

Members

Sen. R. Michael Young, Chairperson
Sen. Brent Steele
Sen. James Arnold
Sen. Lindel Hume
Rep. Greg Steuerwald
Rep. Jud McMillin
Rep. Matt Pierce
Rep. Linda Lawson
Larry Landis
David Powell
Commissioner Bruce Lemmon
Thor Miller
Linda Brady
Hon. Stephen R. Heimann



CRIMINAL LAW AND SENTENCING POLICY STUDY COMMITTEE

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Authority: IC 2-5-32.5

MEETING MINUTES¹

Meeting Date: September 26, 2013
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St., Room 130
Meeting City: Indianapolis, Indiana
Meeting Number: 3

Members Present: Sen. R. Michael Young, Chairperson; Sen. Brent Steele; Sen. Lindel Hume; Rep. Greg Steuerwald; Rep. Matt Pierce; Larry Landis; David Powell; Commissioner Bruce Lemmon; Thor Miller; Linda Brady; Hon. Stephen R. Heimann.

Members Absent: Sen. James Arnold; Rep. Jud McMillin; Rep. Linda Lawson.

Senator Young called the meeting to order at 10:04 a.m.

I. Recidivism and Sentencing Reform

A. G. Roger Jarjoura, Ph.D., of the American Institutes for Research, presented research describing the economic impact of recidivism. According to data Dr. Jarjoura presented to the Committee, reducing recidivism by 1% would annually save 28,000 prison bed days. (See Exhibit 1).

In response to a question from Senator Young, Dr. Jarjoura noted that 80% of

¹ These minutes, exhibits, and other materials referenced in the minutes can be viewed electronically at <http://www.in.gov/legislative>. Hard copies can be obtained in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for hard copies may be mailed to the Legislative Information Center, Legislative Services Agency, West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for hard copies.

offenders returned to incarceration did not have a job; absence of post-incarceration treatment for offenders with substance abuse issues is an important contributing factor to the lack of employment.

In response to a question from Senator Steele, Dr. Jarjoura testified that states with successful recidivism reduction programs funded these programs from moneys that would otherwise have gone to new prison construction.

In response to a question from Judge Heimann, Dr. Jarjoura noted that an additional benefit of reduced recidivism is reduced victimization. While the benefits of reduced victimization do not always show up on a balance sheet, the actual costs incurred when a young person is shot are approximately \$1 million.

In response to a question from Senator Hume, Dr. Jarjoura stated that increasing an offender's educational level while incarcerated is one of the best predictors of lack of recidivism.

In response to a question from Randy Koester, Dr. Jarjoura stated that quality control for recidivism reduction programs is something of an art, and that it is important to study all important aspects of successful programs, including management and staffing numbers.

In response to a question from Senator Young, Dr. Jarjoura testified that when Texas employed its recidivism reduction program, it did not use pilot projects, but rolled the program out to the entire state in stages.

During Committee discussion, Representative Pierce stated that the resources for treatment are located in local communities, and that money should be redirected from the state to local communities to fund treatment and, ultimately, save money at the state level. Judge Heimann observed that when Bartholemew County was required to reimburse the state for some of the costs of sending juveniles to state facilities, it funded local programs and was able to avoid sending many juveniles to the state. Now that locals are no longer required to pay part of this cost, it is harder to convince local officials to fund local programs.

B. Indiana Judicial Center

Jane Seigel, Executive Director of the Indiana Judicial Center, introduced Paula Smith, Ph.D., a professor at the University of Cincinnati's School of Criminal Justice who studies methods for reducing recidivism. Dr. Smith described the results of her research. (See Exhibit 2).

In response to questions from Senator Young, Dr. Smith stated that the first six months after an inmate's release from prison were key to reducing recidivism; intensive programming in the first three to nine months has a strong correlation with reduced recidivism. Programs that extend beyond 12 months show little correlation with reduced recidivism.

In response to questions from the Committee, Dr. Smith testified that the most effective programs target the person's attitude and values. While education and job training are also important, they will not reduce recidivism if the person's attitude and values are not also improved. Dr. Smith described a program that focused almost exclusively on placing newly released individuals in a job - this program led to a 95% job placement rate, but after six months, only 20% of the individuals still had jobs, and only 15% had the same job. The focus of the program was changed to target attitudes and values, and now 60% of released inmates still have jobs after six months.

In response to a question from Representative Pierce, Dr. Smith stated that job skills were more important than education, but that it is also important to focus on creating a value system that will allow the person to be able to keep the job.

C. Marion Superior Court

Judge David Certo, Presiding Judge of the Marion Superior Court, described the approach that probation departments and community corrections programs in Marion County are taking to reduce recidivism. (See Exhibit 3).

In response to a question from Senator Young, Judge Certo stated that the best tools for combatting recidivism are effective assessments and appropriate services. Judge Certo believes that community corrections programs would be more effective if the court had more direct control.

In response to a question from Senator Steele, Judge Certo stated that he believed that judges would benefit from additional focused training in areas such as substance abuse and domestic violence. Extensive training in a few areas that are directly relevant to the experiences of most probationers is better than broader cafeteria-style training that is less directly relevant to issues facing probationers.

C. Mental Health America of Indiana

Steve McCaffrey, Executive Director of Mental Health America of Indiana, introduced Lisa Brueggeman, alcohol and drug services coordinator for Marion Superior Courts; Jennifer Fillmore, program manager of Centerstone (a not-for-profit provider of community-based mental health and addiction services); and Linda Grove-Paul, Centerstone's vice-president of recovery and innovation.

Ms. Brueggeman, Ms. Fillmore, and Ms. Grove-Paul described Centerstone's Project Care, a reentry program for Indiana offenders. (See Exhibit 4).

After describing the goals and approaches of Project Care, Ms. Grove-Paul introduced Niles Hall, an ex-offender employed by Centerstone who counsels ex-offenders. Mr. Hall testified that he was a client of Centerstone less than two years ago; before that he spent one year incarcerated in the Indiana Department of Correction, and more than five years on probation. Mr. Hall explained that his problems stemmed from his addiction to heroin, and that Project Care helped him overcome his addiction. Mr. Hall believes that probation and community corrections were also useful, but that they were generally only available during business hours and were limited in the amount of support that they could provide. Project Care helped him to stop making the same mistakes and stay out of prison.

Ms. Grove-Paul also introduced Letha Jackson, a recovery coach who works in rural areas. Ms. Jackson testified that lack of resources is a problem for newly released ex-offenders; she provides practical assistance such as taking them to buy new clothes and finding affordable healthcare. As many newly released offenders do not have licenses, she also drives them to important appointments.

D. RecycleForce

Gregg Keesling, CEO of RecycleForce, described how RecycleForce hires and trains newly released offenders. (See Exhibit 5).

In response to a question from Senator Young, Mr. Keesling testified that some ex-offenders hired by RecycleForce are struggling with mental illnesses.

In response to a question from Representative Pierce, Mr. Keesling explained that most ex-offenders are employed on a temporary basis for approximately six months.

The Committee broke for lunch at 1:30 p.m. and returned at 2:15 p.m.

E. Coalition for Homelessness Intervention and Prevention

Christy Shepard, Executive Director of the Coalition for Homelessness Intervention and Prevention (CHIP), described homelessness in Marion County and approaches to reduce homelessness. (See Exhibit 6).

In response to a question from Senator Young, Ms Shepard testified that Indiana's new expungement law might help some homeless individuals, but it is not a panacea and not everyone who could benefit from the law is eligible for expungement. There is a work opportunity tax credit available for businesses that hire ex-offenders, but many Indiana businesses do not know about it.

F. Transition from Prison to Community

Randy Koester, Indiana Department of Correction Deputy Commissioner, presented research evaluating which approaches to reducing recidivism were most effective. (See Exhibit 7).

Jerry Vance, Indiana Department of Correction Director of Programming, explained the types of programs that are available for inmates in the Department of Correction. (See Exhibit 8).

In response to a question from Senator Young, Mr. Vance stated that there was no concrete evidence that doing away with college programs has affected recidivism rates, although it is difficult to determine the effect that removing one program has had because so many programs have recently changed. However, despite the removal of the college programs, recidivism has come down.

In response to a question from Representative Pierce, Mr. Vance stated that credit time does motivate people to participate in programs. However, this can mean that inmates come into the programs for the wrong reasons: treatment is most effective when inmates are self-motivated. Some offenders are removed from programs if they seem to be only interested in the credit time and "beating the system."

In response to questions from David Powell, Mr. Vance testified that some sentences are too short to allow for treatment, and that at least 14 months was ideal. Offenders serving less than 12 months are unlikely to get treatment in prison, although they may get outpatient treatment upon release. Mr. Vance explained that individuals with mental health issues are assessed and treated in the facility, but that finding mental health treatment after release from the Department is difficult.

In response to a question from Larry Landis, Mr. Vance testified that inmates often do not get treatment until approximately 36 months before release. If treatment is provided too early, the offenders will lose the benefits of the treatment due to exposure to other offenders in the general prison population while awaiting release.

In response to a question from Senator Hume, Mr. Vance testified that the ability to provide college programs was simply a matter of funding, and that some data demonstrate a correlation between earning an associate's degree and a lower recidivism rate.

G. Indiana Prosecuting Attorneys Council

David Powell, Executive Director of the Indiana Prosecuting Attorneys Council (IPAC), discussed recidivism and sentencing, including advisory sentences and nonsuspendible sentences. (See Exhibit 9). Mr. Powell distributed documents to the Committee, including: (1) a law review article discussing recidivism; (2) a copy of a reentry policy study commission report conducted for the Indianapolis-Marion County City-County Council; (3) research proposals to review the effect of HEA 1006-2013; and (4) IPAC's suggestions for sentencing reform (See Exhibit 9).

During Committee discussion on recidivism, Representatives Pierce and Steuerwald stated that the results of a recidivism study would be critical in obtaining funding for treatment and other offender programs. Mr. Koester noted that a study conducted by a neutral third party would be preferable. Judge Heimann observed that there will be some tension between the state and local officials with respect to funding.

During Committee discussion on sentencing, Judge Heimann stated that he believes that advisory sentences are helpful to the court because they provide a neutral

starting point for sentencing from which the judge can add or subtract time based on the presence of aggravating and mitigating circumstances. Judge Heimann also believes that advisory sentences make the sentencing process easier for the public to understand, and that it would be a disservice to the public to remove them.

H. Indiana Public Defender Council

Larry Landis, Executive Director of the Indiana Public Defender Council, discussed advisory sentences and suspendibility. (See Exhibit 10). Mr. Landis distributed to the Committee: (1) a memo outlining the Public Defender Council's view on advisory sentences and suspension of sentences (Exhibit 11); (2) a spreadsheet containing male commitments to the Indiana DOC from 1995 to 2012 (Exhibit 12); and (3) a spreadsheet describing the predicted impact of the sentencing changes contained in HEA 1006-2013 (Exhibit 13).

During Committee discussion of advisory sentences, Senator Young stated that he was uncomfortable with describing the advisory sentence as a "midpoint" if it was not a true midpoint.

I. Indiana Judges Association

Judge Robert Frazee testified that the Indiana Judges Association believes that it is important for judges to have discretion in sentencing. Mandatory sentences make sentencing worse because they tie the hands of judges and prosecutors, who are faced with the dilemma of either bringing charges that will result in mandatory prison time, or dismissing a case.

The Judges Association also believes that the advisory sentence is very useful as a starting point in sentencing: the prosecutor can argue why the sentence should be increased; the defense can argue why the sentence should be decreased; and the judge can decide the appropriate sentence based on both arguments. This helps the judge impose an appropriate sentence. Removing the advisory sentence would be harmful, particularly to poor defendants represented by public defenders. The Judges Association does not have an opinion on what the advisory sentences should be.

In response to a question from Senator Young concerning advisory sentences, Judge Frazee stated that removing advisory sentences might make sentencing appeals more common.

In response to a question from Senator Young concerning nonsuspendible sentences, Judge Frazee stated that sentences are imposed on people, not on crimes, and that nonsuspendible sentences harm the sentencing process because they remove the ability to make individualized sentencing determinations.

Judge Frazee distributed a letter to Committee members from Judge John Pera, President of the Indiana Judges Association. (Exhibit 14).

During Committee discussion, Representative Pierce stated that HEA 1006-2013 involved many compromises made over a period of several years, including some increased sentences for more serious crimes, reduced sentences for less serious crimes, increased proportionality and rationality for many other crimes, plus reduced credit time and educational credit time. Representative Pierce believes that the compromise allowing longer sentences for some more serious crimes was based on keeping the minimum and advisory sentences at their current level, while extending the maximum sentencing ranges; this allows prosecutors to seek longer sentences for these crimes in appropriate cases while not necessarily raising the sentences for all crimes of the same level. Representative Pierce also stated that during the discussion of HEA 1006-2013, many people felt that nonsuspendible sentences led to arbitrary results.

During Committee discussion, Senator Young stated that it was useful to look at

HEA 1006-2013 holistically, and to consider whether certain crimes are so bad that it is good public policy to make the sentences for these serious crimes nonsuspendible.

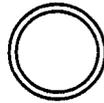
Senator Steele stated that one goal of HEA 1006-2013 was to make criminal penalties proportional, and that if this is to have lasting effect, all proposals to change sentences should be reviewed by the Committee first, in the way that new courts are reviewed by the Commission on Courts. He believes that the only way to keep sentencing proportional is for the General Assembly to change how it considers sentences.

II. Other Matters

Senator Young stated that the Committee would consider numerous bill drafts dealing with HEA 1006-2013, Title 9, Title 7.1, and Title 14 during the meeting scheduled for October 8, 2013. The following meeting will be on October 31, 2013, at 10:00 a.m. The October 31 meeting will consider Representative Hale's issue concerning underreporting of crime, recidivism, expungement, and, if necessary, any revised drafts from the October 8 meeting.

Senator Young adjourned the meeting at 4:50 p.m.

The Economic Impact of Recidivism



A PRESENTATION TO THE CRIMINAL LAW
STUDY COMMITTEE

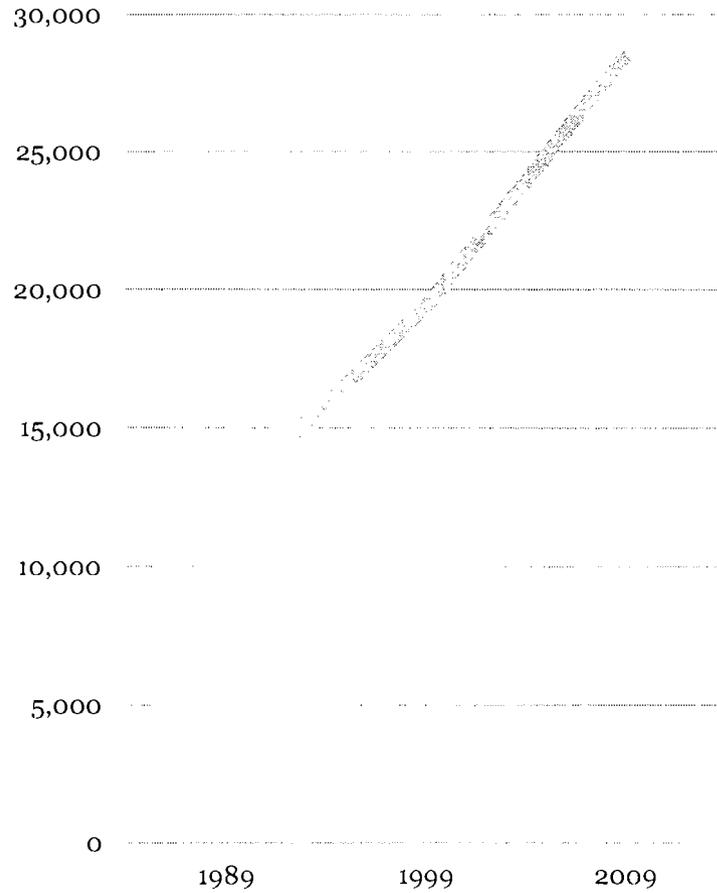
G. ROGER JARJOURA
AMERICAN INSTITUTES FOR RESEARCH
SEPTEMBER 26, 2013

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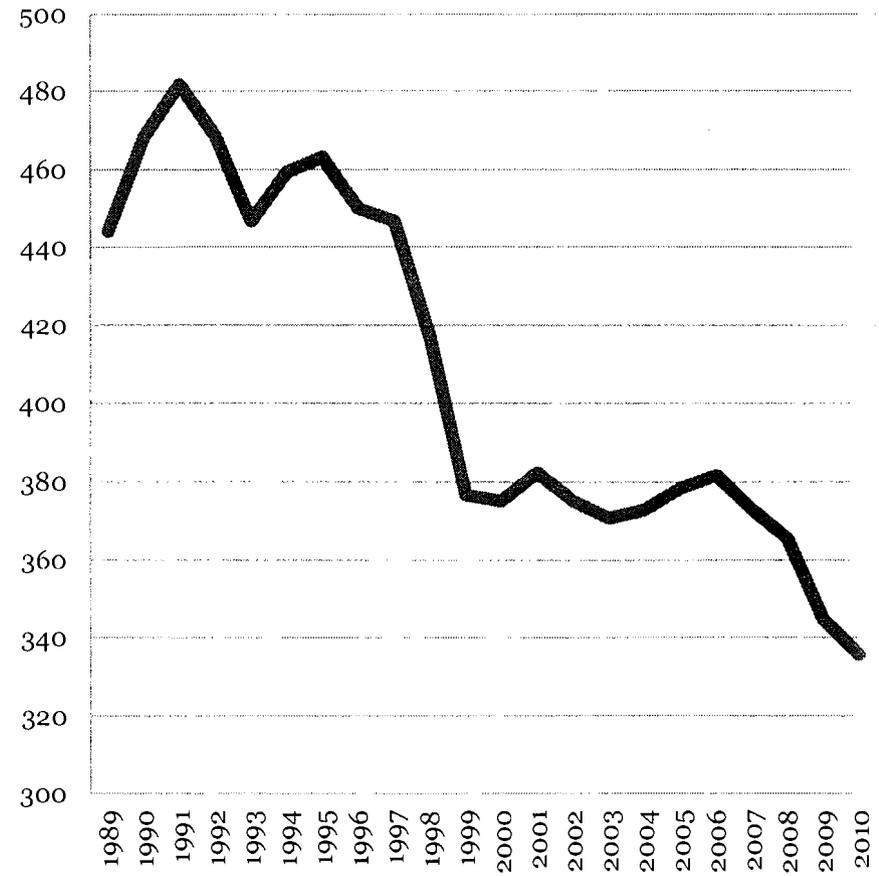
CLSP

Exhibit 1

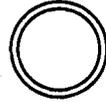
Prison Population in Indiana



Indiana Crime Rates (Per 10,000 Residents)



Recidivism in Marion County



- From a recent study:
 - 51.6% of prisoners released from state institutions are returned to prison within three years
 - This is higher than the state average of 37%
 - 56% of those returning to prison are sent back to prison as a revocation of their parole or probation
 - Of those sent back on a violation, 74% are returning to prison without having committed a new offense

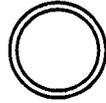
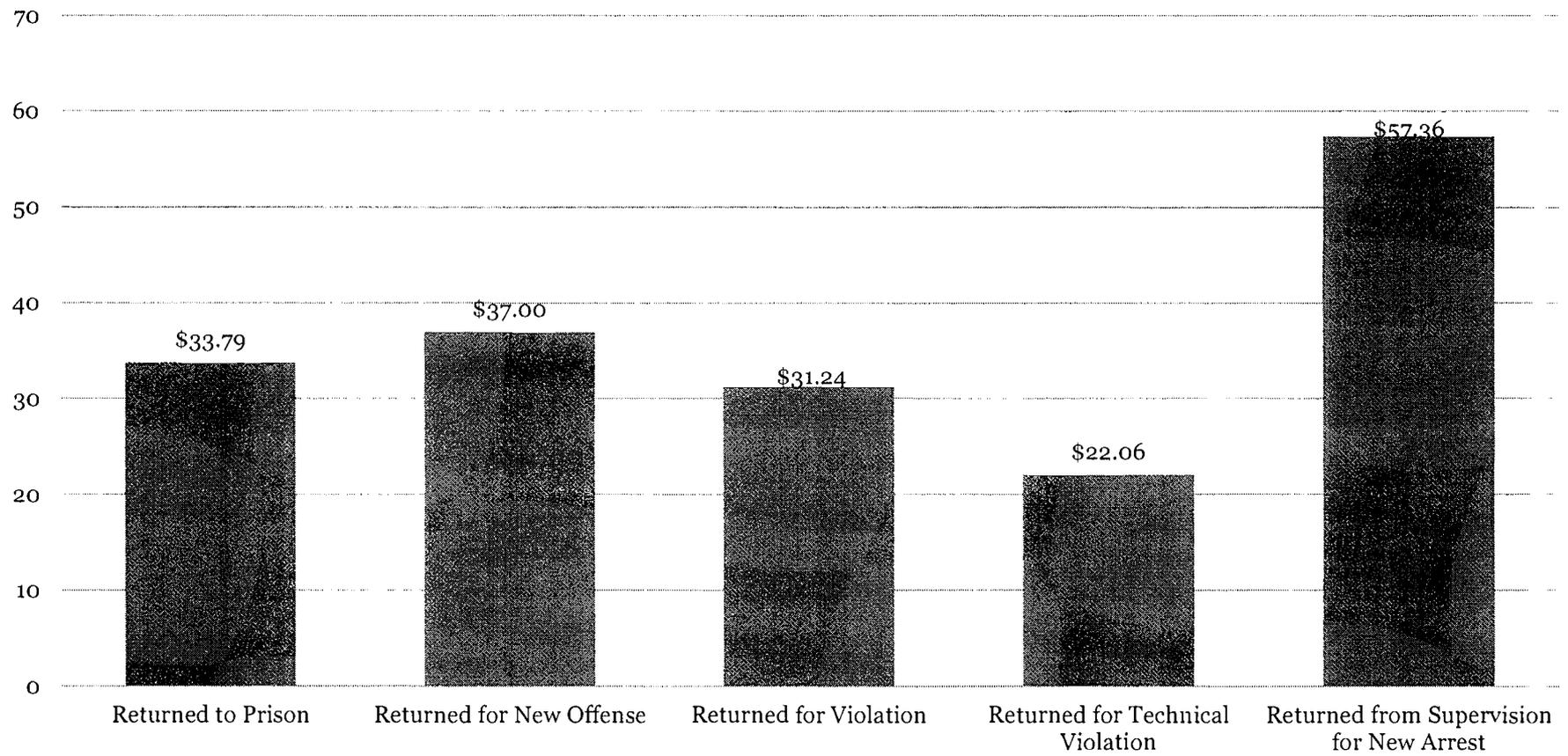


Figure 2. Average Cost Per Reincarceration (in Thousands)



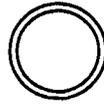
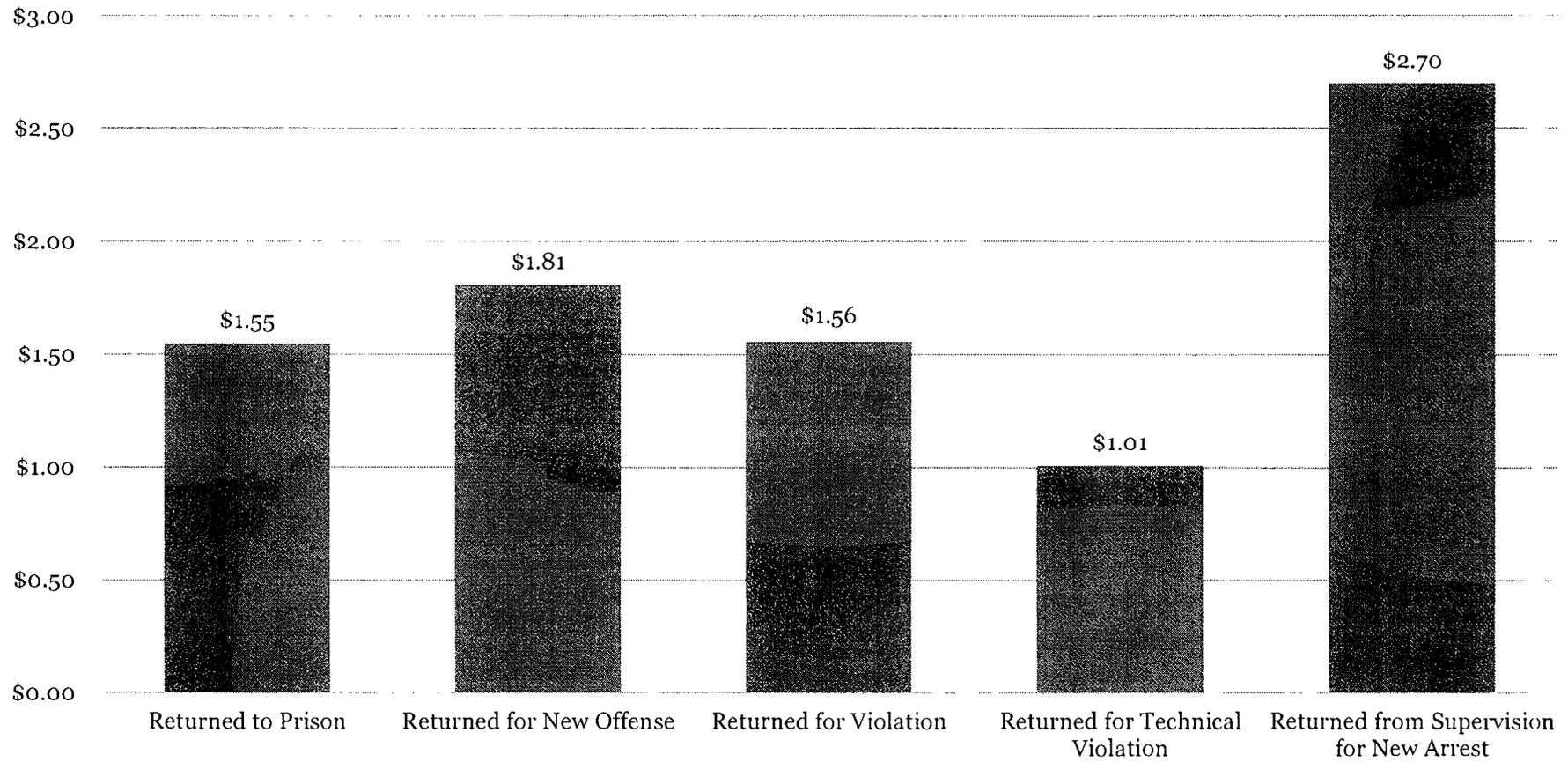


Figure 3. Savings Based on a 1% Reduction in Recidivism (in Millions)



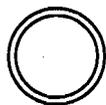
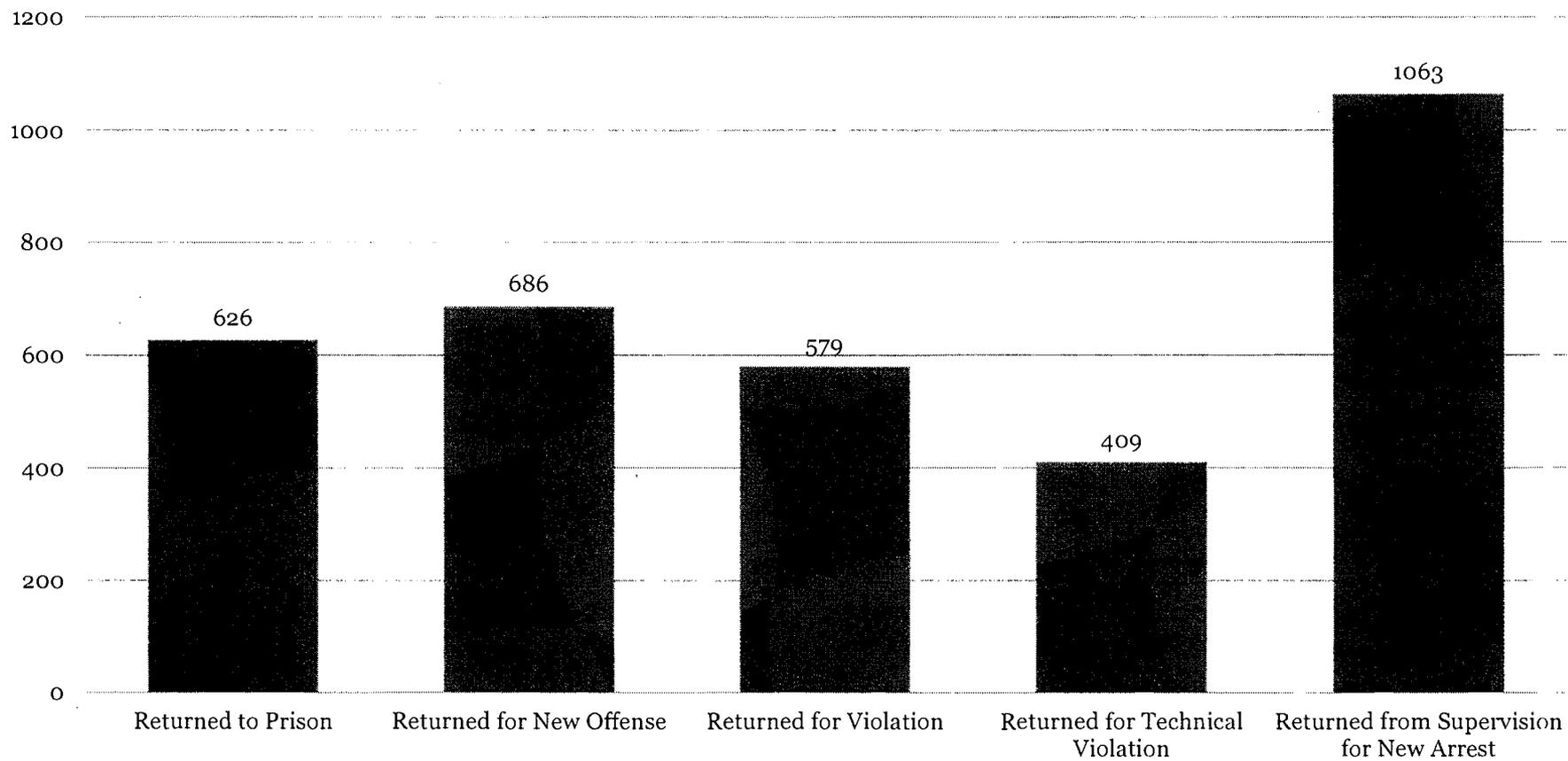


Figure 4. Average Length of Stay (Bed-Days) if Returned to Prison



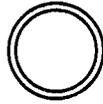
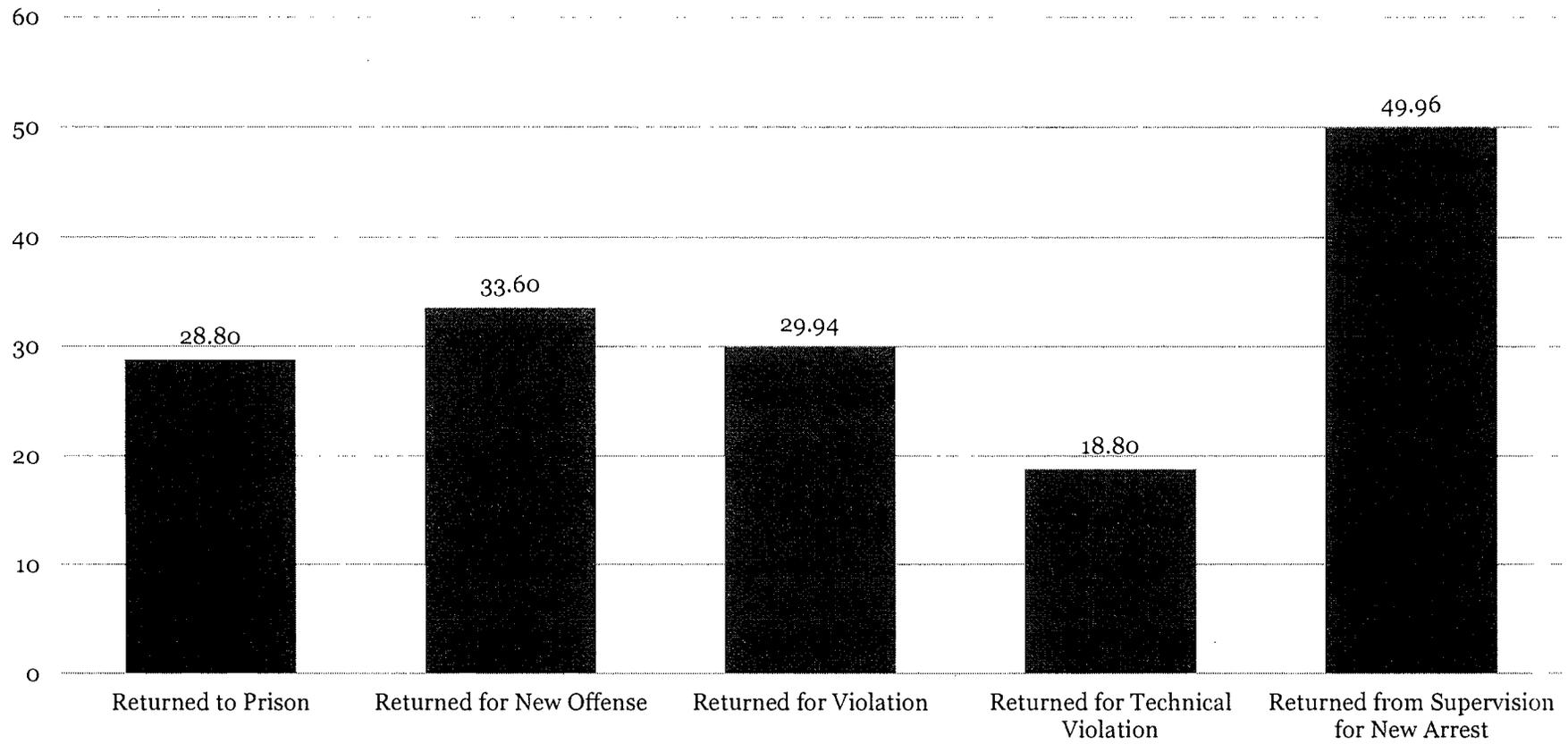
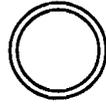


Figure 5. Average Bed-Days (in Thousands) Saved With 1% Reduction in Recidivism

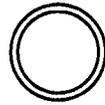


Policy Implications



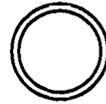
- Each of these categories speaks to policy implications
 - The decision to return people to prison when they have not committed a new offense
 - How to provide reentry support so those wanting to avoid criminal activity have legitimate opportunities
 - The availability of effective and affordable treatment programs
 - How could the funds be otherwise allocated if we can reduce the prison population

Justice Reinvestment



- Focus on individuals most likely to reoffend (risk assessment)
- Base programs on science and ensure quality implementation (drug treatment, supervision combined with treatment, prison education programs)
- Implement effective community supervision policies and practices (graduated sanctions, motivational interviewing, motivational techniques)
- Apply place-based strategies (high-crime places, million dollar blocks, supervision where they live, embedded services, family engagement)

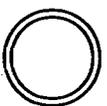
Justice Reinvestment Profiles



- Michigan

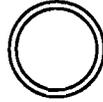
- From 1998-2008, corrections spending increased by 57%, and was 22% of state budget
- National violent crime rates declined by 8% during the same period, but violent crime rates remained unchanged in Michigan

Impact in Michigan



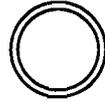
- They recently closed 8 prisons in their state

Justice Reinvestment Profiles



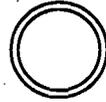
- Texas
 - In 2007, after dramatic growth in their prison population, the state faced needing to spend another \$500 Million to expand prison capacity
 - Over the previous 10 years:
 - ✦ Probation revocations increased 18%
 - ✦ There was a shortfall in space for substance abuse and mental health treatment in the community
 - ✦ Approvals for parole release were not following recommendations from Parole Board, resulting in more than 2,000 offenders staying in prison

Impact in Texas



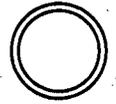
- Parole revocations decreased 29%
- Probation revocations decreased 3%
- Prison populations decreased by more than 1,000 despite projections it would increase by more than 5,000 if the changes had not been made
- Significant expansion in availability of drug treatment and mental health treatment

Justice Reinvestment Profiles



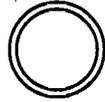
- Kansas
 - Kansas was notable as the state with the highest proportion of new admissions to prison that were the result of technical violations (65% of those entering prison)
 - The vast majority of those returning to prison had substance use violations and no access to evidence-based treatment programs

Impact in Kansas



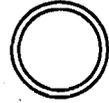
- Since the changes took place:
 - Probation revocations declined by 16%
 - Parole revocations declined by 34%
 - Projected increases in prison population have been avoided

Nonsuspendible Sentences



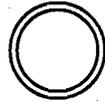
- For a one-year period for Marion County:
 - 688 offenders sentenced to DOC for D Felony and nonviolent C Felony cases in which part of the sentence was nonsuspendible
 - Resulted in the use of 179,384 bed days
 - The total cost for these incarcerations was \$9.3 Million

Performance Incentive Funding



- Provides financial incentives at the local level if community-based treatment programs are designed and used rather than sending the offender to prison
- Tied to outcomes

Education in Prison



- Research evidence is clear that increased educational attainment is related to reduced likelihood for recidivism
- We have abandoned non-vocational college programs for prisoners in this state
- We have significant numbers of offenders spending time in prison and not achieving their GED
- Programs that are available are not necessarily available to scale so that the majority of offenders can benefit

Evidence-Based Approaches to Reducing Recidivism

Criminal Law and Sentencing Policy Study Committee
Indiana Legislative Services Agency

Paula Smith, Ph.D.
Associate Professor, School of Criminal Justice
University of Cincinnati
Revised 09/2013

1

Principles of Effective Intervention

SAFER FACILITIES/SAFER COMMUNITIES

- We are primarily concerned with reducing misconducts and recidivism, while promoting offender accountability.
- As such, we should be focused on strategies that encourage both short-term compliance and long-term behavioral change.

2

Principles of Effective Intervention

METHODOLOGICAL CONSIDERATIONS

- Operational definition of recidivism
- Availability of adequate comparison groups
- Quality of data sources

3

Principles of Effective Intervention

SAFER FACILITIES/SAFER COMMUNITIES

- Previous research has demonstrated that institutional behavior is correlated with post-release behavior.
- Programs that reduce misconducts in custody also serve to lower recidivism rates in the community.

Gendreau & French (2004); Smith & Gendreau (2006)

4

Principles of Effective Intervention

SAFER FACILITIES/SAFER COMMUNITIES

- Core correctional practices are applicable to all correctional settings – and maximize the likelihood that offenders can achieve long-term behavioral change!

5

Principles of Effective Intervention

EVIDENCE-BASED PRACTICE

- Roots in the medical field (circa 1025)
- Modern medicine was pressured to do more with less (i.e., cost-effective services and interventions).
- Evidence-based practice developed to ensure that appropriate and effective treatments were used.

6

Principles of Effective Intervention

EVIDENCE-BASED PRACTICE

"...the explicit and unbiased use of current best research results in making clinical (i.e., individual) and health policy (i.e., population) decisions."

John Hopkins University Bloomberg School of Public Health, Summer Institute of Epidemiology, June 2001.

"...an approach to decision-making in which the clinician uses the best evidence available, in consultation with the patient, to decide upon the option which best suits the patient."

Gray (1997). Evidence based health care: How to make health policy and management decisions.

7

Principles of Effective Intervention

ARE CORRECTIONAL PROGRAMS EFFECTIVE?

- Some programs are more effective than others.
- Effectiveness is largely dependent upon:
 - who is placed in the program;
 - what the program targets; and
 - how these factors are targeted.

8

Principles of Effective Intervention

ARE CORRECTIONAL PROGRAMS EFFECTIVE?

- Effectiveness is determined through empirical research rather than anecdotes, stories, common sense, or personal beliefs about effectiveness.

9

Principles of Effective Intervention

REVIEWS OF RESEARCH

- There are generally three ways to summarize large bodies of research:
 - literature reviews;
 - vote counting techniques; and
 - meta-analysis.
- Meta-analysis is now the review method of choice in most disciplines, including corrections.

10

Principles of Effective Intervention

META-ANALYSIS

Advantages	Limitations
Easy to replicate	Selection of variables for coding
Provides policy implications	Inter-coder reliability can be a concern

11

Principles of Effective Intervention

REVIEWS OF RESEARCH

- At the present time, there are more than 45 meta-analyses of the corrections literature.
- The results have been replicated with remarkable consistency, and the findings are referred to as the principles of effective intervention.

Smith, Gendreau, & Swartz (2009)

12

Principles of Effective Intervention

SANCTION OR SERVICE?

- Not a single reviewer of studies on the effects of official punishment (e.g., custody, mandatory arrest, increased surveillance, etc.) has found consistent evidence of reduced recidivism.

13

Principles of Effective Intervention

SANCTION OR SERVICE?

The bar chart shows the correlation between intervention type and recidivism. The y-axis ranges from -0.04 to 0.14. The 'Sanction' bar is at approximately -0.03, and the 'Service' bar is at approximately 0.12.

Intervention Type	Correlation (r)	Sample Size (n)
Sanction	-0.03	101
Service	0.12	273

Bonta (2004) 14

Principles of Effective Intervention

GUIDELINES FOR EFFECTIVE PUNISHMENT

- Punishment inhibits behavior (i.e., does not teach a new behavior).
- Punishment should be individualized.
- Sanctions should be administered consistently and immediately.

15

Principles of Effective Intervention

GUIDELINES FOR EFFECTIVE PUNISHMENT

- Punishment works best with individuals who:
 - are future-oriented and non-impulsive;
 - are average to above-average intelligence;
 - have minimal histories of punishment; and
 - are cautious.

16

Principles of Effective Intervention

WHY DOESN' T PUNISHMENT WORK?

- Sanctions are intended to suppress behavior; it only tells an offender what not to do.
- Sanctions fail to address criminogenic needs.
- Sanctions are often insufficient to offset the immediacy, frequency and magnitude of rewards for criminal behavior.

17

Principles of Effective Intervention

IN SUMMARY...

- Targeted services - rather than sanctions - reduce recidivism.
- Programs and environmental structures enhance safety for both staff and offenders.
- Reducing misconducts in custody will reduce recidivism in the community.

18

Principles of Effective Intervention

RISK	NEED	RESPONSIVITY
WHO	WHAT	HOW
Deliver more intense intervention to higher risk offenders	Target criminogenic needs to reduce risk for recidivism	Use CBT approaches Match mode/style of service to offender

Principles of Effective Intervention

RISK PRINCIPLE

- Offender risk can be measured and identified with a standardized assessment.
- Higher risk offenders should receive more intense services, treatment and supervision.
- Avoid targeting lower risk offenders as it may increase their risk and failure rates.

Principles of Effective Intervention

LOW RISK OFFENDERS

Latessa and Lowenkamp (2002)

Principles of Effective Intervention

HIGH RISK OFFENDERS

Latessa and Lowenkamp (2002)

22

Differential Supervision by Risk/Need

TRANSLATING THE RISK PRINCIPLE

More services should be delivered to higher-risk offenders:

1. Treatment dosage and supervision dosage
2. Meet with offenders more frequently
3. Use focused interventions
4. Use family and community resources

23

Principles of Effective Intervention

NEED PRINCIPLE

- Identify and target criminogenic needs (i.e., dynamic risk factors):
 - Antisocial attitudes, values and beliefs
 - Procriminal peers and associates
 - Antisocial personality
 - Family and marital relationships
 - Education and employment
 - Substance abuse
 - Leisure and recreation

24

Differential Supervision by Risk/Need

TRANSLATING THE NEED PRINCIPLE

Focus on identified criminogenic needs, but:

1. Work through acute/crisis, noncrimogenic, and criminogenic needs
2. Translate risk and needs assessment into need priorities, but always focus on thoughts, attitudes, values, and beliefs

25

Principles of Effective Intervention

SPECIFIC RESPONSIVITY PRINCIPLE

- Remove or address barriers to treatment.
- Match the style and mode of service delivery to key offender characteristics.

26

Principles of Effective Intervention

GENERAL RESPONSIVITY PRINCIPLE

- Use cognitive-behavioural interventions.

27

Demo Projects vs. Routine Programs

- Previous research has found a difference in the average effect size for demonstration projects versus routine programs.
- The Correctional Program Assessment Inventory has been applied to more than 800 correctional programs – and the vast majority (64%) do not receive a passing grade.

Program Implementation

```
graph LR; A[What Works] --> B[How to Make It Work]
```

Specific Gaps in Program Implementation

- Administering a risk assessment ≠ Using the results
- Identifying a domain ≠ Generating an individualized treatment plan
- Implementing a structured treatment manual ≠ CBT program
- Training staff ≠ Proficiency in skills related to service delivery

Differential Supervision by Risk/Need

TRANSLATING THE RESPONSIVITY PRINCIPLE

Enhance behavioral change by delivering services that are responsive to the way an offender learns:

1. Structure supervision period and meetings
2. Develop a relationship
3. Teach core skills in a concrete and simple way

31

Targeting Criminogenic Needs

LET'S LOOK AT ONE EXAMPLE: NEGATIVE PEERS

- Peers influence attitudes, values, and beliefs
- Peers model behaviors
- Peers reinforce behavior
- Peers punish behavior

32

How do you typically target negative peers?

33

Targeting Criminogenic Needs

SUGGESTIONS FOR REDUCING NEGATIVE PEER ASSOCIATIONS

- *Restrict associates*
- *Set and enforce curfews*
- *Ban hangouts, etc.*

- Teach offenders to recognize and avoid negative influences (people, places, things)
- Teach and practice new skills
- Teach how to maintain relationships without getting into trouble
- Identify or develop positive associations
- Train family and friends to assist offender
- Set goal of one new friend (positive association) per month
- Develop alternative prosocial leisure activities

34

Principles of Effective Intervention

IN SUMMARY...

- It is critical to measure risk, and to vary the intensity and duration of services by risk and need levels.

- Programs and services that to the RNR framework are associated with the greatest reductions in recidivism.

- These concepts are applicable (and can be implemented) across criminal justice settings.

35

Marion Superior Court Probation and Marion County Community Corrections Challenges

September 26, 2013



Hon. David J. Certo
Presiding Judge



Exhibit 3 - CLSP - 9/26/13

Marion Superior Court Probation

Department Highlights Since 2005

- 2006 - Highest number of probation officer positions at 263
- Number of positions - same or less each subsequent year
- 56 probation officer positions have been eliminated since 2005
- 207 probation officer positions are currently active
- 15 Probation officer positions have been left vacant in 2013 due to pressures on Marion County budgets
- Reductions
 - Reduced client populations
 - Eliminated in-house programming services
 - Reassigned non-statutory obligations to non-PO personnel
 - Improved fee collections to over 50%

Probation Department Staffing 2009 v. 2013

- 247 Probation Officers
- Base cost - \$10,682,162
- Avg. line salary - \$39,659
- 207 Probation Officers
- Base cost - \$9,144,026
- Avg. line salary - \$42,460

2013 Probation Challenges

- 40 probation officer positions eliminated over the past 4 years
- Vacancies filled by new hires with less than 1 year of experience
- Advanced degree compensation
- No vacancies filled pending benefit leave payouts
- Approval and justification to MSC Executive Committee
- Positions left vacant

2014 Marion County Budget Points

- Marion County faces a \$55 million structural budget deficit
- Probation Department staffing costs for FY2014: **\$10,352,640**
- Increase of **\$411,843** from FY2013

MCCC Program Enrollment

- Duvall Residential Center
- Present Enrollment: 343
- Capacity 350

•

- Brandon Hall
- MC: (Present Enrollment 69; Capacity 71)
- MH: (Present Enrollment 8; Capacity 9)
- CTP: (Present Enrollment 8; Capacity 10)

•

Theodora House

- MC: (Present Enrollment 50; Capacity 50)
- MH: (Present Enrollment 3; Capacity 4)
- CTP: (Present Enrollment 6; Capacity 6)

•

Electronic Monitoring

•

Post-Trial Home Detention

- Present Enrollment: 1709

•

Post-Trial GPS

- Present Enrollment: 69

•

MEMS-3000

- Present Enrollment: 401

Craine House

- Present Enrollment: 4
- Capacity 4

Marion County Jail Residential Programs Wait List

- Duvall: 3
- Brandon Hall: 0
- Brandon Hall Sex Offender: 7
- Theodora House: 7
- Craine House: 1
- Mental Health Males: 22
- Mental Health Females: 4

Pre-trial Home Detention

- Present Enrollment: 54

Pre-trial GPS

- Present Enrollment: 400

MCCC Challenges With Availability of Beds

Approximate placement waiting periods for individuals
sentenced on September 24, 2013:

DUVALL CENTER

Males, Non-Violent, No Sex Offenders & No Mental Health

3 days

BRANDON HALL

Males, Violent Offenders, Mental Health & Sex Offenders

0 days – Standard Bed

12 months – Sex Offender Bed

12 months – Mental Health Bed

THEODORA HOUSE

Females without children & Mental Health

10 weeks – Standard Bed

6 months – Mental Health Bed

CRAINE HOUSE

Females with children under the age of 5

1 ½ months

MCCC Funding Challenges

Brandon Hall

- Brandon Hall is operated by Volunteers of America (VOA).
- MCCC pays \$21.50 per day per offender to VOA. The IDOC pays VOA over \$37.00, and the Federal Government pays over \$60.00 per day per offender.
- VOA says fees paid by IDOC and the Federal Government subsidize costs associated with Marion County offenders. MCCC's contract with VOA expires 12/31/13, and VOA may choose not to renew Marion County's contract.
- MCCC has not secured additional funding to pay more competitive rates.
 - In 2012, MCCC requested and received funding to increase the per diem rate at Brandon Hall from \$19.50 to \$21.50 per day.
 - In 2013, MCCC sought funding to increase the per diem to \$23.50 per day, but the increase was not approved.

MCCC Funding Challenges

2014 Budget

- MCCC's 2014 proposed budget is less than its 2013 budget due to Marion County's structural budget deficit.
- MCCC faces the difficult decision of eliminating beds in various facilities to live within its budget.
- Current waiting times for community placements likely will increase, providing fewer sentencing and treatment options for judges and creating a dire situation even before implementing HEA 1006.

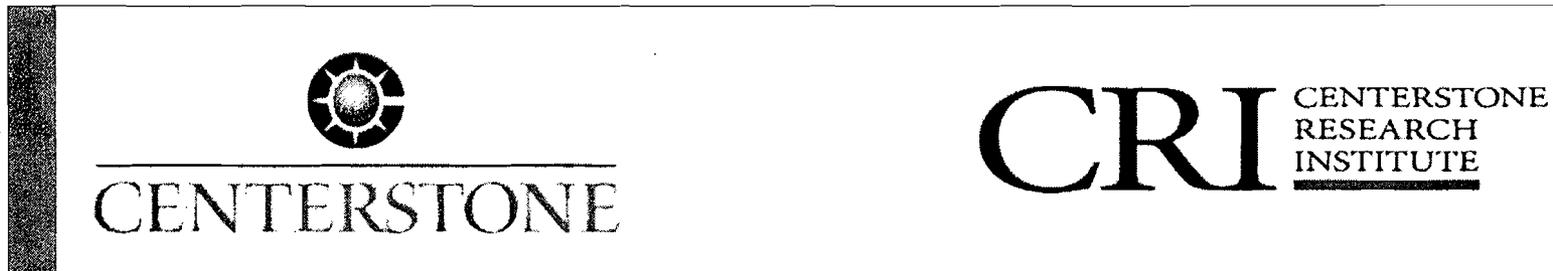
HEA 1006 - Urgent Matters

- Estimates presented to Legislature note potentially 2,480 - 10,000 felony offenders who would be sentenced
- According to IDOC, in 2012 approximately 7,000 offenders were sentenced with their highest offense being Class D felony
- Lowest average estimate of cost to Indiana communities/probation departments is an additional \$1,882,816 per year for community-based supervision
- MCCC's budget constraints and limited bed space jeopardize its ability to respond quickly to a significant increase in the number of clients referred by Courts for residential placement

Centerstone's Project CARE

Indiana Offender Reentry Program
SAMHSA Grant #TI021948

Exhibit 4 - CLSP - 9/26/13



Linda Grove-Paul, M.S.W., M.P.A. Vice President of Recovery and Innovation

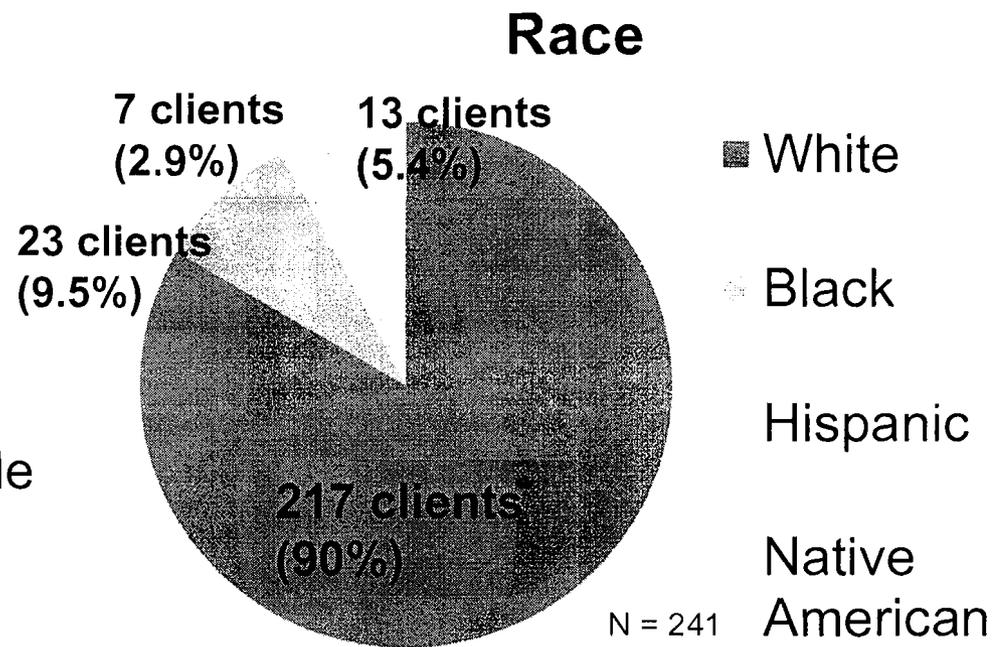
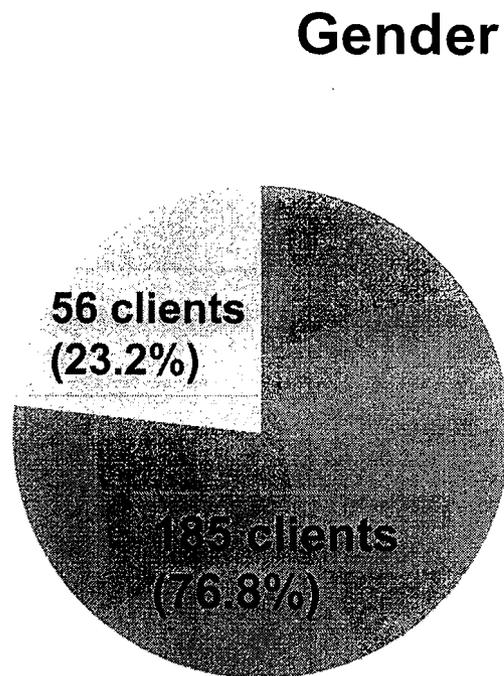
Jennifer Fillmore, M.S., LCAC (Program Manager)

John Putz, M.A. (Program Evaluator)

Centerstone of Indiana

Demographic Information

▶ Average age of clients = 35.55 years



Demographic Information

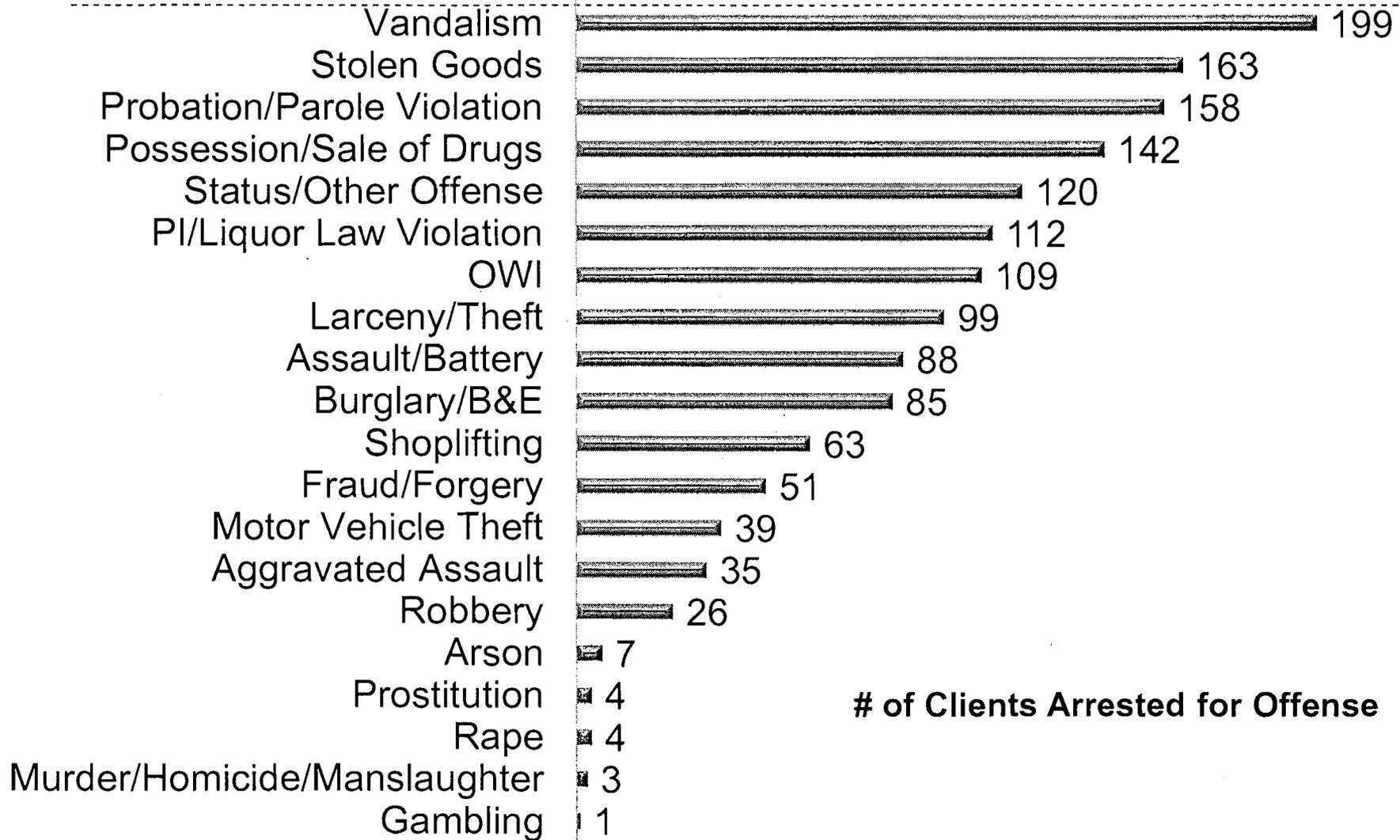
- ▶ 74.1% of clients were unemployed at program intake
- ▶ 92% of clients lived at or below the federal poverty level at program intake
- ▶ 47.2% of clients had less than a 12th grade education at program intake
- ▶ 90% of clients had unsuccessful treatment involvement prior to incarceration

Involvement with Judicial System Prior to Program Enrollment

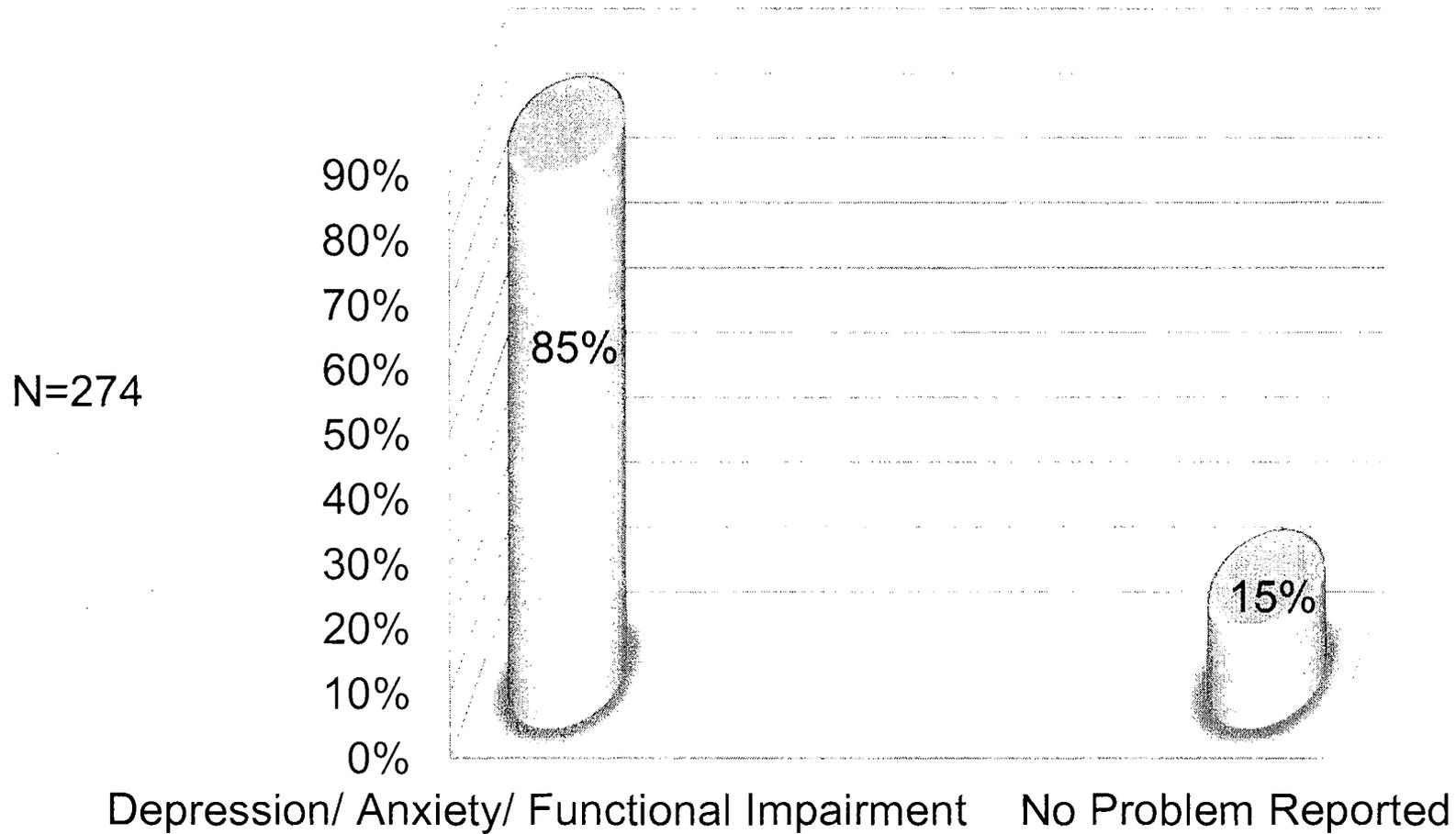
Age of first conviction (N = 235)		Total time spent incarcerated (N = 231)	
<i>Minimum</i>	9 years	<i>Minimum</i>	0.24 years
<i>Maximum</i>	57 years	<i>Maximum</i>	43 years
<i>Mean</i>	19.90 years	<i>Mean</i>	6.81 years
<i>Median</i>	18 years	<i>Median</i>	5.31 years

Total # of arrests (N = 230)		Total # of convictions (N = 232)	
<i>Minimum</i>	4 arrests	<i>Minimum</i>	1 conviction
<i>Maximum</i>	50 arrests	<i>Maximum</i>	200 convictions
<i>Mean</i>	17.11 arrests	<i>Mean</i>	8.12 convictions
<i>Median</i>	19 arrests	<i>Median</i>	5 convictions

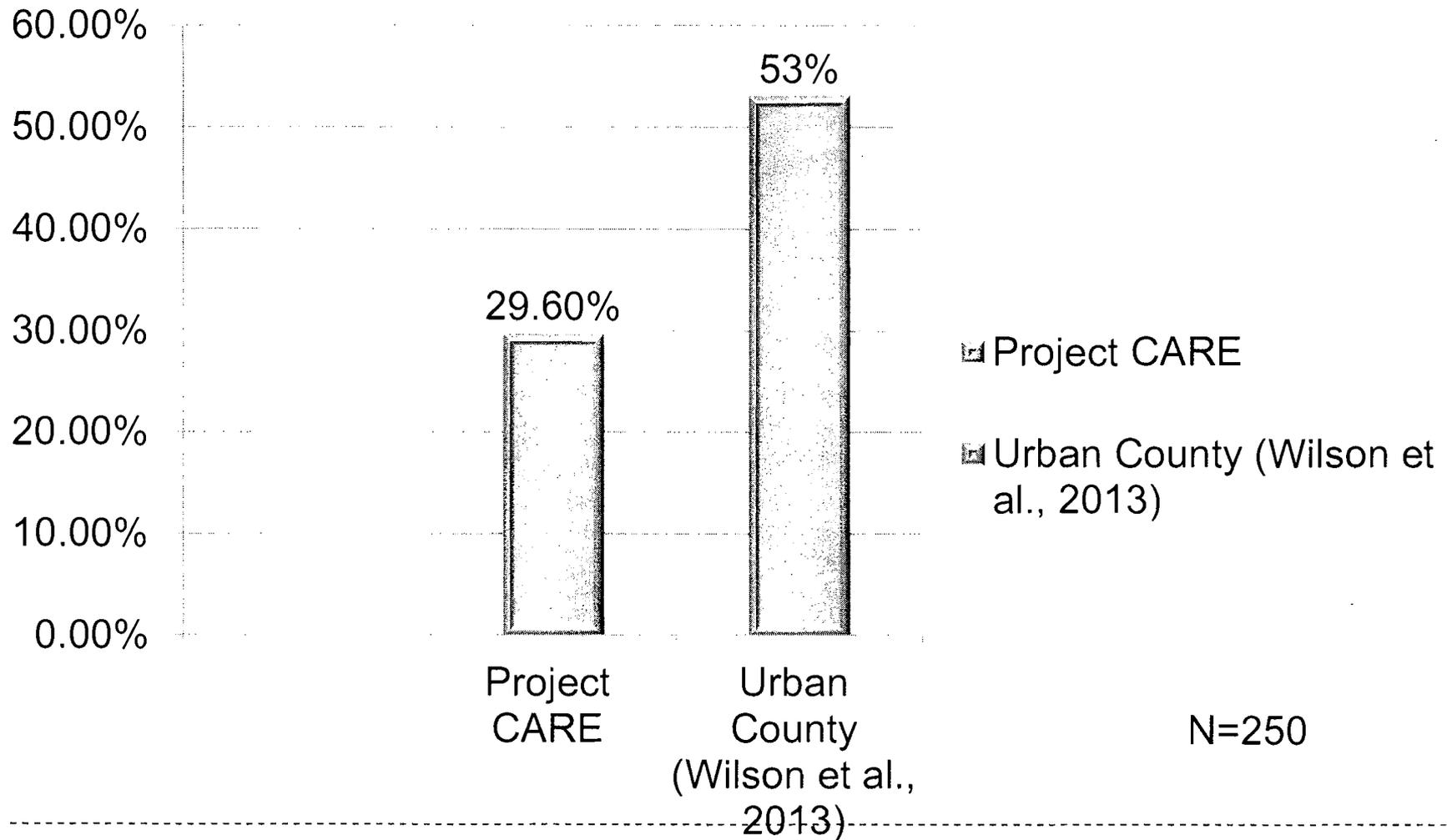
Type of Arrest Prior to Project CARE (N = 237)



Government Performance and Results Act (GPRA) Mental Health Indicators



Recidivism – Project CARE Clients

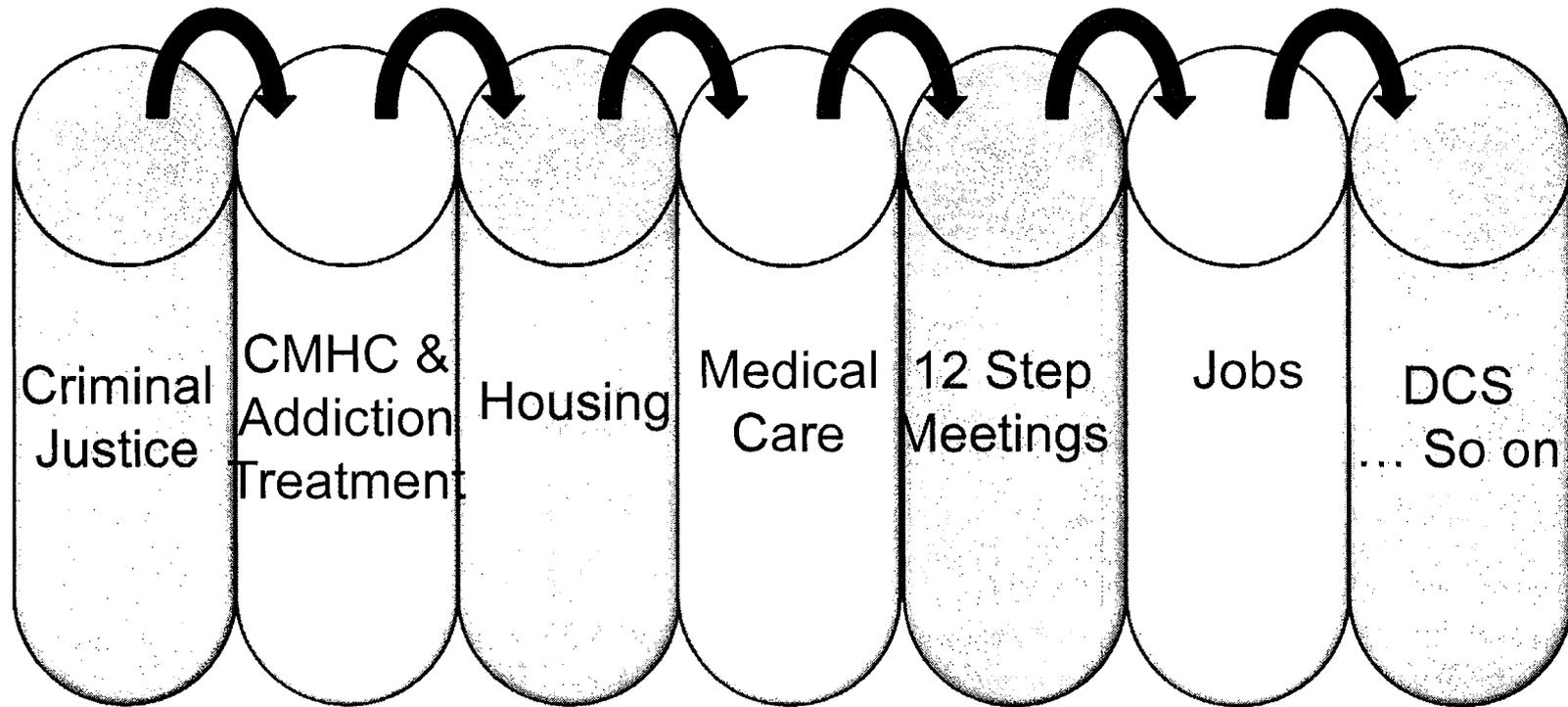


Results

▶ Note:

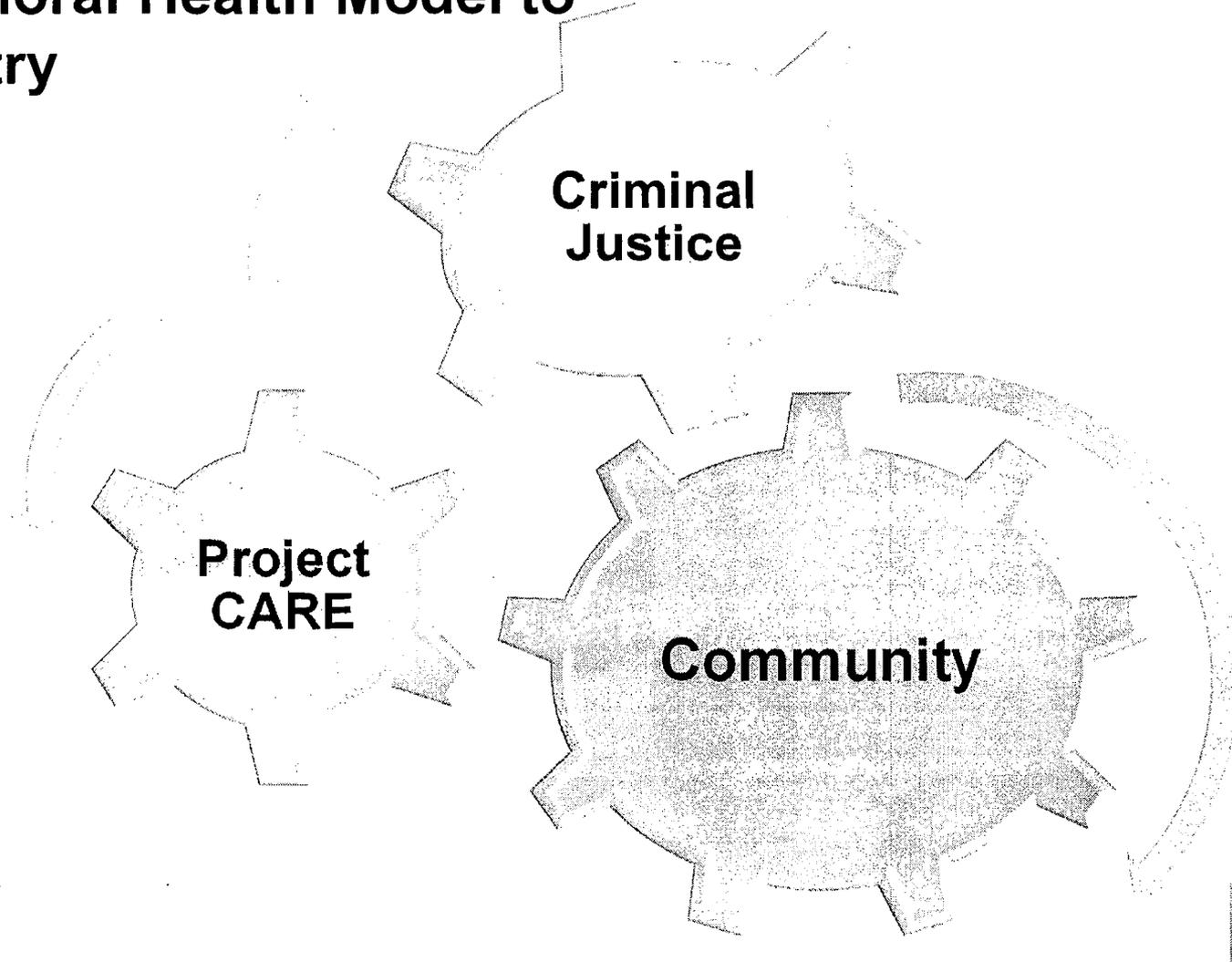
- ▶ When CARE is compared to a similar study, recidivism is reduced by 23.4% (Wilson, et al, 2013)
 - ▶ Persons with serious mental illness & substance use have a 40% higher risk of re-incarceration than persons with no diagnosis. (Wilson, et al, 2013).
 - ▶ Risk of previous incarcerations for individuals with co-occurring serious mental illness and substance use ranges from 54% (depression)-63% (schizophrenia). (Baillargeon, et al, 2009)
-

Silos = Failed Model



Traditional supports require the client to navigate complex and disjointed silos of support.

Behavioral Health Model to Re-entry



No Wrong Door Approach, Trauma Informed, Evidence Based, Criminogenic Needs, Flex funds for Social Supports, Treatment by trained behavioral professionals

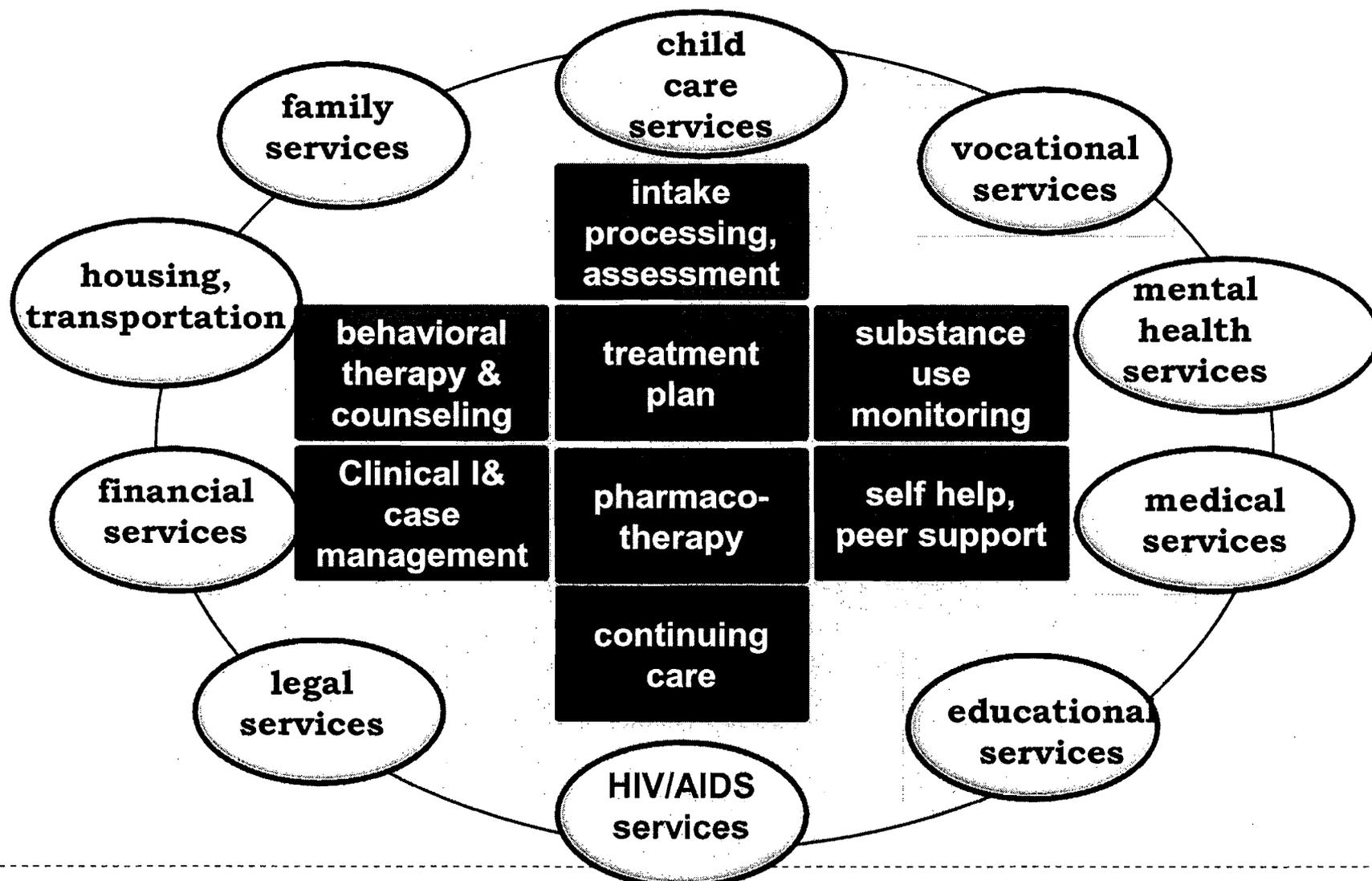
Centerstone of Indiana

Recovery Oriented System of Care (ROSC)

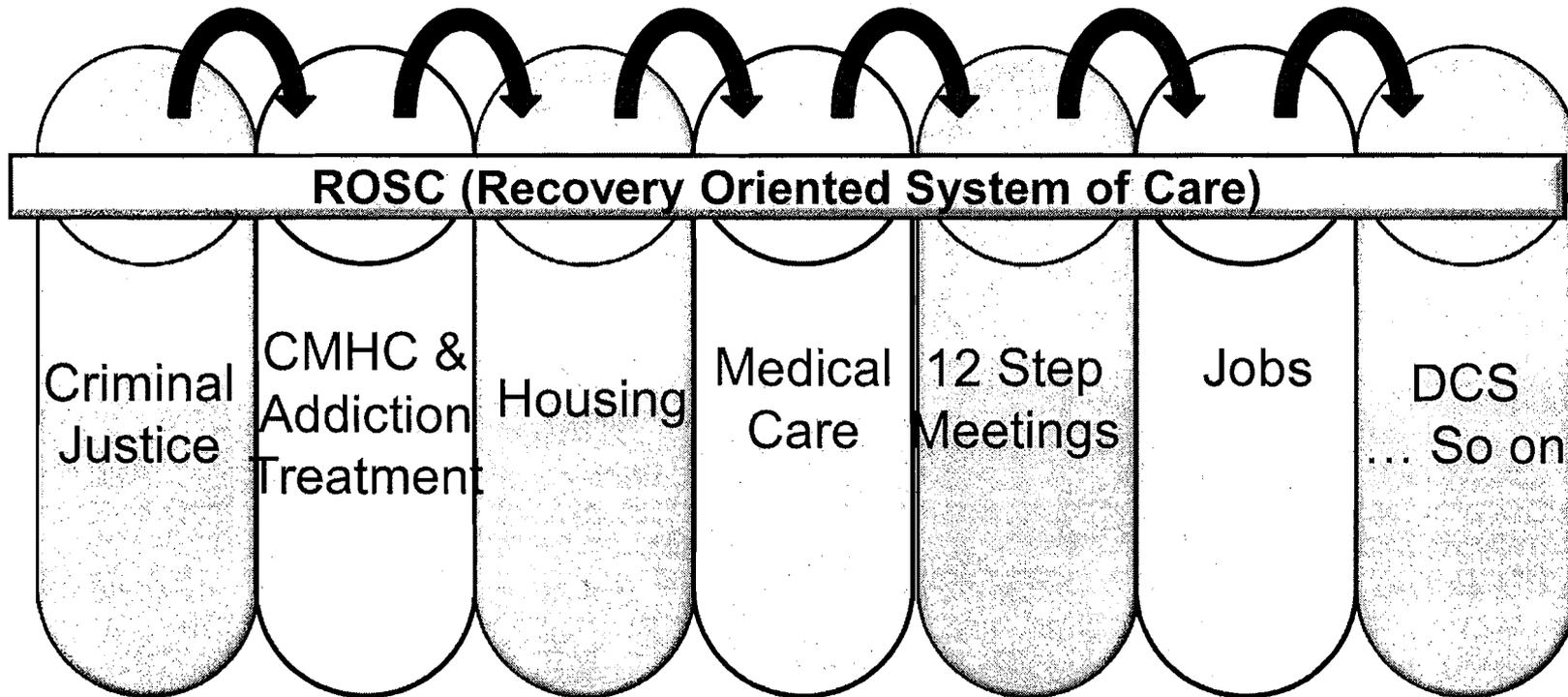
- A **cost-effective, community-based, whole-health** approach to addictions treatment
- Focus on increasing **“Recovery Capital”** in addition to meeting “treatment need”
- Focus on **“Targeted Treatment”**
- Uses **Recovery Coaches, Recovery Engagement Centers, volunteers, and community resources** to meet the need of each individual



Comprehensive Treatment Needs



Project CARE Connects the failed Silos using a Recovery Oriented System of Care



Recovery Capital

Personal Recovery Capital

- **Physical Capital = Health, shelter, food, transportation, etc.**
- **Human Capital = Life skills, values, knowledge, credentials, self-awareness, self-esteem, optimism, purpose**

Family/Social Recovery Capital

- **Family Capital = Family and family of choice, social relationships**
- **Community capital = Access to resources in the community**

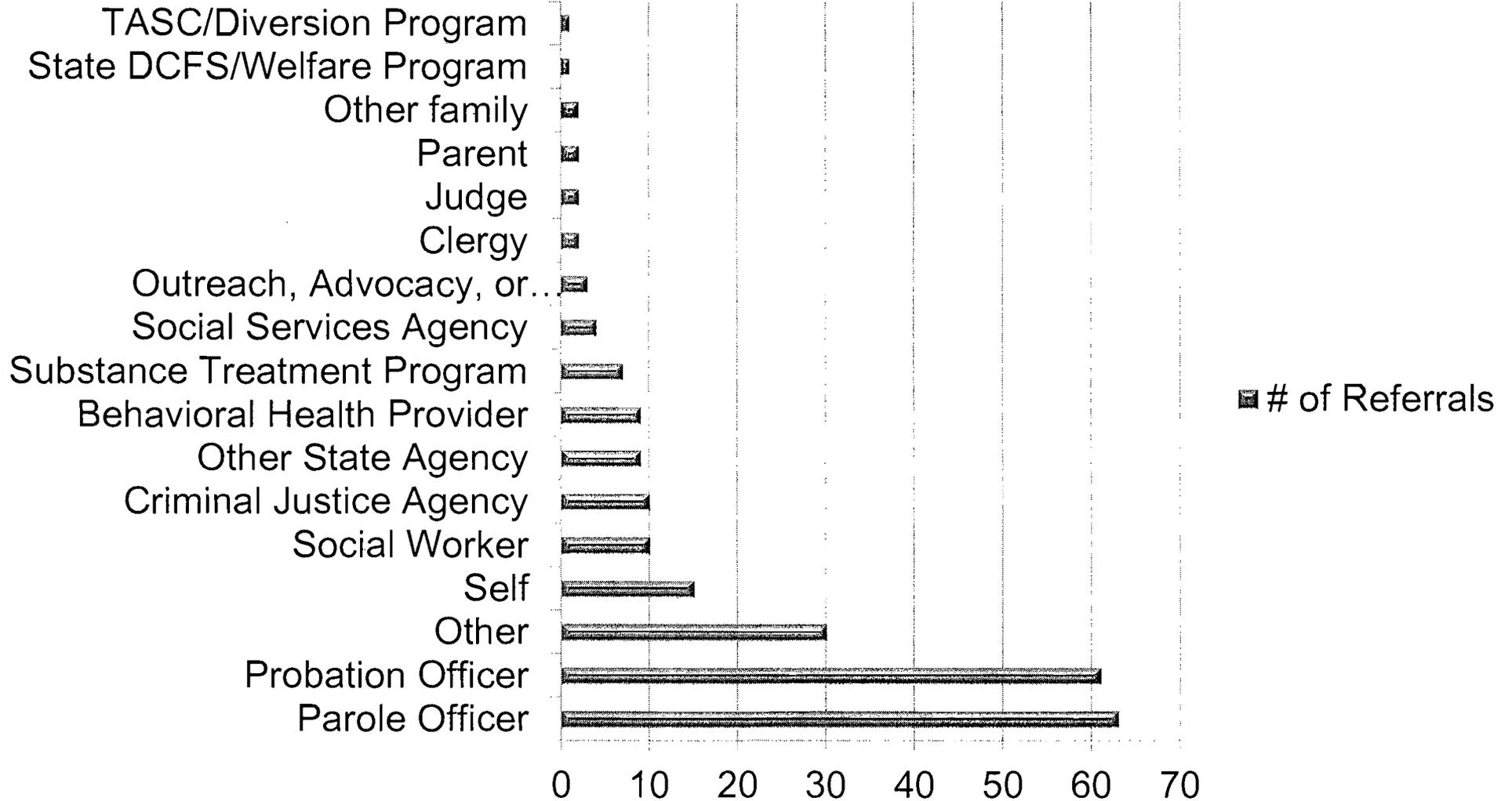
Cultural Recovery Capital

- **Cultural Capital = Local availability of culturally-prescribed pathways of recovery**

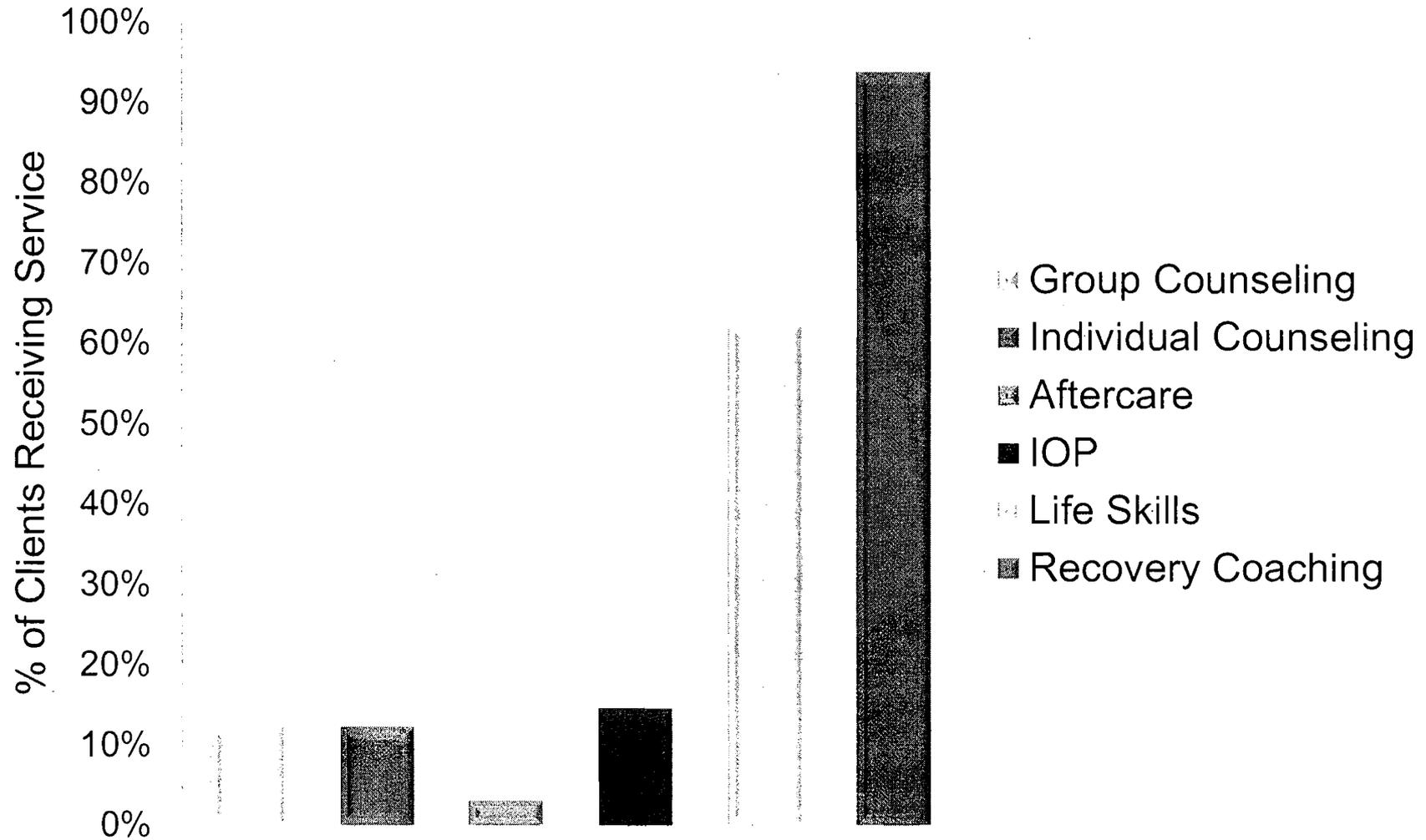
Core Component of Project Care

- ▶ Partnership with Corrections and Probation
- ▶ Evidence Based Practices (Motivation Interviewing, Brief Strengths Case Management, Contingency Management, Mapping Enhanced Counseling)
- ▶ Referral for treatment by Parole/Probation/Pre-screen
- ▶ Clinical evaluation
- ▶ Access to treatment and psychiatric services
- ▶ Recovery Coach Services
- ▶ Individualized Re-integration plan
- ▶ Community based advocacy for re-entry
- ▶ Grassroots and professional organizations are working towards the same goal
- ▶ Flexible treatment and recovery support funds

Project CARE Referral Sources

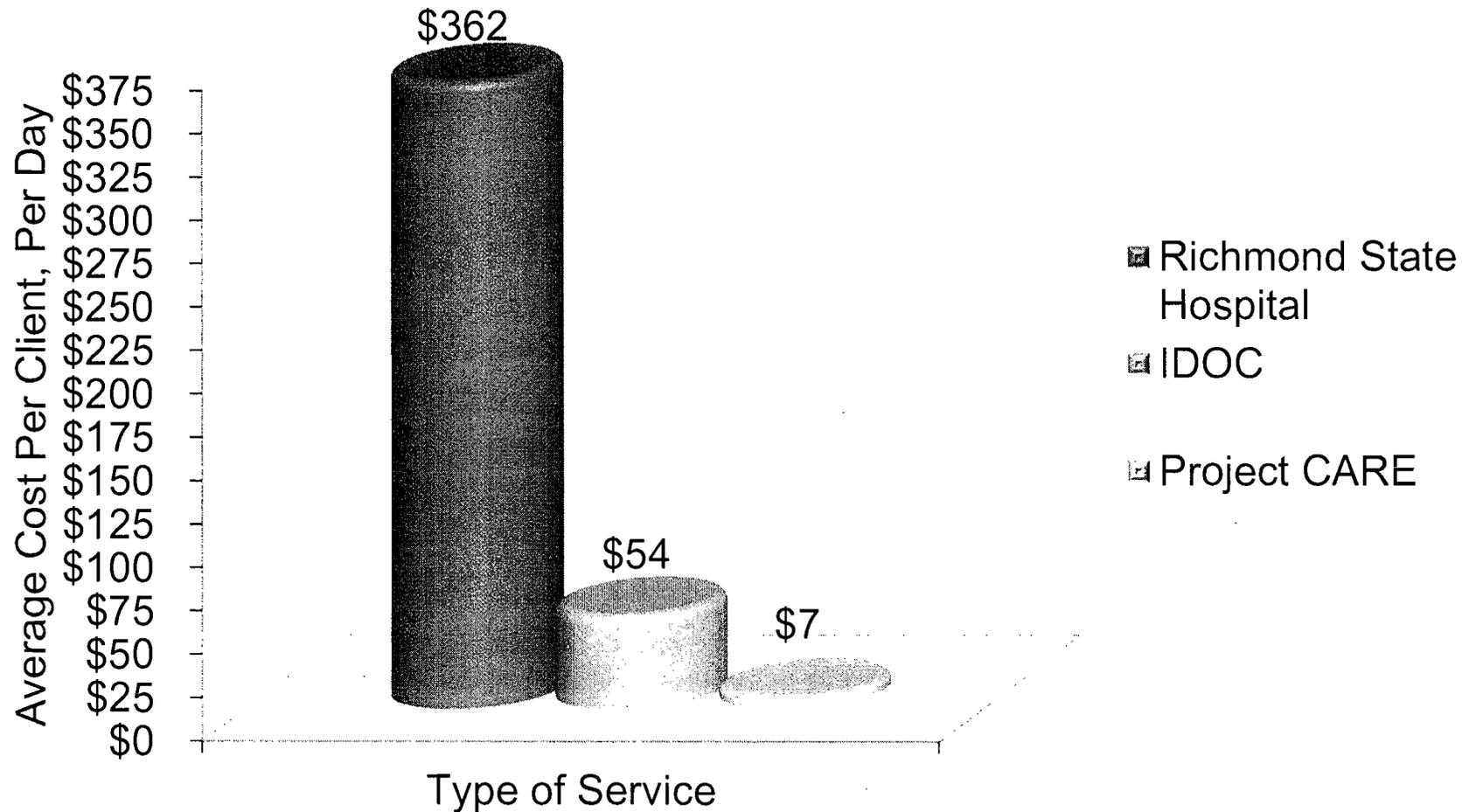


Services Received at Program Discharge



Centerstone of Indiana

Project CARE: A Low-Cost Investment



Positive Impact of Implementing CARE

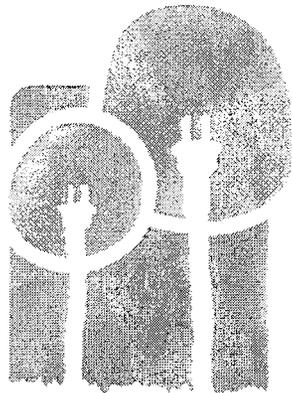
- ▶ Cost Effective
- ▶ Reduces recidivism
- ▶ Takes pressure off of probation, parole, community corrections who have high need/ complex case loads
- ▶ Builds Infrastructure
- ▶ Develop Community Partnerships
- ▶ Flexible in meeting the needs of the clients
- ▶ Network of services created in communities with limited resources
- ▶ Access psychiatric services/ medications regardless of insurance coverage
- ▶ Access to physical, dental needs
- ▶ Assistance in accessing housing
- ▶ Assistance with job placement, and on-going support
- ▶ Community education and advocacy
- ▶ Allowed communities to be apart of the solution

References

- ▶ Baillargeon J, Penn JV, Knight K, Harzke AJ, Baillargeon G, Becker EA. (2010). Risk of reincarceration among prisoners with co-occurring severe mental illness and substance use disorders. *Administration and Policy in Mental Health and Mental Health Services*. 37(4): 367-374. DOI: 10.1007/s10488-009-0252-9.
 - ▶ Baillargeon J, Williams BA, Mellow J, Harzke AJ, Hoge SK, Baillargeon G, & Greifinger RB. (2009). Parole revocation among prison inmates with psychiatric and substance use disorders. *Psychiatric Services*. 60(11): 1516-1521.
 - ▶ Wilson AB, Draine J, Barrenger S, Hadley T, Evans A. (2013). Examining the impact of mental illness and substance use on time till re-incarceration in a county jail. *Administration and Policy in Mental Health and Mental Health Services*. Epub PMID: 23334515.
-

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RECYCLE FORCE

A cleaner environment.
A stronger workforce.

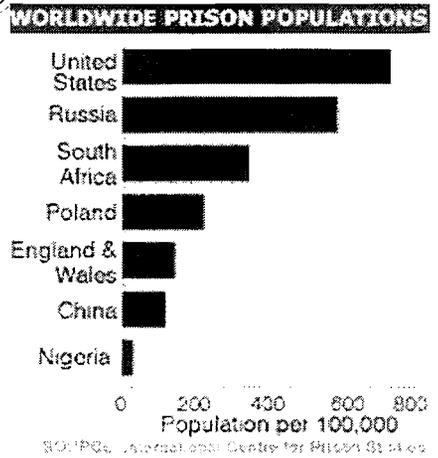
Incarceration Rates

- The U.S. has the highest documented incarceration rate in the world.
- In Indiana in 1992, 1 in every 106 adults was under correctional control.
- In 2007, the number was 1 in 26 adults.
- In Marion County this number is expected to be **1 in 16** or more.

Pew Center on the States, *One in 31: The Long Reach of American Corrections: Indiana*. Washington, DC: The Pew Charitable Trusts. March 2009.

1

WORLDWIDE PRISON POPULATIONS



Country	Population per 100,000
United States	~800
Russia	~600
South Africa	~400
Poland	~250
England & Wales	~150
China	~100
Nigeria	~50

SOURCE: International Centre for Prison Studies

66-67
67-67
66-67 1
1974-75
S. Lewis

How Can We Fulfill Our Governor's Promise?

2

Indiana should be the worst place in America to commit a serious crime and the best place, once you've done your time, to get a second chance.

– Indiana Governor Mike Pence

Technical Rule Violations

3

Of those in Marion County on probation or parole who went to prison in 2012, 71% did not commit a new crime.

They went to prison on a technical rule violation.

Indiana Department of Correction, Research and Planning Division

Issues to Consider

4

In 2012:

- 18,555 offenders were released from IDOC
- 16,773 went to IDOC
 - 4502 (26.8%) had never been incarcerated in an IDOC facility¹
 - 7560 (45.1%) were under criminal justice supervision at the time of their 2012 commitment¹
 - **5480 of the 7560 (72.5%) were incarcerated for a TRV¹**
 - 34.8% of all those sent to an IDOC facility in 2012 were incarcerated for a TRV
 - Average length of stay in IDOC for a TRV is 387 days at a cost of \$56.99/day^{1,2}
 - **At least 1487 TRVs from Marion County were released and returned to IDOC in 2012.³**
 - Incarceration cost for Marion County TRVs in 2012: \$32,759,978.

¹ Indiana Department of Correction: 2012 Annual Report.

² Jarjoura, G.R. & Haight, K.A. 2012. Estimating the Costs Associated with a 1% recidivism in Marion County, Indiana. Indianapolis: Indiana University Public Policy Institute. Indiana University Purdue University School of Public and Environmental Affairs.

³ Indiana Department of Correction: 2012 Adult Recidivism by County of Commitment Report.

RecycleForce

5

Provides a pathway for hundreds of formerly incarcerated men and women to successfully re-integrate into the workforce and become responsible, tax-paying, productive citizens by providing comprehensive, environmentally sound and secure end-of-life electronics processing.

We are a part of the criminal justice oversight system – we help parole, probation and community corrections secure public safety.

The average parole or probation officer sees their clients face-to-face 2 to 3 hours per month. We see these same clients 40 hours every week.

RecycleForce Supports Other Indiana Jobs and the Worldwide Manufacturing Sectors

6

We have recycled **25 million pounds** of waste destined for Indiana landfills and created jobs

- Recycled material goes back into the manufacturing stream
- Copper, aluminum, steel, plastic, cardboard and items that contain precious metals, like gold and silver
- Our workers support three dozen jobs in the Indiana steel industry

RecycleForce Contracts and MOUs

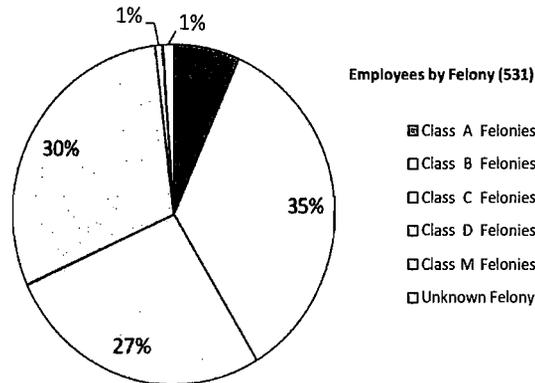
7

- Indiana Department of Administration to recycle all end of life material
- Solid Waste Districts
- City of Indianapolis tox drop program
- Churches, community groups, various businesses
- S&P 500 company that handles retail returns from all 50 states
- Reverse logistics
- 4th largest recycler in Indianapolis
- All is accomplished with an ex-offender workforce

Distribution of RecycleForce Workers by Most Recent Felony Class, 2008 - 2013

8

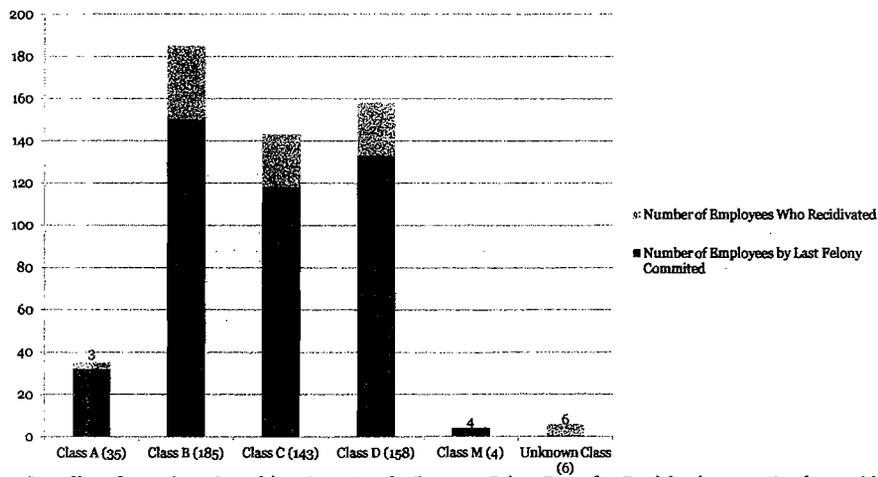
CHART 4: DISTRIBUTION OF WORKERS BY THE MOST RECENT FELONY CLASS



*Antolin and Associates Consulting. Report on the Return to Prison Rate after Participation as an Employee with RecycleForce. August, 2013.

RecycleForce's Rate of Return to Prison by Felony Class

9



*Antolin and Associates Consulting. Report on the Return to Prison Rate after Participation as an Employee with RecycleForce. August, 2013.

RecycleForce: Impacting TRVs

10

- RecycleForce's return to prison rate is 17.67%.*
- Preliminary results from a national study to be released in December 2013 is expected to suggest that compared to a control group, RecycleForce participants
 - have used fewer jail bed days,
 - have lower incarceration rates for both new crimes and TRVs,
 - have higher overall income,
 - are more likely to have secured unsubsidized employment, and
 - have increased child support payments.

*Antolin and Associates Consulting. Report on the Return to Prison Rate after Participation as an Employee with RecycleForce. August, 2013.

Importance of Work to Recidivism

11

A study by IDOC found that if a person can earn more than \$5000 within the first six months after release, recidivism drops by 34-39%.*

RecycleForce employees can earn more than \$8000 within the first six months after release from prison.

*Nally, J., Lockwood, S., & Taiping, H. (2008). Indiana Department of Correction. *The impact of employment and education on recidivism*. www.in.gov/idoc/files/Impact_of_Education_and_Employment_on_Recidivism.pdf.

RecycleForce Outcomes

12

Since 2008, RecycleForce's ex-offender workers:

- Earned nearly \$4.2 million in wages,
- Paid more than \$500,000 in child support
- Paid nearly \$1 million in federal, state, and local taxes
- Returned to prison at a rate of 17.67%

Plans for 2014: Work Court

13

- Pilot program with felony court judges to divert a number of offenders with TRVs from prison to work.
- RecycleForce will provide
 - transitional employment
 - supportive services
 - child support order assistance
 - criminal justice oversight compliance
 - access to unsubsidized temporary jobs, and
 - assistance in securing unsubsidized employment.
- Ethnographic study – who is diverted to work and why?

Moving Forward

14

- Expand Work Court to divert 2000 offenders with TRVs from prison to work.
- The budget for this project is \$60 million over ten years.
- This will require a strategic investment of approximately \$30 million.

RecycleForce's Return on Investment

15

Over ten years, this project will:

- Save Indiana taxpayers \$34 million in prison costs
- Put well over \$125 million in earned wages into the Indiana economy

This swing from the trajectory we are on now is the difference between building a new prison and closing an old one.



A cleaner
environment.
A stronger
workforce.

Why RecycleForce?

In calendar 2012, 71% of the individuals committed to IDOC from Marion County for revocation of parole or probation were the result of technical rule violations (TRV). A variety of issues can result in a TRV – missed or diluted drug tests, not completing mandated counseling or drug treatment programs, not securing employment to pay restitution and criminal justice user fees, failure to make child support payments, and missing meetings with criminal justice oversight officials to name a few. Key to the definition of TRV, however, is that a *new crime was not committed*. Clearly we are sending individuals to prison simply because they make us mad. ***If we believe prison should be reserved to provide rehabilitative services to those who are a threat to society, not how we punish those who make us mad, the system must change.***

Moreover, our propensity to send individuals to prison for reasons other than the commission of a new crime is a drain on the taxpayers of our community. A 2012 study by the Center for Criminal Justice Research, Indiana University Public Policy Institute, at the Indiana University School of Public and Environmental Affairs in Indianapolis determined that on average the prison cost alone for each TRV returned to prison is \$22,055. When the cost associated with courts, law enforcement, and jail beds – few go straight to prison without a few days in jail – it is clear that the cost of returning people to prison for a TRV begs for a new approach.

Since 2006 RecycleForce has developed expertise by employing and providing a comprehensive array of human services to more than 650 offenders released to the community on supervision. Our goal is to employ and serve those who are *virtually unemployable in the private sector*. For these individuals, a program of transitional employment with comprehensive supportive services is their best and perhaps only shot at securing employment paying a livable wage in the mainstream economy and not returning to prison.

RecycleForce provides the opportunity for an ex-offender to work immediately upon release from prison, participate in a program of work skills training, earn certificates of completion for OSHA training programs required by many local employers, and participate in educational and/or industry-recognized credential-granting programs, all in preparation for securing unsubsidized, permanent employment and successful transition into the community.

RecycleForce has developed a system of *criminal justice compliance monitoring* designed to reduce TRVs for our workers. We work closely with criminal justice oversight officers, allowing them to meet with their clients at our work site. We report attendance daily or weekly, as requested, and have bi-weekly meetings with a senior staff member of both Probation and the Duvall Residential Facility (work release) to identify potential TRVs before they occur. We are able to payroll deduct and remit user fees of community corrections charges including paying for drug drops. We attend court for TRV hearings and offer to maintain employment so a judge knows that a job exists for someone as an alternative to prison time. Recently, RecycleForce invested in a biometric time reporting system to ensure that those who report to work are actually here. No one is able to clock in or out for another employee as only an individual's fingerprint verifies attendance at work. RecycleForce was selected as a recipient of JP Morgan Chase's Force for Good award. Through this award, JP Morgan Chase is providing technical expertise to develop a near real time reporting interface using the new biometric system so criminal justice officials can monitor the attendance and receive pertinent information associated with their clients. RecycleForce is working closely with Probation and Community Corrections on this initiative.

In 2014, preliminary results from a national study funded through the US Department of Labor, the Enhanced Transitional Jobs Demonstration program, will be made available. As one of seven funded study sites in the nation, 1000 medium to high risk ex-offenders within four months of release from secure confinement are randomly assigned to either a control or a program group. The program group receives access to transitional employment and supportive services focused on successful reintegration into the community, including permanent job placement at the conclusion of the period of transitional employment. The control group receives services as usual in the community. RecycleForce expects study results to reveal that its program is making a significant difference in the number of offenders who are returned to prison for a TRV, among other measures of success (i.e., fewer instances of new crimes committed, fewer jail bed days used, increased payment of child support, increased earnings, greater rates of unsubsidized employment, and the like). One early data set released by the Marion County Sheriff's Department shows a 40% reduction in jail bed days over the control group. We are optimistic that the federal evaluation of our program will show significant savings to the community associated with these measures of success.

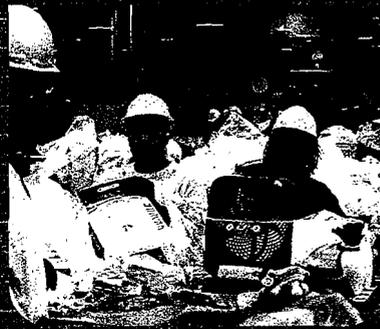
RecycleForce runs a robust recycling and reverse logistics business. We are the sixth largest recycler in the state. We are registered with the Indiana E-Waste program and certified by the Indiana Department of Environmental Management to handle universal waste. In 2012 we passed the stringent requirements to become an R2 certified recycler and became ISO 9001 certified. In 2013 we will begin the ISO 14001 certification process. No other recycler in the state can make these claims, and RecycleForce is accomplishing this with a workforce of ex-offenders. *We not only recycle material, we recycle people.*

Because we operate a business, significant revenue is realized for the nonprofit. During the past two years under the federal grant, the mix of grant revenue and business earnings has been 60% grant and 40% business revenue. Our business is strong and we believe we can maintain that revenue mix, with a goal to reduce that to 50% grant and 50% business revenue.

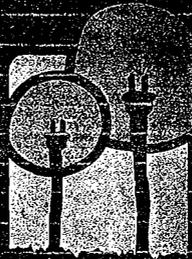
RecycleForce is seeking ways to sustain its program at the level of the past two years. We propose a 10 year pilot project to provide transitional employment and supportive services to 2000 offenders with TRVs *for whom a judge's only other option is a return to incarceration*. The cost for such a pilot project is \$6 million, of which \$3 million would be generated through the recycling business. If three quarters of those served by the pilot project remain out of prison, there would be a cost avoidance of \$34 million. More importantly, this would also generate over \$125 million in earned wages into the Indiana economy.

We clearly understand that cost avoidance is not cost savings, and that significant and perhaps even measurable cost savings are only realized when an intervention creates a major impact on the system, such as the closing of a prison or the wing of a jail. Moreover, as long as the status quo exists – defaulting to putting lower risk offenders into prison as punishment for bad but not criminal behavior – any prison or jail bed freed up by the RecycleForce project will simply result in another person taking that bed, keeping both prison and jails full. However, like the boy and the starfish, even if RecycleForce cannot make a measurable overall impact (yet) on the prison and jail populations, we can and have made a huge impact on individuals and their families. We as a community can await irrefutable evidence of cost savings before making real attempts at system transformation or we can begin system transformation *now* because it is the right thing to do.

1125 Brookside Av Suite D17

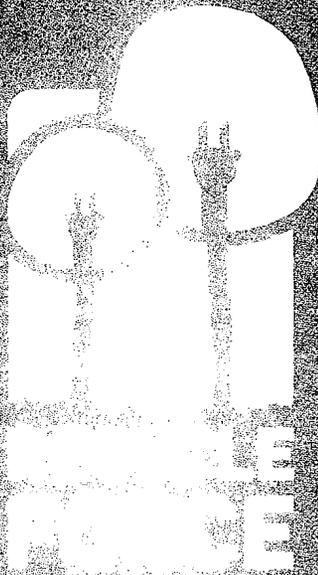


2012



RECYCLE
FORCE

annual report



1125 Brookside Avenue, Suite 1100, Indianapolis, Indiana 46202

Phone: 317.332.1267 Fax: 317.332.1169

www.indianapolis-police.org



A cleaner environment.
A stronger workforce.

Financial Snapshot FY 2012-13

Fiscal Dashboard (as of 6/30/2013)

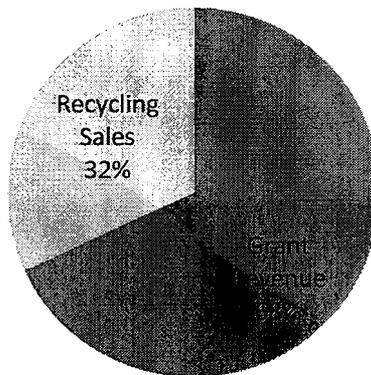
Income Statement

Revenues	\$ 6,020,565
Expenses	\$ 5,591,383
Gain (Loss)	\$ 429,182

Balance Sheet

Assets	\$ 1,696,558
Liabilities	\$ 1,199,618
Long-term Debt	\$ 903,609

Funding Sources FY 2012-13



Funding Sources

Grant Revenue	\$ 4,085,959	68%
Recycling Sales	\$ 1,919,817	32%

The Coalition for Homelessness Intervention and Prevention comes to you today representing over \$4.2 million dollars of direct federal funding, over 60 homeless and housing service agencies, and nearly 5,000 individual stakeholders who enter into Indianapolis' homelessness intervention and prevention system each year.

Individuals that experience homelessness, especially those that are considered chronically homeless, are individuals that have high barriers and often lack opportunity to break cycles on their own. These individuals have faced trauma including: job loss, domestic violence, substance abuse, mental illness, physical disability, chronic illness, or incarceration. It is common for an individual that is homeless to have experienced 3 – 5 of these factors at once and often much more. To get beyond the hurdle of the trauma, these individuals need a wrap-around system that will not only address their housing needs but the barriers that led to their homelessness.

For our chronically homeless individuals, service agencies, churches, outreach teams, criminal justice and IMPD are all concerned with the safety of those in our city experiencing homelessness. These citizens often live in an environment that exposes them high opportunity to offend and even higher risk of being victimized. Just last month the City of Indianapolis closed one of the most famous homeless camps that reported a substantial increase in crime since January 2013.

- More than 80 IMPD and EMS runs to the location since January, compared to 30 total in 2012
- Aggravated assaults
- Domestic assaults
- Break ins
- Theft
- Public Intoxication
- Residents have been threatened

In the last 10 years Indianapolis, in conjunction with its 10 year plan to end homelessness, created:

- 1,044 units of permanent supportive housing
- 472 units of transitional housing
- 3,400 units of affordable housing

But we know this is not enough.

In January 2013, CHIP and the Indiana University Public Policy Institute conducted its annual Point in Time count which is designed to capture a snapshot of our city's homeless population. The count consists of those who are staying in emergency shelter, or unsheltered on the streets, in camps, in cars, and under bridges. This year we counted 1599 individuals in one evening. Of those, 295 individuals (18%) had been previously incarcerated. 57 individuals (4%) specifically stated that incarceration was the reason for loss of permanent housing, and 26 individuals (2%) state domestic violence was the reason for loss of permanent housing.

Between July 1 2012 – June 30 2013 6,037 individuals entered the Marion County department of Corrections and 7,742 were released back into the general population.

Do we have enough opportunity for individuals exiting the criminal justice system?

Many of these individuals have lost the income, family, and social circles they once had before entry. On their own, it can be complicated and confusing navigating life without a job, without an address, and without a mentor to turn to.

What does it take to qualify for Section 8?

Section 8 participants must fall into the "Very Low Income" or "Low Income" category as defined by the Department of Housing and Urban Development. At present, a family of four in Marion County can have a total income of up to \$ 32,550 a year to be considered Very Low Income, or up to \$ 52,100 to be considered Low Income. Criminal History checks are conducted on all applicants and household members 18 years or older. The HUD One Strike policy prohibits admissions of applicants for three years if any household member was evicted from federally assisted housing for drug related criminal activity. The three year period begins on the date of eviction. In addition participant's criminal history is reviewed for violent or drug-related offenses or sexual offenses against minors, as determined by police reports obtained through IHA's Public Safety Department. . Persons convicted and subject to lifetime registration as a sex offender with the State will not be considered for assistance. A property owner may refuse an applicant based on his/her past history as a renter (including credit checks and reports of property damage or disruptive behavior), just as with any other rental applicant. This also applies to fair market and affordable housing properties.

According to Wheeler Mission –

It's pretty common for a guy being released to be referred to Wheeler and use our address as his residence. That brings us into all kinds of liability issues and we're actually thinking through

this now. As far as numbers, we're easily sleeping 40+ guys a night on the floor, and have been consistently through the summer. Not exactly sure of the kind of stats you are looking for but in 2012 we experienced the following:

- Total Meals – 290,234
- Total Bed Stays – 120,684
- Unique Guests – 6,901

We currently have (4) primary agencies in Indianapolis that focus on re-entry and homelessness:

- Volunteers of America (VOA)
- Bethlehem House
- Recycle Force
- Public Advocates in Community re-Entry (PACE)

Need is rising and resources get smaller. 43 groups will split \$1.9M in anti-crime grants. The amount of grant money available was roughly the same as last year, but the average award is much smaller. The money was split by 18 groups last year, but 43 are receiving money this year.

In a recent press release, the U.S. Labor Department:

Announces \$1.4 Million Grant to Volunteers of America of Indiana to Provide Job Training, Employment Services for Formerly Incarcerated Individuals

Local funds part of \$20 million in grants announced nationwide

The grant is part of the Training to Work-Adult Reentry initiative, which seeks to provide work skills, education, and supportive services to improve the long-term employment prospects of soon-to-be released inmates. Volunteers of America of Indiana, based in Indianapolis, was awarded \$1,400,000 for services which will be targeted to adults returning to the Indianapolis metropolitan area. Volunteers of America of Indiana, Inc. was the only grant recipient in the state of Indiana awarded during this grant cycle.

The project will serve 175 individuals during the 39-month grant cycle. Services will include workforce development activities, training leading to industry-recognized credentials, education, case management, mentoring, and follow-up services to help reduce recidivism and lead to long-term success.

President/CEO Tim Campbell states, "Employment is absolutely critical to the successful return of formerly-incarcerated individuals. This grant will help reentering Hoosiers gain the skills and credentials necessary to secure good jobs, and become contributing members of our communities."

A complicated system. Dwindling resources. Limited opportunity. The recent expungement law will remove some barriers for those who qualify and have access and resources to navigate the legal system. But for those who have a criminal record that prevents gainful employment, reduces access to safe and affordable housing, follows you around – what are your chances of success? We need to continue to allocate resources to our community-based programs that ensure we move re-entry to reintegration of all residents



CHIP

Christy Shepard
Executive Director

ADDRESS

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Mobilize Advocate Empower



blueprint 2.0

2013-2018

INDIANAPOLIS CONTINUUM OF CARE

Making homelessness rare, short-lived and recoverable.



For More Information



Mobilize. Advocate. Empower
www.chipindy.org

What works and What Doesn't in Reducing Recidivism: Some Lessons Learned from Evaluating Correctional Programs

By:

Edward Latessa
School of Criminal Justice
University of Cincinnati

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Lesson 1

- Some things don't work

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Some so called “theories” we have come across

- “Offenders lack creativity theory”
- “Offenders need discipline and physical conditioning theory”
- “Offenders need to change their diet theory”
- “Treat them as babies & dress them in diapers theory”
- “We just want them to be happy theory”
- “Male offenders need to get in touch with their feminine side theory”

Other things that don't work

Ineffective Approaches

- Programs that cannot maintain fidelity
- Drug prevention classes focused on fear and other emotional appeals
- Shaming offenders
- Drug education programs
- Non-directive, client centered approaches
- Talking cures
- Self-Help programs
- Vague unstructured rehabilitation programs
- “Punishing smarter”

Lesson 2

- Almost anything you want to fix starts with assessment

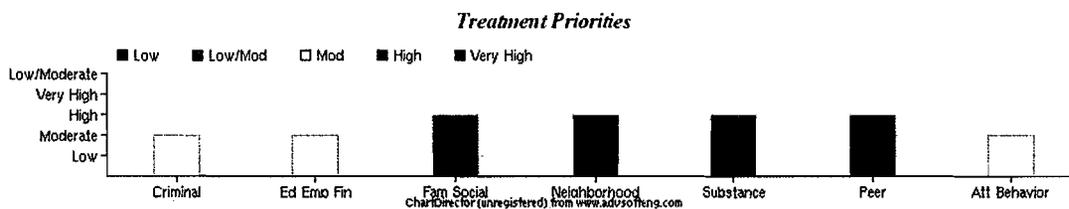
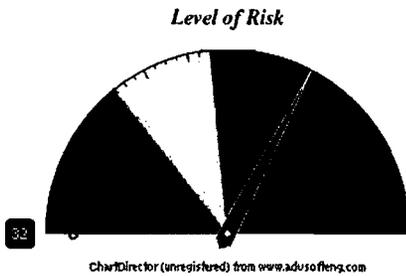
Assessment helps us...

- Meet the risk and need principles – “who” to target and “what” to target
- Reduces bias
- Helps us know if interventions have worked
- Avoid watermelon thumping

One example of a new non-proprietary assessment is the Ohio Risk Assessment System

- The Ohio Risk Assessment System (ORAS) consists of 4 basic instruments:
 1. Pretrial
 2. Community Supervision
 3. Prison Intake
 4. Reentry

ORAS-Community Supervision Assessment

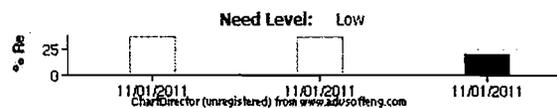


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ORAS-CST Re-assessment Education and Employment

1. **Highest Education**
High School Graduate or Higher
2. **Ever Suspended or Expelled From School**
No
3. **Employed at the Time of Arrest**
No*
4. **Currently Employed**
Yes, Full-time, Disabled, or Retired
5. **Better Use of Time**
No, Most Time Structured
6. **Current Financial Situation**
Stable/Minimal Problems

Total: 1



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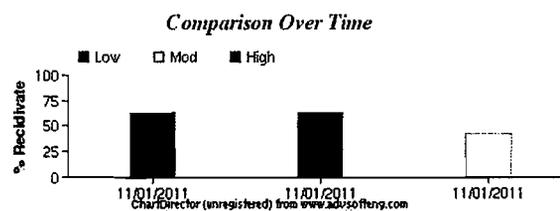
ORAS-CST Re-assessment Peer Association

Peer Associations

1. **Criminal Friends**
Some*
2. **Contact with Criminal Peers**
At Risk of Contacting Criminal Peers*
3. **Gang Membership**
No, Never
4. **Criminal Activities**
Mixture*

Total: 3

Need Level: Moderate



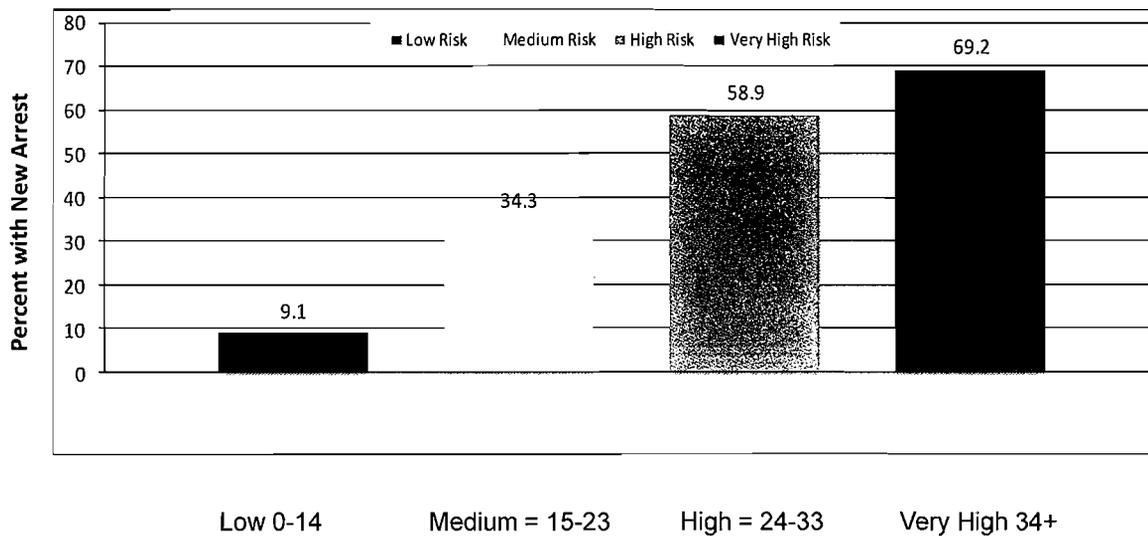
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Lesson 3

- If you want to reduce recidivism focus on the offenders most likely to recidivate

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Example of Risk Level by Recidivism for a Community Supervision Sample (males)



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Lesson 4

- Some times we fail because we provide intensive programs to the wrong offenders

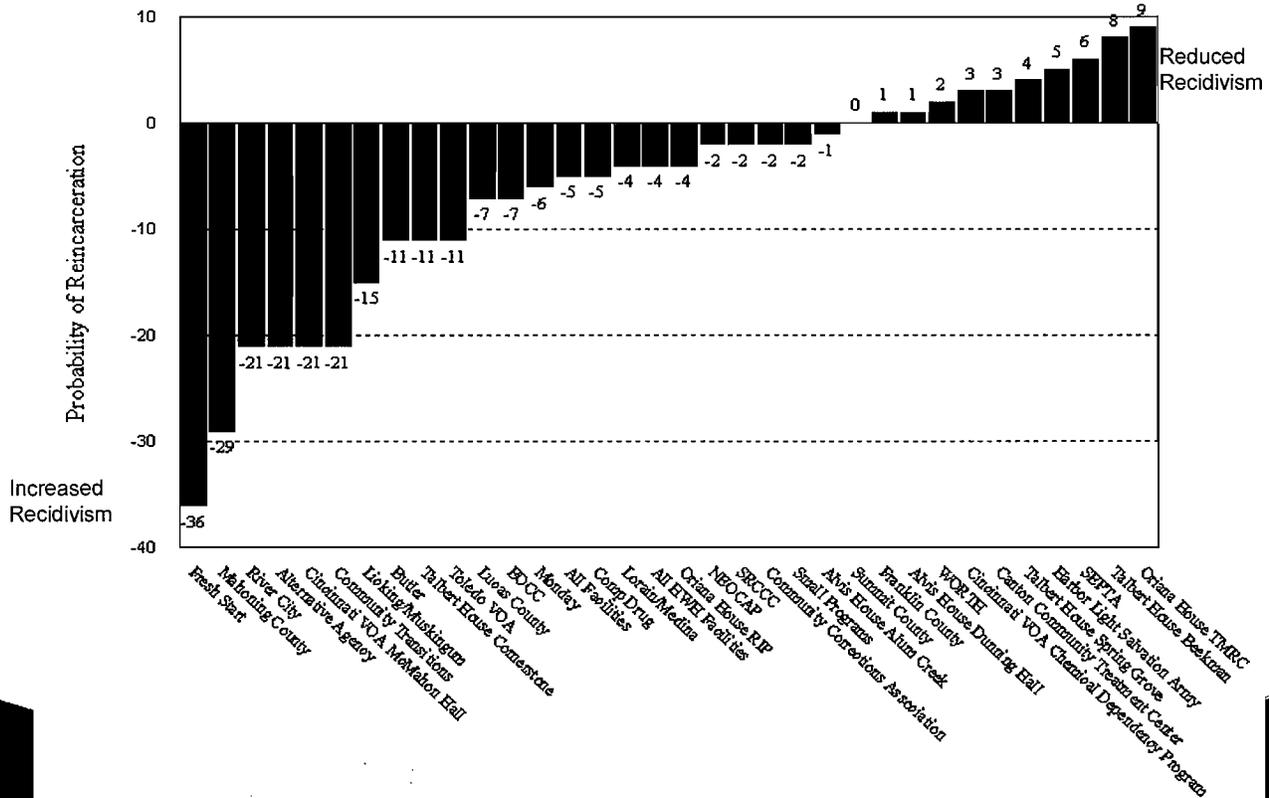
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2002 STUDY OF COMMUNITY CORRECTIONAL PROGRAMS IN OHIO

- Largest study of community based correctional treatment facilities ever done up to that time
- Total of 13,221 offenders – 37 Halfway Houses and 15 Community Based Correctional Facilities (CBCFs) were included in the study.
- Two-year follow-up conducted on all offenders
- Recidivism measures included new arrests & incarceration in a state penal institution

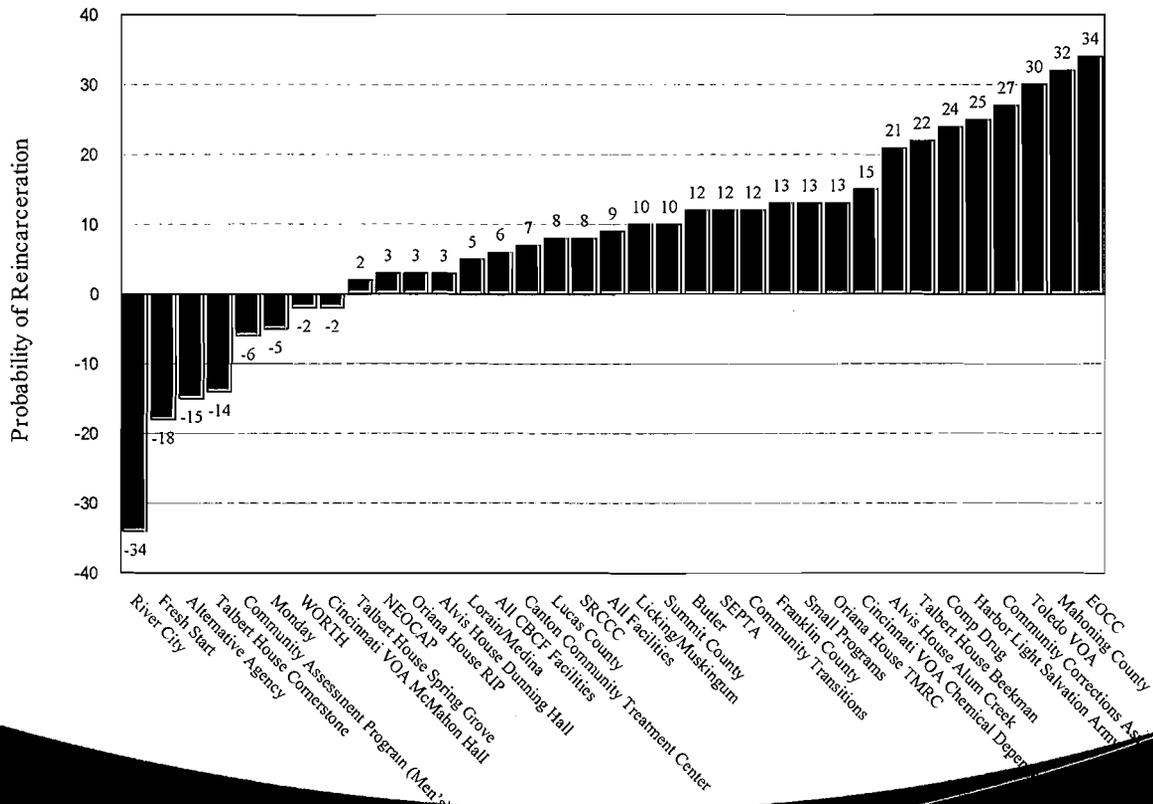
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Treatment Effects for Low Risk Offenders



Cincinnati

Treatment Effects For High Risk Offenders



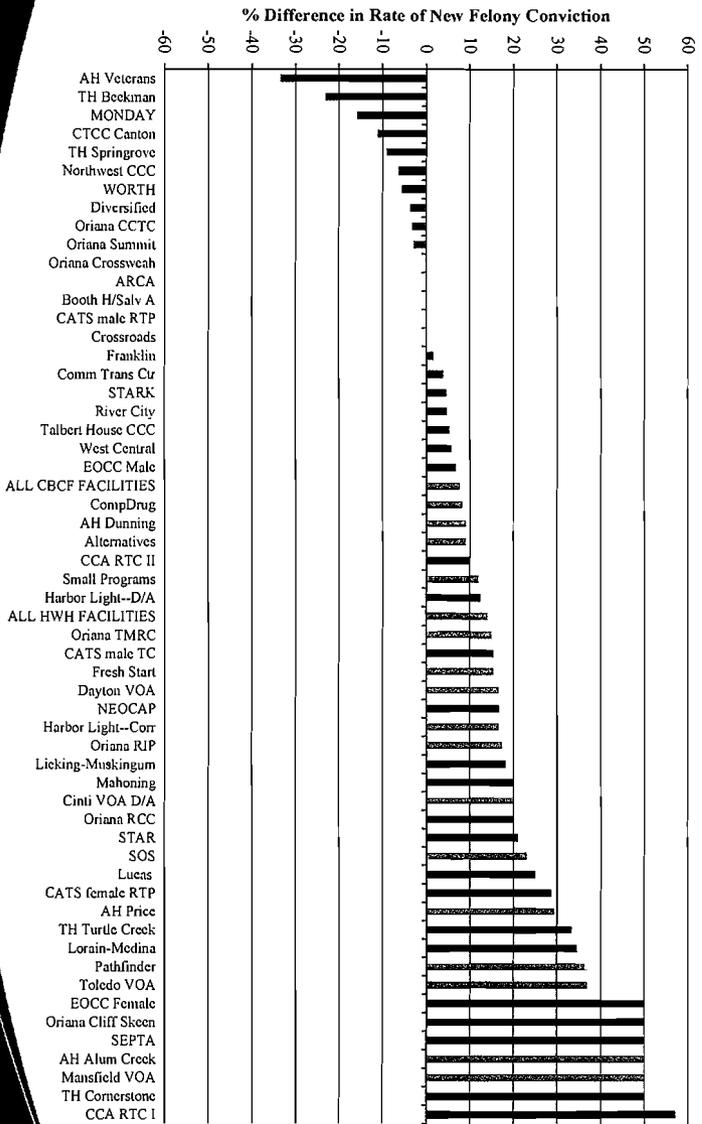
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2010 STUDY OF COMMUNITY CORRECTIONAL PROGRAMS IN OHIO

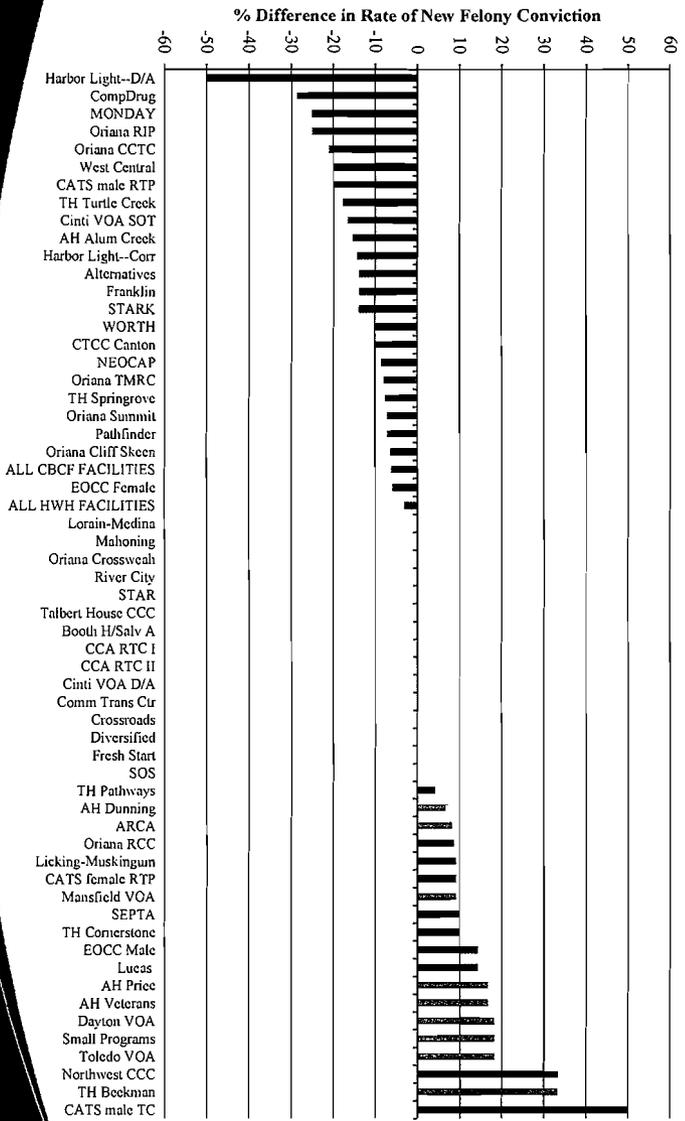
- Over 20,000 offenders – 44 Halfway Houses and 20 Community Based Correctional Facilities (CBCFs) were included in the study.
- Two-year follow-up conducted on all offenders

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Treatment Effects for High Risk



Treatment Effects for Low Risk



Lesson 5

- Sometimes we fail because we do not provide enough treatment

The question is: What does more “intensive” treatment mean in practice?

- Most studies show that the longer someone is in treatment the greater the effects, however:
- Effects tend to diminish if treatment goes too long

Just starting to see research in corrections examining the dosage of treatment needed to achieve effect

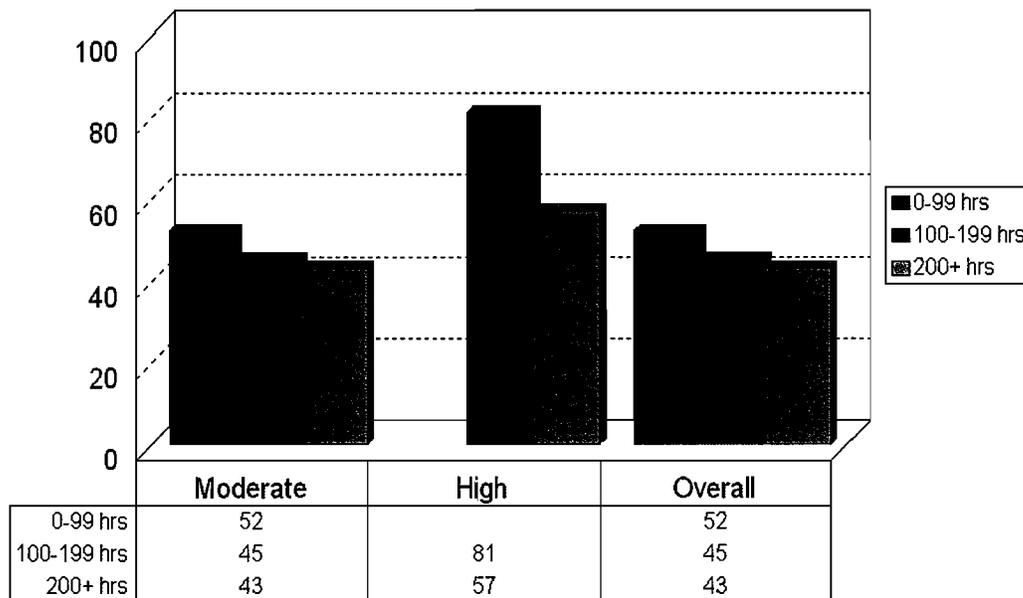
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Results from a 2010 Study (Latessa, Sperber, and Makarios) of 689 offenders

- 100-bed secure residential facility for adult male felons
- Cognitive-behavioral treatment modality
- Average age 33
- 60% single, never married
- 43% less than high school education
- 80% moderate risk or higher
- 88% have probability of substance abuse per SASSI

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Recidivism Rates by Intensity and Risk Level



Provide Most Intensive Interventions to Higher Risk Offenders

- Higher risk offenders will require much higher dosage of treatment
 - Rule of thumb: 100 hours for moderate risk
 - 200+ hours for higher risk
 - 100 hours for high risk will have little if any effect
 - Does not include work/school and other activities that are not directly addressing criminogenic risk factors

Lesson 6

- Everyone thinks they are an expert in criminal behavior

Major Set of Risk/Need Factors

1. Antisocial/procriminal attitudes, values, beliefs & cognitive emotional states
2. Procriminal associates & isolation from antiscriminal others
3. Temperamental and anti social personality patterns conducive to criminal activity including:
 - Weak socialization
 - Impulsivity
 - Adventurous
 - Restless/aggressive
 - Egocentrism
 - A taste for risk
 - Weak problem-solving/self-regulation & coping skills
4. A history of antisocial behavior

Major Set of Risk/Need Factors

5. Familial factors that include criminality and a variety of psychological problems in the family of origin including:
 - Low levels of affection, caring, and cohesiveness
 - Poor parental supervision and discipline practices
 - Outright neglect and abuse
6. Low levels of personal, educational, vocational, or financial achievement
7. Low levels of involvement in prosocial leisure activities
8. Substance Abuse

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Recent study by Bucklen and Zajac
of parole violators in Pennsylvania
found a number of criminogenic
factors related to failure*

*Conducted by Pennsylvania Dept. of Corrections

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Pennsylvania Parole Study
Social Network and Living Arrangements
Violators Were:

- More likely to hang around with individuals with criminal backgrounds
- Less likely to live with a spouse
- Less likely to be in a stable supportive relationship
- Less likely to identify someone in their life who served in a mentoring capacity

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Pennsylvania Parole Study
Employment & Financial Situation
Violators were:

- Less likely to have job stability
- Less likely to be satisfied with employment
- Less likely to take low end jobs and work up
- More likely to have negative attitudes toward employment & unrealistic job expectations
- Less likely to have a bank account
- More likely to report that they were “barely making it” (yet success group reported over double median debt)

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Pennsylvania Parole Study Alcohol or Drug Use Violators were:

- More likely to report use of alcohol or drugs while on parole (but no difference in prior assessment of dependency problem)
- Poor management of stress was a primary contributing factor to relapse

Pennsylvania Parole Study Life on Parole - Violators:

- Had poor problem solving or coping skills
- Did not anticipate long term consequences of behavior
- Acted impulsively to immediate situations
- More likely to maintain anti-social attitudes
- Viewed violations as an acceptable option to situation
- Maintained general lack of empathy
- Shifted blame or denied responsibility

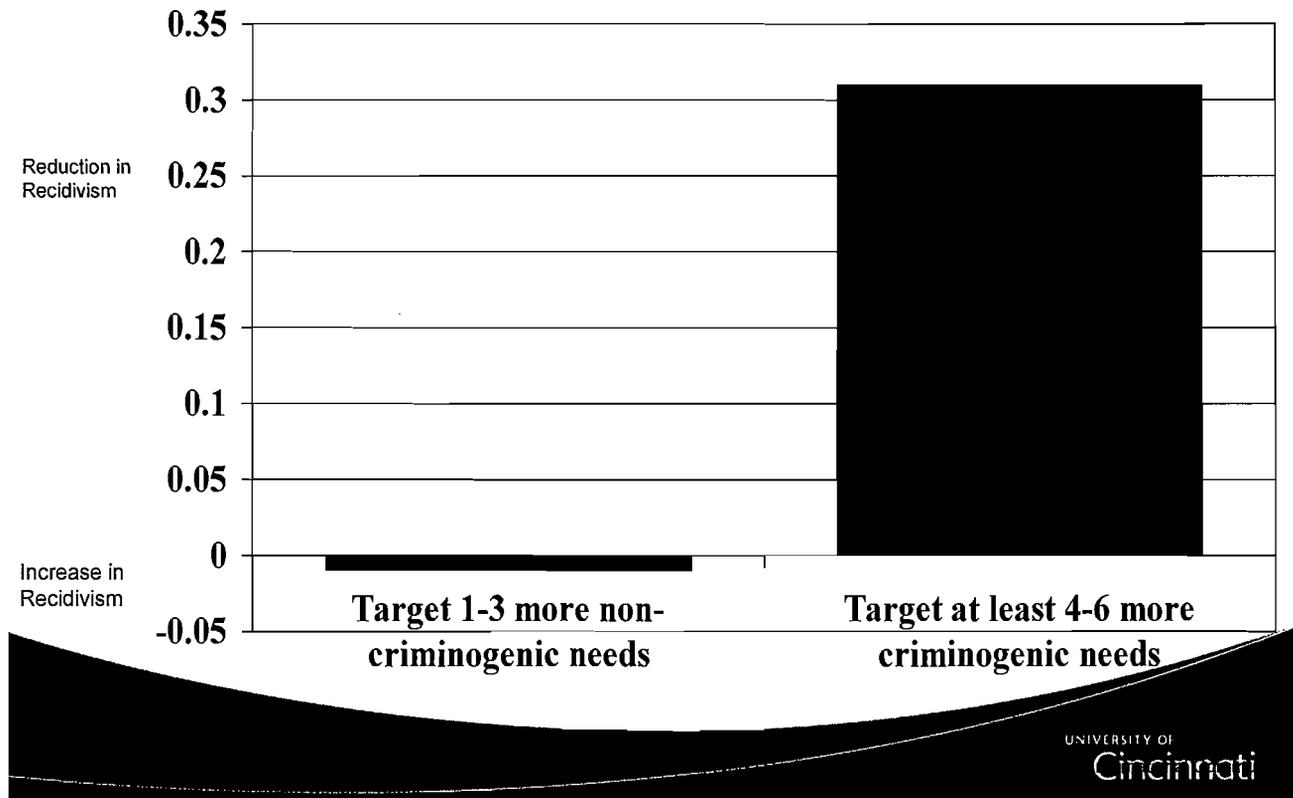
Pennsylvania Parole Violator Study:

- Successes and failures did not differ in difficulty in finding a place to live after release
- Successes & failures equally likely to report eventually obtaining a job

Lesson 7

Offenders are not usually higher risk because they have a risk factor... they have multiple risk factors

Targeting Criminogenic Need: Results from Meta-Analyses



Criminal Thinking and Mental Illness*

Morgan, Fisher and Wolff (2010) studied 414 adult offenders with mental illness (265 males, 149 females) and found:

- 66% had belief systems supportive of criminal life style (based on Psychological Inventory of Criminal Thinking Scale (PICTS))
- When compare to other offender samples, male offenders with MI scores similar or higher than non-mentally disordered offenders.
- On Criminal Sentiments Scale-Revised, 85% of men and 72% of women with MI had antisocial attitudes, values and beliefs – which was higher than incarcerated sample without MI.

Conclusion

- Criminal Thinking styles differentiate people who commit crimes from those who do not independent of mental illness
- Many incarcerated persons with mental illness are both mentally ill *and* criminal
- Needs to be treated as co-occurring problems

Lesson 8

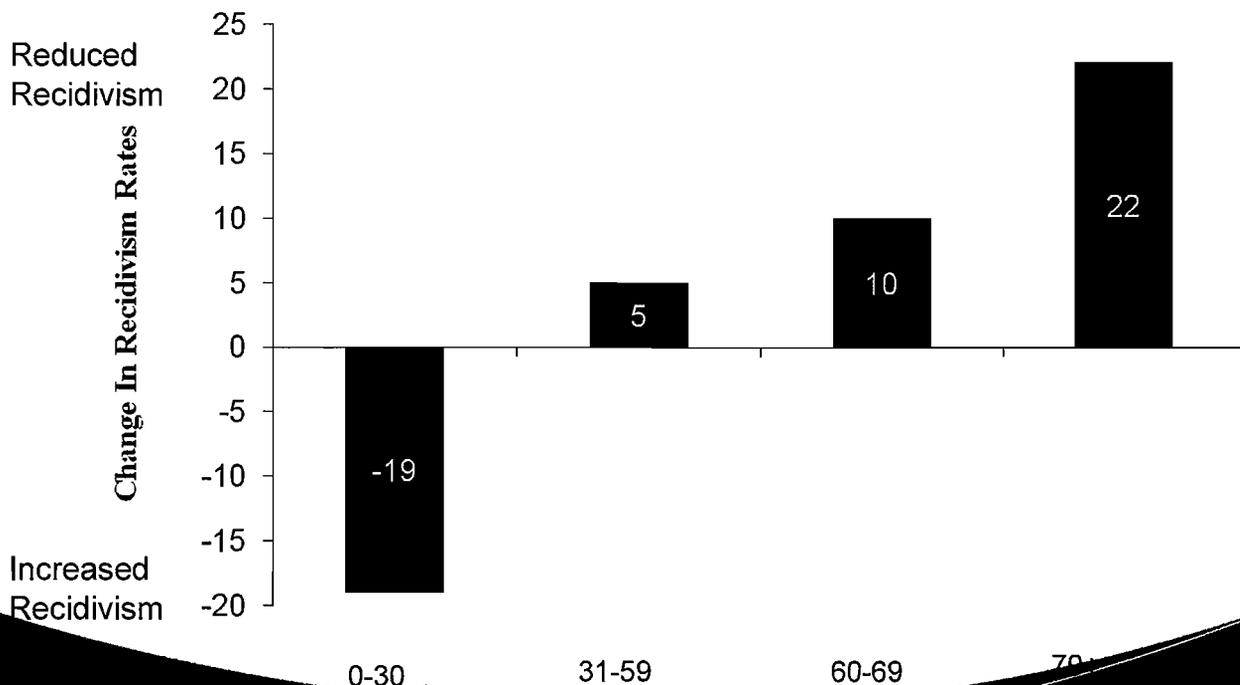
- Doing things well makes a difference

Program Integrity and Recidivism

- Several large studies we have done have found a strong relationship between program integrity and recidivism
- Higher the program's integrity score – greater the reductions in recidivism

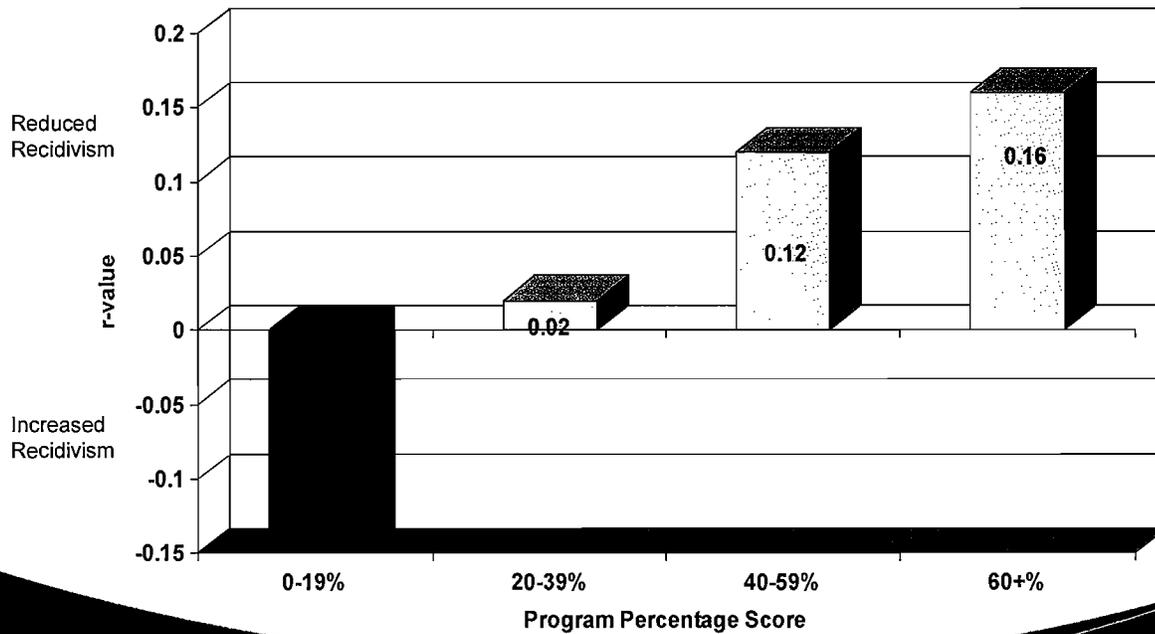
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Program Integrity—Relationship Between Program Integrity Score & Treatment Effects for Residential Programs



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Program Integrity—Relationship Between Program Integrity Score And Treatment Effects for Community Supervision Programs



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Lesson 9

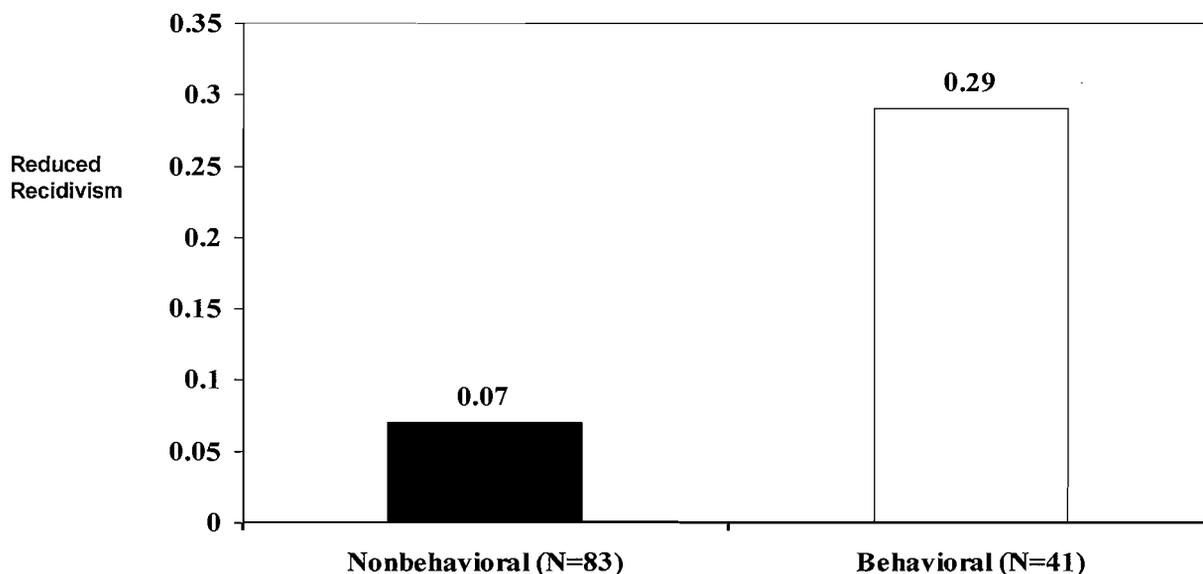
- We can change offender behavior – we just need to go about it the right way

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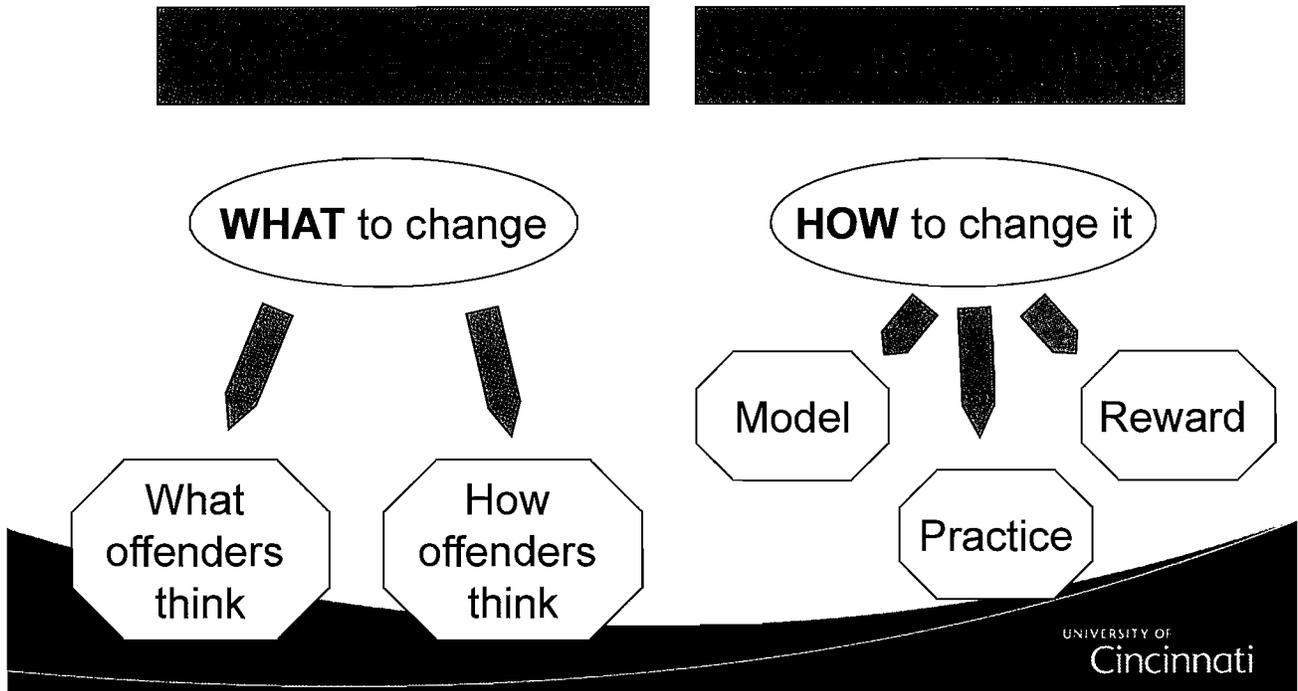
Effective Correctional Interventions

- Use behavioral approaches: Structured social learning model with cognitive behavioral treatment
- Focus on current risk factors
- Action oriented

Results from Meta Analysis: Behavioral vs. NonBehavioral



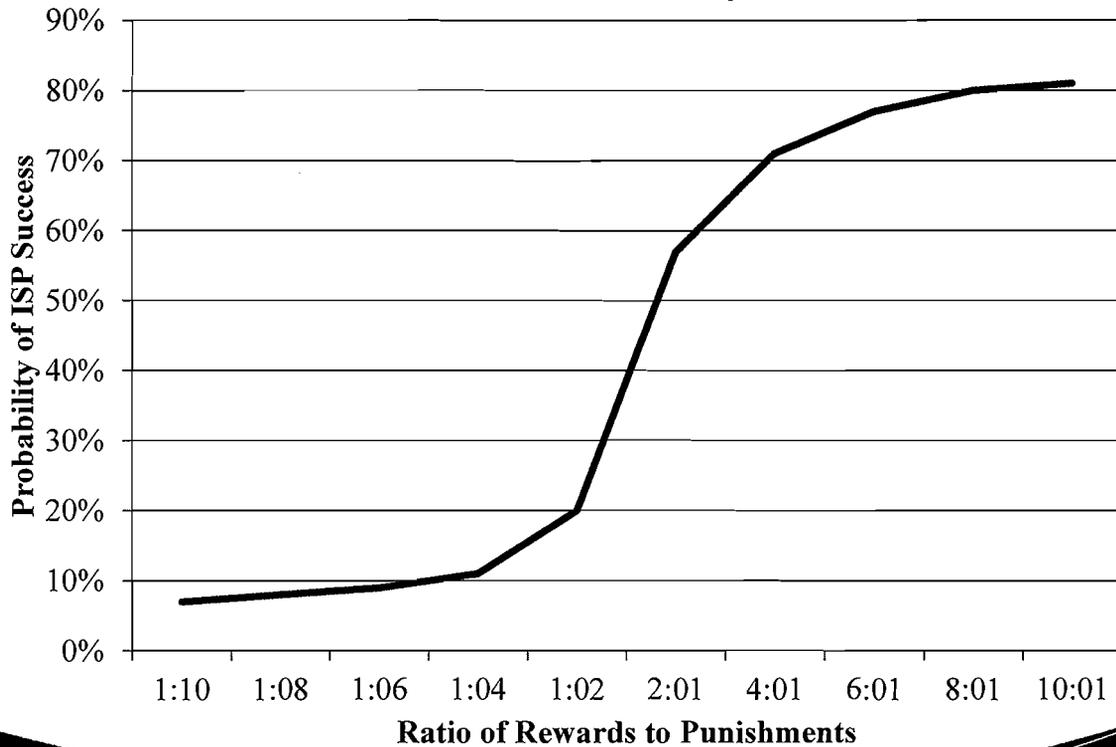
Cognitive-Behavioral



These approaches help us....

- Structure our interventions
- Teach and model new skills
- Allow offender to practice with graduated difficulty
- Reinforce the behavior

Ratio of Rewards to Punishments and Probability of Success on Intensive Supervision



List of Rewards and Sanctions

Sanctions

- Verbal reprimand
- Written assignment
- Modify curfew hours
- Community service hours
- Restrict visitation
- Program extension or regression
- Electronic Monitoring
- Inpatient or outpatient txt
- Detention time

Rewards

- Verbal praise and reinforcement
- Remove from EM
- Level advancement
- Increased personal time
- Approved special activity
- Fees reduced
- Approve or extend special visitation

If we put them together we have the Principles of Effective Intervention

- Risk (who)
- Need (what)
- Treatment (how)
- Fidelity (how well)

Thank you



Substance Abuse Programs

CLIFF



Regular Substance Abuse – “Outpatient”

**Purposeful
Incarceration**



AA/NA meetings



Therapeutic Communities

AA/NA



**CLIFF Units (Methamphetamine
Specific Therapeutic Communities)**



Purposeful Incarceration



Outpatient Substance Abuse Adults

In level 2 and higher facilities an offender would need 1 year or more left on their sentence to successfully complete the SA program. Offenders in level 1 facilities may be able to obtain SA services if they have less than a year to do.

Treatment

Outpatient



- No earned credit time

Phase 2:
Primary
Treatment

- Substance Abuse treatment with an emphasis on Cognitive Behavioral Approaches

Recovery

Phase 3:
Relapse
prevention

- Focus on maintaining sobriety
- Life skills
- Support group participation

***All of the material and activities utilized in each phase are Evidence Based Practices**



Therapeutic Communities

**Therapeutic
Community**

**Relapse
Prevention**

Re-Entry

- Admission criteria 14-36 months from EPRD
- Intensive treatment that holds the offenders highly accountable.
- Privileges and responsibilities are earned in the community as they progress in their recovery.
- Programming is for a minimum of 8 months and is competency based.
- After completion, clients participate in relapse prevention programming for the remainder of their incarceration.
- Cognitive interventions are used.
- AA/NA meetings are available to offenders in the TC.
- 1092 TC Grads and 470 CLIFF Grad in 2012

Locations of the Therapeutic Communities

Branchville Correctional Facility-280 beds

Correctional Industrial Facility(Pendleton)- 248 beds

Plainfield Correctional Facility- 200 beds

West Miller Correctional Facility-1624 beds

C.L.I.F.F. Therapeutic Communities

Milam Correctional Facility- 204 beds

Putnamville Correctional Facility- 312 beds

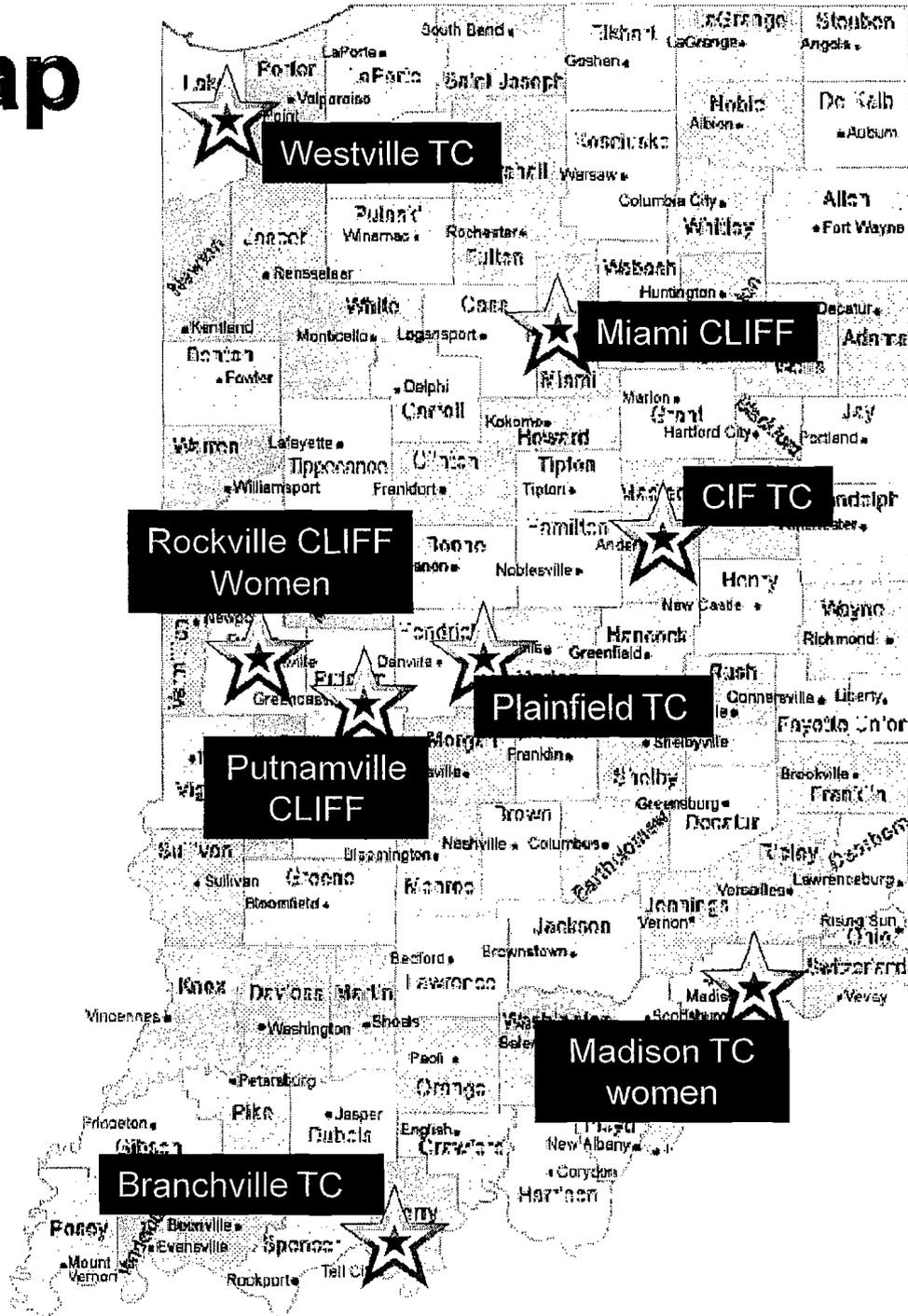
Rockville Correctional Facility- 128 beds (Women)

TC Facility Map

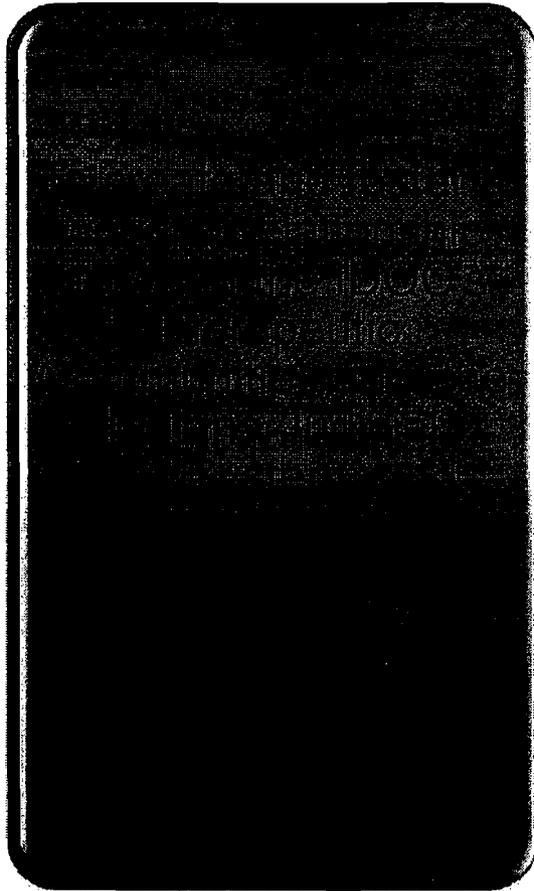
Therapeutic
Community

Relapse
Prevention

Treatment



Purposeful Incarceration



Judges can sentence chemically addicted offenders and document that they will "Consider a sentence modification" should the offender successfully complete a therapeutic community.

The offender can receive treatment and be returned to the community through existing community programs such as:

Re-Entry Courts

CTP Program

Community Work Release

Other available Community Services



Education Programs

GED

Literacy & Creative Problem Solving for Re-Entry

6 month program 6th grade level

Literacy

GED

6-9 month program

Associates Degree

2 year program

Bachelors Degree

4 year program

Vocations

Vocational Program

6 month program

Department of Labor Apprenticeship Programs

1-5 year program



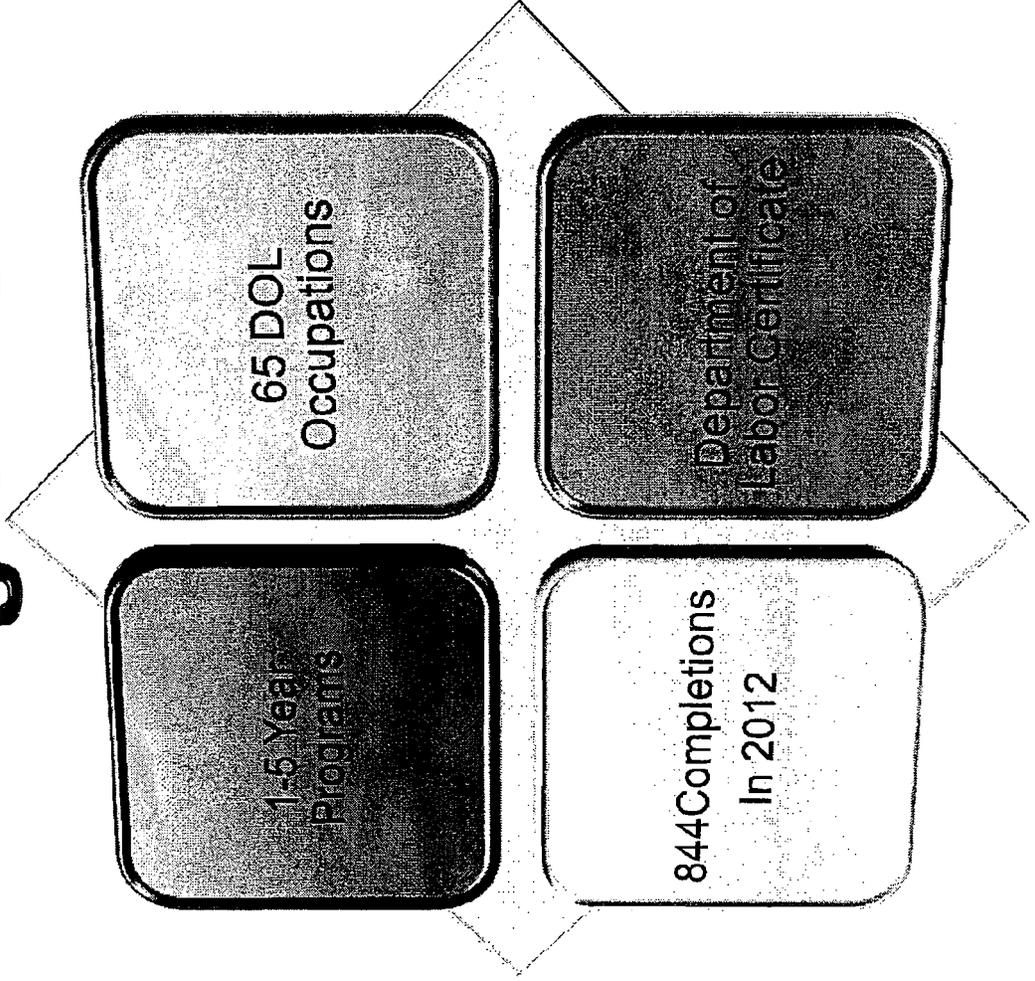
Department of Labor

Programs

Print shop

Maintenance

House
Keeping





Reformative Programs

PLUS

RRRP

T4C 3.1

Purposeful Living Unite Serve Programs (PLUS)

12-16 Months in Length

Faith and Character Based Residential Program

16 Facilities, 1900 Participants 977 Completed in 2012

Reformative Residential Re-Entry Program (RRRP)

6 Month Program

Basic Training and Understanding of Core Values

8 Facilities, 400 Participants 407 Completed in 2012

Thinking for a Change Program (T4C)

25 Lessons

Social Skills, Problem Solving Skills, Cognitive Self Change

All Facilities



Indiana Sex Offender Management and Monitoring

Re-Entry

Monitoring

GPS

- The Indiana Sex Offender Monitoring and Management Program (INSOMM) provides an integrated continuum of sex offender specific services.
- All facility-based treatment services are provided at New Castle Correctional Facility for males and Rockville Correctional Facility for females. (Mandatory)
- Treatment/Management groups are provided within the facility and length of services are based upon risk level.
- Containment teams are utilized in Parole to manage and monitor the sex offender's reintegration into the community. The Containment Team consists of the Parole Agent, Treatment Providers, and Polygraphers.
- The primary goal of the program is to enhance public safety by reducing recidivism in convicted sex offenders.

INDIANA PROSECUTING ATTORNEYS COUNCIL

BINDER INDEX

1. RECIDIVISM POWERPOINT

A. LAW REVIEW ARTICLE – CALIFORNIA’S PRISON REALIGNMENT

B. INDIANAPOLIS – MARION COUNTY CITY-COUNTY COUNCIL RE-ENTRY POLICY STUDY COMMISSION REPORT

C. AIR SCOPE OF SERVICES

D. APPLIED RESEARCH SERVICES SCOPE OF SERVICES

2. SENTENCING POWERPOINT

A. TERMS OF IMPRISONMENT THAT CANNOT BE SUSPENDED DUE TO PRIOR FELONY CONVICTIONS CHART

B. TERMS OF IMPRISONMENT THAT CANNOT BE SUSPENDED DUE TO CRIME COMMITTED

3. IPAC’S HIGHEST PRIORITY CHANGES TO INDIANA CRIMINAL CODE – 2014 LEGISLATIVE SESSION

IPAC RECIDIVISM PRESENTATION

Indiana Prosecuting Attorneys Council
Indianapolis, Indiana
September 26, 2013

Presentation for the Criminal Law and Sentencing Policy Committee

CRIMINAL CASES FILED (2011) SUPREME COURT WEBSITE

- FELONIES 71,325
 - 51,720 CLASS D FELONIES
 - MISDEMEANORS 173,408
 - 244,733 TOTAL FELONIES AND MISDEMEANORS FILED
 - JUVENILE DELENQUENCY 19,553
 - INFRACTIONS 721,089
- TOTAL COURT CASES: 1.3 MILLION

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- NUMBERS DO NOT INCLUDE
 - PROBATION REVOCATIONS
 - PAROLE REVOCATIONS
 - TOTAL REVOCATIONS REPRESENT 48% OF YEARLY ADMISSIONS TO THE DOC FOR OFFENDERS RETURNING FOR LESS THAN 2 YEARS

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

ARE PRISON POPULATIONS EXPLODING ?

- STATE PRISON POPULATION NATIONALLY INCREASED 1.4% ANNUALLY FROM 2000 TO 2009
- DROPPED -0.7% FROM 2009-2010.
- INDIANA PRISON POPULATION INCREASED 4.2% FROM 2000 TO 2009
- DROPPED -2.7% FROM 2009-2010.
- DOC DATA FROM INDIANA SHOWS THAT DOC POPULATION HAS BEEN TRENDING DOWN TO FLAT FROM 2007 TO DATE.

Presentation for the Criminal Law and Sentencing Policy Committee

NUMBER OF MALES RECEIVED AT THE INDIANA DOC RECEPTION DIAGNOSTIC CENTER BY MOST SERIOUS OFFENSE FROM 1996-2004

Most Serious Offense	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04
Murder	204	181	148	102		94	124	136
Total Class A Felonies	217	193	255	431	406	472	458	506
Total Class B Felonies	1289	1447	1254	1648	2279	2471	2851	3083
Total Class C Felonies	1972	1484	2093	3127	3278	3395	3843	4072
Total Class D Felonies	2487	2078	2640	4669	4486	5121	5600	6056
Total	6169	5383	6390	9977	10449	11553	12867	13853

Presentation for the Criminal Law and Sentencing Policy Committee

NUMBER OF MALES RECEIVED AT THE INDIANA DOC RECEPTION DIAGNOSTIC CENTER BY MOST SERIOUS OFFENSE FROM 2004-2012

Most Serious Offense	04-05	05-06	2007	2008	2009	2010	2011	2012
Murder	85	97	105	91	107	100	84	82
Total Class A Felonies	558	526	527	586	593	517	559	514
Total Class B Felonies	3313	3267	3352	3597	3657	3851	3848	3772
Total Class C Felonies	4057	3991	4307	4488	4115	3996	3730	3571
Total Class D Felonies	6353	6305	6788	7305	7438	7217	6215	6296
Total	14366	14186	15079	16067	15910	15681	14436	14235

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- ABOUT 250,000 CASES ARE PROSECUTED
- APPROXIMATELY 10% OR 25,000 GO TO DOC
- THE 90% LEFT REMAIN LOCAL
- APPROXIMATELY 10,000 OR 40% OF THE DOC ADMISSIONS ARE D FELONS FOR LESS THAN 2 YEARS. FOR C & D FELONS
- WHY SO MANY LOW LEVEL OFFENDERS IN DOC?

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- WHY ARE SO MANY LOW LEVEL OFFENDERS GOING TO DOC? BECAUSE OF RECIDIVISM
- WE KNOW THAT 50,000 D FELONY CASES ARE FILED EACH YEAR AND THAT 10,000 OR 20% END UP GOING TO DOC
 - 52% OF THE DOC ADMISSIONS ARE FOR NEW CRIMES
 - 48% ARE PROBATION/PAROLE VIOLATORS
- MOST PRIORS WERE DRUG AND THEFT RELATED

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- 52% OF THE DOC ADMISSIONS ARE FOR NEW CRIMES (70% DRUGS AND THEFT*)
 - THIS GROUP HAD AN AVERAGE OF 5.5 PRIOR CONVICTIONS, 2.3 OF WHICH WERE FELONIES (NONSUSPENDIBLE)
- 48% ARE PROBATION/PAROLE VIOLATORS
 - THIS GROUP HAD AN AVERAGE OF 4.2 PRIOR CONVICTIONS, 2.1 OF WHICH WERE FELONIES (HEA 1006 – NO IMPACT)

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- DOC DATA SHOWS THAT 39% OF THE MALES SENT TO THEM RECIDIVATE AND OF THAT GROUP:
 - THIS NUMBER HAS BEEN CONSTANT FOR A NUMBER OF YEARS.
 - 84% OF THE RECIDIVISTS ARE LOW LEVEL OFFENDERS SERVING LESS THAN 2 YEARS – THE D FELONS

PROSECUTORS KNOW WHO THESE FOLKS ARE – THEY SEE THEM ON A REGULAR BASIS. NO FIRST TIME D FELONS GO TO THE DEPARTMENT OF CORRECTIONS

WHY DO THEY KEEP REOFFENDING?

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

WHY DO THEY KEEP REOFFENDING?

- THE PROBATION DATA PROVIDES SOME EXPLANATION
- DON TRAVIS, CHAIR OF THE PROBATION OFFICERS GROUP REPORTED TO CCEC:
 - 150,000 ON PROBATION IN INDIANA

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- 61% NO H.S. DIPLOMA
- 57% NO JOB & CRIMINAL ATTITUDE
- 73% POOR
- 88% USE DRUGS
- 42% USED ALCOHOL REGULARLY SINCE 17
- 63% MAJORITY OF FRIENDS HAVE CRIMINAL RECORDS
- 67% HAVE UNSTRUCTURED TIME

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

CONCLUSIONS 2012 PROBATION REPORT:

- LOCAL PROBATION UNABLE TO FUND OR CONTINUE EVIDENCE BASED PROGRAMS
- TOO FEW PROBLEM SOLVING COURTS
- ¾ OF OFFENDERS UNABLE TO PARTICIPATE WITHOUT WAIVER OF FEES – REAL COST?

- 57% NO JOB & CRIMINAL ATTITUDE
- 73% POOR
- 88% USE DRUGS

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

2012 JAIL SURVEY

- AVERAGE YEAR OF CONSTRUCTION 1987 (25YRS)
- 17,581 CAPACITY (85 COUNTIES REPORTING)
- \$195,119,052 BUDGETED
- MEDICAL BUDGETED \$27,690,270.00
- MEDICAL APPROPRIATED \$27,843,347.00 (14%)
- 40% NA OR AA
- 28% THINKING FOR A CHANGE & RELIGION
- 17% SUBSTANCE ABUSE ASSISTANCE

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

CONCLUSIONS ABOUT THIS GROUP OF CITIZENS

- MOST ABUSE DRUGS/ALCOHOL, LACK EDUCATION AND DO NOT HAVE JOBS
- SERVICES ARE AVAILABLE ONLY TO THOSE WHO CAN PAY FOR THEM.
- PEOPLE WITH ADDICTIONS & NO JOBS WILL CONTINUE COMMIT CRIMES (STEAL)

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM REMEDIES

- WE NEED PROGRAMS FOR THOSE WILLING TO CHANGE
- FOR THOSE WHO COMMIT VIOLENT OFFENSES OR ARE UNWILLING TO CHANGE, HEA 1006 ALLOWS FOR SPECIFIC DETERRENCE THROUGH EXTENDED INCARCERATION

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

- WHAT LOCAL RESOURCES WILL BE AVAILABLE TO THE APPROXIMATELY 3000 DRUG OFFENDERS WHO WILL NO LONGER BE IN DOC UNDER THE CCEC DRAFT?
- DOC WILL SAVE APPROXIMATELY \$180,000 (\$60 X 3000) A DAY – ANNUALLY \$65,700,000.00.
- IS THERE A PLAN TO SHIFT THESE SAVINGS TO LOCAL PROGRAMS FOR ADDICTION & EMPLOYMENT SERVICES?

Presentation for the Criminal Law and Sentencing Policy Committee

RECIDIVISM

WE KNOW A 1% REDUCTION OF RECIDIVISM IN MARION COUNTY ALONE RESULTS IN A SAVINGS OF 1.5 MILLION DOLLARS.

WE CAN DO BETTER THAN THAT!

Presentation for the Criminal Law and Sentencing Policy Committee

RESOURCES ON RECIDIVISM

- 2 FISCAL STUDIES
 - ARS
 - AIS
- 2 STUDIES
 - CALIFORNIA
 - MARION COUNTY

Presentation for the Criminal Law and Sentencing Policy Committee

Questions?

*Indiana Prosecuting Attorneys Council
Indianapolis, Indiana
September 25, 2013*

Presentation for the Criminal Law and Sentencing Policy Committee

Joan Petersilia* and Jessica Greenlick Snyder
**Looking Past The Hype: 10 Questions
Everyone Should Ask About California's
Prison Realignment**

Abstract: California's Criminal Justice Realignment Act passed in 2011 shifted vast discretion for managing lower-level offenders from the state to the county, allocated over \$2 billion in the first 2 years for local programs, and altered sentences for more than 100,000 offenders. Despite the fact that it is the biggest penal experiment in modern history, the state provided no funding to evaluate its overall effect on crime, incarceration, justice agencies, or recidivism. We provide a framework for a comprehensive evaluation by raising 10 essential questions: (1) Have prison populations been reduced and care sufficiently improved to bring prison medical care up to a Constitutional standard? (2) What is the impact on victim rights and safety? (3) Will more offenders participate in treatment programs, and will recidivism be reduced? (4) Will there be equitable sentencing and treatment across counties? (5) What is the impact on jail crowding, conditions, and litigation? (6) What is the impact on police, prosecution, defense, and judges? (7) What is the impact on probation and parole? (8) What is the impact on crime rates and community life? (9) How much will realignment cost? Who pays? (10) Have we increased the number of people under criminal justice supervision?

Keywords: prison realignment; California corrections; criminal justice; prisons; probation and parole; jails; victim's rights; penology.

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1 Introduction

On April 2, 2011, Governor Jerry Brown signed into law Assembly Bill 109, the Criminal Justice Realignment Act of 2011. AB 109, commonly referred to as "realignment," took effect on October 1, 2011. AB 109 passed the legislature in a matter of hours after being introduced, and without any public input. Despite some misleading headlines, the law did not require the state to release anyone currently

in prison. It did, however, shift virtually all of the responsibility for monitoring, tracking, and imprisoning lower-level felons previously bound for state prison to county jails and probation. The legislation also makes it nearly impossible to return parolees to prison for non-felony parole violations, and instead caps punishment for these “technical violations” to shorter terms in county jail. In other words, California is changing the way that it manages its adult corrections system more completely than at any time in its history.

The importance of California’s realignment experiment cannot be overstated. In a nation struggling to rethink its policies over mass incarceration, California’s experiment with prison downsizing is critical. Realignment is testing the major crime policy issue of our time: Can we downsize prisons safely by transferring low-level offenders from state prisons to city and county systems, using an array of evidence-based community alternatives? Depending on the answer, California will become an important example of how to reduce the prison population and maintain public safety – or realignment will go down in history as just another failed attempt at prison diversion.

At its best, the state’s post-realignment criminal justice system will maintain, or even reduce, California’s historically low crime rates – but at lower fiscal and social costs than during the pre-realignment period. At its best, it will have spurred the use of risk assessments, enabling counties to implement best practices and to tailor their community corrections system in ways best suited to local conditions. At its best, as programs develop, information sharing will allow cross-county sharing of effective practices. At its best, realignment will return criminal justice to local control, reduce recidivism, and reserve prison for California’s most dangerous offenders. At its best, investing in rehabilitation for lower-level offenders will reduce their recidivism, and over time, reduce the pressure on California to build more prisons, which takes money away from the education and work programs that might have helped offenders in the first place.

At its worst, however, realignment will expand the criminal justice system, leave counties unable to fund their programs, and show that alternatives to incarceration cannot work on a large scale. At its worst, low-level offenders will serve their sentences in county jail facilities, many of which are overcrowded and not equipped to hold inmates for long periods of time. At its worst, the state will have dumped tens of thousands of criminals back to cash-strapped counties with imaginary treatment plans that are never delivered upon. At its worst, the State will have simply transferred its crowding problem to local jails, sheriffs will be required to resort to early releases to alleviate crowding, and crime rates will rise. At its worst, overcrowded jails become revolving doors providing “get out of jail free” cards for offenders who continue to commit crime with impunity. Or, if jails become too crowded, the litigation that motivated

realignment in the first place will be replicated in the county jail system. At its worst, more people will end up under criminal justice supervision, but at the county rather than state level, and realignment will just have shifted its mass incarceration to counties without any decreased cost or recidivism reduction, and without any improvement to public safety. At its worst, with no set performance standards, nor any state body to determine the success or failure of the programs, Californians will have spent billions and be left with little data on whether realignment achieved its goals. In short, California's unprecedented prison downsizing experiment backfires.

This is the biggest penal experiment in modern history, yet no comprehensive evaluation was funded to evaluate its impact.¹ Regardless of whether you support or oppose realignment, most everyone is baffled by the fact that although the counties received funding to cover the cost of supervising realigned felons, the state did not establish any statewide standards, nor provide any funding, for objectively evaluating county practices. In contrast, when California enacted its last major criminal justice reform, the "Substance Abuse and Crime Prevention Act of 2000" (Proposition 36), diverting drug offenders to treatment, the legislation required the state to "allocate up to 0.5% of the fund's total monies each year for a long-term study to be conducted by a public university in California aimed at evaluating the effectiveness and financial impact of the programs that are funded pursuant to the requirements of this act."² With AB 109, there is not only no outside evaluation funded but no mandate for any statewide data collection, cost benefit analysis, or outcome report back to the legislature.

How will we know the impact of realignment on crime, incarceration, justice agencies, or offender's recidivism? In just the first 2 years since realignment's passage, California will have spent over \$2 billion dollars to implement a criminal justice experiment of the largest scale, and over 100,000 offenders will have

¹ California's Board of State and Community Corrections (BSCC) provides technical assistance to California's adult and juvenile justice system, including to local governments on realignment. Their statutory duties are to collect and maintain data about state and community correctional policies, capacities, and needs. BSCC is not conducting any outcome evaluation, but will disseminate information on promising and evidence-based practices once identified.

² See California Department of Alcohol and Drug Programs, http://www.adp.state.ca.us/SACPA/Proposition_36_text.shtml (last visited Mar. 4, 2013). In addition to evaluation funding, Proposition 36 required annual "county reports" that "detailed the numbers and characteristics of client participants served as a result of funding provided by this act." (Sec. 1199.11). Proposition 36 also required two three-year follow up studies to evaluate the effectiveness and financial impact of the funded programs. In 2013, the US Department of Justice adopted a new requirement that two percent of all funds from its Office of Justice Programs would be set aside for research, evaluation and statistics. See Office of Justice Programs, Budget Request 2013, available at www.justice.gov/jmd/2013summary/pdf/fy13-ojp-bud-summary.pdf.

participated. If California adopted just a 0.1% set aside for research, that would equal about \$1 million per year for evaluation. Such an allocation is a wise investment. Regardless of funding, we need to consider realignment's impact broadly. This article attempts to provide a framework for doing that.

To understand how realignment impacts criminal justice we need ask ten essential, interdependent questions:

1. Have prison populations been reduced and medical care sufficiently improved to bring prison medical care up to a Constitutional standard?
2. What is the impact on victim safety and victim rights?
3. Will more offenders participate in evidence-based treatment programs, and will their recidivism be reduced and their social functioning improved?
4. Will there be equitable sentencing and treatment across counties?
5. What is the impact on jails? What is realignments' impact on crowding, staff safety, jail conditions, pre-trial releases, and litigation?
6. What is the impact on police, prosecution, defense, and judges?
7. What is the impact on probation and parole?
8. What is the impact on crime rates and community life?
9. How much will realignment cost, and who ultimately pays?
10. Have we increased the total number of people under criminal justice supervision? Did realignment just change the location where inmates are incarcerated or the agency they report to?

This article proceeds as follows: First, we provide a brief overview of the key components of AB 109; and second, we discuss in turn the ten critical questions that everyone should be asking about California's realignment. For each of these questions, we attempt to identify the important issues at stake. Additionally, we provide analysis and data where available, to help provide at least a partial answer to these important questions.

2 Key Components of California's Public Safety Realignment Act (Assembly Bill 109)

2.1 Target Felon Population

While the Realignment legislation is comprehensive and complex, it primarily affects three major groups. (Realignment made no changes to juvenile justice sentencing or their correctional placement.) First, lower-level felony offend-

ers whose current and prior convictions are non-violent, non-sex-related, and non-serious³ (referred to as “non-non-non’s”) will now serve their sentence under county jurisdiction rather than in state prison. Realignment amended about 500 criminal statutes eliminating the possibility of a state prison sentence upon conviction. These newly amended laws are contained in the California Penal Code, the California Health and Safety Code, and the California Vehicle Code. Realigned crimes include, for example, commercial burglary (California Penal Code 459 2nd), forgery (California Penal Code 470), possession of marijuana for sale (California Health and Safety Code 11359), corporal injury on a child (California Penal Code 273d), vehicular manslaughter (California Penal Code Section 192c), child custody abductions (Penal Code 278), and embezzlement from an elder or dependent adult (Penal Code section 368(d)(e)(f)).⁴

After October 1, 2011, any adult convicted of these amended felony crimes [Penal Code Section 1170(h)] cannot be sentenced to prison unless they have a prior serious or violent felony conviction.⁵ They can, however, be sentenced for the same length of time they would have been sentenced to prior to realignment, but that sentence regardless of its length, must be served in county jail and not state prison. The other big change for persons sentenced under section 1170(h) to county jail is that they will not be released to parole or postrelease supervision upon serving their term, unless the court chooses to impose a post-jail supervision period (i.e., split sentence). Once the jail sentence has been served, the defendant must be released without any restrictions or supervision.

Second, released prisoners whose *current* commitment offense qualifies as a “non-non-non” offense will be diverted to the supervision of county probation departments under “Post Release Community Supervision (PRCS).” Before realignment, state parole agents supervised individuals released from state prison. In fact, California was the only state that placed virtually *all* released prisoners on state supervised parole. Moreover, almost every offender’s parole supervision period was for 3 years, although they could be discharged at 13 months if they had no new violations. After realignment, state parole agents will only supervise

³ As enumerated by the statute under Penal Code Section 1170(h), and fully discussed in Richard Couzens and Tricia A. Bigelow, *Felony Sentencing After Realignment* (2013).

⁴ *Ibid.* at Appendix I.

⁵ Offenders can be sentenced to prison even if they are currently convicted of a 1170(h) non-prison eligible crime if any of the following apply: 1) conviction of a current or prior serious or violent felony conviction listed in Penal Code section 667.5(c) or 1192.7c; 2) when the defendant is required to register as a sex offender under section 290; or 3) when the defendant is convicted and sentenced for aggravated theft under the provisions of section 186.1. See *ibid.* at 65.

individuals released from prison whose *current* offense is serious or violent (*regardless* of their prior criminal record), as well as certain other individuals, such as inmates who have been assessed to be mentally disordered or high risk sex offenders. All other prisoners will be released from prison directly to county jurisdiction. And, importantly, offenders now sent to county PRCS supervision terms are eligible for PRCS discharge at 6 months. Eligibility for PRCS and county probation supervision has been one of the most highly controversial aspects of AB 109, since *regardless* of prior criminal record, former state parolees are now sent to county probation supervision. Prison officials estimate that California county probation officers will now assume responsibility for supervising an additional 40,000 to 60,000 prisoners who were released in 2012 and qualify for PRCS.⁶

Third, parole and probation violators will generally serve their revocation terms in county jail rather than state prison. Before October 2011, individuals released from prison could be returned to state prison for violating their parole supervision. The maximum prison term for a violation of parole or probation was 1 year. Some of these violations were non-serious, such as a failed drug test or absences at a required program. Prior to realignment, these non-serious technical violators – about 20,000 parolees each year – were sent to prison.⁷ Now, under realignment, offenders released from prison – whether supervised by the state (on parole) or by the counties (on PRCS) – who violate the technical conditions of their supervision (rather than committing a new crime) must serve their revocation term in local jail or community alternatives. The maximum jail sentence for a probation or parole violation is 6 months. The only exception to this requirement is that individuals released from prison after serving an indeterminate life sentence may still be returned to prison for a parole violation. Individuals realigned to county supervision will no longer appear before the State Board of Parole Hearings (BPH) for revocation hearings. Starting July 1, 2013, the county trial courts will hear allegations of violations and impose sanctions.⁸

In sum, the prison door has slammed shut on tens of thousands of offenders – estimated to be nearly 100,000 offenders in 2012–2013 alone – who used to be under state control and faced prison but after October 1, 2011, remain in their communities where jail is the most severe sanction they confront.

6 California Department of Corrections and Rehabilitation, *The Future of California Corrections* (2012), available at www.cdcr.ca.gov/2012plan/docs/plan/complete.pdf [hereinafter CDCR].

7 Joan Petersilia, *California's Correctional Paradox of Excess and Deprivation*, in *Crime and Justice* (Michael Tonry, ed., University of Chicago Press 2007).

8 Before July 1, 2013, individuals supervised by state parole agents will continue to appear before BPH for revocation hearings. After that date, the trial courts will assume responsibility for conducting revocation hearings for state parolees.

2.2 Realignment Funding Formula, County Discretion, and State Monitoring

The State has allocated about \$2 billion through 2013–2014 to implement realignment, and anticipates giving California's 58 counties roughly \$4.4 billion by 2016–2017, excluding the funding allocated for county planning, staff training, local courts, and jail construction.⁹

The California Department of Finance uses a formula to determine each County's funding level. Roughly speaking, the legislature split the current cost of State supervision by about 50% to 60% with the counties. The current cost of housing a California prisoner is about \$52,000 per prisoner, per year. Front-end realignment is being funded at about \$25,000 per prisoner, per year. The cost of a year on parole in California is now about \$8,500 a year, per parolee, so PRCS supervision was funded at about \$5,000 per year, per offender.¹⁰

\$52,000
a year

In the first fiscal year of Realignment, 60% each county's funding allocation was based on the county's historical average daily state prison population ("ADP") of persons convicted of non-violent offenses from the particular county; 30% was based on the size of each county's adult (18 to 64) population; and the remaining 10% was based on each county's share of grant funding under the California Community Corrections Performance Incentives Act of 2009 (SB 678). SB 678 was based on a county's ability to divert adult probationers from prison to evidence-based programs.¹¹

The funding formula was controversial from the start. Critics contended that the meager funding did not cover the true costs of "evidence-based" mental health treatment, substance abuse, or the housing that such serious offenders required. The amount of money each individual county received was based mostly (60%) on a funding formula that weighed heavily the projected number of non-non-non's each county would have returning home from prison, using historical prison sentencing data. This formula rewarded counties that had previously sent a higher percentage of their lower-level offenders to state prison and penalized counties who historically had invested in community alternatives and as a result, sent fewer offenders to prison.

In the second and third years of Realignment, counties were given the best result among three options in which funding was based on: (1) the county's adult

⁹ Brian Brown et al., Legislative Analyst's Office, *The 2012–2013 Budget: The 2011 Realignment of Adult Offenders – An Update* (2012), available at http://www.lao.ca.gov/analysis/2012/crim_justice/2011-realignment-of-adult-offenders-022212.aspx.

¹⁰ *Ibid.*, at 43.

¹¹ See *Ibid.*, at Figure 5. The last component of the formula refers to Senate Bill 678, also known as the California Community Corrections Performance Incentives Act, which in 2009 created a fiscal incentive for counties to improve probation outcomes.

population ages 18 to 64; (2) the status quo formula of FY 2011–12; or (3) weighted ADP.¹² Over a quarter of counties benefited from the new weighted ADP option, in some cases almost doubling what they would have received had their allocation been based on county population.¹³

Despite the new funding formula, many counties are still dissatisfied. In December 2012, thirteen rural Central California counties wrote a letter to Governor Brown complaining that urban counties are receiving a disproportionate amount of the AB 109 funding. This letter pointed to the fact that San Francisco and Marin Counties are receiving \$24,000 per new offender, whereas Kern and Fresno Counties receive less than \$8,000 per new offender.¹⁴

Initially, counties worried that the State had not guaranteed funding beyond the first 2 years. Some state leaders voiced concern that realignment would prove nothing but a shell game designed to dump the state's responsibilities onto already overburdened and underfunded counties. As Los Angeles County Supervisor Zev Yaroslavsky put it, "This has all the markings of a bait and switch. They promise us everything now, they shift this huge responsibility from the state to the counties now, and then a year or two or three from now, they will forget about that commitment, and it'll be – then was then and now is now, and we'll be left holding the bag."¹⁵

But in November 2012, California voters passed Governor Brown's Proposition 30, a sales and income tax increase. Proposition 30 increases personal income taxes on the wealthy and increases the sales tax by ¼ cent for 4 years. Proposition 30 is estimated to increase state revenues by about \$7 billion annually, and the funds are to be used for education and to "guarantee funding for public safety services realigned from state to local governments."¹⁶ The voters were never told how much would go to education and how much would go to realignment, but



tax
increase

¹² County Administrative Officers Association of California realignment Allocation Committee, AB109 Allocation: Recommended Approach for 2012–13 and 2013–14 Briefing of County Administrative Officers (2012), available at http://www.csac.counties.org/sites/main/files/file-attachments/12.05.15_ab_109_allocation-051412_briefing_on_yrs_2_and_3_formula.pdf (presentation to the California State Association of Counties).

¹³ California State Association of Counties, Estimated funding levels for AB 109 Programmatic Allocation (2012–13 and 2013–14) (2012), available at http://www.csac.counties.org/sites/main/files/file-attachments/12.05.16_attachments_1_and_2_for_5-14-12_caoac_briefing.pdf.

¹⁴ Paige St. John, *Rural Counties Seek Bigger Share of Prison Money*, Los Angeles Times (Dec. 6, 2012), <http://latimesblogs.latimes.com/california-politics/2012/12/rural-counties-seek-bigger-share-of-prison-money.html>.

¹⁵ Carrie Kahn, *LA Prepares to Take on State Prisoners*, National Public Radio (Sept. 29, 2011), <http://www.npr.org/2011/09/29/140922171/l-a-county-prepares-to-take-on-state-prisoners>.

¹⁶ *California Legislative Analyst's Office*, http://ballotpedia.org/wiki/index.php/California_Legislative_Analyst%27s_Office (last visited Feb. 25, 2013) (Ballot Pedia, analysis of Proposition 30).

generally speaking, Proposition 30 was supposed to guarantee at least the same level of realignment funding going forward as had been given in the first 2 years.

This infusion of new funding surpasses any similar allocation for offender rehabilitation in California history, and the funding is now guaranteed for the next several years. The \$64,000 question is: How will counties choose to spend their dollars? Scholars worry that instead of using AB 109 as an opportunity to invest in treatment and alternatives to incarceration, the money will mostly be used to increase law enforcement, electronic monitoring, and jail capacity. If that happens, realignment will have simply been a very expensive and painful game of musical chairs. Whether that happens is mostly up to the discretionary authority of the local Community Corrections Partnerships (CCPs), the topic we now turn to.

2.3 Community Corrections Partnership and Discretionary Decision-Making

Not only did Realignment transfer an unprecedented amount of money and responsibility to the counties, it gave them unprecedented discretion concerning how they chose to spend it. The Legislation (Penal Code 1230) required that each county establish a Community Corrections Partnership (CCP), comprised of the Chief Probation Officer as chair, the District Attorney, the Public Defender, the Presiding Judge of the superior court (or his/her designee), the Chief of Police, the Sheriff, and a representative from social services. The Committee develops the spending and program plan, and submits it to the County Board of Supervisors, where it is deemed acceptable unless the board rejects the plan by a vote of four-fifths. Realignment fundamentally embraces the notion that locals can do things differently and better than the state.

So the threshold question for any assessment of realignment is: How did these counties choose to spend the available funds? How did they divide the funds among various agencies (e.g., law enforcement, probation, social services)? And within the plans, have the counties set-aside funding for specific offender groups (e.g., the mentally ill) or community organizations (e.g., mentoring or faith-based programs)?

Stanford law students analyzed all of the 58 county plans approved in 2011–2012 and found that most of them included estimates of the number of offenders to be realigned to the county, a description of their local capacity and proposed programs for handling these offenders, and an expenditure plan.¹⁷ While there

¹⁷ Angela McCray, Kathryn McCann Newhall and Jessica Greenlick Snyder, *Realigning the Revolving Door? An Analysis of California Counties' AB 109 Implementation Plans* (Stanford Criminal Justice Center, working paper 2012), available at http://www.law.stanford.edu/program/centers/scjc/#california_realignment. The McCray et al. analysis has now been expanded to include all 58 counties and will appear in a forthcoming report by Petersilia in 2013.

was a great deal of variation in the proposed county spending plans (as shown in Figure 1 below), the California average funding allocation for the first year of realignment was as follows:

- 35% to the sheriff's department, primarily for jail operations;
- 34% to the probation department, primarily for supervision and programs;
- 12% for programs and services provided by other agencies, such as for substance abuse and mental health treatment, housing assistance, and employment services;
- 19% unallocated/reserved funds.

Stanford researchers are also studying twelve counties in detail. These counties, as a group, capture the majority of the California population, approximate the state's population in terms of demographics and economic characteristics, and include the majority of the projected realignment population. Figure 1 displays these counties' realignment allocations, showing the diversity in funding choices across counties.

We are now collecting the 2012–2013 CCP plans and analyzing their budgets. At first glance, there do not appear to be major changes in funding allocations within counties or across the state. This data is critical to understanding how spending aligns with – or possibly thwarts – the Legislature's goals.

We are also analyzing how county characteristics (e.g., crime rate, population characteristics, fiscal health, political preferences) are associated with county

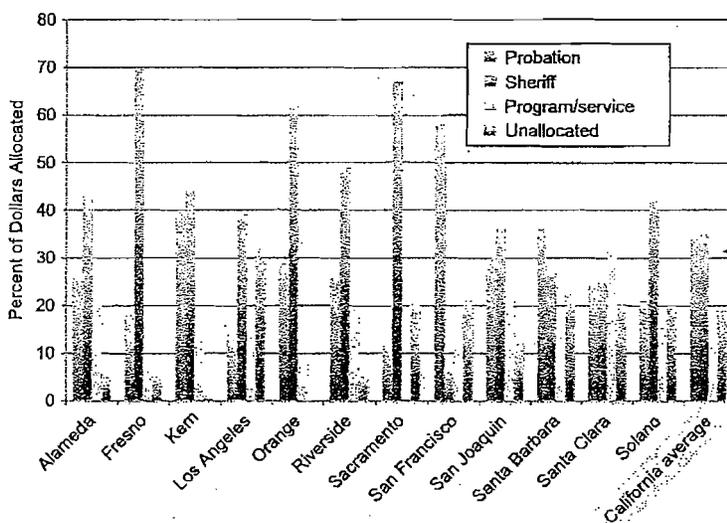


Figure 1: Realignment Funding Allocations by County and Category, 2011–2012.

choices on realignment spending. Our preliminary results suggest that counties tend to allocate a higher proportion of available realignment dollars to the sheriff when the serious crime rate is higher or the probability of (historical) imprisonment for offenses is higher. Counties tend to allocate a greater proportion of their realignment dollars to treatment when median household income is higher, the proportion of population below the poverty line is lower, and their residents have historically voted more Democratic. Understanding why counties spent their realignment dollars in the way they did is an important threshold question. The following 10 questions look to whether those dollars made any difference.

Question 1: Have prison populations been reduced and medical care sufficiently improved to bring prison medical care up to a Constitutional level?

The size of the prison population is the outcome everyone is watching. On the eve of the passage of realignment in October 2011, the prison population was 160,295, more than double what the prison system was designed to hold. In the first 3 months of realignment, the number of inmates in California prisons dropped by 11,000 – a decline of nearly 10% – an astonishingly steep decline.¹⁸ By the end of 2012, California's prison population had dropped another 15,000, reaching 132,619 prisoners, its lowest level in 17 years. California's prison population has declined 24% since 2007, while its adult resident population increased by 5.6%.¹⁹ In fact, realignment reduced California's inmate population so much that Texas now has a larger prison system, although Texas has about 12 million fewer residents.

The primary reason for the reduction in the state prison population has been the removal of the option to send parole violators back to state prison for non-felonious parole violations. During the first 8 months of realignment, the number of parole violators returned to prison was down by 47%. But prison commitments for less serious crimes were also down.²⁰ As shown in Figure 2, in

¹⁸ Magnus Lofstrom and Katherine Kramer, Capacity in California's Jails, (2012), available at http://www.ppic.org/main/publication_quick.asp?i=1034.

¹⁹ For prison population numbers, see *Monthly Total Population Report Archive*, California Corrections and Rehabilitation, http://www.cdcr.ca.gov/reports_research/offender_information_services_branch/Monthly/Monthly_Tpop1a_Archive.html (last visited Mar. 6, 2013) (each month comes from the respective monthly total population report). For California adult population numbers, see *American Fact Finder*, US Census Bureau, <http://factfinder2.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (last visited Mar. 6, 2013) (adult population was calculated by multiplying the percent of the population 18 years and over by the total population).

²⁰ LAO Legislative Analyst's Office, *California's Criminal Justice System: A Primer* 43 (2013) [hereinafter LAO].

Prison
#15 -
double of
designed to
hold

Parole -
Main
Reason for
decrease

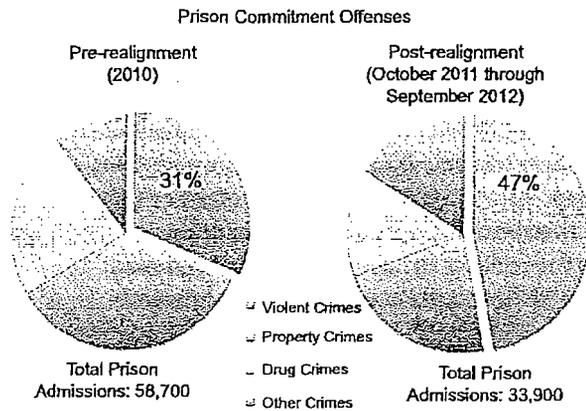


Figure 2: California Prison Admissions by Commitment Offense, 2010 vs. 2011–2012. Source: LAO Legislative Analyst's Office, *California's Criminal Justice System: A Primer* (2013) at 43.

2010 – the year before realignment – most admissions to state prisons were for property crime and drug crimes (58%). Decreases in commitments for drug sales other than for marijuana (down 75%), petty theft (down 62%), and marijuana offenses (down 69%) were substantial. In the first year following realignment, almost half of all admissions to state prison were for violent crimes (47%) – a 62% increase relative to 2010.²¹

Interestingly, the number of female prisoners has dropped by 45% since realignment passed – from about 10,500 inmates to 5,830 inmates by January 2013. A substantial portion of female inmates fell under the definition of non-non's, and their decline in the overall prison population allowed CDCR to convert a female prison into a facility for male inmates. From the state's vantage point, realignment is working: Prison is being increasingly reserved for the most serious and violent offenders.

On January 14, 2013 – just 14 months after realignment's enactment – Governor Brown called a press conference to declare California's long-running prison crisis over. "The prison emergency is over in California. There is no question that there were big problems in California prisons," but after "decades of work, the job is now complete."²² Further reductions, the Governor said, would require releasing some significantly violent criminals, putting public safety at risk. He argued that

²¹ *Ibid.* at 43.

²² Don Thompson, *California Prison Population: Jerry Brown Challenges Inmate Cap*, *Huffington Post* (Jan. 8, 2013), http://www.huffingtonpost.com/2013/01/08/california-prison-populat_n_2433421.html.

while the State would not be able to meet the court's 2009 mandate to reduce its population to 112,000 inmates by June 2014, its prisons were now constitutional at the current level of about 133,000 and 150% of design capacity. The Governor said the "prisons are not overcrowded as a matter of fact," and the number of prisoners the state needs to reduce as stipulated by the courts is "arbitrary."²³ He said the state prison system deserved to be freed from federal oversight because of realignment. Governor Brown told reporters, "We've gone from serious constitutional problems to one of the finest prisons systems in the United States."²⁴ California recently saw its prison population stabilize and even start to climb slightly, but official projections show that it will have gained just 2,700 inmates by 2018.²⁵ A new normal for California prisons may be about 132,000–135,000 inmates. Of course, this could all change if serious crime increases.

Moreover, it is easy to lose sight of the fact that the motivating cause of the judicial order was not overcrowding itself, but the inadequacy of the medical and mental health care in prison. The judges held that prison crowding was preventing the delivery of adequate prisoner health care and that one inmate was dying each week from healthcare neglect. The court appointed a federal receiver, and ruled that reducing the prison population was a prerequisite to improving inmate health care. But less crowding will not in and of itself improve health care. Improving health care required the construction of new specialized space to provide health care and the hiring of trained medical professionals.

San Quentin prison opened a new hospital in 2010 with 50 beds, at a cost of over \$136 million. Prisoners go there to receive medical, dental, and mental health care. San Quentin was the first prison in California to build a new health care facility after a federal judge ordered California to upgrade its prison hospital system in 2005, but it isn't the last. Slated for completion summer 2013, at a cost of \$900 million, the California Health Care Facility in Stockton will provide 1,722 beds for inmates requiring long-term in-patient medical care and intensive in-patient mental health care. The completion of this facility is designed to ensure the continued constitutional levels of health care.

California's prison system comes at tremendous cost to the taxpayers. The average cost of housing a prisoner in the US is about \$25,000–\$27,000 per year. The California's Legislative Analyst Office recently reported that the annual cost to incarcerate an inmate in California is \$51,998, twice the national average – with

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ California Department of Corrections and Rehabilitation, Fall 2012 Adult Population Projections (2012), available at http://www.cdcr.ca.gov/reports_research/offender_information_services_branch/Projections/F12pub.pdf.

\$16,042 (31%) going to inmate health care. Importantly, just \$926 (1.8%) of that roughly \$52,000 goes to fund rehabilitation programs.²⁶ The hope is that the investments in inmate healthcare and medical facilities will improve California's prison healthcare system ultimately convincing a federal judge to end his oversight of prison medical care.

Improving California's prison healthcare system – and regaining State control of the entire prison medical system – is intricately tied to whether the state can keep its prison population down, which is totally dependent upon the success of realignment. Right now, the prison system is reaping the full benefits of realignment, primarily due to the decline of technical violations being admitted to prison. But, prison admissions over time remain unknown – mostly because local law enforcement and court systems will have a great deal of discretion in the new AB 109 system. Depending on how counties exercise that discretion, the decline in prisoners may not last. But of one thing we can be sure: this high profile court case²⁷ and the litigants involved in monitoring its progress, will be providing answers to these questions. In fact, this is the only one of the ten questions for which data is currently being collected as part of the court's continued monitoring.

Question 2: What is the impact on victim safety and victim rights?

Although the focus of AB 109 is clearly on what to do with offenders, it is important to note that realignment significantly impacts crime victims and witnesses. Victims' rights and safety is a significant concern that has, for the most part, gone unmentioned in realignment discussions. Despite their centrality, victims were not heavily involved in planning for realignment. They did not have a representative in the major policy negotiations when realignment was being designed. And AB 109 did not give them a voting seat on the local Community Corrections Partnership (CCP). Their rights to notification, safety, and a place of primacy in custody determinations were unaccounted for in the law's original form, and there is no clear sign that they are soon to be re-engaged. In short, in a rush to protect the constitutional rights of offenders, the rights and needs of victims appear to have been minimized.²⁸

Realignment's impact on crime victims is multifaceted. More felons may be granted early release due to jail overcrowding, and these early releases may increase the risk of citizens becoming crime victims. On the other hand, if

²⁶ LAO, *supra* note 21 at 50.

²⁷ *Brown v. Plata*, 131 S. Ct. 1910, (2011).

²⁸ Jessica Spencer and Joan Petersilia, *California Victims' Rights in a Post-Realignment World*, Fed. Sentencing Rep. (forthcoming Summer 2013).

counties divert offenders to more effective treatment and work programs, reducing recidivism, overall victimization rates will decline.

In addition to victimization issues, realignment may threaten the due process and statutory rights guaranteed California crime victims as a result of Marsy's Law, the California Victims' Bill of Rights Act of 2008. Marsy's Law created a substantial expansion of victims' rights and imposed certain obligations on district attorneys, peace officers, probation departments, parole, the courts, and the Governor. California victims have the legal right to be notified of all court proceedings, receive notification of adult inmate's status in prison, request special conditions of parole for the inmate when he or she is released from prison, and receive victim restitution. Victims have the right to reasonably confer with the prosecuting attorney and, upon request, be notified of and informed before any pretrial disposition of the case. Victims have a right to be heard at any proceeding involving a post-arrest release decision, plea, sentencing, post conviction release decision, or any proceeding in which a right of the victim is at issue.

Marsy's Law added a public safety bail provision [Art. I, § 28(f)(3)], which requires that in setting bail or own recognizance release, the protection of the public and the safety of the victim shall be the primary considerations. Importantly, Marsy's Law requires that the safety of the victim, the victim's family, and the general public be considered before any parole or other post-judgment release decision is made. It is not clear how realignment is preserving and enforcing these victim rights. What does seem clear is that the consequences of AB 109 on victim's rights have not been fully considered. The Crime Victims Action Alliance formally opposed AB 109 and sent a strong opposition letter to Governor Brown asking him to veto it. Fearing that it will negatively affect public safety, some victim lobbyist groups like Crime Victims United of California have uniformly disapproved of AB 109 and called for its repeal.²⁹

Realignment may reduce the ability of victim's to collect restitution. Under the former system, victims would get their restitution payments through CDCR and the parole system, and an offender that failed to make those payments was violating a term of parole. Prisoners subject to longer periods of incarceration were usually required to work during their incarceration, and CDCR had the power to garnish any wages earned and put it toward any restitution order that was in place. However, offenders sent to PCRS instead of parole can now discharge their supervision at 6 months (half the minimum length of time under the old parole system). When offenders are discharged from PCRS, there is no administrative

²⁹ AB 109 – *Public Safety Realignment*, Crime Victims Action Alliance, <http://www.cvaactionalliance.com/ab-109-public-safety-realignment>; Crime Victims United of California <http://www.crimevictimsunited.com/lawsuit>.

body responsible for monitoring restitution payments. Victims often have little recourse to collect court ordered restitution under realignment. In addition, local authorities are now more responsible for collecting crime victim restitution payments – and given their workload, it often does not happen. “That’s a major problem,” says Kelly Keenan, chief assistant district attorney in Fresno County.³⁰ The CDCR tracks restitution orders for inmates in state prisons, collecting even after they are released on parole. But it’s more difficult to track someone who serves a 3-year jail sentence and then leaves with no supervision or probation program. “We’re struggling with it,” Keenan says. For the present, he says, crime victims may have to go after restitution themselves in civil court.³¹

Realignment has also seriously diminished crime victims’ access to the notice that Marsy’s Law requires, mostly because it is not clear who is responsible for providing that notification and when. Realignment created several new types of custodial sentences (e.g., electronic monitoring, day reporting centers), and no one has yet determined which of those sentences require notice to the victim under Marsy’s Law. CDCR had an automated system that allowed victims, family members of victims, or witnesses who testified against the offender to request to be notified of the release, parole hearing, death, or escape of their offender.³² Local police chiefs are also apprehensive because under state parole supervision, there was a statewide database for checking criminals’ status on the street. There is no similar statewide system for offenders on county probation. While there is an effort to put such a system in place, most counties have not allocated the funds required to do so. County jails and probation usually lack these structures, and so now an AB 109 offender could be released into the community without the victim being made aware of the release.

In some counties there are no processes to communicate with victims when the actual sentence of the offender is determined. Thus, victims often have no way of knowing whether the offender will be sentenced to county jail or state prison, the length of the sentence, and whether they will be under any form of supervision when they are released. This is all of grave concern to victims – and a violation of rights under Marsy’s Law. Such legal conflicts could result in significant litigation challenging various applications of realignment. Additional administrative staff and resources could be required if prosecutors have to notify victims so that they have the opportunity to be heard at all stages of court processing. Such notifications will likely require additional court appearances, increasing

³⁰ Spencer and Petersilia, *supra* note 28.

³¹ Pamela A. MacLean, *Prison Realignment: Now What?* California Lawyer, Aug. 17, 2012, <http://www.callawyer.com/Clstory.cfm?eid=923950>.

³² *Request for Victim Services (CDCR 1707)*, California Department of Corrections and Rehabilitation, http://www.cdcr.ca.gov/Victim_Services/application.html (last visited Feb. 28, 2013).

prosecutor, defense, and judicial resources. If they fail to provide opportunities for victim and witness input, realignment may indeed conflict with existing law and the State Constitution.

Question 3: Will more offenders participate in evidence-based treatment programs, and will their recidivism be reduced?

At its core, realignment is designed to increase treatment for offenders. In 2007, California's Expert Panel on Adult Offender Programming found that fewer than 10% of all prisoners and parolees participated in substance abuse or vocational education programs, despite the fact that nearly three quarters of all inmates had serious needs in these areas. Moreover, 50% of all exiting prisoners did not participate in any rehabilitation or work program, nor did they have a work assignment, during their entire prison stay. Offenders did not get help on parole either: 60% of parolees did not participate in any parole programs while under state supervision. In other words, most California prisoners and parolees left the state system with their literacy, substance abuse, and employment needs unmet.³³ It is not surprising that California's 3-year rearrest rate for released prisoners was 70%—the highest in the nation.

Realignment proponents argue that shifting program authority and funding to local governments will result in better programs and more accountability for outcomes. Counties have a far greater stake than the state does in trying to rehabilitate as many offenders as possible, because they have to live with them after they are released. Those going to county jail will almost surely return to the same community after serving their sentences. At its core, realignment is designed to increase offender program participation rates and improve offenders' chances of success.

But for realignment to actually reduce offender recidivism, three things must happen. The first two necessary elements to reducing offender recidivism are squarely within the counties' control: First, offenders must have the *opportunity to participate* in treatment programs, and second, the program's design must incorporate elements consistent with the *principles of effective correctional intervention*. Research has shown that programs incorporating these principles reduce recidivism. California developed the Correctional Program Assessment Process, which is a checklist of items that must be present for a program to qualify as an

³³ Joan Petersilia and Marisela Montes, co-chairs, Meeting the Challenges of Rehabilitation in California's Prison and Parole System: A Report from Governor Schwarzenegger's Expert Panel on Rehabilitation (Dec. 2007), available at http://www.cdcr.ca.gov/news/docs/govrehabilitationstrikeamrpt_012308.pdf.

“evidence-based program.”³⁴ If offenders do not participate in these types of programs post-realignment, we should not expect recidivism reduction.

The third necessary element to reducing offender recidivism is less within the counties’ control: Offenders must *want to take advantage* of the programs offered. Counties can open up more programs, and those programs can be evidence-based, but if the offender does not want to take advantage of them, recidivism will not be reduced. After all, we must remember that many of these offenders are the same ones who failed the last time they were “treated” or jailed in county facilities. “You can lead a horse to water, but you can’t make it drink.” In discussions of recidivism reduction, we often forget this basic point: We can offer offenders opportunities, but if they don’t actively participate, they will not succeed.

While realignment is designed to increase offender programming, it is unclear whether it will have done so significantly in the first year. Yes, more offenders are under the *supervision* of county organizations, but it is unclear how much money is actually going to evidence-based programs or how good the funded programs are. To be sure, there are counties that are using their realignment dollars to invest in better programs. Sacramento, Solano, and thirty-one other counties are funding Adult Day Reporting Center (ADRCs) for realigned offenders, where clients receive counseling, GED tutoring, and employment assistance at no cost to offenders. Santa Clara County funded the Santa Clara Reentry Center,³⁵ and San Diego, Merced, San Francisco³⁶ and Santa Barbara³⁷ created Community Assessment and Social Services Centers: one-stop hubs for all services provided to AB 109 offenders. San Mateo County has funded “Service Connect,” a full service program that begins working with the inmates prior to their prison release. The Orange County Sheriff’s Department has initiated an in-jail transition program, which combines classroom learning with a re-entry coordinator at release. The San Francisco and Sacramento District Attorney’s Office has dedicated resources to an “alternative sentencing planner.” This new position is designed to give

34 See Ryken Grattet et al, *Evidence-based Practices in Corrections: A Training Manual for the California Program Assessment Process (CPAP)* (2006), available at <http://ucicorrections.seweb.uci.edu/pdf/CPAPTrainingManual.pdf>.

35 *Re-Entry Resource Center Brings Crucial Services to Former Offenders as they Transition Back to the Community*, County of Santa Clara News Releases (Oct. 18, 2012), <http://www.sccgov.org/sites/opa/nr/Pages/Re-Entry-Resource-Center-Brings-Crucial-Services-to-Former-Offenders-as-they-Transition-Back-to-the-Community.aspx>.

36 Trent Rhorer and Wendy Still, *Public Safety Realignment Act of 2011 (AB109): Impacts on San Francisco County (2012)*, available at <http://www.cwda.org/downloads/meetings/conference2012/Realignment-San-Francisco.pdf> (presentation at County Welfare Directors Association of California).

37 *San Francisco Realignment: A Well Resourced Traditional Model*, Reentry Court Solutions (Oct. 8, 2012), <http://www.reentrycourtsolutions.com/tag/san-francisco-realignment-plan/>.

prosecutors information about local community-based sentencing options and identify diversion-appropriate defendants. Many counties have also expanded electronic monitoring and jail work release programs. The lessons learned from these innovative programs will be instructive for the rest of the state.

Despite these examples of promising programming, analysis of the county spending plans (shown in Figure 1) during the first year suggests that perhaps not much money is being invested in rehabilitation – and even less in evaluations to see whether the programs reduced recidivism. This is concerning because even well intentioned efforts can do harm if they are not well designed and appropriately targeted. Research has shown that some popular rehabilitation programs currently in use are not effective at reducing criminal behavior (e.g., intensive supervision or electronic without treatment). But other programs are effective, such as therapeutic custody programs with aftercare for drug offenders. Quality vocational education programs with job placement have yielded positive results, as have cognitive behavior treatment in prison and in the community. Gender-responsive programs have demonstrated positive outcomes for female offenders.³⁸ Fully implementing evidence-based rehabilitation programs should reduce California's recidivism rate by about 10–20% overall, although programs with different risk populations can expect different recidivism reduction outcomes.³⁹

Many people have become concerned with the discrepancy between the 58 different counties implementing AB 109. Some, like Donald Specter, the director of the Prison Law Office, have lamented the lack of “guiding principles, oversight, or monitoring” from the State and predicts “extreme variations” in the effectiveness of county programming.⁴⁰ For example, almost all counties plan to employ GPS monitoring, but only 34% of counties plan to use drug courts or community service as part of an alternative sentencing regime.⁴¹ For rehabilitation, virtually all of the 58 county plans mentioned they intended to use evidence-based programming, but only five counties spent more than one paragraph describing what they meant by this.⁴² Eighty percent of counties plan to use vocational training,

38 The Office of Justice Programs' CrimeSolutions.gov uses rigorous research to determine what works. This website identifies programs that have been reviewed and rated as “effective” by reviewers. However, just because a particular program isn't classified as “effective” doesn't necessarily mean the program couldn't be effective, only that there is no rigorous research to date demonstrating that it has or has not been proven effective. See Office of Justice Program Crimes Solutions.gov, <http://www.crimesolutions.gov>.

39 Mark W. Lipsey and Francis Y. Cullen, *The Effectiveness of Correctional Treatment: A Review of Systematic Reviews*, 3 Ann. Rev. L. & Soc. Sci. 297, 297–320 (2007).

40 Jennifer Medina, California Begins Moving Prison Inmates, *NY Times*, Oct. 8, 2011, at A14.

41 McCray, Newhall and Snyder, *supra* note 17.

42 *Ibid.* at 30–31.

and 60% plan to provide economic support, but only 3% plan to use mentoring programs.⁴³ About 65% of the counties plan to partner with community-based organizations, although only 34% plan to actually have a contract with them.⁴⁴

As previously discussed, our analysis of county plans revealed that just 12% of the total first year allotment for realignment across the state was given to community agencies that provide treatment services. It may be that funds within the probation or sheriff's department will be spent on treatment, but so far that doesn't appear to be the case. We found that about 35% of all the AB 109 money allocated in the first year was earmarked for probation and sheriff staff salaries.⁴⁵

Planned realignment spending on these different categories is widely divergent, as shown in Figure 1. Some counties like Sacramento plan to spend a disproportionate amount of their AB 109 funding on salaries of county officials, while others like San Francisco, Orange, Riverside, and Santa Cruz are spending less money on salaries.⁴⁶ Some counties plan to use a majority of AB 109 funds to focus on a single issue; for example Riverside allocated over \$4 million to its Department of Mental Health.⁴⁷ Other counties, like Santa Clara, took a more balanced approach, allocating about 25% each to the sheriff, probation, and social services, and leaving about 20% in reserve.⁴⁸

What might be even more concerning than the relatively small chunk of realignment funds going to services and the significant divergence between counties, is the fact that few rigorous studies are being done to assess the costs and impacts of those rehabilitation programs that are being funded. Some counties are conducting process evaluations but, as far as we know, no county is conducting a randomized trial or cost benefit analysis of realignments' impact. This is an important missed opportunity. How will we know if investing in rehabilitation versus incarceration worked or not? Ideally, we would conduct a true experiment to assess AB 109-funded programs, by comparing initially equivalent program participants (individuals who participated in the AB 109 program) with control individuals (individuals who did not participate in the program but share characteristics with those who did). Even if counties can not apply a true experimental design to their program evaluation, they should compare "quasi-control" groups, where the control group is matched to the program group on similar characteristics (e.g., age, race, prior criminal record), and then behavior is measured pre- and post-program participation. We should shift to offender behavior outcomes (such

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* at 82.

⁴⁶ *Ibid.* at 78.

⁴⁷ *Ibid.* at 81.

⁴⁸ *Ibid.* at 82.

as days drug free, job retention) rather than simply measuring recidivism, which can be driven by policy changes rather than real offender behavior changes.

To us, this is probably the most important of the 10 questions – and the one not receiving serious attention. Without program evaluations, we will not be able to ever answer the most important question that realignment raises: what works, with whom, and what are the costs and benefits?

Question 4: Will there be equitable sentencing and access to treatment across California's 58 counties?

Under realignment, judges now have widespread discretion to impose a jail term or a community-based alternative for a large class of convicted criminals. Because the realigned “non-non-non” offenders must now serve their sentences at the county level as opposed to state prison, judges now have wide discretion to impose a jail term (for the same sentence length that the offender would have received pre-realignment), a community-based alternative, or some combination of jail and mandatory supervision. This latter option is known as split sentencing, where the judge imposes a sentence that is a combination of county jail time and mandatory probation supervision.

As Berkeley law professor Jonathan Simon wrote, if judges simply sentence felons to jail instead of prison for the same time period, they will have simply “traded one form of incarceration, state prison, for another, county jail; a cynical shell game designed to relieve court pressure without altering our basic addiction to incarceration.”⁴⁹

Some counties may well do that, particularly if they have unused jail capacity. In fact, realignment seems to have been somewhat inspired by the observation that pre-realignment, the county jails in California had 10,000 empty beds while state prisons had an excess of 30,000 prisoners.⁵⁰ But other counties appear to be using their AB 109 funds to expand collaborative courts, particularly drug, mental health, and veteran courts. Still other counties are imposing split sentences where offenders serve a few months in jail followed by intensive supervision or programming.

Sentencing disparity across counties has likely increased under realignment. In the first 9 months of realignment, there were about 21,500 felony offenders sentenced to local jail terms under Penal Code section 1170(h)(5).⁵¹ Approximately

⁴⁹ Jonathan Simon, *California penal policy: Realignment and beyond*, The Berkeley Blog (Oct. 11, 2011), <http://blogs.berkeley.edu/2011/10/11/california-penal-policy-realignment-and-beyond/>.

⁵⁰ Margo Schlanger, *Plata v. Brown and Realignment: Jails, Prisons, Courts, and Politics*, 48 *Harvard Civil Rights & Civil Disabilities Law Review* (forthcoming 2013).

⁵¹ Penal Code section 1170(h) refers to those felons who are convicted of a felony offense that is non-serious, non-violent, and non-sexual and are now receiving county jail instead of prison terms.

5,000 or 23% of those offenders were sentenced to a split sentence.⁵² The remaining 77% were sentenced to a straight-term jail sentence, with no mandatory supervision to follow. Once their jail term is served, they must be released, and have no post-incarceration supervision.

Counties vary significantly with respect to the imposition of split sentencing. Los Angeles, with roughly a third of all felons in the state, imposes split sentencing in just 5% of its cases, whereas Contra Costa imposes it in 84% of its cases. On July 1, 2013, county judges will be taking on another new role and will become responsible for the parole revocation hearings for the realigned parole population. The California Board of Prison Terms (BPT) currently oversees all parole revocation hearings and decides disposition, but judges will assume that responsibility shortly. Given the vast county differences observed so far in the use of split sentencing, we can presume that the punishment meted out to parole violators across the state will be similarly disparate. Counties differ in terms of culture, resources, treatment availability, and system capacity, and these aspects are certain to play themselves out not only in sentencing decisions but also parole revocation decisions. As Barry Krisberg of UC Berkeley, recently observed, “The counties will get several billion dollars that they can spend with virtually no oversight or accountability. This *laissez faire* approach means that 58 counties will produce many differing versions of the reform – we will see the emergence of justice by geography.”⁵³

We should worry about whether realignment allows unfettered discretion, which in turn leads to widespread sentencing disparities. As a general matter, defendants with similar criminal records found guilty of similar crimes should receive similar sentences and access to treatment. Of course, this ideal has never been fully realized in California or elsewhere,⁵⁴ but we must be diligent to assure that realignment does not increase the impact of extralegal factors, such as race, income, and geography, on sentencing outcomes. In fact, it is important to remind ourselves that California current system of determinate sentencing was adopted in 1977 in part to rid the state of racial biases and geographical differences that were evident in its former highly discretionary indeterminate sentencing law. Researchers should track type and length of sentence imposed on felons convicted of different crimes with different criminal records, and pay particular

52 Chief Probation Officers of California, *Split Sentencing in California under Realignment*, 1 CPOC Issue Brief (Winter 2012) 1, 2.

53 Barry Krisberg, *Realigning the criminal justice system in California*, The Daily Californian, November 1, 2011, <http://www.dailycal.org/2011/11/01/realigning-the-criminal-justice-system-in-california/>.

54 David Ball, *Tough on Crime (on the State's Dime): How Violent Crime Does Not Drive California Counties' Incarceration Rates – And Why It Should*, 28 Ga. St. U. L. Rev. 987 (2012).

attention to how these sentences vary across counties and with the demographic characteristics of the defendants (e.g., age, race, gender).

Question 5: What is the impact on jails? How does realignment impact crowding, staff safety, institutional violence, and medical care?

The most immediate impact of realignment was to exacerbate jail overcrowding. When sentencing began on October 1, 2011, all qualifying low level offenders convicted on non-non-non offenses – as well as PRCS violators – began serving their sentences locally rather than in state prison. The door to prison for these offenders had shut, and if judges wanted to impose incarceration, local jail was their only option.

But some of California's jails were already dangerously overcrowded. Currently, 17 of California's 58 county jails are operating under a court-ordered population cap, and 20 more have a self-imposed cap on their jail populations.⁵⁵ Realignment caused an immediate increase in jailed inmates. By March 2012, the California jail population reached 78,796 inmates, 11% higher than the same period in 2011.⁵⁶ Sheriffs reported being forced to release 11,000 inmates early each month due to lack of space.⁵⁷

The legislature recognized the need for added jail capacity and passed Assembly Bill 900, creating \$1.2 billion in state matching funds for county jail expansions, and a later Senate Bill 1022 added an additional \$500 million to expand jail capacity. As of May 2012, 18 counties had received conditional awards for a total planned gain of 9,222 jail beds.⁵⁸ With these jails built, California will have expanded its jail capacity to about 88,000 inmates. As *California Lawyer* put it, "Prison building, essentially, has gone local."⁵⁹

The jail building phenomena, however, might have long-term costs to the counties. As Magnus Lofstrom of Public Policy Institute of California writes, "Counties need to analyze closely the long-term benefits of building their way out of capacity problems. The costs of operating new facilities are substantial: construction costs account for less than 10% of the total cost of a jail over its lifetime."⁶⁰

⁵⁵ Magnus Lofstrom, Joan Petersilia, Steven Raphael, Public Policy Institute of California, *Evaluating the Effects of California's Corrections Realignment on Public Safety 10* (2012).

⁵⁶ Board of State and Community Corrections, *Jail Profile Survey: 2012, 2nd Quarter Survey Results* (2012), available at http://www.bscc.ca.gov/download.php?f=/2012_2nd_Qtr_JPS_full_report.pdf.

⁵⁷ *Ibid.*

⁵⁸ Lofstrom and Kramer, *supra* note 18.

⁵⁹ MacLean, *supra* note 32.

⁶⁰ Lofstrom and Kramer, *supra* note 18.

But it isn't just inmate population increases that worry jail managers. Equally problematic are the very long sentences being imposed under 1170(h), the special medical and mental health needs of the AB 109 populations, and the custody and classification issues raised by this new more serious offender population.

Since realignment, through the use of enhancements, some offenders have received staggeringly long sentences to county jail. A recent study by the California State Sheriff's Association found that since realignment 1,153 inmates have been sentenced to serve over 5 years in county jail, with 44 of these inmates sentenced to terms longer than 10 years.⁶¹ One inmate in Los Angeles County is serving a 43-year term in the county jail for drug trafficking.⁶² Some other counties have seen similarly long sentences, with one inmate sentenced to 23 years in Santa Barbara County, and two Sacramento County inmates sentenced to 18 years.⁶³ The Sheriff's Association report found that the majority of offenders sentenced to 5 or more years (58%) were from just three counties (Los Angeles, San Bernardino, and San Diego).

Such long sentences, however, are rare. The sheriff's report notes that just 2.7% of offenders sentenced under realignment [1170(h)] were sentenced to 5 to 10 years and 0.1% were sentenced to more than 10 years. To date, about 42,000 felons have been sentenced to jail as a result of PC 1170(h), and an estimated 2.75% were sentenced to 5 or more years. Los Angeles reports that 98% of its 1170(h) inmates had less than 2.5 years left to serve after receiving their sentence.⁶⁴ Regardless of their number, jails are not equipped to handle long-term prisoners.

The second major concern is about the changed nature of the local jail population. Garden Grove Police Chief Kevin Raney in Orange County asserted that many of the low-level offenders are actually "hardened criminals," adding, "[a]s we were looking at some of the packets (of inmates sent to local jails), you look at the prior convictions and they are startling, alarming and concerning."⁶⁵ Lt. Charles Powell of Santa Barbara similarly noted that the influx of a different population of inmates affected by realignment has negatively affected jail dynamics. He said, "Our average daily population in the jail is increasing dramatically and

61 Don Thompson, *Jails House 1,100 Long Term Inmates*, Associated Press, Feb. 28, 2013, <http://www.utsandiego.com/news/2013/feb/28/ap-exclusive-jails-house-1100-long-term-inmates/>.

62 *Ibid.*

63 Gillian Flaccus, *Calif. inmate realignment law puts pressure on county jails, but full effects remain unclear*, *The Republic*, May 18, 2012, <http://www.therepublic.com/view/story/553867254923406ba92f9c3e07bf6ee4/CA-California-Prisons-Realignment/>.

64 Mark Feldman, *Realignment: The Sheriff's Perspective* (Stanford Criminal Justice Center, working paper, Mar. 4, 2013).

65 Norberto Santana, *Orange County Grapples With Wave of State Parolees*, *Voice of Orange County*, May 23, 2012, http://www.voiceofoc.org/countywide/county_government/article_9ac41a8e-a4f2-11e1-8b93-0019bb2963f4.html.

we're really struggling with how to deal with that *type* of population."⁶⁶ Further, Cmdr. James Buttrey, who used to manage corrections for the Merced County Sheriff's Department, noted, "They're all bad guys in jail. There's nobody left in jail that's singing too loud in church."⁶⁷

Counties are also unprepared for the medical and mental health care costs of realignment. County jails generally lack the infrastructure to house long-term inmates with significant healthcare needs. Jails also have problems with disability access and having enough space to separate gangs and other vulnerable inmates. As Bill Brown, Sheriff of Santa Barbara County, observed, the funding formula for jail inmates was based on the marginal cost of each inmate and did not sufficiently account for the fixed costs of constructing medical infrastructure where none existed. Counties that do not have a full complement of medical personnel inside the jail will have to find a specialist on the outside to diagnose and treat the inmate. In small rural counties, the closest specialist willing to treat inmates may be hours away, and the jail will have to utilize its resources to transport the inmate to receive treatment. If counties are unable to provide adequate healthcare, they will likely see an increase in lawsuits and litigation costs.

Sheriff Keith Royal of Nevada County, the president of the California State Sheriffs' Association, said members were worried about their capacity to provide "adequate treatment" in jails and about "litigation at the local level." Because a number of counties, including Los Angeles County, are already under court supervision because of the unconstitutional conditions of their jails, many experts fear that one of AB 109's hidden costs could be an increase in litigation over the overcrowded jails. Orange County District Attorneys and Public Defender Frank Ospino agree that the county is facing huge litigation costs with so many new legal challenges concerning the overcrowded county jails.⁶⁸

Two months after AB 109 was passed, the Prison Law Office (PLO) sued Fresno County on behalf of four inmates who say the county's jail system violates their constitutional rights by denying them medical and mental health care. In March 2013, the PLO sued Riverside jails on behalf of three prisoners, claiming the County is subjecting them to cruel and unusual punishment by depriving them of basic medical and mental health care. Alameda County was sued in November 2012, and Monterey County is expecting to be sued. The Prison Law Office is the same firm that sued the state to improve medical care for inmates — ultimately leading to realignment.

⁶⁶ *Ibid.*

⁶⁷ Joshua Emerson Smith, *Softer sentences in hard times; packed jails spark debate*, Merced Sun-Star, May 5, 2012, <http://www.mercedsunstar.com/2012/05/05/2334586/softer-sentences-in-hard-times.html>.

⁶⁸ Santana, *supra* note 65.

In March 2012, the ACLU released a report that was very critical of the counties that were reacting to realignment by building more jails. The report confirmed the growing fears of many people: that many counties, instead of pursuing cost-effective methods to reduce recidivism through programs, were repeating the same mistakes of the state correctional system by locking offenders away for the maximum amount of time without engaging in a serious effort to help them avoid returning to criminal behavior.⁶⁹ The report explained that, “left unchecked, these counties will build larger jail systems that will cost more tax dollars than they do now and hold more people than they do now.”⁷⁰ Emily Harris of Californians United for a Responsible Budget, which opposes heavy prison spending, said, “If realignment just becomes a massive jail expansion plan, we are continuing the 30 years of failed corrections policy.”⁷¹

Counties are caught between a rock and a hard place: If they do not expand jail capacity, they risk huge litigation costs due to crowding and inadequate care. But if they use most of their realignment dollars to simply build more jail beds, they will have missed an opportunity to test whether local resources and programming could rehabilitate offenders. If realignment becomes just a massive jail expansion program, we will ultimately have created a corrections system that costs more than it does today with little positive benefit.

Question 6: What is the impact on police, prosecution, defense attorneys, and judges?

There are myriad ways that realignment will impact the workings of law enforcement and the court system. These impacts will be highly variable from county to county and likely determine the entire success or failure of realignment. It is important to ask: How and in what ways will prosecutorial discretion, plea bargaining, judicial sentencing and court processing change? How will the workload of the district attorneys, judges, and defense attorneys be impacted? Will these various actors change their working relationships with one another and with what impact?

The realignment legislation provided counties with additional options for managing realigned offenders but to make full use of them, court personnel have to become familiar with them. The most important new sentencing option is “split sentencing,” which allows the judge to sentence a felon to jail and community supervision. This is somewhat different than what prior law allowed, where

⁶⁹ Chris Megerian, *ACLU Is Critical of State Prison Realignment*, L.A. Times, Mar. 22, 2012.

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

a judge often sentenced someone to either jail or probation. In addition, AB 109 allows county probation officers and judges to return offenders who violate the terms of their community supervision to jail for up to 10 days, which is commonly referred to as “flash incarceration.” The rationale for using flash incarceration is that short terms of incarceration when applied soon after the offense is identified can be more effective at deterring subsequent violations than the threat of longer terms following what can be lengthy criminal proceedings.⁷² It appears that counties are slowly increasing the use of split sentencing and flash incarceration, but many are still unfamiliar or unsupportive of the concepts, and as such, there is concern that there will be growing sentencing disparities across counties for similar crimes. In this way, it is as if realignment has created 58 systems of justice, each with their own sentencing commission.

The complexity and redundancy of the California penal code has always enabled prosecutors – indeed, often required them – to exercise discretionary judgement in mapping provable facts on to alternative statutory crime definitions. In light of AB 109, some prosecutors may believe that, holding sentence length constant, the experience of county jail is inherently more lenient than state prison, or they may fear putting too great a burden on county resources. If so, where the facts fit overlapping crime definitions, District Attorneys might tilt towards exercising that discretion in the direction of charging prison-eligible felonies, rather than crimes in the 1170(h) non-prison category. This tendency might be greater if prosecutors believe that jail crowding is so severe that it might lead judges to choose split sentences or strengthen the hand of defense lawyers in plea bargaining. It is currently unclear whether these effects will occur, and to what extent.

Most experts believe realignment increases defense attorneys’ leverage in negotiations with prosecutors. Freedman and Menchin quote an attorney from the San Francisco Public Defender’s Office who said, “The Public Defender will have a little bit of an upper hand in the sense that more options are on the table, such as supervision, and more things are off the table, such as prison.”⁷³ Perhaps the most frequently mentioned source of defense attorneys’ newfound power

⁷² Mac Taylor, Legislative Analyst’s Office, *The 2013–13 Budget: Governor’s Justice Proposals* (2013), available at http://www.lao.ca.gov/analysis/2013/crim_justice/criminal-justice-proposals/criminal-justice-proposals-021513.pdf. See also, Angela Hawken and Mark Kleiman, *Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE*, National Institute of Justice, 2009, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>.

⁷³ Malaina Freedman and Craig Menchin, *Realignment’s Impact on the Public Defender and District Attorney: A Tale of Five Counties*, 20 (Stanford Law School, working paper, 2012), available at <http://www.law.stanford.edu/organizations/programs-and-centers/stanford-criminal-justice-center-sjcj/california-realignment>.

is the removal of prison from the host of options facing an 1170(h) defendant. Prosecutors used to induce pleas by offering to take prison off of the table if the defendant agreed to plead guilty. Most agree that the removal of prison changes the dynamics and augments the defense attorney's leverage.

Whether realignment works or not will likely depend on how local authorities handle prosecutorial charging, plea-bargaining, and sentencing. AB 109 cut off the parole revocation route to prison (and SB 18 and AB 109 reduced the number of parolees and length of supervision), but a possible unintended consequence is that prosecutors will feel more pressure to file new criminal charges, and if felons are convicted, those charges will result in *longer* prison terms than the previous parole revocation terms. Pre-realignment, parole violators could be returned to prison for a maximum 12-month prison term for technical violations, but the actual prison time served averaged 3–4 months (once pre-trial and good time credits were applied). A critically important question, for which we do not yet have enough data to answer, is whether many of these former “technical violations” will now be filed as new felony charges. The growth of California's prison population heavily depends on how many of these filings result in prison terms, and the length of prison sentence imposed.

These changes do not simply alter the population of prisons and jails. The institutions of criminal justice constitute a hydraulic, interactive system in which any change in one part can catalyze changes in the practices of the prosecution, the defense, and the judiciary. For example, these sentencing changes will greatly impact prosecutorial discretion and guilty plea rates. It is an axiom of criminal law that prosecutors can induce guilty pleas from defendants by trading off the prosecutor's power to threaten higher charges and very serious sentences. The prosecutors' ability in this regard and the likelihood of guilty plea is enhanced especially when charges carry mandatory or fixed minimum sentences.

If AB 109 removes some of the arrows from the prosecutor's quiver, cases that previously ended in guilty pleas may result in different outcomes because defense counsel might advise defendants that it may be worth their while to risk a trial, including a jury trial, on the lower maximum charges they face. The guilty plea rate, which approaches 95% of the convictions across jurisdictions, is the biggest cost- and efficiency savings the prosecutor and the courts have (and even the public defenders) enjoy. So counties will have to hazard guesses as to how many more full trials, including jury trials, will occur as result of AB 109. Any increase will put pressure on staffing in district attorneys' offices, on the available space and staff resources of and caseloads of the Superior Courts, and on the budgets for indigent defense representation. This potential change in trial rates is just one example of the unintended consequences arising from AB 109 that counties should be prepared to address.

Question 7: What is the impact on probation and parole?

Of all the agencies involved in realignment, probation occupies center stage. It is safe to say, that the success of realignment hinges on the performance of probation – and in many ways the future of California probation hinges on the success of realignment. The Chief Probation Officer is the chair of the CCP—the engine of change for each county under Realignment. Probation is also the natural leader within each county to coordinate community-based punishments for PRCS offenders. As Don Meyer, Chief of Probation for Sacramento County, recently told the authors, “We’ve been the silent partner of the criminal justice system. Now we’re out in front.”

Parole too has a critically important – albeit more nuanced – role to play in realignment’s success. Both agencies have to accommodate an increasingly serious offender population, all while adhering to formal agency mission statements and public pronouncements that prioritize rehabilitation. But line staff in both of these agencies echo the same sentiment: they are being asked to do too much, too fast, with too little. It is not just that resources are insufficient, which is what most focus on, but that offenders – *regardless* of how many programs are thrown at them – have to make the personal decision to fully participate and take advantage of program opportunities.

For California’s probation system, realignment gives it an opportunity to test whether it can reduce recidivism through evidence-based programming. Probation has always supervised two-thirds of Californians under correctional supervision but never gotten the resources commensurate with their responsibilities. According to a study by the Pew Center on the States, for every dollar spent on prisons, the US spend just 6 cents on probation and parole.⁷⁴ Realignment balances the scales slightly by investing more in community-based treatment. As shown in Figure 1, probation received 34% of all allocated first-year realignment money. Probation is seeing a significant infusion of much-needed cash to implement offender programming.

While the resources are welcomed, they came with a very big string attached: The population now sent to probation is more serious and more of them are struggling with addiction and mental illness. One of the biggest points of controversy is the fact that released prisoners are now reassigned to county-probation *regardless* of their prior criminal record. Assignment to PCRS is determined only by the current prison conviction offenses regardless of prior record, mental health status, or in-prison behavior.

⁷⁴ The Pew Center on the States, *One in 31: The Long Reach of American Corrections* (The Pew Charitable Trusts, Mar. 2009).

This systematically alters probation's caseload and creates a higher-need, higher-risk population. In fact, CDCR's research division is tracking the characteristics of prisoners being realigned to county probation/PCRS versus those being retained on state parole. CDCR data reveal that in the first year of realignment prisoners sent to PCRS were *more* likely to have a "high" California Static Risk Assessment (CSRA) score. In the first year, 55% of PCRS offenders scored "high risk" compared with 44% of those retained on state parole (see www.acjca.org/images/ppf12/1seale.pptx). It is quite possible that California's realignment experiment is systematically testing whether the evidence-based programs shown to work in previous settings, usually with much less serious offenders, will work in California with its higher risk population.

It is critically important to remember that even those identified as "low" and "medium" risk prisoners using California's Risk Assessment have historically had high recidivism rates. A recent study by CDCR tracked the cohort of prisoners released in 2007–2008 for 3 years. By the end of the 3 years, 41% of prisoners classified as "low risk" and 57% of those classified as "medium risk" were returned to a California prison. While these recidivism rates were lower than for prisoners classified as "high risk" (who had a 74% return-to-prison rate within 3 years), most would not consider an average 50% return-to-prison rate "low risk." It is better thought of as lower risk (and it is important to recall that this figure represents a return to a California prison, not rearrest, return to jail, or return to another state or federal prison). Susan Turner at the University of California Irvine, who developed California's risk assessment tool, reported that 11% of those classified as "low risk" and 22% of those classified as "moderate risk" were rearrested for a violent felony within 3 years of release. Between 23% and 38% of those classified as "high risk" were rearrested for a violent felony within 3 years of release.⁷⁵ So, regardless of how one slices the data, California counties are dealing with a risky offender population. The challenge in California's realignment experiment is whether evidence-based alternatives – which for the most part have been tested on lower risk populations – can work here. Tracking offenders' characteristics, the programs they participate in, and the resulting social and criminal justice outcomes is critically important to advancing knowledge of the utility of evidence-based programming for higher risk offenders.

⁷⁵ California Office of Research, California Department of Corrections and Rehabilitation: 2012 Outcome Evaluation Report (Oct. 2012), available at http://www.cdcr.ca.gov/Adult_Research_Branch/Research_Documents/ARB_FY_0708_Recidivism_Report_10.23.12.pdf; For data on rearrests and reconstructions, by crime type and risk level, see Susan Turner, California Static Risk Assessment (CSRA) (2008), available at www.acjca.org/ppt08/2.pvdmturner.ppt.

Supervising higher risk offenders will change the cultures of probation and parole agencies. Since both agencies will see a hardening of their caseloads, what impact will this have for supervision and support mechanisms? Probation was designed for less serious offenders. Probation staff members work for the county. They often have social-work degrees, they usually are not armed, and they are not considered sworn law enforcement officers. Historically, probation is designed to be the “helping” part of the criminal justice system. Yet many probation agencies are now arming more of their officers, and there is more concern for staff safety.

Probation is hiring agents while parole is laying them off – yet there is little difference in their high-risk caseloads post-realignment. Interestingly, to accommodate probations’ increase in staffing levels, probation departments are looking to recruit laid off parole agents since they already have safety and weapons training. These “transfers” may still benefit State coffers, since parole agents are paid about 30–50% more than probation officers, they do not need additional training or weapons certification, and when they transfer to probation they lose eligibility for membership in the California Correctional Peace Officers Association (CCPOA), arguably the most powerful union in the state.⁷⁶

Long-term members of CCPOA get hefty pensions and lifetime medical insurance, something the State wants to reduce. If California can downsize the State’s CCPOA workforce, and replace it with less expensive agents doing essentially the same job with lower salaries and fewer benefits, the State wins. This economic benefit should not go unnoticed when we examine why realignment – and the shift from state to county supervision – took the form that it did. But, importantly, when you infuse probation agencies with former parole agents, you also bring into probation the surveillance culture that permeated parole in recent years.

There are serious implications if parole agents simply turn around and get hired to work for county probation departments. Parole agents were considered law enforcement officers for a reason – they supervised the most serious criminals. If they are doing the same job for probation – will they be able to switch their “enforcement” hats for “rehabilitation” hats? If they bring their “nail ‘em and jail ‘em” mentality to the new job, will rehabilitation programs have been given a fair try? Interestingly, the State won’t save as much money as budget analysts project,

⁷⁶ California CCPOA members have by far the most generous wages and benefits that prison officers get anywhere in the county. In 2009, corrections employees received an average of \$70,000 a year and more than 40,000 of them earned over \$100,000. See Brian Joseph, *State prison system lucrative for corrections*, Orange County Register, Jan 6, 2011, <http://www.ocregister.com/articles/-283117.html>. Since then, wages have gone up. Their contract includes pensions of up to 90% of salary starting at as early as 50 – more than teachers, nurses or firefighters get. The CCPOA contract was very much on the minds of legislators when they approved the realignment legislation.

because the State may have to pay twice; it may pay the former parole agents' pensions and that same person's new county probation-agent salary.

These are complicated issues and no one is studying them. Both probation and parole are undergoing significant changes, and it is not clear how they will play out over time. Prior to realignment, parole agents supervised all inmates released from prison. Post-realignment, parole agents will supervise only offenders whose current commitment offense is a serious or violent felony, or when the offender has been convicted of a third strike. All high-risk sex offenders or officially diagnosed mentally disordered offenders report to parole. But while parole agents will be supervising the most serious offenders in the State, they now are dependent on county judges and sheriffs to impose a sanction for a technical violation (e.g., using drugs, not participating in treatment). Parolees who violate parole conditions can no longer go to prison but must serve their revocation terms in county jails (where they face a maximum 6-month term in jail, whereas before they faced a maximum 1-year term in prison).

For parole, the threat of revocation has lost its teeth because of the 6-month cap in county jail (and they might be released much sooner if the jail is overcrowded). Because of this, agents have lost their most powerful tool for encouraging offenders to comply with the conditions of parole, including participating in mandated treatment. On the other hand, since they do not have sure access to jail to punish violations, parole agents might work harder to find intermediate sanctions other than jail to respond to violations. If such programs do not exist or are unavailable to parolees, the agents essentially have no recourse but to ignore the violations. The same dynamic is now in play with probation agents and their caseloads. It is unclear how these changing dynamics will alter parole and probation supervision, but it is critically important to realignment's ultimate success.

Probation will experience expansion in terms of scope, personnel and funds. For most probation departments, the immediate task will be surveillance of former parolees. Depending on county investments and political will, some will experiment and succeed with community alternatives. These innovative probation departments will provide an opportunity for counties to learn from each other. However, if not monitored closely, probation will lose its rehabilitation function and be totally focused on surveillance. In the end, this will backfire, since evidence-based corrections require surveillance plus treatment.

There is another emerging development that deserves attention: being referred to as "AB 109 exceptionalism." The term is borrowed from health care, where a debate is being waged over "AIDS exceptionalism."⁷⁷ When the HIV/AIDS epidemic

77 Julia H. Smith and Alan Whiteside, *The history of AIDS exceptionalism*, 13 J. Int. AIDS Soc. 47, (2010), available at <http://www.biomedcentral.com/1758-2652/13/47>.

grew in the 1980s, the government poured billions into research and treatment, treating HIV/AIDS differently from other diseases. Now critics claim that the HIV/AIDS category is receiving a response above and beyond “normal” diseases and interventions, diverting resources and threatening overall public health. In a paradox, some say the decline of these other services makes it harder to care for people whose behavior puts them at risk for AIDS/HIV, but who are not yet infected.

California policymakers are voicing similar concerns with the AB 109 funding. California now invests close to \$1 billion a year on the AB 109 offender classification. If we assume even 30% of it goes to fund work, education, and housing opportunities for realigned offenders, that means we are deploying \$300 million a year – a significant infusion of rehabilitation funding in California’s cash-strapped social services system. Special need offenders *outside* of the AB 109 population – including the mentally ill, developmentally disabled, and first time probationers – who might be on lower-risk caseloads, may not have access to the specialized AB 109 funding and programs.

The irony is that we might be ignoring the risky behavior of “regular” probationers we could have helped *before* they committed a serious felony, while spending our dollars on much higher risk offenders, simply because they are members of the triple-non designate group targeted by the legislation. Ideally we would have enough resources to deliver needed programming to all offenders, but that seems naïve. Even worse, some have pointed out that the programs those *in* the criminal justice system can take advantage of – e.g., Section 8 housing, job training, substance abuse counseling – are made possible due to cuts in those exact same programs for *non*-criminally involved Californians.⁷⁸ The Los Angeles County Housing Authority announced in September 2012 that it will move parolees to the front of the line for limited and much-sought-after Section 8 housing vouchers, which provide rent subsidies to low-income individuals.⁷⁹ A mother, whose son is blind with cerebral palsy and intellectual disabilities, wrote to the *San Francisco Chronicle* in an article titled “Would disabled receive better care in prison?”⁸⁰ She noted that California programs to support persons with disabilities – including dental, healthcare, housing, work training, counseling – have all been drastically reduced over the last 5 years to fund those exact programs for prisoners. This isn’t the place to debate priorities for funding but rather to point out the irony of what realignment funding portends in the years ahead.

78 See, e.g., Laura Repke, Would disabled receive better care in prison?, *San Francisco Chronicle*, Mar. 31, 2011, <http://www.sfgate.com/opinion/openforum/article/Would-disabled-receive-better-care-in-prison-2376903.php#ixzz1IIsIR99n>.

79 Editorial, Helping homeless ex-cons, *LA Times*, Apr. 18, 2012, <http://www.latimes.com/news/opinion/opinionla/la-ed-section8-homeless-lancaster-20120418,0,6314406.story>.

80 Repke, *supra* note 78.

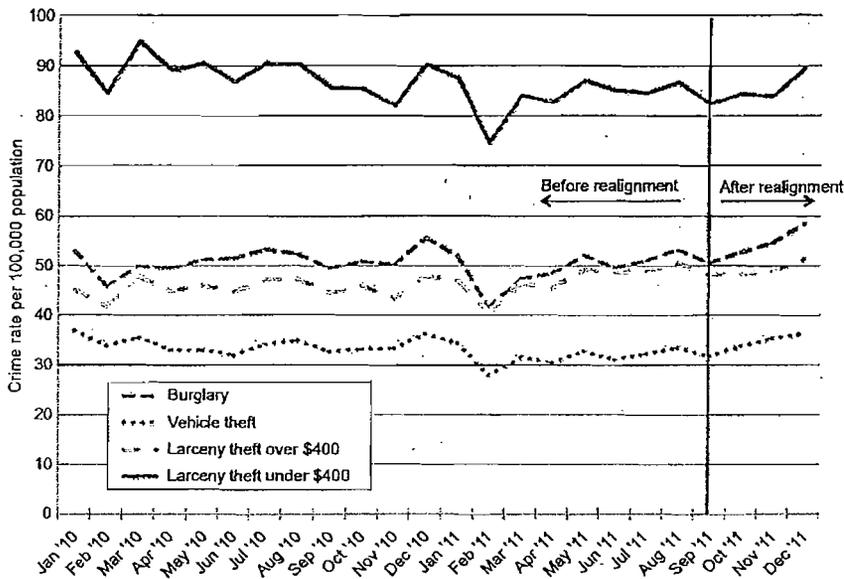


Figure 3: California's Property Crime Rate, 2010–2011.

Source: Magnus Lofstrom, *Crime Trends in California*, Public Policy Institute of California 2012, http://www.ppic.org/main/publication_show.asp?i=1036.

Question 8: What will the impact be on crime rates and community life?

California's overall crime rate has declined every year since 2003 and now has reached its lowest level in the past 50 years. This declining trend is similar to the rest of the nation. Will realignment increase or decrease crime rates, or have no negligible impact? Potentially, crime could rise as offenders serve shorter sentences and more of them are on the streets. On the other hand, realignment could contribute to a decrease in crime if counties apply evidence-based programs that have been found in other states to reduce recidivism. This is an important question to answer, both at the state and local levels. Realignment's impact on crime will likely vary by county, particularly since counties differed on crime rates pre-realignment and are using their funds in vastly different ways post-realignment.

Magnus Lofstrom, an economist at the Public Policy Institute of California (PPIC), recently analyzed county level crime data from the California Attorney's General's Division of Criminal Justice Information Services and concluded that statewide "violent crime continues to decline but that the downward trend in property crimes is ending."⁸¹ However, as shown in Figure 3 below, his analysis

⁸¹ Magnus Lofstrom, *Crime Trends in California*, Public Policy Institute of California, (September 2012), http://www.ppic.org/main/publication_show.asp?i=1036.

reveals that the property crime rate has been higher in nearly every month since May 2011 – several months *before* California implemented public safety realignment. Statistics on felony larceny theft are the strongest indication that some property crime may be on the rise: since July 2010, this rate has increased in all but 2 months (February and March 2011) relative to the same month in the previous year. When looking at the change in property crime rates pre-realignment to post-realignment (from September 2011 to December 2011, the latest data available), the property crime rate has increased approximately 11%. Looking at this same time period, we find that violent crime has dropped 4.3%.⁸²

Many law enforcement practitioners throughout California blame realignment for rising crime in their communities. On public radio station KPBS Chief William Lansdowne of the San Diego Police Department said that San Diego's increased crime rate was caused in part by the "state mandated return of prison inmates to county jails."⁸³ In Humboldt County, the *Willits News* reported that police officials are blaming the spike in property crime on realignment.⁸⁴ In Bakersfield, Sheriff Donny Youngblood was recently quoted in news reports connecting the increased crime rate in Kern County to AB 109: "When you have that many people who should be in custody and aren't, it just goes without saying that we're going to have a higher crime rate than we did in 2011."⁸⁵

Despite the fact that these news reports rely on correlation as evidence of causation, there is reason to take the stories seriously. A recent study found that the average daily jail population in California has increased about one inmate for every three felons who are no longer serving time in state prison. "This finding suggests that some inmates who would have been incarcerated prior to realignment are now either not locked up or are not spending as much time in jail."⁸⁶

Many counties have addressed the fear of rising crime rates by hiring more law enforcement officers, or hiring back law enforcement officers that they had previously been forced to lay off because of strapped county budgets. Approximately

⁸² If larceny under \$400 is included, the rate is 10.5%. If larceny under \$400 is excluded, the property crime rate has increased 11.8% post-realignment. For these statewide data (including violent crime) see *CJSJ Statistics: Crimes and Clearances*, State of California Department of Justice, Office of the Attorney General, <http://oag.ca.gov/crime/cjsc/stats/crimes-clearances>.

⁸³ *San Diego Crime Rate increases 6.9 Percent*, KPBS, Feb. 13, 2013, <http://www.kpbs.org/news/2013/feb/13/san-diego-crime-rate-increases-69-percent/>.

⁸⁴ Grant Scott-Goforth, Humboldt: Spike in property crimes coincides with prison realignment, *The Willits News*, Feb. 17, 2013, http://www.willitsnews.com/ci_22607046/officials-spike-property-crimes-coincides-prison-realignment.

⁸⁵ Angela Chen, Crime spiked last year; local officials blame prison realignment, *Bakersfield Now*, Jan. 22, 2013, <http://www.bakersfieldnow.com/news/local/Crime-spiked-last-year-local-officials-blame-prison-realignment-187998161.html>.

⁸⁶ Lofstrom and Kramer, *supra* note 18.

35% of the allocated first year AB 109 funding was spent on sheriff's departments, and \$33 million of this was for the salaries of new sheriffs' deputies.⁸⁷

Other county sheriffs are concerned not just about the increasing numbers of prisoners on their streets, but also a general message to would-be-criminals that they will not be punished as harshly. A recent article in the *Los Angeles Times* highlighted the growing problem of sex offenders cutting off their GPS monitoring bracelets with little consequence because of jail overcrowding and shorter jail terms if they are caught (maximum 6 months). The article noted that 3,400 arrest warrants have been issued for sex offender GPS tamperers since realignment went into effect, an increase of 28% compared to the year before realignment.⁸⁸ State Senator Ted Lieu, D-Los Angeles, has introduced a new bill requiring parolees who tamper with their GPS monitors to be sent back to prison for up to 3 years.

Many in law enforcement believe that the lack of a "hammer" or threat of a prison sentence is undermining deterrence and will ultimately increase crime. But not all share these predictions. Los Angeles County Sheriff Lee Baca "believes his deputies can do a better job than the state when it comes to managing 'low-level offenders'."⁸⁹ Indeed, Butte County District Attorney Mike Ramsey said, up to this point, realignment is being achieved without a serious compromise to public safety.⁹⁰ Although the overcrowding in Butte County jails has forced the sheriffs to release inmates early every day, they credit increased rehabilitation programs with keeping crime levels down.⁹¹

These differing viewpoints among the counties demonstrate how important accurate measurement of crime rates and recidivism will be to assessing the success of realignment. In addition to analyzing the effects on overall crime rate, researchers should assess the impacts of realignment on specific crime categories, as the impacts are likely to vary. It is worth noting that crime fluctuations are difficult to explain due to several factors, including the demographics of the population, citizen and police actions, and the actions of the population-

87 McCray, Newhall and Snyder, *supra* note 17; see, e.g., AB 109 Impact Report Shows More Inmates Than Expected, *Central Coast News*, Apr. 17, 2012.

88 Paige St. John, Paroled sex offenders disarming tracking devices, *LA Times*, February 23, 2012, at A1.

89 David Greenwald, *D-Day Approaches for AB 109 and Realignment – No One Sure What it Means*, Vanguard Court watch of Yolo County (Sept. 26, 2011), available at http://davisvanguard.org/index.php?option=com_content&view=article&id=472:d-day-approached-for-ab-109-and-realignment-no-one-sure-what-it-means&catid=74:judicial-watch&Itemid=100.

90 Greg Welter, Prison Realignment Hasn't Yet Compromised Safety in Butte County, *Oroville Mercury-Register*, Apr. 21, 2012.

91 *Ibid.*

at-large. A rigorous statistical model will have to be employed to determine whether, holding all other relevant factors constant, there is any relationship between realignment and crime rates. This issue, more than anything, will likely determine public opinion of the success of realignment, yet this issue, more than anything, is incredibly difficult to measure accurately.

Question 9: How much will realignment cost, and who pays?

Before the ink was dry on AB 109, everyone was complaining about the money factor. Many counties said the money was not enough and the formula for determining how much each county got was poorly conceived. Other counties feared the State's financial commitment to the counties would be short-lived, reminiscent of previous criminal justice reforms. As previously noted, Proposition 30 has now provided constitutional protection for realignment funding. But how much is realignment really costing us? How is the money being spent? What have we gotten for our investment? Have the costs and burden simply shifted to other social service agencies? What will be the impact on social services systems?

It is hard to get a full accounting of how much money the State is investing in realignment, as several different bills fund portions of it. According to California's Department of Finance, realignment will reduce the state inmate population by about 40,000 inmates (roughly one-fourth of the total inmate population) upon full implementation by 2014–2015. The state parolee population is projected to decline by 77,000 parolees (roughly three-fourths of the total parole population) in 2014–2015. The Legislative Analyst's Office suggested that this reduction in inmate and parolee population resulted in a state savings of about \$453 million in 2012, and the savings will increase to \$1.5 billion by 2014.⁹²

CDCR claims the cost savings are even greater. Last spring it released a report titled *The Future of California Corrections*, which predicted annual savings to California of \$1.5 billion for maintaining the smaller inmate population and another \$4.1 billion from bond authority that would no longer be needed for new prison construction. California's prison budget grew from about \$5 billion in 2000 to over \$9 billion in 2012, and currently CDCR expenditures are 11% of all general fund expenditures. When faced with a \$26 billion General Fund deficit in 2011, realignment looked like a huge cost saver. By 2022, the CDCR predicted, California would save \$30 billion in prison costs.⁹³

⁹² Legislative Analyst's Office, 2011 Realignment: Addressing Issues to promote Its Long-Term Success (2011), available at http://www.lao.ca.gov/reports/2011/stadm/realignment/realignment_081911.aspx.

⁹³ CDCR, *supra* note 6.

Governor Brown uses those figures to tout the cost savings of realignment. And he is correct: If the State had been forced keep its prison population while satisfying the court's noncrowding requirements, it is estimated that California would have had to build nine new prisons at a cost of \$7.5 billion – plus an addition \$1.6 billion per year to operate them.⁹⁴

But those costs are too narrowly conceived. A more accurate realignment cost-benefit calculation should include an estimate of the total criminal justice dollars spent on each offender during a particular follow up period (e.g., 2 years after sentence). These costs should (minimally) include law enforcement, court and corrections costs. If the offender completes the program and is not rearrested, reprocessed and resentenced over a certain period of time, the system has benefited and saved those reprocessing costs. Conversely, if the realigned offender is rearrested, reprocessed and re-incarcerated, the system incurs those additional costs as well. A more comprehensive cost-benefit analysis would also include the costs of other government services (e.g., medical care provided by the public health system) that are utilized in the supervision and control of offenders.

The cost of crime is not borne solely by government agencies, but by victims and society at large. Social scientists typically differentiate between tangible and intangible costs of crime. Tangible costs involve direct financial costs to individuals, business or government from out of pocket expenditures or lost productivity. They include costs such as property loss, medical treatment, and lost productivity for victims, crime prevention expenditures by business, and expenditures for offender adjudication and incarceration by government entities. These costs can typically be measured using accounting and other expenditure data. A recent RAND study including these costs reported that the cost of a motor vehicle theft averaged \$9,000, and the cost of a rape, \$217,000.⁹⁵ It is clear that the estimates of other social costs of crime are large, certainly more than simply the cost of criminal justice operations. Researchers should begin collecting data that would allow a more rigorous cost benefit assessment of realignment.

There are also long-term cost *benefits* if offenders who desist from crime are now productive members of society, perhaps employed and paying taxes, and providing for their families. The "costs avoided" could be added to cost-benefit calculations. If realigned felons have a higher rate of economic self-sufficiency than felons sentenced to prison, the long term cost savings could be significant.

Taxpayers should demand a full accounting – and a statistical model that keeps track of the costs. In theory, realignment has the potential to be very positive for California. It is cheaper to send someone to county jail than to state prison, especially

⁹⁴ *Ibid.*

⁹⁵ Paul Heaton, RAND, Hidden in Plain Sight: What Cost-of-Crime Research Can Tell Us About Investing in Police, (2010), available at http://www.rand.org/pubs/occasional_papers/OP279.html.

for a term of only a few months. Administrators avoid a lot of transportation and intake costs. And ending the constant churning of new people in and out of the state prisons should make the prisons themselves safer and more stable. Moreover, keeping offenders closer to home makes it easier for families to visit. County officials are better placed than state bureaucrats to tailor programs to the needs and punishment philosophies of their community. Since county officials are local, they may establish partnerships with local non-profits or social service providers that offenders may rely upon for support after release. Ideally, forcing counties to bear more of the cost of their own policing and prosecuting decisions will encourage more thoughtful decisions about how to allocate scarce law enforcement resources.

Question 10: Will realignment increase the total number of people under correctional control and supervision?

Criminologists often use the term “correctional control” to describe the *total* corrections population under supervision at any given time. The total consists of all offenders supervised on probation or parole as well as those incarcerated in prisons and local jails. The Bureau of Justice Statistics recently released the correctional control rate for the US as a whole, noting about 2.9% of adults in the US (or 1 in every 34 adults) were under some form of correctional supervision at year end 2011, a rate comparable to 1998.⁹⁶

As realignment moves forward, we must monitor California’s total correctional control population. Tracking such data will show us whether we have downsized state prison and parole populations while simultaneously increasing jail and probation populations. In 10 years, will more people be locked up and on supervision than in 2011 when realignment went into effect? If the correctional control rate goes up, we can rest assured that we haven’t implemented programs that work to reduce recidivism, but simply changed the address where offenders live and report – from prison to jail, and from parole to probation. Realignment will have been just an expensive shell game.

The authors are tracking California’s correctional populations, and as shown in Table 1, there were 575,129 adults under correctional control in California at year-end 2012, or approximately 2.05% of the adult population. This figure is down from 725,085 or 2.8% of all California adults under correctional control in 2004.⁹⁷ So the total number of adults under correctional supervision is declining.

⁹⁶ Lauren E. Glaze and Erika Parks, *Correctional Populations in the United States, 2011*, NCJ 239972, Bureau of Justice Statistics (Nov 2012).

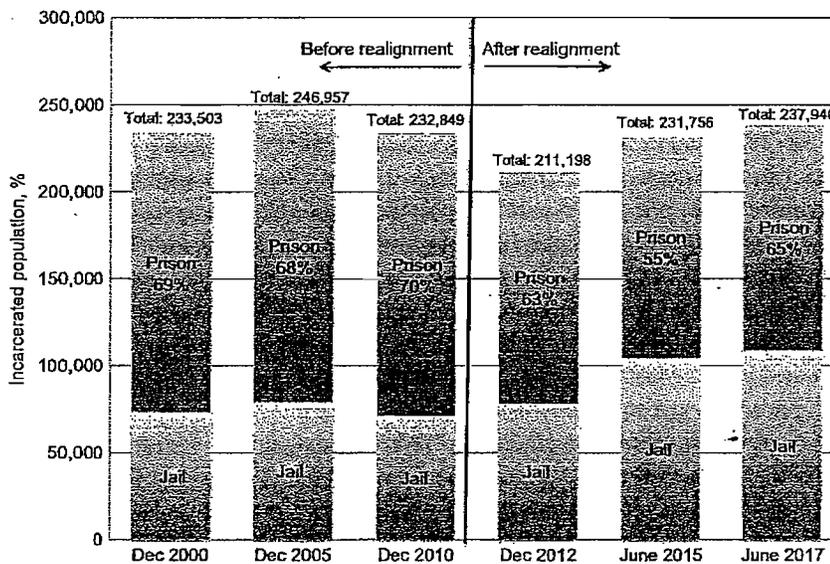
⁹⁷ Jeffrey Lin and Jesse Jannetta, *The Scope of Correctional Control in California*, University of California Irvine, Center for Evidence-Based Corrections (2006), available at <http://ucicorrections.seweb.uci.edu/pdf/Bulletin706Da.pdf>.

Table 1: California Adults Under Correctional Supervision, 2012.

Status	Total population	Rate per 100,000 CA adults	Percent of CA adults
Prisoners	132,935	463	0.46%
Jail inmates	78,263	205	0.21%
Parolees	65,931	230	0.23%
Probationers	298,000	1049	1.05%
Total	575,129	2005	2.05%

Source: Jail data provided by the Board of State and Community Corrections; prison and parole data comes from the California Department of Corrections and Rehabilitation (CDCR) population reports; the probation population data are from 2011 and come from the Bureau of Justice Statistics, US Department of Justice (<http://bjs.ojp.usdoj.gov/content/pub/pdf/ppus11.pdf>).

But for those remaining in custody, will we simply have substituted jail for prisons? According to CDCR, the prison population is projected to level out at about 128,00 by June 2013, reaching 131,000 by 2018. The jail population is now

**Figure 4:** California's Prison vs. Jail Populations, 2000–2017.

Source: Jail population data was provided by the Board of State and Community Corrections; jail population projections are from the "Impact of AB109 on Local Jail Population 2007–2017" graph from James Austin at the National Institute of Corrections Board Hearing, August 22, 2012; prison population data and projections come from the California Department of Corrections and Rehabilitation (CDCR) monthly population reports.

at about 78,000 inmates and is projected to reach 108,000 by 2017. As shown in Figure 4 below, the total population for prison and jail combined is projected to increase to 231,756 by 2015. This is nearly the same number of offenders in prison and jail in June 2010, right before realignment passed. By 2017, the total jail plus prison population may actually be 5,091 higher than it was pre-realignment. If these projections prove true, realignment will not have been the massive experiment in community corrections that proponents had hoped for; it will have simply changed the inmate's address from state prison to county jail.

It is important to note that this estimate is based on projections that are dependent on historically high recidivism rates. Therefore, an optimist might argue that the projections are overestimates because they do not take full account of the long-term recidivism reductions that might accrue should some of the realignment programs work. Nonetheless, the idea that realignment, the biggest correctional reform initiative in California history, could result in static or even increased numbers of adults under correctional control is sobering.

3 Conclusion

California is at a crossroads, a time of rethinking possibilities. The importance of California's realignment experiment cannot be overstated. It will test whether the nation's largest state can reduce its prison population in a manner that maintains public safety. Realignment's significance is precisely why it needs to be closely monitored. Answering these questions and many more will help state and local officials learn what worked and what didn't, what problems were encountered in implementation, and which offenders benefited from the program. Ultimately, answering these questions will tell us whether the accomplishments were worth the resources invested.

INDIANAPOLIS-MARION COUNTY
CITY-COUNTY COUNCIL
RE-ENTRY POLICY STUDY
COMMISSION REPORT



JULY 2013

About the Commission

The Re-entry Policy Study Commission was established by City-County Council Resolution 80, 2012 and later amended by Council Resolution 90, which expanded the membership of the Commission. The Commission was directed to:

- Examine and investigate the current policies and procedures relating to the re-entry of ex-offenders and the economic and community impact of reducing recidivism in Marion County,
- Hold public hearings and take public input, and
- Report to the Council findings and recommendations for improvement.

The mission of the Re-entry Policy Study Commission is to increase public safety in Marion County by breaking the cycle of criminal activity by ex-offenders who are re-entering the community. This will be accomplished by examining, investigating and facilitating the implementation of policy and procedures related to the re-entry of ex-offenders with a focus on the economic and community impact of those measures.

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- Indianapolis-Marion County Council
- Indy Chamber
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- Marion County Jail
- Marion County Prosecutor's Office
- Marion County Public Defender Agency
- Marion County Re-entry and Drug Court
- Marion County Re-entry Coalition
- Marion County Sheriff's Department
- Mayor's Office of Re-entry
- Marion Superior Court Probation Department
- Neighborhood Christian Legal Clinic
- PACE
- Recycle Force
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Table of Contents

About the Commission	2
Acknowledgements.....	3
Introduction & Purpose.....	7
Definition of Recidivism	10
Re-entrant Statistics and Demographics, including the Re-entrant Population	11
Fiscal Impact.....	13
Criminal Justice System	14
Policy Issues.....	17
Economic Impact.....	18
Uses of Time During Incarceration	26
Wrap Around Services (Case Management).....	30
Health, Mental Health and Addiction Services.....	32
Housing.....	36
Employment.....	40
Sentencing Options & Alternatives.....	44
Policy Improvement Opportunities.....	48
Measuring & Reporting Progress.....	51
Appendices	
Appendix A: Meeting Agendas, Minutes and Handouts	
Appendix B: Presenter List & Biographies	
Appendix C: Commission Member Biographies	
Appendix D: Reference Materials	
Appendix E: Enacting Proposals to City County Council	

Introduction & Purpose

From Mary Moriarty Adams, Commission Chair, and Vop Osili, City-County Councillor

The statistics spoke loudly: data from the Indiana Department of Correction and the Marion County Jail indicate that approximately 5,000 men and women are released into Marion County from prisons and jails each year. During the last few years, approximately 51% of those released into Marion County have returned to incarceration within three years of their release date. The average annual cost for an incarcerated offender is more than \$25,000. Reducing the rate of recidivism would have significant economic and public safety benefits in addition to increasing the number of productive members of our community. In response, the City-County Council decided to take action to address issues that we found. In partnership with our public safety partners, members of the Marion County Re-entry Coalition, the Greater Indianapolis Chamber of Commerce and other community organizations, the Council's Re-Entry Policy Study Commission began its work to examine, on a local level, the number of men and women incarcerated, the number released and the number who recidivate, costs associated with offenders as they move through the prison system and to develop policies to address concerns about our county's high recidivism rate as identified by local business, policy groups, community organizations and social service agencies. These numbers, coupled with the costs to local government, challenge the Council's ability to adequately fund and address concerns raised by our public safety partners, county residents, and to realize the successful outcomes of those re-entering our community from incarceration.

The Re-entry Policy Study Commission was created and amended by Council Resolutions 80, 2012 and 90, 2012, respectively. Under the authority of the Council, its purpose is to examine and investigate current policies and procedures relating to the re-entry of ex-offenders and the economic and community impact of reducing recidivism in Marion County. From November, 2012 through April of 2013, the Commission held 10 public hearings, received presentations from subject matter experts and testimony from members of the public. The information provided was both informative and enlightening to members and the public, and central to the content of this Commission Report, which includes findings and recommendations for policy improvements regarding re-entry.

The powers and duties as prescribed by the enacting Council resolutions required the Commission to:

1. Review current practices surrounding offender sentencing, incarceration, release and re-integration into the county,
2. Review sentencing practices/guidelines and their role in supporting or crippling successful re-integration,

3. Review costs associated with the processing, prosecution, incarceration, release, probation, and community supervision of the offender, and determine how the funds are utilized and their efficiency and effectiveness as measured by the successful re-integration of the re-entrant population,
4. Review sources of payment of these costs and how they are utilized,
5. Create community goals/targets for successful re-integration of re-entrants into the community and study the potential impact on the city's economic development,
6. Review national best practices for successful re-integration, including use of public funds utilized in the process of prosecution, sentencing, incarceration, and release of offenders,
7. Review the service provider entities which have been most successful in lowering recidivism rates and recommending means of streamlining and possibly eliminating those which have not,
8. Analyze economic cost/benefit to the city and county of incorporating any new policies,
9. Review current barriers to re-entrant employment, housing, and other necessities,
10. Review best practices to encourage more private sector employers to review their hiring and screening policies and provide more non-discriminatory hiring opportunities,
11. Review and analyze our current supportive services (housing, workforce development, etc.) and ways to improve their role in successful re-integration; and
12. Establish a periodic review of the county's recidivism rate and create a method of measuring and tracking successful performance and re-integration of the re-entrants.

From a Council perspective, the work of the Re-entry Policy Study Commission was to examine current practices and create policies that, if implemented, will successfully transition offenders from incarceration to re-entry to the community. To successfully transition offenders will require that new laws be created and some existing laws be changed, funding be provided and program implementation be monitored. Additionally, some changes can be realized through new or revised administrative policies of state and/or local agencies. Successful re-entry should demonstrate clear outcomes for ex-offenders, such as a decline in recidivism, increased employment rates and wages, increased educational attainment and increased access to evidence based support services that assist offenders in obtaining housing, mental health services, transportation, educational opportunities and employment. For the foreseeable future, city-county budget deficits will continue. As a result of those deficits, city-county agencies will continue to be asked to curtail their spending and reduce or maintain the current level of their overall budgets. For our Public Safety agencies, further budget reductions will continue to impact successful re-entry. We have seen, for example, how during difficult financial times, state funds for higher education of prisoners were reduced. Locally, additional restrictions of funding could affect re-entry initiatives and services such as work release programs, health, mental health and addiction services; workforce development, probation services, the Department of Public Safety's Re-entry Initiative and Public Defender services. It is vital that commission policy initiatives be put in place to reduce

recidivism among men and women in Marion County. These initiatives cover the spectrum of factors that exist in addressing the challenges of re-entry, from education and workforce development; access to housing, health care, mental health and addiction services; employment; economic impact; sentencing options and alternatives; and policy implementation. Some may question the usefulness of spending money to educate and provide services to the incarcerated. Statistics indicate otherwise. According to research conducted by Dr. John Nally and Dr. Susan Lockwood of the Indiana Department of Correction, employment of ex-offenders is the #1 predictor of recidivism. Unemployed offenders are more than two times likely to recidivate than those who have a job. Predictor #2 of recidivism is educational attainment: incarcerated men and women who attained a post-secondary degree were 50% less likely to recidivate than their counterparts. Those released from incarceration without skills or education cannot find jobs because they are less employable. Inability to find and maintain work means they have no way to pay child support, obtain housing, pay court and other fees, and acquire health, mental health, and addiction services. They do not have a means for supporting their families and, when they are on the unemployment roster, do not pay taxes. Without some means for meeting these challenges, they either end up going back to jail or committing crime.

We would like to express appreciation to the members of the Commission for their thoughtful and diligent work over the past several months. We also are indebted to the members of the public and public safety and criminal justice community for their input to this process. We could not have completed this process without them. We are also appreciative of the Office of Audit and Performance, and its Director Manuel Mendez for helping to synthesize and finalize the Commission's recommendations. It was an invaluable part of the process.

Finally, we want to remind all that this process does not end with the publication of this report. Commissioners, with the help of community partners, have identified 26 concrete policy improvement opportunities, which can be achieved over various timelines and with varying levels of complexity to assist us in meeting the mission of the Commission. We will look forward to the heavy lifting that lies ahead in putting these recommendations in place and hopefully to the recognition of reduced economic and social costs as a result of increased public safety and lower recidivism.

Definition of Recidivism

Recidivism, in the context of criminal behavior, commonly refers to the re-arrest, the re-conviction, or the re-incarceration of ex-offenders. It is often considered the critical outcome variable in determining if an ex-offender has been successful or has failed in his or her return to the community.

Assessing recidivism can present a very complex measurement problem depending on definitions used. For example recidivism, according to the federal Bureau of Justice Statistics “is measured by criminal acts that resulted in the re-arrest, reconviction, or return to prison with or without a new sentence during a three-year period following the prisoner’s release.” Some define recidivism as re-admission to prison, while others define it as conviction of a new crime, whether or not it involved return to incarceration; still others define recidivism as arrests for a new crime, or even a technical violation of release conditions, regardless of outcome.

In a practical sense, recidivism can be defined as an event whereby an ex-offender lapses into a previous pattern of anti-social behavior, especially a pattern of habitual criminal behavior which conflicts with the goals and objectives established by the system to assist him or her in becoming a law-abiding member of the community. To the degree that former offenders desist from criminal activity, victimization is reduced and public safety is increased.

In order to reduce recidivism, regardless of definition, it is essential that we promote opportunities that are research-based and proven to work to change behavior and reduce the likelihood of a participant’s return to criminal activity, whether or not it results in return to custody. These opportunities must be present within all areas of our community including, but not limited to, our criminal justice system, our treatment community, our business community, our faith based community and our educational community.

These opportunities must be in the form of creative and productive programs and activities. These include cognitive-behavioral programs that address anti-social and criminal thinking, behavior and motivation, addiction treatment, education, technical training, problem solving, social and life skills as well as mental health counseling. Interventions need to be based on individual risks and needs indicated through the use of valid assessment instruments.

Re-entrant Statistics & Demographics, including the Re-entrant Population

According to the Marion County Sheriff's Office, in 2012, 54,957 people were released from the Marion County Jail facilities. Of those, 75% were male and 25% female. Only 12% of those released had spent more than 30 days in jail. Forty one percent were released on their own recognizance; 19% were released on bond; 11% were released to community treatment or to the streets; 7.5% were released to the Indiana Department of Correction; and 7% were released because they had served their sentences. The remaining 15% were released to other states or counties, to federal jurisdictions, to juvenile detention, or to home detention.

Detailed data from the INFORMER database that Probation and Community Corrections utilizes indicates that, between 2010 and 2012, there were 65,087 Probation convictions in 12 categories. The majority of offenders were convicted of D Felony (42%) and Criminal Misdemeanor (33%) charges (*see discussion of Sentencing Options & Alternatives on page 44 for an explanation of sentencing and offense categories*).

The annual number of people on probation has declined slightly each year: there were 24,038 in 2010, 22,037 in 2011 and 19,012 in 2012. Nearly all conviction types experienced a decline that mirrored the overall number of convictions; however, that was not the case with B Felony, A Misdemeanor, Miscellaneous, and Murder convictions. The number of B Felony convictions peaked in 2011 with 1,570 (1,561 in 2010 and 1,290 in 2012). The number of Miscellaneous convictions was 896 in 2010 and then steadily increased during 2011 and 2012 to 1,031 and 1,046, respectively. The numbers of A Misdemeanor and Murder convictions are much lower; but still signal growth: there were two A Misdemeanor convictions in 2010 followed by six and five in 2011 and 2012; there were 45 murder convictions in 2010 followed by 51 in 2011 and 14 in 2012.

In terms of the perpetrators of these criminal acts, 15,148 (23%) are female; and 49,936 are male (77%). Interestingly, the proportion of male-to-female convictions remained steady at 77% and 23% in 2010 and 2011. There was a one-percentage point increase in the proportion of females in 2012. Overwhelmingly, these crimes are perpetrated by blacks and whites for both genders. Forty-one percent and 56% of female convictions were of black and white females, respectively. Likewise, 44% and 46% of male convictions were of black and white males, respectively. Nine percent of the total three-year male convictions were of Hispanic males. Nearly two thousand (1,873) or 3% of Probation convictions came from offenders outside of Marion County.

While the number of people in Community Corrections is lower, unlike Probation, it is growing. Between 2010 and 2011, there were a total of 23,225 convictions (6,047 in 2010; 7,189 in 2011

and 9,989 in 2012). Eighty-two percent of the Community Corrections convictions were of males during the three-year period (18% female); the percentage of female convictions grew by one percentage point each year from 2010 to 2012. Forty-three percent of the Community Corrections convictions are Felonies; 3% are Misdemeanors.

According to data on 2005 releases provided by the Indiana Department of Correction (IDOC), the ratio of African American offender to Caucasian offender in Marion County is almost 2:1 (63%:36%). The rate of recidivism is not significantly impacted by race (33.3% vs 30.1%). The majority of Marion County people who are incarcerated are between the ages of 25-39 (51%). Forty six percent of those released to Marion County had an education level less than high school at the time of their release from IDOC custody. Of those who fell into this category, only 12% had a literacy level at 6th grade or higher. — 88% of those with an education level below high school had a literacy level below a 6th grade level.

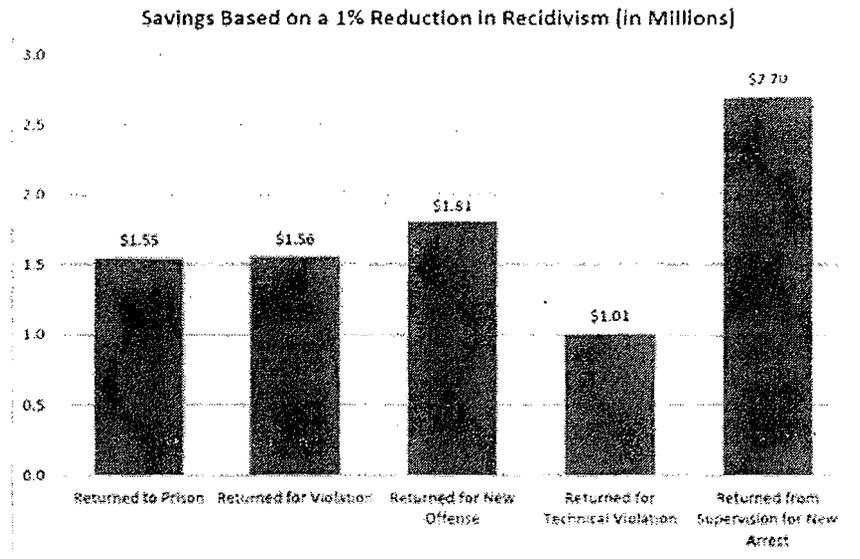
Of those released in 2005 and followed up with in 2008, 49% were not employed. Further analysis of the data showed that the recidivism rate among the unemployed offenders was 42.4%; recidivism among the employed offenders was 26.2%. Employment was the number one predictor of recidivism. Of those who were employed, 72% of them made less than \$10,000 in one year of employment. In 2007, the zip codes of 46218, 46201, 46222, and 46203 received 33.77% of all of the people who returned to Marion County.

Fiscal Impact

The cost of recidivism varies depending on the “type” of return. People return either because they committed a new offense or because they had a technical violation of the conditions for their release. A 2012 study by the *Center for Criminal Justice Research, Indiana University Public Policy Institute, Indiana University School of Public and Environmental Affairs*, analyzed the cost of these returns.

The chart below shows the savings based on returning in general and the savings based on the reason the person returned. Overall, the cost savings of a 1% reduction in the three year recidivism rate in Marion County is \$1.55 million dollars.

There were 4,776 offenders released from prison to Marion County in 2007. 2,463 (51.6%) had been returned to prison within 3 years of their release date. This analysis is based on reducing that recidivism rate by 1% (50.6%). For Marion County this is 46 people.



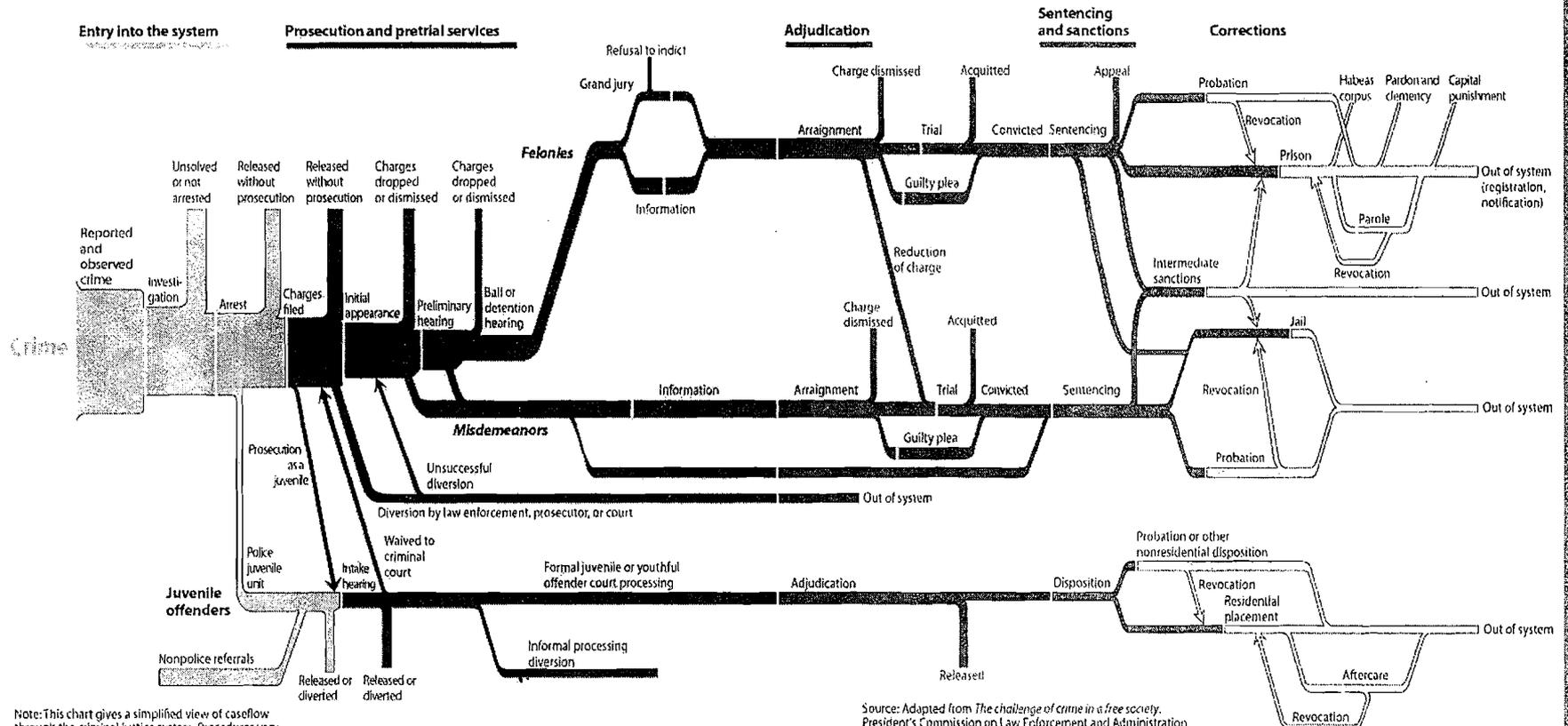
In 2012, IDOC had 4,233 new admissions of people who were previously incarcerated; 2,223 (52.5%) of these admissions were for a technical rule violation (TRV). Of that 2,223, 91% were only technical rule violations, the other 9% were a rule violation and another offense.

The Commission was charged with identifying the costs associated with processing, incarceration, release, probation and community supervision as well as the sources that provide for these costs. During the process of gathering the information, it was realized that more detailed analysis and considerations were needed than anticipated; therefore, given the complexity, the Commission has decided that this topic deserves further and more in-depth study and will assign it as one of the tasks to be performed in implementing the Commission's policy recommendations.

Criminal Justice System

Upon entry into the criminal justice system, there are several paths that can be taken. The flow charts on the following page represent the various pathways.

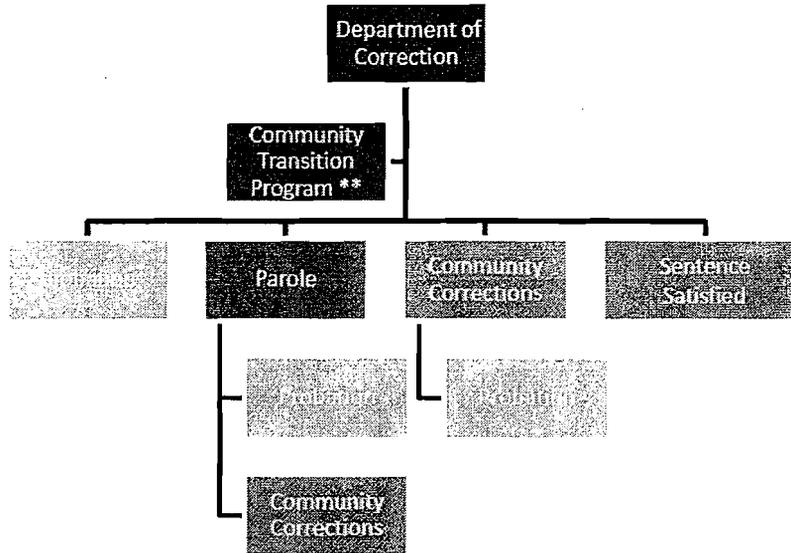
What is the sequence of events in the criminal justice system?



Note: This chart gives a simplified view of caseload through the criminal justice system. Procedures vary among jurisdictions. The weights of the lines are not intended to show actual size of caseloads.

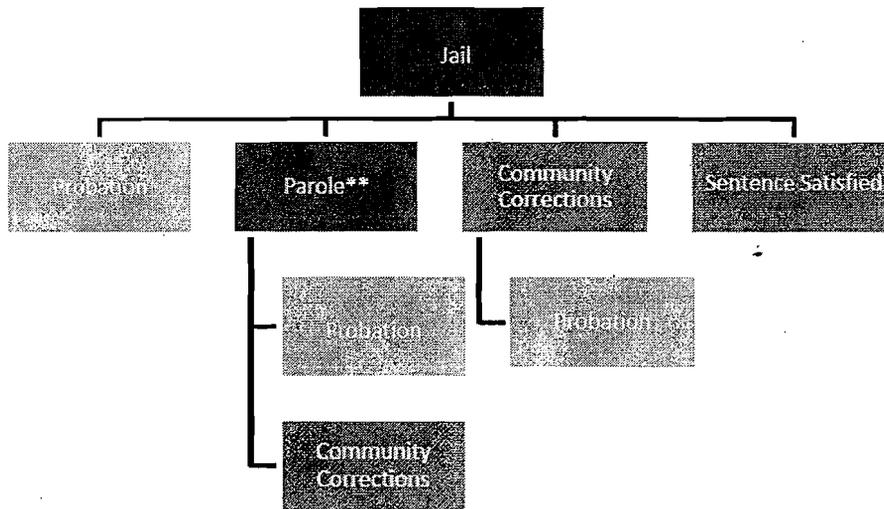
Source: Adapted from *The challenge of crime in a free society*. President's Commission on Law Enforcement and Administration of Justice, 1967. This revision, a result of the Symposium on the 30th Anniversary of the President's Commission, was prepared by the Bureau of Justice Statistics in 1997.

DIAGRAM OF OFFENDER PLACEMENT FOLLOWING SENTENCE TO DEPARTMENT OF CORRECTION



**Applies if offender meets criteria and is eligible for program per statute. The program term is served outside of a Department of Correction facility generally a community corrections program.

DIAGRAM OF OFFENDER PLACEMENT FOLLOWING SENTENCE TO LOCAL JAIL



**Applies if offender is serving DOC sentence at the local jail.

Policy Issues

The Re-entry Policy Study Commission conducted several sessions, each of which focused on a particular aspect that impacts the ability of the system to address the issues that influence successful re-entry. What follows is a summary of each of those sessions. The notes, presentations and other document from the sessions can be found in Appendix A.

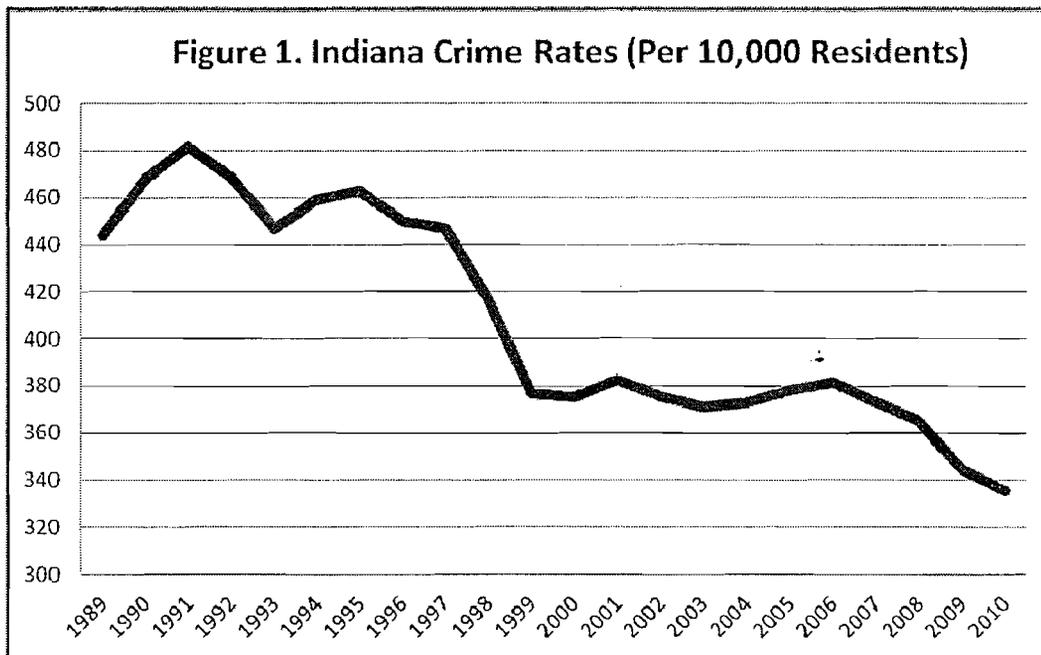
Economic Impact

Submitted by: *G. Roger Jarjoura and Konrad A. Haight*

Center for Criminal Justice Research, Indiana University Public Policy Institute/ Indiana University School of Public and Environmental Affairs

The size of the prison population in Indiana and the volume of people leaving prison and returning to Marion County (Indianapolis) is a public policy crisis. Consider the following:

- Over the past 20 years, the number of people in prison in this state has reached an all time high. In 1989, the prison population in Indiana had risen to a level higher than had been the case at any point in the state's history. On the final day of that year, there were 12,341 adults incarcerated in Indiana prisons. Ten years later (on the final day of the year in 1999), the population in Indiana prisons had risen to 19,309. Another ten years passed and by the end of 2009, the prison population had reached 28,389.
- Over the same 20-year period, the crime rates were following an entirely different pattern, as evidenced in Figure 1.



In fact, the crime rates for Indiana in 2010 were lower than they had been at any point since 1969. It should be noted that research has consistently shown that the reductions in crime rates over this period were not due to the increases in the rates of incarceration but to other factors such as proactive policing, employment opportunities, shifts in crime demographics, and utilization of social programs.

According to a report issued by the Justice Policy Institute in 2009, Indiana spent \$645 Million on correctional expenditures in 2007.¹ It is particularly noteworthy that only 17 states spent more on correctional costs that same year.

Scope of the Research Question

The purpose of the analysis reported here is to estimate the financial savings that would be realized with a one-percent decrease in the recidivism rate for Marion County. There are multiple dimensions to this particular research question. First, there must be a determination as to what is meant by the term “recidivism.” We begin with a cohort of offenders who have been released from prison and returned to communities within Marion County. Recidivism for this group may involve any new arrests committed after their release from prison. An important consideration is how to identify indicators of new criminal offenses. As we are relying on official measures of offending, we would either be interested in capturing new arrests or new convictions. An alternate approach would be to examine whether the offenders returned to prison within a specified period of time. A return to prison would either be the result of a conviction on a new offense or the result of violating the terms of their conditional release (i.e., the terms of their parole or probation). For the state of Indiana, the Indiana Department of Correction (IDOC) has a tradition of considering recidivism as any return to prison within three years of release from an IDOC facility.

Another dimension to the key research question for this project has to do with the matter of estimating the costs associated with recidivism. There are a variety of ways that the costs associated with crimes have been conceptualized. In addition to the ways that costs accrue due to the different aspects of criminal justice processing (costs associated with police actions, incarcerations in jail, court processing costs, community supervision costs related to probation and community corrections, and prison commitments), there is also research that has calculated social costs relating to the property loss and victim costs.² In a report from the Criminal Justice Commission for the State of Oregon, Michael Wilson provided taxpayer and victimization costs for a series of processing points in the criminal justice system, including arrest, conviction, probation, parole, and jail. Wilson notes that the taxpayer costs for each point in the criminal justice system are not easy to estimate. His estimates are presented for a limited number of offenses: homicide, rape, robbery, aggravated assault, and then the broad categories of property crimes, drug offenses, and other offenses.

¹ Justice Policy Institute (2009) “Pruning Prisons: How Cutting Corrections Can Save Money and Protect Public Safety.” Available online at http://www.justicepolicy.org/images/upload/09_05_REP_PruningPrisons_AC_PS.pdf.

² See Lochner, Lance, & Moretti, Enrico. (2004). The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports. *American Economic Review*, 94(1):155-189. See also Miller, Ted. R., Cohen, Mark A., & Wiersema, Brian. (1996). *Victim Costs and Consequences: A New Look*. Washington DC: National Institute of Justice.

For the purposes of this analysis, we examined the possibility of providing a more detailed analysis that considered the criminal justice costs and social costs described above. To do so would, unfortunately, require the manual capturing of detailed information from the county's data management system JUSTIS. For a recent analysis on recidivism for Marion County's Leadership in Action (LAP) initiative, we were provided with data on arrests from the JUSTIS system. Those data, however, did not specify the reason for the arrest so we are unable to identify the offense or to distinguish arrests for new offenses from those arrests for probation and parole violations. We have access to JUSTIS to look up the information, but the amount of time that would be necessary to gather these data for the full release cohort would have meant this project could not be completed within the 30-day window we agreed to.³

We should note as well that there were concerns with the data that was made available to us for this analysis. From Marion County, we received a data set that was supposed to capture all arrests for the observation period of interest. We have come to understand, though, that the data are not complete and the gaps in the data are not systematic or predictable.

Coupled with the situation described above where we are limited in our ability to distinguish the new arrests from technical violations, we could not have produced an analysis that we could have offered with confidence as the basis for valid conclusions. We also received data from IDOC on those offenders released to Marion County. We were under the impression that we were provided with a complete cohort of released offenders. Yet, for the cohort we focus on in this analysis (those released from prison in 2007), we received data from IDOC on 4,776 offenders released from prison and returning to Marion County.

The data provided by IDOC is incomplete, though, in ways we can determine and correct for. To be able to estimate the costs associated with returning the offenders to prison, we needed to know how long they were expected to be in prison. From the data we received from IDOC, we needed to look up expected release dates on 706 offenders. In 22% of the cases, we learned that the offender had already been released from prison, and as such, should have appeared in subsequent release cohorts but did not. This gap in the data was unexpected, but we were able to manually fill in gaps and have done so. Relative to the gaps that appear in the JUSTIS data, we believe we are able to produce cost estimates with more confidence based on the data we have on prison returns and releases.

Given the concerns we note here, we elected to go with the following research design.

³We drew a random sample of cases from the release cohort and compiled comprehensive follow-up data on arrests, convictions and jail stays. In a separate report, we will offer a proposal for a more detailed costs analysis based on such a comprehensive examination of the data. Such an analysis would require a longer time to complete.

Research Design

We are interested in estimating the cost savings associated with a one percent reduction in recidivism. We define recidivism as the return of an offender to prison within three years after his or her release from prison. Since we were interested in a follow-up period of three full years after release, we elected to base our analysis on a cohort of offenders released from IDOC during 2007. We received data from IDOC that identified a cohort of 4,776 offenders released at some point during 2007 and returning to Marion County. In the data set we received, we were also provided with information on whether each offender returned to IDOC within three years after their release. If they returned to prison, we looked to determine how long they were due to be in prison. Our estimates of the costs of the reincarceration were calculated by multiplying the expected (or actual if the person has already been released again) number of days in prison by the current average per diem rate reported by IDOC: \$53.96. To determine the expected length of the prison stay, we did one of the following, as appropriate:

- If the person has already been released from prison again, we captured the actual release date.
- If the person is still in prison, we looked for what IDOC reports as the earliest possible release date. This provides a conservative estimate of the length of time in prison, as some of these offenders may not be actually released on the earliest possible date.
- In a small number of cases, we did not have access to an earliest possible release date. In those cases, we based our expected release date on the sentence from the court, taking into account any good-time credit calculations for which the offender is eligible. In one case, the offender is serving a life sentence, so we based the expected release date on current estimates of expected life span given the individual's demographic characteristics.

Results of Analysis

Of the 4,776 offenders released from prison in 2007, 2,463 had been returned to prison within three years of their release date. This represents 51.6% of the original sample. That more than half of the formerly-incarcerated offenders are returned to prison is disappointing in and of itself. It is also noteworthy, though, that IDOC has published three-year recidivism rates for those released from 2002-2005 and found statewide return rates of 39.2% for those released in 2002, 38.6% for those released in 2003, 37.8% for those released in 2004, and 37.4% for those released in 2005. A three-year recidivism rate of 51.6% suggests that the recidivism rates in Marion County are higher than in other parts of the state. Our analysis shows that among all the offenders returning to prison within three years of their release, the average length of time each offender will spend in prison is 626 days and the average cost for the new period of incarceration per offender is \$33,786.

When an offender returns to prison, IDOC identifies whether the person is coming to prison because of a new offense or because of a technical violation. We make use of that designation in distinguishing between several groups of returning offenders:

- Those who have been convicted of a new offense and sentenced to prison on a new cause number. 1,090 offenders (22.8%) fell in this category. The average length of time an offender in this group will spend in prison when they go back is 686 days. The average cost of the new incarceration per offender is \$36,998.
- Those who were returned to prison as a result of a revocation of their community supervision (probation, CTP, or parole). There were 1,373 (28.7%) persons in this category. It is noteworthy that among those returning to prison, more than half were returned for violations. The average length of time an offender in this group will spend in prison when they go back is 579 days. The average cost of the new incarceration per offender is \$31,236.
- Among those returning to prison for violating the terms of their community supervision, 1,016 (21.3% of the total cohort) were returned for a technical rule violation. This group tended to spend shorter amounts of time in prison when they did go back. The average length of time an offender in this group will spend in prison when they go back is 409 days. The average cost of the new incarceration per offender is \$22,055.
- Among those returning to prison for violating the terms of their community supervision, 357 (7.5% of the total cohort) were returned on the basis of a new offense (although not necessarily convicted of a new offense). This group tended to spend the longest average amounts of time in prison when they did go back. The average length of time an offender in this group will spend in prison when they go back is 1,063 days. The average cost of the new incarceration per offender is \$57,363.

We are looking to conceptualize the cost savings of a 1% reduction in recidivism for each of the groups identified above. We consider a 1% reduction based on the actual rate of recidivism as described above. So for instance, the data show that among all offenders in the cohort, 51.6% recidivate. For this analysis, we consider the impact of moving the recidivism rate from 51.6% to 50.6%. In Table 1, we calculate the number of cases involved in a 1% reduction in recidivism. With such a reduction, we then present the revised recidivism rate and the new number of cases in that particular group. Then we calculate the total costs for the original number of offenders in that group returning to prison. We also calculate the costs for the reduced number of offenders in that group (after moving the percentage down by 1%). From these two values, we calculate the difference to determine how much we can save by reducing recidivism by one percent.

Table 1. Results of Analysis Estimating Cost Savings for a 1% Reduction in Recidivism

Group	1% Reduction Involves	New Percentage	New Total	New Cost	Total Cost	Cost Savings
Returned to Prison	46	50.6	2417	\$81,660,849.89	\$83,215,007.56	\$1,554,157.67
Returned for New Offense	49	21.8	1041	\$38,515,222.81	\$40,328,139.16	\$1,812,916.35
Returned for Violation	50	27.7	1323	\$41,325,074.21	\$42,886,868.40	\$1,561,794.19
Returned for Technical Violation	46	20.3	970	\$21,393,589.71	\$22,408,131.08	\$1,014,541.37
Returned from Supervision for New Arrest	47	6.5	310	\$17,782,657.06	\$20,478,737.32	\$2,696,080.26

Table 2. Results of Analysis of Estimating Day-Beds Saved with a 1% Reduction in Recidivism

Group	1% Reduction Involves	New Percentage	New Total	New Bed-Days	Total Bed-Days	Bed-Days Saved
Returned to Prison	46	50.6	2417	1,513,359	1,542,161	28,802
Returned for New Offense	49	21.8	1041	713,774	747,371	33,597
Returned for Violation	50	27.7	1323	765,846	794,790	28,944
Returned for Technical Violation	46	20.3	970	396,471	415,273	18,802
Returned from Supervision for New Arrest	47	6.5	310	329,553	379,517	49,964

Discussion

The results of this analysis point to a number of policy-relevant conclusions. First, the recidivism rate for Marion County is high relative to statewide estimates. The costs associated with the high recidivism rate are also substantial. The cost of returning so many offenders to prison is more than \$83 Million. To reduce the recidivism rate by one percent would involve keeping a “mere” 46 offenders from returning to prison. What could we do to ensure that 46 offenders are retained in the community? This might involve providing treatment-focused supervision that has been shown to effectively reduce recidivism in other jurisdictions. Let’s speculate that we could hire two treatment-focused parole/probation officers to manage these 46 offenders. If they are effective at keeping the offenders from returning to prison, we stand to save \$1.55 Million. Hiring two such officers could be done for much less than \$1.55 Million. In addition, for every additional 46 offenders retained in the community we stand to save an additional \$1.55 Million.

Our estimate of the cost savings is based on the number of days that offenders would otherwise be in prison and assumes that if we keep one person from going to prison that we actually would realize a true savings in the costs of incarcerating that person. Yet, we know that until we have a significant reduction in the number of people going to prison, perhaps so that we can in fact close one of our prisons, we are not really saving the amount of money that is identified by the state as the per diem costs associated with one offender. Another way to consider the impact of a reduction in the percentage of offenders returning to prison is to examine the number of bed-days that are saved when the offenders are not going back to prison. So, for example, we can also say that since the typical offender returned to prison will spend 626 days incarcerated, by reducing the recidivism rate by 1% for Marion County, we are saving the state **28,802** prison bed-days.

The results of this analysis also point to the differential impact that we might realize if we focus more on retaining people in the community once they have violated the terms of their supervision. Again, this is where we might look to other parts of the U.S. for examples of effective strategies that have resulted in fewer people returning to prison. When we are able to reduce the number of returning prisoners so much that we can actually realize savings in terms of needing fewer facilities or fewer staff, then we can begin to consider ways to reinvest the savings to expand the capacity of the community to support the offenders in their efforts to stay out of prison. We might also think about this from an investment perspective. Community-based efforts that actually lead to the reduction in the number of people returning to prison might be expected, over time, to realize cost savings of the magnitude determined here.

The literature provides many directions for policy changes that support the goals of reducing the number of people in prison without increases in the risks to public safety. Some of these potential changes include:⁴

- Parole officer roles should be transformed to emphasize the provision of services and support in addition to performing their supervision function. The overall goal should be to see fewer offenders returning to prison for violating the terms of their parole—either technical rule violations or by committing new crimes.
- When states have “shifted supervision modalities from intense supervision to support”, the results have been that fewer people go back to prison on technical violations. The use of risk assessments to determine the appropriate intensity of supervision is recommended.
- There must be greater access to effective evidence-based treatment in the community.
- Deliberate effort is needed to reduce the barriers to civic participation for those released from prison: this means increasing access to jobs, education, welfare benefits, and affordable housing, among other things.
- Significantly reduce the use of parole supervision for nonviolent offenders.
- Introduce graduated sanctions for those violating the terms of their community supervision
- Reinvest savings from reducing reincarcerations for the improvement of criminogenic social conditions.

⁴ See: Greene, Judith, and Schiraldi, Vincent. (2002). *Cutting Correctly: New Prison Policies for Times of Fiscal Crisis*. Washington DC: Center for Juvenile and Criminal Justice, Justice Policy Institute. See also: Justice Policy Institute. (2010). *How to safely reduce prison populations and support people returning to their communities*. Available online at: http://www.justicepolicy.org/images/upload/10-06_FAC_ForImmediateRelease_PS-AC.pdf

Uses of Time During Incarceration

Summary Submitted by Mary Leffler, Volunteers of America

Introduction & Key Concepts, Including Definitions & Acronyms

The Study Commission wished to learn more about how offenders spend their time while incarcerated or detained in a variety of settings, such as jail, prison, work-release and Community Corrections. Services typically include such things as job skills and vocational training, education and literacy, cognitive programs, addiction recovery, anger and stress management, and parenting.

Some terms which may appear in this summary include:

- **IRAS-** Indiana Risk Assessment System
- **Evidence-Based Practice-** Evidence-based practice is a significant trend throughout all human services fields that emphasize outcomes. Interventions within corrections are considered effective when they reduce offender risk and subsequent recidivism and therefore make a positive long-term contribution to public safety.
- **Motivational Interviewing-** Motivational interviewing is a directive, client-centered counseling style for eliciting behavior change by helping clients to explore and resolve ambivalence.
- **Trauma Informed Care-** Trauma informed care is grounded in and directed by a thorough understanding of the neurological, biological, psychological and social effects of trauma and violence on humans and the prevalence of these experiences in persons who receive mental health services.
- **Gender Responsive Services-** Unique program models and services that comprehensively address the needs of a targeted gender group. An essential ingredient is the fostering of positive gender identity development, particularly during the formative years of the gender group.

Problem Statement

According to the National Institute of Corrections (NIC), "Inmate programs are important to the overall management and to the community, as well as inmates." Thus offenders with idle time pose behavior and security issues for custody personnel. The goal of programs within facilities is to occupy idle time of the offender and capitalize on this period of confinement, in order to prepare the offender to make better decisions upon release, and to facilitate desistance and restoration. *Within Marion County, the identified problem is how to increase capacity and open access for evidence-based supportive programs and practices.*

What Practices are in Place?

Across the board it appears that prisons, jails, work release and other community-based settings recognize the need for programs and work collectively to bring **low and no cost** programs into their settings. In the state system, programs are built into facility budgets and have suffered due to cost containment at that level. This community has been fortunate to receive some substantial Department of Labor grants, which have propped up the employment and job readiness programs within Marion County; however access to these programs is very restricted. Many programs are operated with grant funds by small nonprofits or volunteers. Thus when grant funding ends, the programs can be discontinued until another funding source or program can be identified.

Additionally, participation in programs varies across the spectrum. Ideally, the IRAS should serve to help identify those offenders and which programs would likely target those most at-risk domains. In practice, many programs are voluntary and offenders often determine “the value” of the program in terms of whether there is an associated time cut for program completion.

The relationship between the supervising staff and the offender is an important and research-supported component, typically using motivational interviewing as a strategy for developing those relationships and identifying reasons for change. Correctional staff should strive to adopt a balanced approach in dealing with offenders. Additionally, the length of incarceration can often determine program access. Programs do not carry from one facility to another very well, so offenders may stop and start programs in somewhat of a chaotic fashion.

Policy Implications, Including Economic Impact

Implementing evidence-based policies, whenever possible, and best practices requires a commitment from the top leadership down through every level of a system. Substantial upfront resources must be invested in the evaluation of various programs, selection and training of staff, and implementation and continuation of effective programs. Often programs may be considered “time-fillers” for offenders and can be seen as secondary to other more “important” activities, such as work details or outside employment. Thus, true commitment to supporting evidence based programs and practices, may require policy revisions with regard to existing rules and regulations, particularly within work release or other pre-release environments. Thus the economic impact is often a large up-front investment, with the cost savings of reduced recidivism coming later in the process.

Best Practices

Effective treatment are those that target dynamic risk factors—those criminogenic needs that are powerful predictors of recidivism. Those include antisocial attitudes, antisocial associates, history of antisocial behavior, antisocial personality pattern, family functioning, education/employment, leisure and substance abuse. Programs should target the criminogenic needs of HIGH risk offenders.

Effective programs are behavioral in nature. Services should be intensive. Intensive services occupy 40-70% of offender time while in a program and are typically 3 to 9 months in duration.

In the delivery of programs, the principle of responsivity should be utilized. This means treatment programs should be delivered in a manner that facilitates the learning of new pro-social skills by the offender.

Gender responsive services and trauma informed care are also identified as best practices.

Promising targets for change include:

- Raising the level of employability
- Raising the educational attainment of the offender
- Build social skills
- Changing antisocial attitudes
- Changing/managing antisocial feelings
- Reducing antisocial peer associations
- Promoting identification/association with anti-criminal role models
- Promoting familial affection/communication
- Promoting familial monitoring and supervision
- Promoting child/family protection
- Increasing self-control, self-management and problem-solving skills
- Replacing the skills of lying, stealing and aggression with more pro-social alternatives
- Reducing chemical dependence and substance abuse
- Build a network of community supports
- Shift the thinking patterns regarding the costs and benefits for criminal and noncriminal activities – so that noncriminal alternatives are favored

Specific Strategy Recommendations for Marion County, Including Changes in Legal and/or Practical Policy

While there was a strategy recommended to **further educational opportunities for offenders while incarcerated and restore funding to deliver those educational programs**, this strategy was deemed as a very low emergent opportunity for this Commission.

It was determined that grant controllers **follow proven evidence-based practices research (promising and best practices) to identify priorities for funding and to select grant recipients**. For example, grant controllers will follow established guidelines for such grants as Crime-Prevention and applicable CDBG, to ensure that the programs funded are using evidence-based practices in their design and implementation.

Wrap Around Services (Case Management)

Submitted by Rhiannon Edwards, PACE

Introduction

Wrap around services are most effective as part of care-coordinated case management. Care coordinated case management is the process of linking ex-offenders with the services they need to maximize their success and assist them in their transition with the over-arching goal that they avoid recidivism.

The topic of wrap-around case management began with the discussion of the definition of re-entry. Identifying an agreed upon definition of re-entry provides a context to determine the types of services necessary to lower recidivism. For the purpose of this section, re-entry is identified as the transition of all offenders from any form of incarceration back into the community.

The population served in a re-entry program would therefore be any person who has been convicted of a criminal offense (felony or misdemeanor) who is returning into their community. It is important to note that re-entry does not constitute that the individual had to be incarcerated in the Indiana Department of Correction, but that there was some contact with an aspect of the criminal justice system (i.e. the criminal courts, probation, parole, community correction, Indiana Department of Correction, etc.).

In order for a re-entry program to be effective it must be based on best practices that have documented results to demonstrate the program's ability to be effective with the ex-offender population. Programs that have not been proven to be effective with ex-offenders would not be suitable re-entry programs. Re-entry programming must be developed and evaluated to ensure that programs are based on criminogenic risk and ensure successful transition. The Indiana Risk and Needs Assessment (IRAS) is performed by all criminal justice supervising agencies, i.e. probation, parole, Marion County Community Corrections (MCCC), Indiana Department of Correction (IDOC), etc. Community-based agencies should use the risk level evaluation as part of the assessments to determine an appropriate plan for each ex-offender.

Re-entry programs must also have a documented way to track recidivism of program participants. Recidivism rates are the best indicators of the success of a re-entry program. In the evaluation of a re-entry program, it is important that recidivism is always used as one of the main indicators.

Problem Statement

There are various organizations in Marion County/Indianapolis that operate re-entry programs or (by their own description) provide some form of re-entry service. The problem is that there is a big difference in a re-entry program and an effective re-entry program. Re-entry programming or services that do not follow effective best practices and evidence-based practices will be ineffective and often cause more harm to the ex-offender.

Current Practices

Marion County utilizes various forms of community-based supervision through Marion County Probation, Marion County Community Corrections-MCCC (electronic monitoring, work release, daily reporting), Parole (IDOC) and various other contractual work release and electronic monitoring programs. While these agencies attempt to provide case management in addition to supervision, it is difficult for them to be aware of all the resources in the community without help from the community providers. Criminal justice agency providers most often do not provide direct service (with the exception of the various work release facilities and some MCCC programs) so they rely heavily on the community to provide the services their clients need to be successful in the community. For this to be effective there must be collaboration and communication between the criminal justice agencies and the community based providers.

Policy Implications

There is a current disconnect between the various criminal justice providers as they do not share the same information system. That disconnect often causes miscommunication between agencies that could be more effective should they have access to the same information. The Indiana Risk and Needs Assessment (IRAS) is not available to all criminal justice agencies and community agencies so this often makes it difficult to correctly assess an offender and therefore create a plan that is based on the criminogenic risk and need.

Best Practices

Agencies indicating they provide re-entry services or suggesting they have a re-entry program should be able to document that their programming is based on best practices and that they utilize some form of evidence-based practices. Ensuring staff are properly trained on effective re-entry practices is important for both community based agencies and criminal justice supervising agencies as well.

Recommendation for Marion County

Better communication between ex-offender serving agencies—A process should be created to ensure a better hand-off from criminal justice agencies to community-based agencies so accurate plans can be created for ex-offenders in the community.

Health, Mental Health & Addiction Services

Submitted by Lisa Brueggeman, Marion County Probation

Many offenders exiting prison or jail have physical, mental health or addiction issues. Based on various reports ("Health-Related Issues in Prisoner Reentry" Crime and Delinquency 47 no. 3, 2001-07-01, 390 – 409), it is estimated that:

- 16% of the population in prison or jail has a serious mental illness as compared to 5 to 7% in the entire population
- Co-occurring substance abuse disorders affect more than 70% of prisoners with mental illness

Offenders who have mental health and/or addiction issues also have greater incidence of physical issues as well as the typical incidence of physical issues offenders have (same as in the entire population). Based on the Survey of Inmates in State and Federal Correctional Facilities, 2004, and the Survey of Inmates in Local Jails, 2002, it was found that:

- Nearly a quarter of both state prisoners and jail inmates who had a mental health problem had served 3 or more prior incarcerations, compared to a fifth of those without,
- Female inmates had higher rates of mental health problems than male inmates 73 to 75% of women, compared to 55 to 63% of men

Mental Health Disorders can be anything covered under the diagnostic and statistical manual of mental diseases and disorders (DSM IV). These encompass personality disorders, depression, anxiety, psychotic disorders and Post Traumatic Stress Disorder (PTSD).

Addiction issues impact the majority of offenders. According to research cited by the Council of State Governments – Justice Center – Reentry Policy Council:

- 80% of state prisoners report a history of drug or alcohol use
- 55% of state prisoners report using drugs or alcohol during commission of the crime that resulted in their incarceration
- 66% of convicted jail inmates were "actively involved in drugs" prior to their admission
- 36% were using drugs or alcohol at the time of their offense

Data from the Indiana Department of Correction indicates that drug abuse among prisoners does not vary significantly by race or gender, although it does vary by age, with inmates age 44 and younger reporting rates of drug and alcohol use significantly less than that of their older counterparts.

Problem Statement

Many offenders returning from incarceration have difficulty entering treatment or obtaining needed medications in a timely manner. This can be a result of availability of services, appropriate referrals, financial issues, and communication among interested parties.

Policy/System Issues to Consider

- Beginning in 2014 the Affordable Care Act (ACA) explicitly allows incarcerated individuals pending disposition to qualify, enroll, and receive services from health plans participating in state health insurance exchanges if they otherwise qualify for coverage. Also, individuals who satisfy bail requirements and are released pending disposition will be eligible for Medicaid under the ACA if they qualify
- Waiting list for community mental health center appointments can range from 60 to 90 days; inmates are released with a 30-day supply of medication
- Individuals released from incarceration to probation may be subject to many conditions of release through plea agreements that are not based on appropriate level of treatment or need
- Due to Health Insurance Portability and Accountability Act (HIPAA), CFR 42 Part 2, and agency requirements regarding confidentiality, having all appropriate releases signed to allow interagency communication is difficult

Current Practices in Place

The Indiana Department of Correction (IDOC) has contracted with Corizon to provide behavioral health care to offenders while incarcerated. Corizon provides a continuum of care for offenders with mental health issues and/or substance abuse issues. Individuals are screened and classified at intake according to treatment needs. In addition to intake, there are other points of care at which an individual may be screened for mental health issues. These include: transfer from one facility to another, annual health screening, individual or staff member's referral, admittance to segregated housing, crisis, and re-entry. If needs are identified, further evaluation by qualified professionals is conducted and a treatment plan created. Treatment options range from psychiatric treatment or individual psychotherapy to group psychotherapy or psycho-education.

For all individuals placed at an IDOC facility, a case plan is created to begin working toward the process of re-entry. The individual and case manager work on the plan throughout the period of incarceration, and then for individuals with a mental health issue, prior to release, the case manager will attempt to schedule an appointment for the individual with a mental health agency upon his release. Those individuals who are on prescribed medications are usually given a 30-day supply with a prescription for another 30 days upon their release.

For individuals with histories of substance abuse and dependence, there is also a continuum of services delivered by qualified professionals. Services offered include outpatient treatment (that consists of 3 phases), therapeutic communities, the Clean Lifestyle is Freedom Forever (CLIFF) program (methamphetamine specific treatment), support group meetings (Alcoholics Anonymous/Narcotics Anonymous meetings), Purposeful Incarceration (a partnership program between IDOC and the Court system designed to get drug- or alcohol-addicted offenders into a therapeutic community within the Indiana Department of Correction soon after they begin serving their sentences), and urine drug screens. Therapeutic communities and the CLIFF programs are only available at certain facilities and Purposeful Incarceration only applies to individuals placed in therapeutic communities. The IDOC's goal is to get the right offender to the right program at the right time.

Concerns expressed from the IDOC perspective regarding re-entry offenders with mental health and/or substance abuse issues (that affect Marion County):

- Offenders with mental health issues may have difficulty in securing an acceptable housing arrangement which then limits the ability to schedule an appointment for treatment,
- Mental health centers have lost funding, which has led to reductions in staff and therefore the ability to schedule appointments within an immediate time frame,
- Offenders are only given a 30-day supply of prescription medication for many reasons; among them the risk that an individual will lose or sell the medication. The offender not only may have difficulty obtaining an appointment in that time, but the cost of the medications can be prohibitive, and
- In 2009, of offenders released from IDOC, 31.3% had less than a year to serve and 21.4% had 6 months or less to serve; this impacts greatly the ability to provide substance abuse services because the short length of stay limits the ability of the offender to participate in programming.

In looking at best practices, the Community Outreach Task Force (COT) has proven to be an effective program. In 2009, this program was developed to address those individuals with multiple arrests in the downtown area due to addiction, mental illness, and/or homelessness. The task force is comprised of individuals from many of the community agencies that work with the homeless population as well as the Indianapolis Metropolitan Police Department (IMPD). The release of information was designed to satisfy all agencies. Significant numbers to consider:

- One arrest costs \$798.12 (2009),
- One day in jail costs \$45.27 to \$62+, and
- One day in housing and treatment costs \$15.

Initially, IMPD identified 22 individuals accounting for 99 arrests in one year, primarily for public intoxication. Nine of those individuals engaged in treatment and entered housing the first year. There was a 48% reduction of arrests for these individuals over a 12-month period. The task force focused on 3 individuals, who accounted for 185 arrests in a three-year period. Those 3

individuals are all in treatment, sober, and housed for more than 2 years. Not only has the program impacted arrests and the costs associated with arrests, there have been fewer Crisis Intervention Unit (CIU)/Emergency Department visits, saving taxpayer money as well. Why it works:

- Removes barriers to accessing treatment and housing
- Funding identified for long term housing and treatment support
- Monthly case conferencing with key players
- Trust amongst the team; across the board ownership with client focused success
- All agencies interfacing with client share same message; working from same page

Recommendations

Engage community based medical organizations, mental health care and substance abuse treatment agencies to provide services for offenders, pre- and post-release from incarceration. This can help facilitate continuity of care when applicable. For Marion County jail inmates this would be beneficial. However, it should be pointed out that inmates in IDOC may be released from facilities all over the state. It would not be practical for local providers to be able to serve inmates who are being housed outside of Marion County.

For those inmates who are released to probation, allow the Probation Department to determine appropriate level of treatment and other conditions based on an individual's current needs. Specific terms and conditions of probation should be based on current risk and needs assessment.

Convene a task force group consisting of local mental health and substance abuse treatment providers, probation and parole officers, agencies that provide re-entry assistance, representatives from the IDOC, and other interested parties to discuss possible avenues for creating a more seamless transition from incarceration by developing a protocol to obtain appointments in a reasonable time frame and establishing some form of release of information that all parties can accept (similar to COT Force). This task force could also look at medications and how to assist clients with obtaining needed medications at reasonable costs as well as funding sources to assist offenders with treatment costs.

Utilize resources such as the National Re-entry Resource Center which offers assistance through general information and webinars. The center just recently offered a five-part webinar series in conjunction with Treatment Alternatives for Safe Communities (TASC) entitled Best Practices for Engaging and Retaining Formerly Incarcerated Individuals in Community Substance Abuse Treatment.

Housing

Submitted by Julie Fidler, Department of Metropolitan Development, City of Indianapolis

The meeting to address housing and barriers to housing was held February 6, 2013 and featured representatives from the Indianapolis Housing Authority, Neighborhood Christian Legal Clinic (NCLC) and the Department of Metropolitan Development. Key topics reviewed included:

- What are the barriers to housing?
- What resources are available?
- What are effective best practices from other communities?
- Which local communities might consider transitional housing in their neighborhoods and what are the legal boundaries currently for those who have felony convictions?
- What are policy implications?
- What strategies should be pursued?

Key Terms:

- CFR: Code of Federal Regulations — Policies set by the Federal Government which guide HUD funded Programs. Each program is governed by a specific section of CFR.
- HUD: United States Department of Housing and Urban Development — Provides funding both to states and units of local government to provide grants for housing, community development and programs for those who are low to moderate income with and without qualifying disabilities.
- IHA: Indianapolis Housing Authority — The Public Housing Authority that manages programs for low income persons, in particular the Section 8 programming and the Housing Choice Voucher program for HUD.
- NCLC: Neighborhood Christian Legal Clinic — A non-profit agency which provides pro bono legal representation and prevention services to low income families. Clients must be at or below 125% of the established Federal poverty level to be eligible for NCLC's services.
- Project GRACE — A program of the NCLC that assists those with criminal histories and increases access to services after incarceration.
- Doubled Up or Couch Surfing — Persons who are staying with family or friends because they lack a regular fixed night time address for themselves and/or their families. Many people who are Doubled Up fail to identify as homeless.
- CHIP (Coalition for Homelessness Intervention and Prevention) — The local Indianapolis agency charged with convening the community around homeless issues and which provides research, data and resources for those groups who work with the homeless and at risk populations.

- **At Risk** — Those persons who are currently housed in a regular, fixed night time location but who are under eviction or disconnect orders, or earn less than 30% of the Median Family Income (MFI) as determined by HUD. This can also include those persons and families who are paying more than 30% of their total income for rent or who have the ability to pay that rent but are one event from being unable to pay it.
- **Homeless** — As defined by HUD, this is those persons in emergency shelters, approved transitional housing (who were previously in shelters) or places not fit for human habitation. Anything else is considered housed under HUD homeless programming (including doubled up and living in a hotel).

Problem Statement

The barriers to those who are or have been incarcerated are very high when it comes to obtaining and maintaining housing. Many who have violent or sexual offenses face even higher barriers because of the location of the housing or the lack of a desire to have them as tenants by landlords and persons who manage properties. Drug offenses are also often cause for persons who would otherwise qualify for and benefit from public housing to be denied access.

Current Practices

1. According to the IHA, the agency is required to enforce admissions policies relative to criminal and drug related activity, which includes not only the applicant but any member of the household who:
 - Has been evicted from Federal housing for drug-related criminal activity
 - Is determined to be actively using drugs
 - Is convicted for the production of Methamphetamine on the property
 - Is required to be a lifetime registered sex offender

This is for a period of the most recent five years from the application date. A person is not required to have a criminal conviction, only to present with a preponderance of evidence that the activity has occurred, to be denied housing.

2. The Department of Metropolitan Development manages three (3) HUD grants that address the needs of those who are homeless or at risk. They are:
 - Housing Opportunities for Persons with AIDS (HOPWA) for those who are HIV Positive or who have AIDS
 - Emergency Solutions Grant (ESG) for those who are at risk or homeless and earn less than 30% of Median Family Income as established by HUD
 - Continuum of Care (CoC) Grant which is used for those who are homeless only and who have a qualifying disability-Serious Mental Illness, Chronic Substance Abuse, HIV/AIDS, Physical/Cognitive impairment or two or more of the above.

Note: Please refer to the homeless definition. HUD considers it the responsibility of the public institution to develop a housing plan that ensures persons are not being released as homeless into the community.

3. NCLC Project GRACE assists those persons for whom a lack of legal services is a barrier to housing. Those can be:
 - Family and consumer law issues
 - Lack of identification
 - Reinstatement of licenses
 - Options to clear their records

There is very little systemic collaboration between agencies that provide re-entry services and other agencies that could provide services to address the gaps in those services currently provided. There are even fewer mechanisms to facilitate relationships with those landlords and providers who are willing to work with high barrier clients. Relatively few agencies are aware of Federal funds available to specific populations and what those requirements (which themselves can be barriers) may be. In a 2007 study conducted by IUPUI and CHIP, just those who were “only” homeless cost the city between \$9 and \$15 million dollars in law enforcement and emergency public health funding. While criminal history is not tracked in the annual point in time homeless count, CHIP reported that 36% of the persons surveyed at the Indy Homeless Connect had a conviction for a crime.

Best Practices

Where re-entry programs are successful, there is a holistic approach to managing that change for the client. At the Delancey Street Foundation project in San Francisco, clients are given basic necessities that include clothing, housing and food as well as access to job training and education with few restrictions so long as they self identify that they need help. The project takes no Federal funds and is a model for how to locate projects successfully in neighborhoods where opposition is high. While the model is “each one, teach one” and it is highly successful in the communities where it is located, the project cannot work with persons who have mental illness or active addictions. In Indianapolis, the Homeless Probation Team and the COT Force work in tandem to provide clients access to housing, drug treatment and mental health help through a collaborative effort and with various funding. They work with IMPD to divert persons from jail or the emergency room where possible. There has been a concerted effort to link housing providers with service providers and the re-entry court, other re-entry service providers and with programs such as those targeting sex workers, persons who are transgendered and those at high risk for HIV/AIDS.

Recommendations

1. Expand access for courts and re-entry programming to collaborate and to apply for/use funding for all eligible activities (For example, Emergency Solution Grants can pay for legal fees and assist with housing search and placement as well as housing case management; there are available funds for demonstration projects on successful re-entry).
2. Map all affordable housing projects including project based Section 8, include locations where there are known schools and other prohibited sites for offenders. All interested stakeholders should have the same information from which to identify resources.

3. Map all the service providers, what services they actually provide (on a comprehensive basis) and provide that information. All interested stakeholders should have the same information from which to work.
4. Where there is the opportunity to do so, begin re-entry planning at least a year in advance. Develop a team approach to providing services, which includes housing, case management, evaluation for risk of homelessness along with the other evaluations. Provide access to the inmate to allow him or her to complete all the applications for housing, insurance, mental health and medical appointments so that on the release date, those papers can be filed immediately.
5. Undertake a public information campaign so that everyone has the same information and resources and there is a “no wrong door” approach. This means that the paperwork is streamlined or pre-assembled, the processes for accessing help at any agency are the same and the information is easy to access for clients AND providers. Anyone should be able to walk into any provider’s location and know what to expect. Work with IDOC to distribute that to incarcerated individuals as part of their release plan.
6. Identify those landlords who will work with those who have violent or sex offenses and work to expand that list. Enlist the landlords who currently house these offenders to put together information about any possible advantages/disadvantages. Assign mentors through the Mayor’s Office of Re-entry so that landlords have a contact person when there is potential for a problem.
7. As part of case management, ex-offenders should be required to complete applicable classes to include Rent Smart and financial literacy as well as AA/NA and anger management as applicable. There should also be a link to the Indianapolis Neighborhood Housing Partnership homeowner program so that those who have achieved long term stability have the opportunity for homeownership.

Conclusion

Persons re-entering communities from jail or prison should be given every opportunity to return to a productive, stable status. As communities all over the country struggle with solutions to effective re-entry, the best programs combine wrap around services and positive re-enforcement with effective monitoring and mentoring. One such example is Texas’ 4C program, which is designed to deal with aftercare on a full-time basis. Created and funded in 2009 by the Texas Legislature, the 4C ReEntry Court is designed to stem the flow of people headed to prison and to ensure they remain drug free and productive neighbors. After a probationer completes a 6-9 month inpatient treatment, they are returned directly to the 4C Court (more details of the program can be found at http://www2.dallasbar.org/members/headnotes_showarticle.asp?article_id=1754).

According to our own research, stable ex-offenders are less likely to reoffend, which allows focus of scarce resources for those who have the most barriers to re-entry. Housing is nationally recognized as a bridge to stability and allows the ex-offender to focus on factors which will further ensure their success. (*Opening Doors, the Federal Strategic Plan to Prevent and End Homelessness; United States Interagency Council on Homelessness (USICH), Executive Summary, page 4*)

Employment

Submitted by John Cocco, Step-Up

Introduction & Key Concepts, Including Definitions & Acronyms

On February 28, 2013 the Commission heard from several different service providers and agencies about employment barriers faced by those with felony records. As part of that conversation, commissioners were introduced to a few specific terms that surround this problem. Among them:

- Federal Bonding Program- A program designed to limit the liability employers face when hiring people with felony records. This program provides federal bonds of \$5,000 to \$25,000 to ensure against theft, fraud, embezzlement, and other criminal actions by the employee with a felony record.
- Soft skills- Skills that pertain to interpersonal abilities, like communication, teamwork, networking, and professionalism that are an important part of finding and keeping employment.
- WOTC- Work Opportunity Tax Credit, a federal tax credit to entice employers to hire people from at-risk populations, including people with federal records.

Problem Statement

People with criminal records are frequently unable to find work, or if they are, often feel forced to take positions that do not provide adequate pay, benefits, or job satisfaction. In a form of legalized discrimination, these men and women are excluded from work they would otherwise be qualified for. For some, this pattern continues even decades after their crime was committed.

Unemployment and underemployment contribute to some of these men and women returning to incarceration, either because they are unable to comply with stipulations of supervision programs, or because they engage in behaviors that violate probation or parole, or result in a new arrest.

Under the provisions of Indiana Code (IC 35-38-9-1 through 10), The Sealing and Expunging of Conviction Records law there is now a comprehensive process for a person to request that past misdemeanor and felony convictions and true findings in the Juvenile Justice system be expunged and sealed. This law, which went into effect on July 1, 2013, provides a process to request expungement and sealing of past criminal convictions and juvenile true findings and it also provides remedies if an expunged and sealed conviction is used to discriminate against the person granted relief. The Equal Employment Opportunity Commission released a guidance in 2012 that informed employers of potential Civil Rights Act violations if they discriminate between candidates based on criminal record alone. This is partially due to the fact that a disproportionate number of minorities have criminal records.

In earlier reports, the commission heard how corrections programming is focusing more and more on correcting antisocial attitudes and behaviors, along with increasing soft skills and other

training to improve marketability. Tools like the Indiana Risk Assessment System (IRAS) are used to measure the risk a person poses to his or her community. Even with these advances, popular notions about “criminals” persist and frighten employers and community members.

Additionally, there are some people with felony records who were unable or unwilling to participate in training or other skill building while incarcerated. Uneducated and undereducated people are at greater risk for unemployment generally, and this risk increases when the person has a felony record. However, education and training are not cure-alls, as there are men and women who have bachelor and/or master degrees from fine schools who are also rejected from positions due to their records.

In summary, having a felony record may seem like a nearly insurmountable obstacle for many who are returning from prison. Even in these difficult economic times, the unemployment rate for people with felony records is significantly higher, even when accounting for other factors. Not only are these under- or unemployed persons unable to contribute fully to the economy, their inability to do so reflects a grave injustice within the community.

What Practices are in Place?

There are currently several different approaches to solving this problem, all containing an element of specifically addressing the needs of these individuals.

- The Indiana Department of Workforce Development (DWD) has hired 12 dedicated re-entry specialists. These specialists will work with employers to determine their willingness, ability, and what traits they desire in applicants who have felony records. Also, DWD is implementing workshops inside correctional facilities to provide training and education, as well as pre-release planning, in order to improve job finding potential. Finally, there is an effort to collaborate with employers and community members to change attitudes about people with felony records.
- PK USA is an example of a private sector approach to solving this same problem. This company had a need for workers and felt that this population would do good work, so they hired them, feeling it was the right thing to do. The company acknowledges there were a few hiccups, and stresses the need for the employees to keep their backgrounds confidential in the workplace.
- A group doing similar work is RecycleForce. This company follows a social enterprise model, where the employees are not only provided work, but are provided with case management services, skills building, and job search referrals as well. However, in this case, all of the employees have felony records, so there is no threat of stigma or discrimination in the workplace. RecycleForce is demonstrating that running a successful business using people with felony records is completely viable.
- Goodwill Industries is also implementing a program that includes both hard skills training and work experience with soft skills education and referral to other services. Following this model of using this labor force to build a successful business while bearing in mind their employees' futures, Goodwill Industries is showing some very positive outcomes even in the short time it has been implementing this model.

- Strive Indy is a federally funded program administered by Volunteers of America. In many ways it is similar to other programs, providing training, employment, and wrap-around case management to people with felony records. However, Strive Indy is geared primarily toward helping women, hoping to eventually serve 225 women and 25 men. What's more, the skills building and job searching embedded within the program will target fields that are not traditionally occupied by women, such as welding, HVAC, and plumbing.
- Finally, the Indianapolis Chamber of Commerce has begun to engage business owners in a conversation about hiring people with felony records. The Chamber recently sent out a survey to its member businesses, which yielded results showing the need for more work in this area. The numbers revealed that most employers are leery about hiring people with felony records. However, there was a low response rate to this survey, so another will be issued and will hopefully have more positive results.

Policy Implications, Including Economic Impact

The policies in place at national, state, and local levels provide few protections for people with felony records. Unlike a few states, Indiana has not adopted sweeping measures like prohibiting employers from asking about arrests and convictions. Additionally, the policies and procedures of work release centers, probation, parole, problem-solving courts, and other supervisory and governmental agencies can greatly inhibit a person's ability to find and keep meaningful work. These policies can hinder other areas as well, such as housing, educational opportunities, or driver's licenses, all of which are important to successful reentry. There were few projections of economic impact as a result of these policies, but the Indianapolis Chamber of Commerce reports employment reductions due to incarceration will cost the GDP \$60 billion per year.

Best Practices

The Equal Employment Opportunity Commission suggests five best practices for helping people with felony records find jobs.

- Eliminate across-the-board policies.
- Develop narrowly tailored written policy and procedure.
- Train managers, hiring officials, and decision makers.
- Do not ask about convictions on job applications.
- When asking questions about criminal records, limit inquiries to convictions for which exclusion would be job-related and consistent with business necessity.

Additionally, the commission heard evidence of several other practices that are yielding positive results.

- Wrap-around case management services- The case manager and the client work with people in different areas of the client's life, such as parole agents, employers, family members, etc., to ensure the client's needs are being met.

- Getting increased training and education. Realizing that there are funds available to obtain education that would provide access to new vocations and opportunities.
- Skills training. Providing certification at the job site in hard skills like forklift driving or welding, while also teaching inter-relational soft skills.

Specific Strategy Recommendations for Marion County, Including Changes in Legal and/or Practical Policy

- Find ways to engage employers and the community on stereotypes and assumptions about people with felony records in a way that will diminish fear and discrimination.
- Prohibit or discourage employers from asking about criminal records.
- Increase ways that people may have their records sealed or expunged.
- Educate business owners about and streamline access to, WOTC and Federal Bonding Programs.
- Provide economic incentives to hire people with felony records.
- Overhaul work release and other community corrections programs to allow them to let the people in their custody find work and gain education with fewer hurdles.

Sentencing Options and Alternatives

Submitted by Andy Fogle, Marion County Prosecutor's Office and John Alt, Marion Superior Court

The law in Indiana requires that every criminal conviction has sentencing consequences that include fines, costs, incarceration and post-conviction and post-incarceration oversight.

Sentencing for a criminal offense is within the sole authority of the trial court and its judicial officer. The Indiana Code (IC) defines the range of sentencing that can be imposed including imprisonment, suspended sentences, fines and cost, probation, community corrections and alternatives to incarceration. For those sentenced to the Indiana Department of Correction (IDOC) on a flat sentence (no suspended time on probation), the Indiana Code requires a period of parole for all offenders that have earned credit time.

Currently Indiana has five (5) types of felony offenses and three (3) types of misdemeanor offenses. Each offense has a defined advisory sentence which can be either increased or reduced depending on factors considered by the sentencing judge. The sentencing ranges are as follows:

Class of Crime	Minimum	Advisory	Maximum	Fines
Murder	45 years	55 years	65 years	\$10,000
A Felony	20 years	30 years	50 years	\$10,000
B Felony	6 years	10 years	20 years	\$10,000
C Felony	2 years	4 years	8 years	\$10,000
D Felony	6 months	1 1/2 years	3 years	\$10,000
A Misdemeanor	0	0	365 days	\$5,000
B Misdemeanor	0	0	180 days	\$1,000
C Misdemeanor	0	0	60 days	\$500

Executed Sentences of no less than the minimum sentence are required by the Indiana Code for certain felony convictions either because of the nature of the crime or if the convicted person has had a recent prior felony conviction.

Problem Statement

It has been demonstrated that sentencing options other than imprisonment or jail for certain types of offender have been very effective in breaking the cycle of criminal activity. It has also been determined that where prisons and jails have effective re-entry programs that can be successfully linked with comparable programs in the community once an offender is released, there is an ability to be effective in breaking the cycle of criminal activity.

It is a continuing challenge to determine what types of programs are effective, which of these programs are presently available to the Marion County criminal justice system, and how additional programs can be implemented.

Practices in Place

The Marion County Criminal Justice system has in place the tools that can assist a court in determining if alternative sentencing options would be appropriate. This includes the required risk assessment instrument and outcome based/best practice programs offered by both government agencies and private providers.

- Indiana Risk Assessment System (IRAS) is an evidence based practice approach that identifies the recidivism risks of offenders and permits concentration of more intense oversight of those offenders at higher risk. The IRAS is currently required to be used by Probation, Community Corrections, and Parole.
- Marion County Probation is the agency tasked with establishing the risk level for review by the courts and for developing possible oversight options for the court. For offenders placed on probation there are programs to assist an offender in re-entry by addressing his or her criminogenic problems including but not limited to job readiness, education, substance abuse, parenting and anger management.
- Problem Solving Courts are established by the Indiana Code and sanctioned by the Indiana Judicial Center to provide courts with the ability to intensely supervise offenders who have been found to have specific criminogenic problems that are considered to be a significant cause of their criminal behavior. Currently there are three (3) Problem Solving sanctioned courts in Marion County. They are the Drug Treatment Court that concentrates on offenders with substance abuse problems; the Marion County Re-entry Court whose goal is to reduce recidivism by assisting them to break through the barriers to successful re-entry while holding them accountable for their behavior; and Community Court that concentrates on offenders who have committed relatively minor offenses and have been shown to have anti-social behavior.
- Mental health is being addressed on a limited basis through the Psychiatric Assertive Identification and Referral (PAIR) diversion program and there is a concerted effort within the criminal justice system to have a certified mental health Problem Solving court.
- Marion County Community Corrections is a county agency regulated and funded for the most part by the Indiana Department of Correction to provide alternatives to incarceration. Originally designed to provide local options for incarceration, community corrections has expanded to include pre-trial, post-trial and post-incarceration options. Among the options available are pre-and post-trial electronic monitoring; work release; technical rule violation programs for non compliant probationers; mental health programming and addictions intervention.

- Agencies that provide resources and services to offenders returning to the community are very important to the developing best practices in addressing the criminogenic needs of these offenders to help ensure a smoother transition into the community. Among those agencies are:
 - ~ Public Advocates in Community re-Entry (PACE) provides service to individuals with felony convictions. These services include Transitional and Pre-release services; pre employment services and; Job Development and placement
 - ~ Volunteers of America of Indiana (VOA) provides offenders services to enhance their physical, emotional, spiritual, and intellectual needs by providing counseling, rehabilitation, job placement, and residential services. VOA provides services in areas of employment, mental health, addiction, anger management and life skills.
 - ~ The Bethlehem House provides service for offenders, including individual counseling; case management; support groups; relapse prevention; life skills and vocational information
 - ~ Recycle Force provides workforce training and employment opportunities for formerly incarcerated offenders.

Best Practices

Best practices and outcome based practices are what all agencies in criminal justice strive for in providing oversight and making services available for offenders to address their criminogenic needs.

A coordinated effort with intense oversight of offenders in both post conviction and post incarceration settings has been found to be the best practice in providing offenders with the tools and opportunity to strive for success. Often times there are effective programs in one jurisdiction of criminal justice oversight that are not or cannot be continued when an offender enters into another jurisdiction (e.g., when people transfer from the Marion County Jail to IDOC).

Additionally, an offender on probation or community corrections programs have obligations both court ordered, required by probation and/or community corrections that present obstacles for the offenders in trying to obey the rules and reestablish themselves in the community. These programs work best when they can be coordinated through comprehensive case management and a coordination of requirements placed upon the offender.

Specific Strategies

Among the specific strategies that have been presented to the Commission that could assist in eliminating confusion and contradictions placed in front of offenders:

- Permitting offenders to take the time to receive training to qualify for jobs that will provide a living wage rather than forcing offenders to take “dead end” jobs that do not permit offenders to meet their obligations.
- Encouraging a more coordinated effort with Probation and Community Corrections to minimize the conflicts for those offenders who are working and still required to make court appearances and undergo court ordered testing, meetings and appointments.
- Establishing a coordinated database that will permit all areas of criminal justice to have “real time” access to resources necessary for successful re-integration into the community (e.g., therapeutic programs, drug-treatment, etc.).
- Improving coordination with agencies dealing with offenders’ fiscal requirements, both in their criminal cases and other obligations such as child support and traffic fines.
- Improving coordination with agencies in areas of health services, mental health services, addiction services, education and other services.
- Encouraging the development of more comprehensive “problem solving courts” within the criminal justice system to permit more intense oversight of criminogenic needs of offenders especially in the areas of mental health and addiction.

Policy Recommendations

The following pages include a summary of the policy improvement opportunities that were identified by the Re-Entry Policy Study Commission. In addition to the topic specific recommendations described in the preceding policy topic discussions, the Re-entry Policy Study Commission members identified 26 policy improvement opportunities and ranked them based on perceived effectiveness, risk factors, complexity to implement, and other factors. Those broader policy recommendations are outlined on the following pages.

Policy Improvement Opportunities

After consideration of the challenges and opportunities related to re-entry, the Re-entry Policy Study Commission recommends the following:

- A. The Probation Department should seek to promote and protect the employment of ex-offenders by significantly limiting work interruptions for mandatory probation requirements, including but not limited to: drug/alcohol testing, meetings and appointments with re-entrants who are employed and under correctional supervision during their scheduled work hours. For these working re-entrants such requirements should be scheduled at times that occur during reasonable and accessible intervals before or after a re-entrant's scheduled work hours.
- B. The City-County Council should designate an implementing organization to support and catalyze the development of a comprehensive housing program with municipal agencies and area Community Development Corporations (CDCs) to make municipally-owned empty housing stock available for fix-up and rent, or purchase by those who are financially qualified and have undergone home-owner training as described in Policy Initiative E.
- C. The Council should coordinate with the Greater Indianapolis Chamber of Commerce (Indy Chamber) and related agencies on the development of national evidence-based data into informational material for dissemination to area businesses, financial institutions, housing providers, etc., to provide accurate information about hiring, housing and other business interactions, of re-entrants. This material also should provide information about tax benefits and other incentive programs currently in place to encourage the hiring of ex-offenders.
- D. The City of Indianapolis (City) administration and Council should establish comprehensive guidelines for selection of grant recipients to serve the re-entry population. The guidelines should be based on national evidence-based best practices and should be used during the administration of such funding.
- E. The Council should designate an organization to monitor the implementation of programs and initiatives originating from this Re-entry Policy Study Commission (Commission). The organization should use best practices to identify measures of success for each program and recommendation, provide quarterly status reports to the Council President and present an annual progress report to the Council.
- F. The implementing organization should develop Re-entry/Transition Packets and electronic materials for distribution to correctional institutions and incarcerated individuals. The packets should contain, at a minimum, information targeted to re-entrants on available and fully vetted (see Policy Initiatives O. and P. below) social service agencies, housing and employment opportunities, public transportation options, and resources on treatment and counseling services.
- G. The implementing organization should engage and coordinate with the Indianapolis Housing Agency (IHA) and the local office of the Department of Housing and Urban Development (HUD) to create a system to update arrest dismissal information in order to improve access to housing opportunities for re-entrants wherever possible.

- H. The implementing organization should coordinate with Probation, the Department of Public Safety (DPS) and Indiana Department of Correction (IDOC) to oversee the development of a comprehensive and coordinated database for local and state correctional agencies to track a re-entrant's legal status, current obligations and legal history. This database shall be accessible to all correctional agencies. Limited access will be available to re-entrants who seek to access their own personal records for the review of their personal histories.
- I. The City's grant management contract should require that the grant evaluation processes of the City-provided re-entry grant funds be in alignment with the Commission recommendations and policies as scoring criteria.
- J. The implementing organization should facilitate coordination between all municipal government correction-related agencies on re-entrant fiscal issues such as support payments, probation fees, traffic fees, etc.
- K. All City and County agencies (except those directly related to public safety and law enforcement) should eliminate all questions about past and current legal issues and offenses from employment application forms and during first interviews (also known as "Ban-the-Box").
- L. State and local government correction-related agencies should provide a continuum of care for re-entrants, to create a system for improved access to health, mental health and medication history of all offenders with statewide criminal justice agencies and vetted (see Policy Initiative E.) social service providers in order to ensure the well-being of re-entrants. The undertaking should ensure that the highest standards of data protection, in accordance with HIPAA, are maintained.
- M. Commission designees should engage and coordinate with the Indianapolis Housing Agency (IHA), the local office of the Department of Housing and Urban Development (HUD), and the state Family and Social Service Agency (FSSA) to review state and local policies that restrict re-entrants access to government-assisted housing and benefits programs.
- N. State and local government correction-related agencies should review the regulations, statutes and procedures governing programs at work-release facilities to ensure such programs work to promote the success of re-entrants in areas including, but not limited to, the fees charged, timeline requirements for obtaining employment, determining job assignment priorities, etc.
- O. The implementing organization should work with criminal justice agencies to assemble a comprehensive resource publication that provides information about all wrap-around and social services available to re-entrants.
- P. The implementing organization should establish a set of evidence-based best practices and standards for social service providers receiving City or County funds. The standards should require agencies receiving City or County funds to demonstrate consistent use and application of these practices/standards. In addition, the guidelines should include actions that will be taken if the grantee is found to be intentionally negligent.
- Q. The Council and City Administration should review and evaluate current incentives offered to employers hiring re-entrants.
- R. Commission designees should assemble evidence-based best practices about alternatives to incarceration and should work with state and local judiciaries to encourage alternative sentencing guidelines where the preponderance of data indicates its benefit.

- S. The Courts and other criminal justice agencies should promote, implement and expand the use of Restorative Justice programs county-wide.
- T. Commission designees should work with IDOC and the Indiana Bureau of Motor Vehicles (BMV) to create a provisional driver's license for qualified drivers who are soon to be released from incarceration or, where not practical prior to release, as soon as possible after release.
- U. The implementing organization should seek funding to retain and sustain the Access to Recovery program.
- V. The Council, with support from the implementing organization, should coordinate with state and federal legislators and commission designees to advocate for changes to existing laws governing funding and opportunities for housing, education, employment, finances and social services to remove barriers to successful re-entry.
- W. Commission designees should work with Marion County Probation, Community Corrections and IDOC to review fee schedules and evaluate whether such fees and/or amounts are constraints to the re-entry process.
- X. Has been integrated into recommendation H.
- Y. Commission designees should seek funding to establish treatment option(s) to provide for low cost walk-in addiction assistance, secure lockdown for detoxification, and mental health assistance.
- Z. Commission designees should seek funding to increase secondary and post-secondary educational opportunities for offenders during their incarceration.

Measuring & Reporting Progress

The Re-Entry Policy Study Commission is committed to identifying tangible, measurable indicators of progress for the implementation of the recommendations. Council leaders will continue to work with community partners to develop these measures and the process for reporting progress to policy makers and the public.

The Commission recognizes that identifying policy changes is only the first step and that a full cycle of problem resolution requires a plan and initiation of implementing the policies. Toward that end, the Commission has identified subject matter experts and re-entry community leaders to lead the efforts and shepherd the implementation of each recommendation and policy improvement opportunity. Under the oversight of the Indianapolis Marion County City-County Council, these leaders will report periodically to the City-County Council about the status and improvements realized as a result of these efforts.



AMERICAN INSTITUTES FOR RESEARCH®

September 18, 2013

Ms. Mary Allen
Indiana Criminal Justice Institute
101 West Washington Street - Suite 1170, East Tower
Indianapolis, IN 46204

RE: Assessment of Local Fiscal Impact of Indiana HEA 1006

Dear Mary,

With this letter, I am providing you with our response to the request from the Criminal Law and Sentencing Summer Committee Working Group for a study to assess the local fiscal impact of HEA 1006. I am enclosing a Scope of Work for the project, a budget, and a detailed budget narrative. Let me know if you will need additional information from us as you prepare the contract.

I have spoken with Josh Ross and we will be including some of his staff to assist with the work on this project. That assistance is going to be important in helping us complete the work of this project and submit a final report by December 31, 2013.

I have also forwarded to the corporate headquarters of the American Institutes for Research (AIR) the request from Gabriel Paul to register as a vendor with the State of Indiana.

Please contact me if there are any questions at (317) 408-9274 or by email at rjarjoura@air.org. We are looking forward to the work we will do on this project and the impact it may have on criminal justice reform in Indiana.

Sincerely,

G. Roger Jarjoura
Principal Researcher

Proposal to Criminal Law and Sentencing Summer Committee Working Group

Scope of Work

Submitted by: American Institutes for Research

Goal: Assess the fiscal impact of proposed House Enrolled Act (HEA) 1006 on county-level corrections, probation, community corrections, treatment programs and public safety professionals.

Researchers from the American Institutes for Research propose the following project to achieve this goal. This is an outline of the components we seek to include. Completing this project within the window of time that we have identified (September-December 2013) will be contingent on immediate access to the data and a contract with the funder so we can proceed with the work.

Task 1. Quantitative Analysis (for all counties)

1. Data from the Indiana Risk Assessment Systems (IRAS) that would allow us to get estimates of the scope of the need for substance abuse and mental health treatment in each county.
2. Data from IDOC that shows the proportion of offenders entering prison that present the need for substance abuse and mental health treatment—allowing us to get an estimate of the scope of the impact of legislative changes on treatment needs in the community. This will be supplemented by data from the abstract of judgments. Combining data from IDOC and the IRAS should allow us to see the relative balance of treatment needs for those on probation vs. those committed to IDOC.
3. Data from State Court Administrator's Office would allow us to get estimates of the probation revocations over the past year and to make projections based on proposed legislative changes.

Task 2. Cost Projections for Evidence-Based Treatment

1. Based on assessment of research on effective substance abuse and mental health treatments in community-based settings
2. Based on assessment of research on effective probation/parole strategies that demonstrate reductions in recidivism
3. Incorporating what we learn about scope of need from quantitative analyses in Task 1

Task 3. Assessment of Jail Reports (all counties where data is available)

1. From the reports submitted to the Sheriff's Association, we will assess:
 - a. Population vs. capacity
 - b. Costs associated with health care and treatment
 - c. Available treatment programs for addictions, mental health or behavior
 - d. Reasons for incarceration in jail—relative use of jail space for warrants vs. new offenses
2. Where there are gaps in the reports, we will reach out by phone to the Sheriff's Department to gather information

Task 4. Surveys (all counties—although voluntary participation)

1. Using Survey Monkey, we will design a survey to assess the available treatment options at the local level in each county
 - a. What services are being used?
 - b. How are the services funded?
 - c. What are the costs for the services?
 - d. How many clients may be served annually with current services?
 - e. What gaps are there in treatment programs?
2. The survey would be distributed to representatives in each county from probation, community corrections, and the prosecutor's office. We will also seek to survey representatives from community mental health centers in the local communities.

Task 5. Focus Groups and Key Informant Analyses

1. We will select 11 counties (more than 10% of 92 counties, and likely to represent between 25-50% of offenders in state). We took guidance from the members of the Working Group that are serving as advisors to our project to select the counties.

Our preliminary list is as follows: Allen, Decatur, Grant, Greene, Hendricks, Lawrence, Marion, Monroe, Parke, St. Joe, and Starke

We also identified the following alternates (in case it is not possible to include some from the preliminary list): Daviess, Scott, Tippecanoe, and Wells

2. One trip to each county for a series of focus groups
3. Phone or in-person interviews with key informants
4. Questions for focus groups and key-informant interviews:
 - a. Will HEA 1006 impact the number of people on probation?
 - b. Will the state or county need to increase or decrease the number of probation officers and what will it likely cost?
 - c. What is the likely impact on the jails—crowding, safety issues, medical care, treatment?

- d. How do we expect the workload on police, prosecution, defense attorneys, judges to be affected?
- e. Is it likely or unlikely that HEA 1006 will increase the number of participants in community corrections programs, and what are the likely costs?
- f. Do we expect the new law to impact victims? How?
- g. How will indigent defendants fare under the new statutes?
- h. What impact, if any, will HEA 1006 have on Indiana's current system of parole?

Task 6. Report to Working Group and Indiana Criminal Justice Institute

1. We will complete data collection by November 30
2. We will make a preliminary presentation of findings by the second week in December and invite discussion and feedback from the members of the Working Group
3. Final Report Delivered by December 31. Key Questions to be addressed in this report:
 - a. What is the scope of the need for effective treatment options at the local level across the state?
 - b. Can we estimate the fiscal impact on the local jurisdictions due to:
 - i. Shifting of treatment and management of offenders from IDOC to local jurisdictions
 - ii. Given recent evidence on recidivism and probation/parole revocations, what are projections for costs associated with criminal justice and community resources based on a variety of potential scenarios that emerge from the focus group discussions
 - c. What are some evidence-based programs that have been shown in other jurisdictions outside of Indiana to be effective?
 - i. What would it cost to successfully import these programs to local communities in Indiana?
 - ii. What kinds of fiscal resources are going to be required to deliver the level of programming to make a difference in reducing recidivism across the state?



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Proposal

Developing a Correctional Simulation Model To Assess the Impact of HEA 1006

Submitted by:

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Tammy Meredith, Ph.D.

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Development & Deployment of an Indiana Correctional Simulation Model

The Indiana legislature began the process of major criminal justice reform in its 2013 session – restructuring the criminal code for felony offenses and changing the state policy for allocating prison good time and program credits. The following proposal outlines a plan for Phase 1 of assessing the fiscal impact of the passage of House Enrolled Act (HEA) 1006, which will take effect July 1, 2014. Phase 1 will assess the fiscal impact of HEA 1006 on the state prison system. To complete a comprehensive assessment, Phase 2 will require an assessment of the impact of HEA 1006 on local government, to include county jails, probation, community corrections, parole, prosecutors/public defenders and local treatment providers.

Many jurisdictions face the daily challenge of avoiding a prison-crowding crisis. Their policy makers have two options: (1) to predict, fund, and build adequate space for their impending demand, or (2) take the necessary policy or legislative steps to reduce the number of inmates entering prison and/or reduce how long inmates stay. Complicating the debate is the fact that prison populations vary naturally over time for a number of reasons: changes in prison admission patterns, changes in the demographic make-up of offenders (particularly age and ethnicity), changes in sentences imposed by judges, changes in resource allocation and prison capacity, and annual legislative changes to criminal sanctions.

Together, these factors interact in a dynamic system that complicates the efforts of planners to manage the growth of prison populations – ensuring prison beds are in place at the time beds are needed. Building too many prisons can be a costly investment, while building too few prisons can be a costly mistake that typically results in extensive social and legal costs (federal law suits). To assist in making such critical policy decisions, public policy planners are turning to simulation technology borrowed from the engineering and operations research world. Advances in simulation technology in the manufacturing, transportation, computer science, health care and service sectors provide the knowledge base to enhance rational criminal justice planning through simulation.

The proposed project will result in a customized discrete-event simulation software application to mimic the flow of offenders into, through, and out of the Indiana judicial and correctional system. The simulation model will provide the ability to analyze the impact of changes in operating policies, sentencing practices, release practices and external system pressures on the system. The model offers an experimental, risk-free environment for policy makers to test different “what-if” scenarios to quickly assess the potential impact associated with complex policy decisions or changes in criminal sanctions. This includes, for example, the projected impact of criminal code revisions on institutional bed space, correctional alternatives, resource allocation, prison admissions and commitments. In addition to modeling prison bed space needs, the model will support ad hoc amendments to the underlying logic in order to support future modifications, expansions, or system changes, as well as support decisions as existing data improves or new data becomes available.

Simulation Model Objectives

The simulation model goals and objectives will be clarified and expanded during the model conceptualization phase at the beginning of the project. While Phase I work will focus on the prison system, the proposed simulation model will be built with several overarching objectives:

1. Determine the state and local correctional resources required under current laws, policies, and practices related to criminal penalties (sentencing), release practices, community supervision, and other constraints stemming from policy or legislative changes.
2. Allow Indiana to determine whether legislative recommendations exceed existing correctional capacity and assist the state in identifying the correct mix of sanctions to optimize existing or planned correctional resources.
3. Assess the impact of proposed policy changes on Indiana courts and correctional resources, such as amendments to laws affecting sentencing, changes in projected prison commitments, changes in time-served practices, and changes in supervised release and revocation policies.
4. Mimic the flow of "individual" offenders from sentencing through the correctional system, including prison and other alternatives. This model is designed to mimic the differential impact on prison bed space associated with different sentencing scenarios.
5. Project all identified correctional populations by offense, admission type, and offender characteristics (gender, age, criminal history), and other identified characteristics for up to 5 years into the future by month and year or other user defined time periods.
6. Permit the end-user to expand the model to include new intermediate sanction program populations, further breakdowns of the basic probation population (risk supervision levels), and/or prison populations breakdowns (mental/medical health problems, HIV, maximum/medium/minimum security inmates).
7. Permit the end-user to conduct "what if" (simulated) scenarios based on a wide range of easily adjustable policy parameters.
8. Provide the user with a financial module to compute the costs (\$) associated with different scenarios.
9. Permit the end-user to conduct multiple trials *automatically*. The model will be capable of running hundreds or thousands of independent simulations, capturing the results for each trial. This will provide the end-user with 95% or 99% confidence intervals for user-defined model parameters. This allows for the examination of the *sensitivity* of the model to changes in the random variables.

10. Permit the end-user to work *backwards*, identifying system parameters that optimize limited resource allocations. The optimization module runs the simulation multiple times with different parameters to find a good combination of values that meets a user-defined goal (such as the optimal number of prison admissions required to ensure that the overall prison standing population never exceeds a set value). Neural network technology provides the capability to quickly identify the optimal combination.
11. Provide the user with the capability to direct the projection output to MS-Access, MS-Excel, or Crystal Reports depending on user preference and reporting needs. Projection output will include, but is not limited, to offense, offense group, matrix cell, gender, age, county/court, custody level, LSI scores, intermediate sanction, and other user defined outputs.
12. Allow the user to import new baseline data from any format (SQL-Server, Oracle, MS-Access, ASCII, or Justice XML).

Defining Simulation

Simulation is the imitation of the operation of a real-world process or system over time (Banks, Carson, and Nelson, 1999). A simulation model consists of a set of assumptions concerning the operation of the system that are usually grounded in historical observations and data. These assumptions are expressed in the model as mathematical, logical or symbolic relationships between the entities moving through the system (offenders) and their interaction with decision processes in the model (Banks, Carson, and Nelson, 1999). These models, once completed and validated, provide the analyst with a risk-free, experimental platform to investigate a wide range of “what if” scenarios, assessing the impact of policy changes on system processing times and resources. Investigators can manipulate the system to predict the potential impact such changes would have on actual system performance. Simulation can be used to evaluate different systems while still in the design phase to test the efficiency and performance of competing system designs under different operation conditions.

Discrete-Event Simulation: Emerging Trends in Criminal Justice Simulation

Simulation models fall into three distinct model types: discrete-event, continuous, and hybrid models. A discrete-event system is one in which the “state” of the system only changes at discrete, albeit random, time points, referred to as event times (Schriber and Brunner, 1998). For example, the number of inmates in a prison system represents a discrete system state variable that changes with each new discrete event – arrival or departure of a new inmate. Conversely, a continuous system is one in which the state variables change continuously over time. Banks et al. (1999) use the head of water behind a dam as an example of a continuous system. Water is continuously moving into and out of the lake behind the dam, thus causing a constant but continuous change in the water level. Water level changes represent continuous events not individual, discrete events.

For applications in criminal justice, discrete-event models best describe the system under study. The reason discrete-event simulation models are popular is their ability to model any transaction-based system where units of traffic or entities (offenders) that utilize system resources move (flow) from point to point in the system (Schriber and Brunner, 1998). Therefore, discrete-event

models are commonly found in the manufacturing sector, aviation, computer and telecommunications, health care, financial planning, environmental planning, transportation, and other areas where analysts want to model the flow of entities through a system.

What are the Advantages of Discrete-Event Simulation?

Banks (1998) enumerates a number of advantages to discrete-event simulation, many of which are particularly important for criminal justice applications:

1. Maintains unique offender identities. Discrete-event simulation models maintain the unique identity of all offenders. As offenders move through the system, offender attributes or variables (demographics, prior criminal history, current offense, risk level) move with the offender from point to point in the system. This feature accrues a number of benefits. First and most importantly, this level of detail about individual offenders in the model provides the ability to implement any rule-based system regardless of complexity, such as determinate, indeterminate, or guideline-based sentencing models. More specifically, it is possible to implement thousands of hierarchical decision trees, probability distributions, and complex rule structures to mimic the actual flow and decisions that form the decision-structure of the criminal justice system. Second, since discrete-event simulation models maintain the identity of every offender, it is possible to examine population characteristics at any time during the simulation run of any population (jail backlog, prison, probation, parole) or capture the population characteristics at different points in time to assess the changes over time.
2. Allows stochastic processes. Discrete-event simulation models provide the ability to introduce a random or "stochastic" process anywhere in the model using the most appropriate continuous or discrete statistical distribution. For example, in two existing software applications used in criminal justice population projections, many model parameters are treated as constants because the model does not support random variables at key decision points. To illustrate this point, consider the probability of receiving a probation or prison sentence. In most cases, analysts are forced to treat this probability as a constant (one probability value for all cases). However, in jurisdictions without mandatory sentencing guidelines, this probability will likely fluctuate over time within a specified range. Discrete-event models allow the analyst to introduce real world randomness at any place in the model. Moreover, discrete-event simulation provides the ability to incorporate time-dependent probability distributions. Such distributions represent situations where the analyst wants the model to automatically change the probability distribution depending on the time-period. It is possible that judges are more likely to sentence an offender to probation if the jurisdiction is faced with a jail-overcrowding problem. Under such conditions, discrete-event models can monitor the local jail census during the simulation run while automatically changing the sentencing parameters to reflect this time-dependent pressure on the system.
3. Allows multiple trials. Discrete-event simulation allows the user to test every aspect of a proposed policy change. In a stochastic model, one simulation run will produce one set of results based on one draw from one random number stream. If a second run is conducted, another random number set is used, thus producing a second set of results. The concept behind simulation is that automatic repeated trials (multiple runs) will cover all highly

probable outcomes while providing the user with the ability to test the sensitivity of the model.

4. Allows manipulation of time. By compressing and expanding time, analysts can speed-up or slow-down a process in order to study the system thoroughly.
5. Expands system knowledge. Reconstruction of the system, coupled with repeated runs of the system over time, assists analysts in understanding why certain events occur in the system.
6. Allows system experimentation. Discrete-event simulation allows the user to assess the impact of new policies on system resources, processing times, and the potential for bottlenecks without incurring the expense or time in experimenting with the actual system. Given the complex inter-relationships among system parts, experimenting with the simulation model provides the ability to detect and identify potential problem areas that may be masked by other system events.

Simulation Software

Today, simulation software falls into two general categories. The first category consists of general-purpose, high-end programming languages (e.g., SIMAN) similar to C++. These programming languages demand extensive in-house expertise and knowledge of computer simulation architecture and design. Such languages serve as the programming backbone for commercial-off-the-shelf packages, or they are used to build specialized models in high-end simulation environments (e.g., Department of Defense).

The second category consists of commercial-off-the-shelf software structured for end-users to design, build, and operate simulation models without extensive knowledge of computer simulation architecture (e.g., Simul8[®], ProModel[®], ARENA[®], Witness[®]). These packages often come with user-friendly interfaces and an internal programming language that facilitates design and programming. For the current project, Simul8 will serve as the core application within a larger customized Visual Basic application.

Selected Simulation Software Package

The proposed project will rely on Simul8[®] Enterprise Edition as the commercial off-the-shelf simulation platform. Simul8[®] was selected for several reasons:

- ARS has experience in building criminal justice-related models in Simul8[®] and has firsthand knowledge that Simul8[®] can handle all modeling problems, issues, and functionality needed to support the proposed simulation goals and objectives.
- Simul8[®] has an open architecture and is thus compatible with all Windows-based applications, such as Excel and common enterprise-wide databases and programming languages, such as Access, Oracle, SQL server, and Visual Basic. Simul8 can also operate within Visual Basic programs or front-end applications.

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- Simul8® has an easy-to-use internal programming language (Visual Logic), making it easy for the end-user to make ad hoc changes to the underlying logic without specialized training.
- Simul8® is an internationally recognized software application with an extensive network of trainers, consultants and on-line support, ensuring that Indiana agency staff will always have access to national/international experts and training if the need arises.
- Simul8® has all of the functionality of other, more expensive simulation packages. In fact, the principal architect and designer behind Simul8® was the chief software engineer behind Witness®, a high-end, AT&T simulation product.
- Simul8® supports a Business Viewer application (similar to Adobe Acrobat) that allows users who do not own Simul8® to run and operate simulation models or to run the model *on a web* site.
- Simul8® supports 25 continuous and discrete probability density functions, as well as the technical capability to sample from actual data stored in an internal spreadsheet if existing distributions do not fit the data adequately.
- Simul8® Enterprise Edition is significantly less expensive than competing products, making upgrades or multiple licenses affordable for government agencies.
- Simul8® offers a built-in financial/budget module that captures budget information at every decision point and asset in the model.
- Simul8® offers a high-end neural network technique to build optimization models whereby the user defines the desired outcome (keep prison population under a certain level) and the model searches for the best combination of defined input variables to achieve this goal.

The reader is encouraged to view the Simul8® web site at www.simul8.com/demos. For the user to run the simulation engine on-site, Simul8 Profession Edition is required (\$4,999).

Proposed Model Functionality: Example

The purpose of this discussion is to demonstrate potential model capabilities, building blocks, and model functionality. This discussion is not a description of the Indiana model blueprint. The final model architecture will depend on additional IPAC and DOC needs, specific functional requirements, and other goals and objectives identified during the concept/development phase of the project. The following paragraphs offer an example of capabilities available using Simul8 as the simulation platform, including system modules, inputs, objects, proposed routing, and external data files. The models can vary in complexity depending on user specifications. As an example, the Georgia simulation model, a relatively mature system, models the current indeterminate system and the proposed sentencing guidelines, as well as various correctional options.

Module 1. Commitments

The Commitment Module is where offenders enter the criminal justice system as a new court commitment to prison. A new court commitment is an offender who is receiving a new sentence for a crime, and who is currently not on probation or parole at the time of sentencing. The purpose of the commitment module is to meter the flow of offenders into the model based on admission projections. The proposed model depends on DOC to identify one or a series of admission projections based on seasonality, growth models, or ARIMA. These projections can be stored in an Excel spreadsheet or the model. The proposed model can support any set of user-defined projections, such as daily, weekly, monthly, or annual projections. However, daily projections appear to be the most popular.

Missing Data: Combining Micro-simulation with Simul8 Probability Distributions. DOC will probably face situations where the micro-data file is missing key defendant information that is under legislative or policy consideration. Such missing information, for example, might include weapon-use, specific drug or drug amount, presence of past convictions for specific offenses, or other data that may not be part of the historical database. In fact, the only data available may be limited sample data, anecdotes, or aggregate records. In such cases, the Commitment Module can estimate such missing information using sample data and appropriate statistical distributions. For example, suppose DOC is considering special sanctions for methamphetamine manufacturing where children were present in the home. In these cases, DOC could rely on sample data or law enforcement reports and the micro-data to construct statistical distributions to estimate the prevalence of these cases. These estimates could vary by offense, age, sex, race, criminal history, or other relevant factors that increase the accuracy of the estimate.

Module 2: Sentencing

After the Commitment Module produces a commitment, the next step in the process is assignment of the offender's disposition and prison term. Using the micro-data file, the Sentencing Module can test any proposed policies, including changes in penalty structure.

Depending on data availability, defendants can be routed to different non-prison options, including drug courts, home detention, probation, community service, probation, specialized probation caseloads (IPS), residential treatment programs, or other correctional or non-state programs. Using the sentence data available in the micro-data file, coupled with sample length-of-stay data that are available, ARS will build models in Phase 2 that estimate the impact of legislative recommendations and policies on these non-prison programs, including annual admissions, releases, and standing program population.

Module 3: Time Served

Although time-served data is not readily available for all inmates, ARS will work with DOC to estimate length-of-stay using existing aggregate data and specific legislation and policies dictating time-served requirements for specific defendants. Of course, these time-served estimates will incorporate information on any jail credits available in the micro-data file. Using aggregate data and other techniques, the simulation model will be tested and validated to determine if such

length-of-stay estimates are consistent with historical data (e.g., annual aggregate prison releases).

Module 4: Correctional Population Buffers

In Simul8[®], correctional population buffers are referred to as "storage bins." Offenders remain in these bins until their individual time-to-serve value expires (referred to as "shelf-life" in Simul8[®]). Upon shelf-life expiration, the offender moves to the next decision point in the model. If the offender spent 100% of his court-imposed sentence in prison, he will be discharged to the Alumni storage bin. If the offender is released early (prior to 100% time served), he moves out of the system. Simul8[®] does not impose any limits on the number of offenders serving time in a storage bin or in the number of storage bins in the model. It is possible to specify as many intermediate programs as necessary or implement different prison population bins to represent inmate security classification levels (maximum, medium, minimum) or specialized inmate populations (mental or medical beds). In some cases, it may be necessary to route released inmates to other correctional programs, including probation (split sentences) or parole.

Module 5: Release

The Release Module represents the mechanism for controlling release from prison. Depending on the model, Simul8[®] permits multiple release policies to be in effect simultaneously, with each policy tailored to individual offenders or groups. This is typically found in systems where inmates are sentenced under different statutes or sentencing. The following list highlights selected release policies that can be in effect simultaneously for any combination of offender characteristics (offense, year convicted, habitual offender, guideline scores, etc.):

- Expiration of court imposed sentence
- Release based on percent (%) of time served
- Release based on minimum time (months) served
- Release date set with sentencing or parole guidelines
- Release dates set based on prison operating capacity and inmate characteristics

This flexibility allows the user to replicate a system under transition where the prison population is likely to have inmates sentenced under several sentencing policies, or incremental or delayed implementation of new guideline policies.

Ad-Hoc Amendments to Underlying Simulation Model Logic

The criminal justice system is constantly changing which dictates that the proposed model is amenable to end-user initiated amendments to the underlying model logic. As Indiana considers different reforms, it is essential that agency staff can make ad hoc changes to the simulation application without the need for additional consulting contracts or technical assistance. Therefore, the following paragraphs provide an overview of Simul8[®] building blocks and the technical knowledge and work required to make model changes.

The proposed Simul8[®] model is not designed like other products that may consist of C++, FORTRAN, or SIMAN simulation programming code. In those products, it is impossible, even with extensive knowledge of the language, to decipher the source code given the proprietary

nature of the internal logic, algorithms, sub-routines, and overall design structure of the model. If developers provided the source code, which is unlikely, it would take considerable time and assistance from the developers to modify the model. Simul8[®] is designed to accommodate ad hoc amendments to a simulation model. Simul8[®] provides the user with drop-down dialog boxes, menus, and an easy-to-understand end-user programming language (Visual Logic) to make model changes. Adding such features to the model may be undertaken in Phase 2.

Front-End Data Importation & Preparation

The proposed model will use MS-SQL 2008 Desktop Engine to import and restructure the Indiana correctional (DOC) data to supply the simulation engine with required data, including admissions, stock population, time-severed statistics, & revocation statistics. MS-SQL 2008 Desktop engine is freely available from Microsoft and has no initial or recurrent licensing fees. This product serves as a local (desktop) engine to handle all pre-simulation data manipulation.

Phase 1 Simulation Model Development

ARS follows the recommended steps to guide the model development phase (Banks, 1999; Ulgen et al., 2000). These steps, followed rigorously, ensure the project stays on course and will lead to a validated, fully-tested simulation model. This development consists of several key phases.

Setting Objectives

1. Issues to be addressed (not contained in the IPAC Scope of Services)
2. What is the operating philosophy (who/how/where users will interact with the model)?
3. System/process description
4. Model assumptions
5. Model boundaries
6. All inputs/outputs
7. Level of abstraction
8. Critical decision points

Model Building (Pre-Computer Programming)

1. Estimate life-cycle of the model
2. Estimate number of component models contained within the larger model
3. Identify all exogenous and endogenous factors driving system/process
4. Determine the animation requirements
5. Determine the level of data available and what data are needed
6. Determine the audience and skill level
7. Decide where/how continuous/discrete distributions will augment micro-simulation data
8. Determine the level of detail needed to describe the system components
9. Determine the statistics collection system in the model and communicate this information
10. Describe the process in detail
11. Collect and Analyze all input data
12. Identify any missing data requiring statistical estimation
13. Prepare detailed model functional specifications for TDOC review and acceptance

Model Translation & Verification – Converting the Concept into Simulation Code

1. Using a conceptual model, build an operation model using Simul8 visual logic language
2. Construct flow diagrams as needed
3. User modular simulation modeling techniques
4. Use proper naming conventions
5. Use structured programming techniques

6. Document the model code as the model is built
7. Walk through the code with TDOC
8. Test the code in modules using sample data

Validation & Experimental Designs

The validation phase determines whether the model is an accurate representation of the system/process. This phase will take place in close collaboration with DOC to subject the model to various experimental conditions, such as running projections with historical data. The object is to subject the model to hundreds of different hypotheses stating how the model should respond/ behave to different inputs and analyzing the results to determine if the model performed as expected.

Phase 1 Deliverables in 4-Month Timeline September 1 - December 31, 2013

1. Finalize prison model boundaries, decision-points, and desired reporting while ensuring that DOC has provided ARS with all required data.
2. Analyze DOC data and existing Indiana legislation and parole board policies to identify minimum (non-discretionary) release eligibility rules for Indiana inmates serving time in local jails or in state prison.
3. Program MS-SQL front-end to import and analyze DOC data and prepare data to supply simulation engine with required data.
4. Begin model testing & validation phase and provide data detailing validation findings.
5. Based on initial model tests and validation results, ARS will change the model and/or underlying input data to remedy identified problems.
6. Prepare and present official impact assessment findings to the Legislative Study Committee.

Phase 1 Fixed Fee Cost

\$95,000

Statewide Simulation Models Built by ARS

- Alabama Sentencing Commission
- Canadian Research Services
- Georgia Department of Corrections/Office of Planning & Budget
- Pennsylvania Department of Corrections
- Pennsylvania Board Probation and Paroles
- Pennsylvania Sentencing Commission
- South Carolina Sentencing Reform Commission (for The Pew Charitable Trusts)

Applied Research Services, Inc. (ARS)

"turning data into decisions"

- Tennessee Department of Corrections
- Missouri Working Group (for The Pew Charitable Trusts)
- Maryland Sentencing Commission

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IPAC Report on Advisory Sentences and Suspendability of Sentences

Criminal Law and Sentencing Policy Study Committee

Thursday, September 26, 2013

MISSION

Study and Make Recommendations Concerning:

I. ADVISORY SENTENCES
HEA 1006 --Section 683 (a)(2)

II. SUSPENDABILITY OF SENTENCES
HEA 1006 00 Section 683 (a)(3)

AGENDA

I. Advisory Sentences

- i. Current Code
- ii. HEA 1006
- iii. Proposal – Public Safety Priorities

II. Suspendability of Sentences (Prison Terms)

- i. Current Code
- ii. HEA 1006
- iii. Proposal – Public Safety Priorities

Advisory Sentences:

Current Code

- History (*Presumptive Sentences* preceded *Advisory Sentences*)
 - 1977- 2005: presumptive sentences were the sentencing baseline
 - Sentencing judge required to start at presumptive sentence, weigh aggravating and mitigating circumstances, and determine sentence
 - *Apprendi v. New Jersey*, 530 US 466 (2000); *Blakely v. Washington*, 542 US 296 (2004)
 - These two cases ended presumptive sentences as the sentencing baseline - Indiana Law had to change

Advisory Sentences:

Current Code

- History
 - Advisory Sentencing scheme created by Indiana Legislature in 2005 in response
 - An advisory sentence is a voluntary guideline that a trial judge may use in sentencing an offender
 - Aggravating and mitigating circumstances still exist, however, they are used only for purposes of appellate review of the sentence
 - Aggravating and mitigating circumstances may be considered by the judge in determining whether a sentence will run concurrently or consecutively
 - Judge is not required to weigh aggravators and mitigators to determine the sentence

Advisory Sentences:

Current Code

- "Advisory sentence" is defined in IC 35-50-2-1.3
 - A guideline sentence that the court may voluntarily consider as a *midpoint* between the maximum sentence and the minimum sentence
 - Neither current code or HEA 1006 set advisory sentences as the midpoint - creates confusion
 - The court is not required to use the advisory sentence except for:
 - Consecutive sentences
 - Habitual offenders
 - Repeat sex offenders

Advisory Sentences:
HEA 1006

- Should advisory sentences be eliminated?

Level	Minimum	Advisory	Maximum
Murder	45	55	65
Level 1	20	30	50
Level 2	10	17.5	30
Level 3	3	6	20
Level 4	2	4	12
Level 5	1	2	6
Level 6	6 months	1	2.5

Advisory Sentences:
Proposal

- If we keep advisory sentences, what should they look like?
- Follow the definition and go to the midpoint?

Level	Minimum	Advisory	MIDPOINT	Maximum
Murder	45	55	55	65
Level 1	20	30	35	50
Level 2	10	17.5	20	30
Level 3	3	6	11.5	20
Level 4	2	4	7	12
Level 5	1	2	3.5	6
Level 6	6 months	1	1.5	2.5

Advisory Sentences:
Proposal

- HEA 1006 does not change the language which defines an advisory sentence (IC 35-50-2-1.3)
- PROSECUTORS PREFER A REPEAL OF THE ADVISORY SENTENCE SCHEME
- How do we do this?
 - REPEAL 35-50-2-1.3 (definition)
 - REPEAL 35-31.5-2-10 (definition)
 - AMEND penalty provisions for each level of felony by removing advisory sentence language

**Advisory Sentences:
Proposal**

- How do we eliminate advisory sentences?
 - REMOVE the limitation regarding consecutive sentences in IC 35-50-1-2(b)
 - REMOVE the sentence enhancement calculation based upon advisory sentence in repeat sexual offender - IC 35-50-2-14
 - REPEAL definition of "recommendation" defined in IC 35-31-5-2-272 - a proposal that is part of a plea agreement made to the court that dismisses a felony charge or allows the defendant to receive less than the advisory if the defendant pleads to a felony.
- That's it!

**Advisory Sentences:
Proposal**

- Is the elimination of advisory sentences good public policy?
 - Advisory sentence are no longer a starting point
 - Judges are not required to use stated aggravating and mitigating circumstances to justify a deviation from an advisory sentence
 - Creates an impression with the sentencing judge that the Indiana General Assembly endorses the advisory sentence as the appropriate sentence
 - DANGER: A de facto violation of *Blakely*
 - Better practice is elimination of the advisory sentence

**Advisory Sentences:
Proposal**

- If we keep advisory sentences, what should they look like?

Level	Minimum	PROS.REC	Advisory	PROS.REC	Maximum
Murder	45		55	55	65
Level 1	20		30	30	50
Level 2	10		17.5	17.5	30
Level 3	3	6	6	10	20
Level 4	2	4	4	8	12
Level 5	1	2	2	4	6
Level 6	6 months	1	1	1	2.5

Suspendibility of Sentences (Prison Terms):
Current Code

- IC 35-50-2-2 (2 categories)
 1. Prior felony conviction minimum nonsuspendible.
 - Class A and B felony: no time limit
 - Class C felony: prior felony conviction w/in 7 years
 - Class D felony: prior felony conviction w/in 3 years

Suspendibility of Sentences (Prison Terms):
Current Code

- IC 35-50-2-2 (2 categories)
 2. List of Offenses with a minimum nonsuspendible prison term – no criminal history
 - 30 offenses
 - Examples
 - Murder, rape, kidnapping, a number of offenses that involve deadly weapons, and a number of class A felonies
 - See handout

Suspendibility of Sentences (Prison Terms):
HEA 1006

- IC 35-50-2-2.2 (2 categories)
 1. Prior felony conviction minimum nonsuspendible.
 - Level 1 and Level 2 felonies (current class A felonies)
 2. List of Offenses minimum nonsuspendible with no criminal history
 - One offense: MURDER
 - All other felonies are completely suspendible
- This is a major change from current law

Suspendibility of Sentences (Prison Terms):
Proposal

- What should Indiana's policy on suspendibility look like?
 1. Prior felony conviction minimum nonsuspendible.
 - Level 2 and 3
 - Level 4 and 5 if the prior felony if less than 10 years has passed since the defendant completed the sentence

Suspendibility of Sentences (Prison Terms):
Proposal

- What should our policy on suspendibility look like?
 2. List of Offenses minimum nonsuspendible with no criminal history
 - Murder
 - Level 1 felony offenses, the heinous nine.
 - (1) Attempted murder; (2) conspiracy to commit murder resulting in death; (3) aggravated battery (death of a child under 14); (4) rape (SBI, DW, drugged victim); (5) child molesting and (6) sexual misconduct with a minor (child under 12 with certain circumstances); (7) burglary (dwelling and SBI); (8) disarming a law enforcement officer resulting in death of the officer; (9) neglect of a dependent resulting in death of a child under 14

Suspendibility of Sentences (Prison Terms):
Proposal

- Be mindful. The Criminal Code Evaluation Commission Working Group recommended no changes to 35-50-2-2 during its review of the Indiana Criminal Code.

Suspendibility of Sentences (Term of Imprisonment):

Four Unresolved Issues

- I.C. 35-50-2-2.1 (Juvenile delinquency)
- Probation question
- Sentence v. Term of Imprisonment (Term of Art)
- Suspendibility of other enhancements
 - Gang – IC 35-50-2-15
 - Habitual – IC 35-50-2-8
 - Firearm – IC 35-50-2-11; IC 35-50-2-13
 - Repeat Sex Offender – IC 35-50-2-14
 - **simple fix:** make whatever term of imprisonment added as an enhancement plus the minimum for the underlying offense nonsuspendible (add language to 35-50-2-2.2)

IPAC Report on Advisory Sentences and Suspendability of Sentences

Questions?

**TERMS OF IMPRISONMENT
THAT CANNOT BE SUSPENDED
DUE TO PRIOR FELONY CONVICTIONS**

**CURRENT LAW
IC 35-50-2-2**

**H.E.A. 1006
IC 35-50-2-2.2**

**PROSECUTORS'
PROPOSAL**

Class A felony Prior unrelated felony conviction at any time	Level 1 felony Prior unrelated felony conviction at any time	Level 1 felony Minimum cannot be suspended
	Level 2 felony Prior unrelated felony conviction at any time	Level 2 felony Prior unrelated felony conviction at any time
Class B felony Prior unrelated felony conviction at any time		Level 3 felony Prior unrelated felony conviction at any time
		Level 4 felony Prior unrelated felony conviction AND less than 10 years has passed since defendant completed sentence
Class C felony Prior unrelated felony conviction AND less than 7 years has passed since defendant completed sentence		Level 5 felony Prior unrelated felony conviction AND less than 10 years has passed since the defendant completed sentence
Class D felony Prior unrelated felony conviction AND less than 3 years has passed since defendant completed sentence NOTE: Judge has option to place defendant on home detention instead of DOC		

**TERMS OF IMPRISONMENT
THAT CANNOT BE SUSPENDED
DUE TO CRIME COMMITTED**

**CURRENT LAW
IC 35-50-2-2**

**H.E.A 1006
IC 35-50-2-2.2**

**PROSECUTORS'
PROPOSAL**

Murder (35-42-1-1)	Murder (35-42-1-1)	Murder (35-42-1-1)
Attempted Murder (35-41-5-1)*		Attempted Murder (35-41-5-1)
		Conspiracy to Commit Murder (35-41-5-2)
Voluntary Manslaughter (35-42-1-3) unless the crime was NOT committed with a deadly weapon		
Battery (35-42-2-1) if it results in death (Class A or Class B felony under certain circumstances)		
Battery (35-42-2-1(a)(3)) if it is committed with a deadly weapon (Class C felony)		
Aggravated Battery (35-42-2-1.5)		Aggravated Battery (35-42-2-1.5) if it results in the death of a child less than 14 years of age and is committed by a person at least 18 years of age
Sexual Battery (35-42-4-8) if it is committed with a deadly weapon		
Kidnapping (35-42-3-2)		
Confinement (35-42-3-3) if it is committed with a deadly weapon		
Rape (35-42-4-1) as a Class A felony		Rape (35-42-4-1) as a Level 1 felony NOTE: Rape as a Class A felony and Rape as a Level 1 felony are virtually identical. Rape as a Level 1 felony also

		includes the current crime of Criminal Deviate Conduct, as a Class A felony
Criminal Deviate Conduct (35-42-4-2) as a Class A felony		
Child Molesting (35-42-4-3) as a Class A felony, unless certain specified circumstances exist		Child Molesting (35-42-4-3) as a Level 1 felony
Child Molesting (35-42-4-3) as a Class B felony, unless certain specified circumstances exist		
Child Molesting (35-42-4-3) If the child is less than 12 years of age and the defendant is at least 21 years of age, the minimum nonsuspendible term of imprisonment is 30 years		
		Sexual Misconduct With a Minor (35-42-4-9) as a Level 1 felony
Robbery (35-42-5-1) resulting in serious bodily injury or with a deadly weapon		
Arson (35-43-1-1) for hire or resulting in serious bodily injury		
Burglary (35-43-2-1) resulting in serious bodily injury or with a deadly weapon		Burglary (35-43-2-1) burglary of a dwelling that results in serious bodily injury to a person other than the defendant
Resisting Law Enforcement (35-44.1-3-1) with a deadly weapon		
Disarming a Law Enforcement Officer (35-44.1-3-2)		Disarming a Law Enforcement Officer (35-44.1-3-2) if it results in the death of a law enforcement officer
Escape (35-44.1-3-4) with a deadly weapon		

Rioting (35-45-1-2) with a deadly weapon		
		Neglect of a Dependent (35-46-1-4 if it is committed by a person at least 18 years of age and results in the death of a dependent who is less than 14 years of age
Providing a Firearm to a Child (35-47-10-6) if the commission of the offense is knowing or intentional		
Dangerous Control of a Child (35-47-10-7) if the commission of the offense is knowing or intentional		
Dealing in Cocaine or a Narcotic Drug (35-48-4-1) if the person possessed a firearm or the person delivered to a person under the age of 18, at least three years junior to the person, and within a protected zone (school, park, etc.)		
Dealing in Methamphetamine (35-48-4-1.1) if the person possessed a firearm or the person delivered to a person under the age of 18, at least three years junior to the person, and within a protected zone (school, park, etc.)		Dealing in Methamphetamine (35-48-4-1.1)** if the person manufactures methamphetamine within 1,000 feet of a dwelling
Dealing in a Schedule I, II, or III Controlled Substance (35-48-4-2) if the person possessed a firearm or the person delivered to a person under the age of 18, at least three years junior to the person, and within a protected zone (school, park)		

Possession of Cocaine or a Narcotic Drug and a Firearm (35-48-4-6(b)(1)(B))		
Possession of Methamphetamine and a Firearm (35-48-4-6.1(b)(1)(B))		
Operating While Intoxicated (9-30-5) If the person has two prior unrelated convictions for Operating While Intoxicated under IC 9-30-5		
Operating While Intoxicated Causing Death (9-30-5-5(b))		

*IC 35-50-2-2 does not specifically list the offense of Attempted Murder as an offense where the minimum executed term of imprisonment cannot be suspended. However, the Indiana Supreme Court has interpreted IC 35-50-2-2 to include the offense of Attempted Murder. See, *Haggenjos v. State*, 441 N.E.2d 430 (Ind. 1982).

** Under H.E.A. 1006, there are no controlled substances offenses that are classified as Level 1 felonies. However, as a part of their proposal, Prosecutors have requested that the Indiana General Assembly make the offense of Manufacturing Methamphetamine (within 1,000 feet of a dwelling) a Level 1 felony.

Indiana Prosecuting Attorneys Council

Highest Priority Changes to Indiana Criminal Code—2014 Legislative Session

Victim & Public Safety Focused Policies—Stronger Penalties for Serious & Violent Offenders & Lesser Penalties for Low Level and Non-Violent Offenses

To: Indiana Prosecutors

From: Indiana Prosecuting Attorneys Council

Date: July 2, 2013

Re: IPAC Legislative Priorities—2014 Session

Summary & Overview—Next Steps in Advancing Criminal Justice Reform

The Indiana General Assembly took many good steps to revise the criminal code during the 2013 session, most of which becomes effective in 2014. House Enrolled Act 1006 (HEA 1006) includes many very positive changes including requiring that felons serve 75% of their sentences instead of 50% and decreases other credit time. HEA 1006 also increases penalties for a number of serious crimes while decreasing them for other offenses. IPAC commends Representative Steuerwald and other legislators for their diligent work on the criminal code revisions. Because of the magnitude of the code revision project, many issues and changes were left to be addressed in the 2014 session through a summer study committee.

IPAC seeks the following attached changes to the criminal code. These priorities reflect policy positions decided upon by the IPAC Board of Directors. The priorities reflect leniency for first time and low level offenders, while seeking stronger penalties for serious and dangerous offenders (murder, rape, violent crime, crimes against children, dealers of serious drugs such as meth and cocaine). The priorities also seek to deal with the group of offenders which causes the highest volume of crime in Indiana—the habitual offender. IPAC seeks no increase in penalties for marijuana offenses nor does it seek any changes to the current marijuana provisions under HEA 1006. IPAC is very much aware of the costs of incarceration, and thus seeks to approach problems of criminal justice from a thoughtful, cost conscious perspective. Some of the policy positions below actually constitute cost saving measures.

Indiana prosecutors seek to make our state the best place to get a second chance for non-violent, low level crimes, and the worst place to re-offend or commit a serious crime.

Crimes Against Children---Increased Penalties

A key priority for prosecutors is protecting children from violent offenders. Current penalties in Indiana law are far too low for some crimes, including the following offenses.

Child Exploitation

IPAC Position:

Increase the penalty of Child Exploitation to at least 2-12 years. (Increase from a Level 5 felony to a Level 4 felony. The offense currently carries a sentence of 1-6 years and is a Level 5 felony. (See HEA 1006, Section 226—IC 35-42-4-4) Child pornography is a horrific crime causing life-long damage to child victims. The current penalty is far too low given the nature of the crime.

Child Molesters

IPAC Position:

Increase the penalty (specifically IC 35-50-2) to an additional 10 years if a person was convicted of the offense of Child Molesting involving the commission of sexual intercourse or deviate sexual conduct, when the victim is twelve (12) years of age or younger and the perpetrator is at least twenty-one (21) years of age.

No Suspension of Minimum Term for Murder & Serious Crimes

A key area of concern for prosecutors is the current authority under HEA 1006 to suspend any sentence for any serious crime, including murder, rape, child molestation, child pornography, meth manufacturing and many more serious crimes. Prosecutors believe that at least the minimum sentence should be served in serious crimes. HEA 1006 provides that the terms of imprisonment for all levels of felony convictions may be suspended, except when an offender has a prior felony conviction. (In that case the trial court may only suspend that part of the term of imprisonment in excess of the minimum term of imprisonment for the following felony offenses.) (See Section 651 of HEA 1006, creating IC 35-50-2-2.2)

IPAC Position:

- No suspension for minimum sentence for Murder or Level 1 felony.
- No suspension allowed for the minimum sentence for any Level 2 felony or Level 3 felony if the defendant has a prior felony conviction;
- No suspension allowed for the minimum term of imprisonment for any Level 4 felony or Level 5 felony if the defendant has a prior felony conviction AND less than ten (10) years has passed since the defendant completed the sentence (i.e., term of imprisonment, probation and parole) for the most recent prior felony conviction.

Policy Support:

- That term of imprisonment could be served at the Indiana Department of Correction or through some form of community corrections program.
- Promotes consistency in sentencing.
- **The changes would constitute a significant reduction from the current statute (IC 35-50-2-2) that requires that the terms of imprisonment for certain felony offenses may not be suspended.**
 - There are very few crimes in HEA 1006 (Murder and Level 1 felonies) where the term of imprisonment could not be suspended for a first felony conviction.

- Many current Class B felonies have been moved to Level 4 felonies, whereby the minimum term of imprisonment may be suspended, even with a prior felony conviction.
- Prosecutors are not requesting any change with respect to Level 6 felonies, which would allow the suspension of any term of imprisonment.

Sentencing Disparity Issues

The term of imprisonment ranges established by HB 1006 are set forth in the grid below:

<u>LEVEL</u>	<u>MINIMUM</u>	<u>ADVISORY</u>	<u>MAXIMUM</u>	<u>25% CREDIT</u>
Murder	45	55	65	33.75 – 48.75
Level 1	20	30	50	15.0 -- 37.5
Level 2	10	17.5	30	7.5 -- 22.5
Level 3	3	6	20	1.0 -- 15.0
Level 4	2	4	12	1.5 -- 9.0
Level 5	1	2	6	0.75 -- 4.5
Level 6	0.5	1	2.5	0.375 – 1.875

Minimum Terms of Imprisonment

Prosecutors request that the minimum terms of imprisonment be amended, as follows:

1. Level 3 felony – to 6 years;
2. Level 4 felony – to 4 years;
3. Level 5 felony – to 2 years.

Habitual Offenders

A key area of concern for prosecutors is the Habitual Offender. These offenders are in and out of prison and community corrections, committing multiple crimes over and over again at a very high cost to society in crimes against the person and property, insurance costs and other financial costs that are often overlooked.

HEA 1006 provides that:

- For Murder or a Level 1--Level 4 Felony, an additional term of imprisonment of 0-20 years if determined to be a habitual offender by the court.
- For a Level 5 or Level 6 felony, an additional term of imprisonment of 0-6 years.

(See Section 658 of HEA 1006 – IC 35-50-2-8(i))

IPAC Position:

- Change minimum enhancement for Murder or a Level 1—4 to 6-20 years;
- Change imprisonment for a Level 5 felony to 6-10 years;
- The additional term of imprisonment for a Level 6 felony would be from 2-6 years.

Policy Support:

1. A habitual offender sentence enhancement should not have a starting point at zero. The habitual offender enhancement only applies to recidivists who have committed serious crimes and have failed to reform on multiple occasions. A determination that an offender is a habitual offender, followed by an additional term of imprisonment of zero denigrates the value and the purpose of this enhancement as a reformatory tool.
2. For Murder, Level 1, Level 2, Level 3 and Level 4 felonies, the minimum term of imprisonment requested by prosecutors remains below the minimum term of imprisonment required under the current provisions of IC 35-50-2-8 for Murder and Class A and Class B felonies.

3. For Level 5 and Level 6 felonies, the minimum term of imprisonment requested by prosecutors represents a slight increase from the minimum term of imprisonment for the habitual offense enhancement under the current provisions of IC 35-50-2-8. The additional limiting provisions of HEA 1006, relating to the imposition of the habitual offender enhancement on Level 5 and Level 6 convicted felons remains in place.

Victim's Rights—Sentence Modification

An area of concern for prosecutors is the current ability under HEA 1006 for a convicted offender to seek limitless modifications of a sentence at any time, even long after the sentence has been set. This greatly impacts victims as they are subject to reliving the crime over and over again and having to return to court limitless times. Prosecutors support judicial discretion to modify sentences with some limits in order to protect victims.

HEA 1006 allows a trial judge to modify a defendant's sentence at any time, so long as the trial judge could have imposed the modified sentence at the time of sentencing. (See Section 392 of HEA 1006 – IC 35-58-1-17.)

IPAC Position:

Amend HEA 1006 to provide that a trial judge may modify a defendant's sentence, without the approval of the prosecuting attorney, during the first 365 days after sentencing. Thereafter, a trial judge should only be able to modify the defendant's sentence with the approval of the prosecuting attorney.

Policy Support:

1. **Cost Increase in Limitless Filings with Court:** Allowing a trial court to modify a defendant's sentence for years after the time of imposition of the sentence would allow a defendant to file multiple requests for a sentence modification for years, or even decades, after sentencing. This open-ended procedure would certainly result in a significant increase in requests for modification of sentence

by convicted felons, with a significant increase in the cost to the Indiana judicial system. A convicted felon who is serving a lengthy term of imprisonment has, literally, nothing but time on his hands with which to file an endless stream of requests for modification of sentence. Each such request will need to be addressed by the trial court and by the prosecuting attorney.

2. **Crime Victims:** This open-ended procedure would have a significant adverse effect on crime victims, who would be required to relive the crime with each modification request.
3. **No Finality:** The current provisions of HEA 1006 with respect to sentence modification would not provide any finality with respect to the imposed sentence.
4. **Lack of Familiarity with Case:** Allowing a convicted felon to request a modification of sentence years after the sentence was imposed may result in a situation whereby the modification request would be handled by a different judge and/or prosecuting attorney, who may be unfamiliar with the case.

Dealing in Cocaine, Narcotics & Meth

Prosecutors are concerned that the lower penalties for dealing in these specific serious drugs will turn back Indiana's fight against dealing in these substances. In Indiana in 2012 alone, for instance, the State Police seized over 1700 meth labs. Law enforcement needs all of the help it can get in battling the scourge of dealing in serious drugs, which is much more serious than possession.

HEA 1006 reduces the base offenses of dealing in cocaine, a narcotic drug or methamphetamine from a Class B felony (6-20 years imprisonment) to a Level 5 felony (1-6 years imprisonment). (See, Section 618 of HB 1006 – IC 35-48-4-1 and Section 619 of HB 1006 – IC 35-48-4-1.1)

IPAC Position:

Dealing in serious types of drugs (narcotics, meth, or heroin) is a much more serious offense than possession and the law should reflect this fact. For the most serious of controlled substances, HEA 1006 be amended to move the base offenses of dealing in

cocaine, a narcotic drug or methamphetamine from 1-6 years imprisonment (Level 5) to a Level 4 felony (2-12 years imprisonment).

Policy Support:

1. While prosecutors recognize that the current penalties for dealing in and possession of a controlled substance may have some proportionality issues, a reduction of the base offenses of dealing in cocaine, a narcotic drug or methamphetamine (the most serious of the controlled substances violations) to a Level 5 felony creates a penalty that is disproportionately low. Reducing the base offenses of dealing in cocaine, a narcotic drug or methamphetamine from a Class B felony (6-20 years imprisonment) to a Level 4 felony (2-12 years imprisonment) is sufficient to address the proportionality issues that may exist under the current controlled substances statutes.
2. Thousands of other criminal acts of burglary, theft, robbery, neglect of a dependent, and many others) are directly connected to controlled substances offenses. **Simply reducing controlled substances penalties for cost or other concerns would lead to an increase in the crimes connected to controlled substances offenses and would end up likely costing the state more money.**

Weight and Other Enhancing Circumstances

HEA 1006 establishes a system whereby the base controlled substances offenses would be enhanced to increased felony levels due to the weight of the controlled substance and due to the presence of statutory “enhancing circumstances.” (See Section 615 of HEA 1006, creating IC 35-48-1-16.5.

The weight of the controlled substances enhancement allows an increase of up to three felony levels, as the weight of the controlled substance increases. However, the statutory “enhancing circumstances” allow only a one felony level increase, regardless of how many such enhancing circumstances may be present.

IPAC Position:

Make the weight enhancements and the enhancing circumstances work in concert so that each enhancing circumstance causes a one step increase in the felony level, with a cap on the felony level at a Level 2 felony. A Level 1 felony would be reserved for a

manufacturing controlled substances offense whereby the manufacturing process resulted in the death or in serious bodily injury to a person other than the person who manufactured the controlled substance.

Policy Support:

Allowing the weight enhancements and the statutory enhancing circumstances to work in concert as requested by the prosecutors would allow an enhancement for an offender who had multiple enhancing circumstances and is, therefore, a more dangerous offender. For example, under the current provisions of HEA 1006, a cocaine dealer who is dealing less than three grams of cocaine, but who was in possession of a firearm, who had a prior dealing conviction and who committed the offense in a protected zone, would only move from a Level 5 felony to a Level 4 felony.

Protecting Children & Families from Drug Dealing—Increase Safe Zone Spheres

HEA 1006 makes significant changes to the use of protected zones as an enhancing circumstance, as follows:

1. HEA 1006 removes “family housing complex” and “youth program center” as protected zones;
2. HEA 1006 reduces the protected area around protected zones from 1,000 feet to 500 feet;
3. HEA 1006 adds an element to the protected zone enhancement requiring that the State prove that the controlled substance offense take place “while a person under 18 years of age was reasonably expected to be present.”

(See Section 615 of HEA 1006, creating IC 35-48-1-16.5.)

IPAC Position:

Amend HEA 1006 to include “family housing complex” and “youth program center” as protected zones, to return to the 1,000 foot area around protected zones, and to remove

the additional element requiring that a person under 18 years of age is reasonably expected to be present during the controlled substances offense.

Policy Support:

1. Protected zones are singled out for special treatment because these are places where children are present and will likely be present in the future. The zone is protected because drug dealing and drug possession causes collateral damage to the zone – that is, the offenders leave behind drug, drug paraphernalia and drug byproducts that, because children will be present in the zone in the future, could very well end up in the possession of a child.
2. Prosecutors believe that adding the element to the protected zone enhancement that requires prosecutors to prove that the controlled substance offense occurred “while a person under 18 years of age was reasonably expected to be present” fails to recognize, as stated above, that it is the ZONE that is to be protected, regardless of whether children are present at the exact time when the controlled substances offense occurs. Children will be present later and will be subject to the collateral damage caused by these offenses. Moreover, IC 35-48-4-16, setting forth a statutory defense if children are not present in the zone, remains a part of HEA 1006 (See Section 641 of HEA 1006). Given the statutory defense, the additional element is not necessary.

Prior Offense Enhancement

HEA 1006 includes, as an “enhancing circumstance,” that the person committing the controlled substance offense has a prior conviction for dealing in an offense (except marijuana, hashish, hash oil, salvia or a synthetic drug). (See HEA 1006, Section 615, creating IC 35-48-1-16.5).

IPAC Position:

Amend this offense to include an enhancement for any prior felony controlled substance offense. In addition, the language of the statute should include attempt and conspiracy offenses and out of state felony controlled substances convictions.

Policy Support:

A person who is dealing drugs should be subject to a one level felony enhancement if that person has either a prior conviction for dealing or a prior felony conviction for possession of a controlled substance. This is a recognition that a possessor of drugs will often move

to dealing drugs. This is also a recognition that controlled substances offenders have an extremely high recidivism rate.

Manufacturing of Drugs as an Enhancement

IPAC Position:

HEA 1006 sets forth, as an “enhancing circumstance,” manufacturing a controlled substance. (See HEA 1006, Section 615, which creates IC 35-48-4-16.5.)

Amend HEA 1006 to make manufacturing an offense separate from dealing a controlled substance and to make the manufacture of a controlled substance one felony level higher than dealing that same controlled substance.

Policy Support:

The manufacturing of a controlled substance is the most dangerous part of drug dealing. Placing the manufacturing enhancement in the new enhancing circumstance statute would mean that the enhancement would apply to possession offenses. The solution is to limit this enhancement to dealing offenses by creating a separate offense for manufacturing, as set forth above.

Burglary

HEA 1006 currently provides that the burglary of a residence is a lower level felony (Level 4---imprisonment of 2-12 years). HEA 1006 also currently provides that burglary is a Level 2 felony if the burglary was committed while armed with a deadly weapon or if it resulted in serious bodily injury. (See HEA 1006, Section 457 – IC 35-43-2-1).

IPAC Position:

Burglary is a violent crime which threatens the safety and security of the individual and families. Change burglary of a dwelling to a Level 3 felony (imprisonment of 3-20 years) and burglary of a dwelling that resulted in bodily injury to a person other than the defendant should be added as a Level 2 felony.

Policy Support:

1. The burglary of a dwelling has a significant impact on the victim of that burglary, often causing the victim to feel unsafe in the victim's own home. Prosecutors consider the burglary of a residence to be an extremely serious offense.
2. Residential burglars often commit numerous burglaries prior to apprehension. A recent burglar in one Indiana county, for example, committed 100 burglaries before being caught.
3. The current placement by HEA 1006 of residential burglary as a Level 4 felony (imprisonment of 2-12 years) constitutes a significant reduction in the penalty for a residential burglary from its current penalty (Class B felony – imprisonment of 6-20 years).
4. Prosecutors request adding another Level 2 felony burglary when the offense is a burglary of a dwelling AND the burglary results in bodily injury to any person other than the defendant because this offense would have to occur when the victim was home, which prosecutors consider to be the most dangerous burglary offense (i.e., home invasion).

Possession of a Firearm by a Serious Violent Felon

HEA 1006 provides that the crime of Possession of a Firearm by a Serious Violent Felon is a Level 4 felony (2-12 year term of imprisonment). (See HEA 1006, Section 587 – IC 35-47-4-5).

IPAC Position:

Serious violent felons should not have firearms of any kind. Change the offense of Possession of a Firearm by a Serious Violent Felon from a Level 4 felony to a Level 3 felony.

Policy Support:

1. The current placement by HEA 1006 of the offense of Possession of a Firearm by a Serious Violent Felon as a Level 4 felony (imprisonment of 2-12 years) constitutes a significant reduction in the penalty for this offense from its current penalty (Class B felony – imprisonment of 6-20 years).
2. Placement of the offense of Possession of a Firearm by a Serious Violent Felon as a Level 3 felony (3-20 years imprisonment) properly reflects the seriousness of

this crime. Serious violent felons are the worst offenders and should be appropriately punished for possessing firearms.

Advisory Terms of Imprisonment

IPAC Position:

Eliminate Advisory Terms: If advisory terms of imprisonment are not eliminated, prosecutors request that the advisory terms of imprisonment be amended, as follows:

- Level 3 felony – to 10 years;
- Level 4 felony – to 8 years;
- Level 5 felony – to 4 years.

Policy Support:

1. The advisory terms of imprisonment are no longer the starting point for trial judges in determining the proper sentence. Trial judges are no longer required to use stated aggravating circumstances and mitigating circumstances to justify a deviation from the advisory sentence.
2. If advisory terms of imprisonment are adjusted, as requested by prosecutors, it will create a more proportionate sentencing scheme for Level 3, Level 4 and Level 5 felonies.

Robbery

HEA 1006 classifies the offense of Robbery as beginning at a Level 5 felony (1-6 years imprisonment) and ending at a Level 2 felony (10-30 years imprisonment). (See HEA 1006, Section 447 – IC 35-42-5-1.

Amend HEA 1006 be amended to provide for Robbery as a Level 1 felony when the perpetrator is armed with a deadly weapon AND the offense results in serious bodily injury to someone other than the perpetrator.

Policy Support:

Prosecutors contend that this form of Robbery is the most serious and, generally, involves a situation where the perpetrator shoots the victim, but the victim survives. Often times, it is only the advances in trauma care that prevent the victim from dying. Otherwise, the defendant would be charged, upon the death of the victim, with Felony Murder.

Creating a Level 1 felony Robbery offense reflects the seriousness of this crime.

Theft

HEA 1006 defines the offense of Theft as a Class A misdemeanor unless the value of the property stolen is at least \$750.00 or unless the person has a prior unrelated conviction for Theft or Conversion. (See HEA 1006, Section 460 – IC 35-43-4-2.)

IPAC Position: Amend to remove the requirement that the value of the property stolen must be at least \$750.00 before the Theft will be a felony offense. Prosecutors also request that HEA 1006 be amended to add a retail theft crime, with the \$750 value limitation.

Policy Support:

Prosecutors have consistently opposed the concept of requiring that the property stolen be of a certain value before a Theft offense may be charged as a felony. Some of the reasons for this opposition include the following:

1. HEA 1006 does not take into consideration the theft of an item from a person. That is, prosecutors consider it to be a more serious theft to steal from an individual than to steal from an organization, such as a retail store. Addition of a retail theft where the \$750.00 value limit applies, will resolve concerns.
2. The concept of the value of the items stolen as the trigger for misdemeanor or felony treatment does not take into account the sentimental value of items that may be stolen, where such items may not have a significant fair market value or replacement value.
3. Placing a value element on the Theft statute adds another element of proof for Prosecutors, where there is, in the opinion of Prosecutors, little, if any, good purpose for adding such a value element.

Identity Deception

HEA 1006 starts the offense of Identity Deception as a Level 6 felony (0.5 – 2.5 years imprisonment). With the presence of one of several statutory aggravating circumstances, the offense is a Level 5 felony (1-6 years imprisonment). (See HEA 1006, Section 468 – IC 35-43-5-3.5.)

IPAC Position & Policy Support:

Amend HEA 1006 be amended to provide that the offense of Identity Deception starts as a Level 5 felony and becomes a Level 4 felony (2-12 years imprisonment), with the presence of the listed aggravating circumstances.

Identity Deception is a crime that has a significant impact on victims who have had their identity stolen. The time and cost to victims to repair and reconstruct aspects of their identity (i.e., driver's license, credit cards, credit score reporting, bank accounts, etc.) is extremely burdensome. Moreover, with the increase of financial transactions being electronic in nature, prosecutors believe that there has been and will continue to be increases in the commission of identity deception crimes.

Forgery

HEA 1006 assigns the offense of Forgery to a Level 6 felony (0.5 – 2.5 years imprisonment). See HEA 1006, Section 466 – IC 35-43-5-2(d). Current law provides that the offense of Forgery is a Class C felony (2-8 years imprisonment).

IPAC Position & Policy Support:

Amend HEA 1006 to make Forgery a Level 5 felony when the defendant has a prior unrelated conviction for Forgery.

Forgery is an offense wherein there is significant repeat commission of the crime. Therefore, raising the offense to a Level 5 felony upon proof of a prior conviction for such crime is designed as a deterrent to repeat commission of the crime.

Reckless Homicide

HEA 1006 assigns the offense of Reckless Homicide to a Level 5 felony (1-6 years imprisonment). (See HEA 1006, Section 412 – IC 35-42-1-5)

IPAC Position:

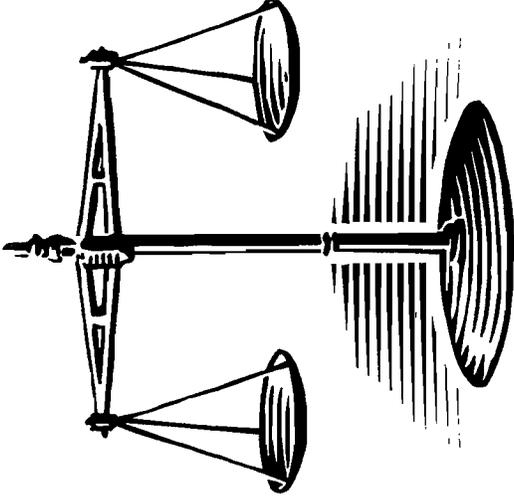
Amend Reckless Homicide to a Level 4 felony (2-12 years imprisonment) if the reckless homicide was committed by means of a firearm OR if the victim of the reckless homicide was under the age of eighteen (18).

Policy Support:

This request for a one level enhancement for the offense of Reckless Homicide if the reckless homicide was committed by means of a firearm or if the victim of the reckless homicide was under the age of eighteen (18) properly reflects the seriousness of the reckless homicide in these defined situations.

Priority Issue Approved by Legislative Committee— For Review by IPAC Board

Background: The U.S. Supreme Court recently issued a decision allowing states to collect DNA upon the arrest in a serious crime. (*Maryland vs. King*). Twenty-eight jurisdictions (states and territories) have statutes which allow for the collection of DNA upon arrest of a serious crime. IPAC's Legislative Committee strongly endorses the adoption of a statute by the General Assembly which will greatly assist in solving sexual assault crimes and cold cases. Constitutional protections are built into the Maryland statute and most other state statutes and IPAC endorses adopting such protections to ensure privacy concerns are addressed. IPAC is currently working with legislators and stakeholders to draft language for introduction during the 2014 session and has analyzed statutes from all other jurisdictions.



Advisory Sentences and Suspendibility

Larry A. Landis
Executive Director
Indiana Public Defender Council

Felony Sentences

Class	Current Law			Level	HEA 1006			Level	IPDC Recommendation		
	Range (yrs.)	Advisory	Time Served @ 50% Credit Time		Range (yrs.)	Advisory	Time Served @ 25% Credit Time		Range (yrs.)	Advisory	Time Served @ 25% Credit Time
Murder	45-65	55	22.5-32.5	Murder	45-65	55	33.75-48.75	Murder	30-50	40	22.5-37.5
A	20-50	30	10-25	1	20-50	30	15-37.5	1	15-35	25	11-26
A	20-50	30	10-25	2	10-30	17.5	7.5-22.5	2	10-25	17.5	7.5-18.8
B	6-20	10	3-10	3	3-20	6	2.25-15	3	4-14	6	3-11
B	6-20	10	3-10	4	2-12	4	1.5-9	4	2-10	4	1.5-7.5
C	2-8	4	1-4	5	1-6	2	0.75-4.5	5	1-5	2	0.75-3.8
D	.5-3	1.5	.25-1.5	6	0.5-2.5	1	0.38-1.88	6	0.5-2	1	0.38-1.5

Sentence Ranges

<u>Offense</u>	<u>Current (yrs)</u>	<u>HEA 1006 (yrs)</u>
Murder	10	15
1	15	22.5
2	15	15
3	7	12.5
4	7	7.5
5	3	3.75
6	1.25	1.5

NUMBER OF MALES RECEIVED AT INDIANA DOC RECEPTION DIAGNOSTIC CENTER BY MOST SERIOUS OFFENSE FROM 1996-2012

Most Serious Offense	96-97	97-98	98-99	99-00	00-01	01-02	02-03	03-04	04-05	05-06	06-07	07-08	08-09	09-10	10-11	11-12
Murder	204	181	148	102		94	124	136	85	97	105	91	107	100	84	82
A Felonies	217	193	255	431	406	472	458	506	558	526	527	586	593	517	559	514
B Felonies	1,289	1,447	1,254	1,648	2,279	2,471	2,851	3,083	3,313	3,267	3,352	3,597	3,657	3,851	3,848	3,772
C Felonies	1,972	1,484	2,093	3,127	3,278	3,395	3,834	4,072	4,057	3,991	4,307	4,488	4,115	3,996	3,730	3,571
D Felonies	2,487	2,078	2,640	4,669	4,486	5,121	5,600	6,056	6,353	6,305	6,788	7,305	7,438	7,217	6,215	6,296
TOTAL	6,169	5,383	6,390	9,977	10,449	11,553	12,867	13,853	14,366	14,186	15,079	16,067	15,910	15,681	14,436	14,235



STATE OF INDIANA

INDIANA PUBLIC DEFENDER COUNCIL

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TO: CLSPSC Members

FROM: Larry A. Landis, Executive Director, *LAL*
Indiana Public Defender Council

DATE: September 23, 2013

RE: Use of Advisory Sentences and the Suspendibility of Sentences

An assessment of advisory sentences and the suspendibility of sentences in HEA 1006 can not be done in a vacuum. The only way to understand whether they are good or bad public policy is to evaluate them in relation to the other sentencing provisions in HEA 1006. They are merely pieces of the whole. To understand the pieces, one needs to see how they fit into the new sentencing code in HEA 1006.

But first, remember when we started this journey and we had that press conference in the Governor's office with the Chief Justice, House Speaker Bauer, Senate President Pro Tem David Long, and a number of legislators and we were all committed to a bipartisan, inter-branch effort, to use rigorous analyses of state and local data systems to design strategies that would reduce spending on corrections and reinvest dollars that would otherwise be spent on prison construction.

We brought in the Council for State Governments. They helped us design a plan called "Justice Reinvestment for Indiana," like they had done in several other states. It was filed as SB 561 in 2011. It would have made a number of changes, but the major ones were the reduction of sentences for drug and property offenses. And, it would have created an incentive and disincentive program for counties to reduce the number of D felony commitments to the DOC, and a local rehabilitation incentive funded by the savings realized by the DOC as a result of counties committing fewer D felons to the DOC.

Sen. Steele (with help from Sen. Bray and Hume and others) got SB 561 through the Sen. Corrections and the Sen. Appropriations. It passed the Senate by a vote of 46-3. Then, it died in the House without a hearing.

What we have now is an entirely different animal. Sentences for Murder and Level One offenses were significantly increased even though no evidence was presented to the CCEC or the legislature that a need existed to increase sentences. Both good time credit and earned credit time were reduced. The result is the sentences HEA 1006 combined with the credit time changes will increase the average time served compared to current law.

The goal of justice reinvestment wasn't intentionally abandoned. It was just made impossible, because there will be no savings at the state level to reinvest in the counties. *See* Appendix A.

The reason that advisory sentences and suspendibility need to be left as passed in HEA 1006 is because they are the counter-weights to the increased sentences demanded by prosecutors as the price for their continued support of HEA 1006. Whether they are adequate to offset the projected increase in time served is a matter of speculation and debate. The problem is that nobody really knows what the impact will be because no one knows how judges and prosecutors will use their new authority and discretion.

I've tried to assess the impact of the sentence changes using the advisory and mean sentences for each felony level. Attached is Appendix B, entitled "Impact of Sentence Changes in HEA 1006 Using the Advisory and Mean Sentences." The charts in Appendix B show the change in felony classifications from Class to Level of offense and the impact of the credit time changes and the use of the advisory sentence and the mean or average sentence. Although the use of the advisory vs. mean sentence isn't too significant for the higher offenses, it is significant in Class C felonies converted to Level 4 or 5 offenses and Class D felonies converted to Level 6 offenses. There are approximately 3,000 Class C felons and 6,000 Class D felons committed to the DOC each year. *See* Appendix B. If the average time served for these offenses increase as indicated on these charts, the DOC population will begin increasing much sooner than projected by the LSA fiscal impact statement.

Because of the very real possibility that HB 1006 will increase the DOC population, I don't think we should be focusing on whether we need advisory sentences and whether we should limit judicial discretion. Here's why.

Advisory Sentences

To understand the significance of advisory sentences, one needs to know why they were created. Advisory sentence were created by PL. 71- 2005 (SEA 96) in response to the decision of the U.S. Supreme Court in *Blakey v. Washington*, 542 U.S. 296 (2004), which held that in a felony trial any facts that would result in a sentence above the prescribed range must be submitted to a jury using the beyond a reasonable doubt standard. Prior to *Blakey*, Indiana, like many states, used the concept of a presumptive sentence with a structured decision-making process for imposing determinate sentences. IC 35-38-1-7.1 provided for a presumptive sentence for each class of offense and authorized a sentencing judge to increase or decrease the sentence using the statutory aggravating and mitigating circumstances. The consensus was that Indiana's sentencing structure would likely be held to be unconstitutional after *Blakey*.

The solution in SEA 96 was to strike the term "presumptive" and replace it with the term "advisory" and authorize courts to impose any sentence within the statutory range regardless of the presence or absence of aggravating circumstances. *See* IC 35-38-1-7.1(d).

This switch from presumptive to advisory is also contained in the change made to IC 35-35-3-1 in SEA 96:

As used in this chapter:

"Advisory sentence" means the nonbinding guideline sentence defined in IC 35-50-2-1.3.

"Plea agreement" means an agreement between a prosecuting attorney and a defendant concerning the disposition of a felony or misdemeanor charge.

~~"Presumptive sentence" means the penalty prescribed by IC 35-50-2 without consideration of mitigating or aggravating circumstances.~~

SEA 96 also converted the mandatory considerations that a judge was required to consider before imposing a sentence to aggravating circumstances.

The use of "advisory sentences" currently in IC 35-50-2-1.3, was not changed by HEA 1006.

IC 35-50-2-1.3 Advisory sentences

(a) For purposes of sections 3 through 7 of this chapter, "advisory sentence" means a guideline sentence that the court may voluntarily consider as the midpoint between the maximum sentence and the minimum sentence.

(b) Except as provided in subsection (c), a court is not required to use an advisory sentence.

(c) In imposing:

1) consecutive sentences for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct, in accordance with IC 35-50-1-2;

(2) an additional fixed term to an habitual offender under section 8 of this chapter; or

(3) an additional fixed term to a repeat sexual offender under section 14 of this chapter;

a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term. However, the court is not required to use the advisory sentence in imposing the sentence for the underlying offense.

(d) This section does not require a court to use an advisory sentence in imposing consecutive sentences for felony convictions that do not arise out of an episode of criminal conduct. *As added by P.L.71-2005, SEC.5. Amended by P.L.178-2007, SEC.4.*

HEA 1006 also did not change the requirement in IC 35-50-2-1.3 that a court use the advisory sentence when imposing a consecutive sentence for felony convictions arising out of an episode of criminal conduct and when imposing an additional fixed term for a repeat sexual offender.

Although advisory sentences are not mandatory and could be abolished, we recommend retaining the use of advisory sentences for felonies for the following reasons:

1. Advisory sentences serve the same purpose that "presumptive sentences" previously served. They serve as the default sentence or starting place for a sentence for each felony Class or Level from which judges may depart using the aggravating and mitigating circumstances in IC 35-38-1-7.1.
2. Two of the original purposes for expanding the felony classes from four to six were

proportionality and disparity. There was widespread agreement that the ad hoc process of creating new crimes and enhancing sentences over 30 years had created a criminal code with sentences disproportionate to offense. There was also a recognition that the large sentencing ranges (e.g., 20-50 years) and the broad discretion to impose consecutive sentences resulted in a disparity of sentences that depended more on which judge did the sentencing than the nature of the offense or the criminal record of the offender. Thus, the purpose of expanding the felony classes from four to six was to enhance the ability to make the sentence proportional to the offense and narrow the sentencing ranges to reduce disparity.

The CCEC Work Group did a commendable job of assigning all felonies in Title 35 to one of the six Levels. The proportionality chart that you have seen from time to time is the product of the Work Group. Unfortunately, no sentence ranges were approved by the CCEC. And, when sentencing ranges were added to HEA 1006, they went in the opposite direction or what was intended in the Justice Reinvestment Model. Rather than creating narrower ranges, HEA 1006 created wider sentence ranges that will only serve to increase disparity of sentences for similar offenses.

Offense	Sentence Ranges	
	Current (yrs)	HEA 1006 (yrs)
Murder	10	15
1	15	22.5
2	15	15
3	7	12.5
4	7	7.5
5	3	3.75
6	1.25	1.5

Thus, the expansion of the sentence ranges in HEA 1006 increases the need for advisory sentences to help reduce the outliers and reduce the number of cases needing appellate review of sentences under Appellate Rule 7.

3. The requirement in IC 35-50-2-1.3 for using the advisory sentence for consecutive sentences and repeat sex offenders helps to make the additional sentences predictable and consistent.
4. If advisory sentences are not retained and the mean or mid-point of each sentencing range becomes the norm, the DOC population will significantly increase unless the sentence ranges are reduced. *See* "Impact of Sentence Changes in HEA 1006 on Sentences Using the Advisory and Mean Sentence Within Each Range."

Suspendibility of Sentences

We recommend that the current provisions for suspendibility of sentences in IC 35-50-2-2 be retained for the following reasons:

1. The increase in sentences and the reduction of good time credit in HEA 1006 is likely to result in a significant increase in time served for Murder and Level 1 and 3 offenses and a slight increase in time served for Level 4-6 offenses. In addition, the reduction of maximum earned credit time from 4 years to 2 years will further increase time served over the current sentences. Increasing judicial discretion to suspend all or part of a sentence or grant a sentence modification is necessary to reduce the impact of the sentence increases and reduction of credit time.
2. When judges identify an offender who does not need incarceration, they need the ability to suspend a sentence and impose community sanctions.

**MALE COMMITMENTS TO
INDIANA DEPARTMENT OF CORRECTION
1995-2012**

prepared by

**Larry A. Landis, Executive Director
Indiana Public Defender Council**

from

**Offender Population Statistical Reports
of Indiana Department of Correction**

9/26/13

CLSP

Exhibit 12

Murder

NUMBER OF MALES RECEIVED AT RDC WITH MURDERY AS MOST SERIOUS OFFENSE

Murder (45-65 yrs)	Code	95-96	96-97	97-98	98-99	99-00	00-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Murder	35-42-1-1	136	204	181	148	102		94	124	136	85		105	91	107	100	84	82

CLASS A FELONIES

NUMBER OF MALES RECEIVED AT RDC WITH CLASS A FELONY AS MOST SERIOUS OFFENSE

Class A Felonies (20-50 yrs)	Code	95-96	96-97	97-98	98-99	99-00	00-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Aiding, Inducing or Causing an Offense	35-41-2-4									2	0		1	5	3	4	7	7
Arson	35-43-1-1	6	2	4	2	1	2	5	1	0	1		3	2	2	2	5	3
Attempt to Commit a Felony	35-41-5-1					29	40	50	49	36	38		43	35	40	30	38	36
Battery	35-42-2-1										5		5	2	1	3	0	4
Battery of child w/death	35-42-2-1.5										1		0	2	0	0		0
Battery with Bodily Waste	35-42-2-6												0	0	0			0
Burglary	35-43-2-1	16	9	5	7	16	18	14	16	20	12		12	28	33	25	27	24
Child Molesting	35-42-4-3	6	12	30	51	95	79	87	95	102	110		106	101	107	109	121	128
Conspiracy	35-41-5-2	39	57	34	9	54	76	76	43	38	60		35	36	24	34	20	17
Criminal Deviate Conduct	35-42-4-2	3	4	7	3	1	8	10	10	11	13		13	7	10	7	11	7
Dealing in Cocaine or Narcotic Drug (>3 grms; to person <18; on school bus; or w/i 1000' of school prop., public park, family housing complex, or youth program center)	35-48-4-1	67	69	78	104	114	91	116	146	184	189		214	234	222	155	184	119
Dealing in Methamphetamine (>3 grms, delivered to person <18 at least 3 yrs junior, on school bus or w/in 1000' of school prop, public park, family housing complex, or youth program center)	35-48-4-1.1													20	30	34	35	46
Dealing in a Schedule I, II, III Controlled Sub. (to person <18; on school bus; or w/i 1000' of school prop., public park, family housing complex, or youth program center)	35-48-4-2	6	2	1	6	16	7	11	3	4	3		3	4	17	37	17	19
Possession of Cocaine or Narcotic Drug (>3 grms on school bus, or w/i 1000' of school prop., public park, family housing complex, or youth program center)	35-48-4-6	5	5	4	9	29	17	19	14	28	41		28	23	13	10	9	10
Possession of Methamphetamine (>3 grms on school bus or w/i 1000' of school prop., public park, family housing complex, or youth program center)	35-48-4-6.1													2	1	3	1	2
Kidnapping	35-42-3-2	3	2	5	8	9	9	3	11	9	2		8	7	2	0	4	3
Neglect of a Dependent Causing Death	35-46-1-4												2	2	2	3	9	3
Rape	35-42-4-1	19	20	8	16	15	20	26	23	23	20		17	18	27	16	24	24
Robbery	35-42-5-1	12	9	6	14	21	15	27	14	23	25		14	29	29	24	17	32
Sexual misconduct w/minor	35-42-4-9										1		0	0	0	0	1	1
Vicarious Sexual Gratification	35-42-4-5													0	0	0		
Voluntary Manslaughter	35-42-1-3	29	25	11	26	30	24	27	30	25	37		23	29	30	21	29	29
Miscellaneous		1	1	0	0	1	0	1	3	1	0							
Total for Class A felonies		212	217	193	255	431	406	472	458	506	558	526	527	586	593	517	559	514

CLASS B FELONIES

NUMBER OF MALES RECEIVED AT RDC WITH CLASS B FELONY AS MOST SERIOUS OFFENSE

Class B Felonies (6-20yrs)	Code	96-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Accident/Failure to Stop																2	4	4
Aggravated Battery	35-42-2-1.5	60	49	71	47	48	59	79	66	67	82		92	67	85	84	83	87
Aiding, Inducing or Causing an Offense	35-41-2-4						23	29	26	22	39		33	42	43	38	30	41
Arson	35-43-1-1	21	19	36	24	35	33	32	34	45	45		27	31	29	42	30	42
Attempt to Commit a Felony	35-41-5-1						51	69	69	78	84		74	73	91	100	85	67
Battery	35-42-2-1							11	18	14	17		18	23	23	19	23	20
Battery by Bodily Waste	35-42-2-6							0	1	1	0		0	0	0	0		
Burglary	35-43-2-1	350	319	343	295	431	529	495	562	590	671		609	700	730	856	801	802
Causing Suicide	35-42-1-2												0	0	0	1	0	0
Carjacking	35-42-5-2	23	20	16	8	15	21	17	20	22	24		27	44	26	31	24	29
Child Molesting	35-42-4-3	104	128	114	76	87	135	143	151	169	161		206	172	187	107	195	200
Child Solicitation	35-42-4-6																	1
Conspiracy	35-41-5-2	10	24	33	27	6	60	96	103	86	134		131	112	108	134	121	91
Consumer Product Tampering	35-45-8-1													0	0	0		0
Criminal Confinement	35-42-3-3	30	36	56	51	40	56	34	66	48	67		75	56	75	63	73	45
Criminal Deviate Conduct	35-42-4-2	12	6	14	11	14	25	20	22	29	38		31	41	41	45	36	41
Dangerous Control of a Handgun	35-47-10-6												0	0	0	0		0
Dealing in Cocaine or Narcotic Drug	35-48-4-1	366	383	406	357	438	571	597	746	852	980		977	938	825	815	739	633
Dealing Methamphetamine	35-48-4-1.1													119	235	272	374	350
Dealing in Schedule I,II,III Cont. Sub.	35-48-4-2	40	42	69	64	98	165	204	265	238	161		143	157	191	236	255	270
Dealing in Schedule IV Controlled Substance	35-48-4-3	1	1	0	1	0	2	4	4	3	7		3	4	3	5	3	3
Dealing in Schedule V Controlled Substance	35-48-4-4	0	0	0	0	0	2	2	3	1	3		2	2	1	1	4	0
Escape	35-44-3-5	3	1	2	0	1	1	3	1	2	5		2	6	0	1	4	2
Failure to Deposit Public Funds	5-13-14-3												0	0	0	0	0	0
Felon in Possession of a Firearm	35-47-4-5							46	87	87	95		93	145	114	156	149	173
Human Sexual Trafficking	35-42-3-5																1	0
Incest	35-46-1-3			8	5	7	9	5	6	2	7		6	9	15	6	7	9
Misappropriation of Insurance funds	35-43-9-7(B)(2)															1		0
Neglect of a Dependent	35-46-1-4	9	4	4	2	6	16	10	10	14	10		13	11	11	18	13	13
Operating a Machine Gun/Bomb	35-47-5-9												1	1	0	1	0	0
Operating a Vehicle-Intoxicated-Death	9-30-5-5							3	6	4	8		12	15	15	15	17	12
Possession of Cocaine or Narcotic Drug	35-48-4-6	20	13	28	32	52	89	90	71	126	120		143	141	124	97	103	69
Possession Methamphetamine	35-48-4-6.1													12	20	26	23	31
Possession Sched IV Controlled Substance	35-48-4-7	0	0	0	0	0	0	1	4	0	0		1	0	2	0	2	3
Prisoner Possession of a Dangerous Device	35-44-3-9.5												2	1	0	0	3	4
Promoting Prostitution, Under 18	35-45-4-4	0	0	1	0	0	1	0	0	0	0		1	0	2	0	2	0

Rape	35-42-4-1	33	42	43	34	31	52	66	58	65	61		78	81	60	61	68	54
Resisting Law Enforcement	35-44-3-3							1	1	3	0		2	3	3	3	0	1
Robbery	35-42-5-1	212	198	188	190	288	282	320	369	412	392		439	477	485	489	437	511
Sexual Misconduct with a Minor	35-42-4-9			6	24	38	51	61	73	85	88		99	108	105	123	129	154
Service Provider Misconduct	35-44-1-5																0	0
Stalking	35-45-10-5						2	3	1	3	3		0	0	0	1	0	0
Vicarious Sexual Gratification	35-42-4-5	0	0	0	0	0	1	1	0	0	2		0	1	0	0		0
Voluntary Manslaughter	35-42-1-3	6	4	6	3	5	9	10	7	12	6		12	5	8	2	10	10
Miscellaneous		1	0	3	3	7	34	19	1	3	3		0	0	0			
Total Class B Felonies		1301	1289	1447	1254	1648	2279	2471	2851	3083	3313	0	3352	3597	3657	3851	3848	3772

CLASS C FELONY
NUMBER OF MALES RECEIVED AT RDC WITH CLASS C FELONY AS MOST SERIOUS OFFENSE

Class C Felonies (2 - 8 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Aiding, Inducing or Causing an Offense	35-41-2-4					18	26	19	26	21	20		25	26	26	28	25	27
Altered/Counterfeit Lotto Ticket	4-30-14-3												0	0	0	0		0
Armor Piercing Handgun Ammo	35-47-5-11												0	0	0	0		0
Arson	35-43-1-1	2	4	2	3	2	1	3	5	0	4		1	4	3	0	2	2
Assisting a Criminal	35-44-3-2	11	10	7	8	10	9	8	7	6	9		11	10	6	8	6	12
Attempt to Commit a Felony	35-41-5-1					48	63	87	77	71	86		78	89	60	63	52	58
Auto Theft, Receiving Stolen Parts	35-43-4-2.5	32	37	32	31	61	53	75	75	72	73		104	94	84	90	76	65
Battery	35-42-2-1	162	190	146	195	280	303	262	297	312	308		305	397	341	370	366	355
Battery by Bodily Waste	35-42-2-6						2	1	2	2	1		1	5	1	0	2	2
Bribery	35-44-1-1	1	0	0	3	3	0		0	0	3		3	2	0	3	2	0
Burglary	35-43-2-1	343	355	312	403	532	538	561	616	631	630		646	669	685	688	613	671
Carrying Handgun w/o License	35-47-2-23						35	110	148	140	128		189	194	213	184	184	132
Causing Suicide	35-42-1-2																	0
Check Fraud	35-43-5-12						0	1	2	1	2		3	1	1	1	1	1
Child Exploitation	35-42-4-4									4	8		15	13	14	13	14	13
Child Molesting	35-42-4-3	208	220	144	172	275	293	279	303	314	269		282	305	260	255	245	218
Child Solicitation	35-42-4-6									3	2		12	20	18	21	12	10
Conspiracy	35-41-5-2	14	19	11	4	26	37	21	41	33	44		25	20	25	31	29	21
Contributing to Delinquency	35-46-1-8										1		1	1	0	0	3	0
Controlled Substance Registration	35-48-4-14	4	1	1	1	1	1	1	9	3	5		2	4	1	4	1	1
Corrupt Business Influence	35-45-6-2	2	2	0	3	5	2	4	6	5	2		7	6	7	1	15	18
Criminal Confinement	35-42-3-3	3	2	4	6	7	9	6	12	14	6		23	26	36	33	52	40
Criminal Mischief	35-43-1-2	1	0	0	6	0	4	2	4	3	4		1	2	2	3	0	2
Criminal Recklessness	35-42-2-2	20	19	33	35	33	33	34	27	33	40		25	50	38	54	47	47
Dangerous Control of a Handgun	35-47-10-6						1	0	0	0	2		0	0	0	0		0
Dangerous Possession of a Handgun	35-47-10-5								3	1	1		0	0	0	0		0
Deadly Weapon - Aircraft	35-47-6-1												0	0	0	0		0
Dealing in Cocaine or Narcotic Drug	35-48-4-1									9	4		2	3	4	5	1	2
Dealing in Marijuana, Hash Oil, or Hashish	35-48-4-10	43	54	49	51	69	62	67	56	63	50		43	46	56	50	38	37

Class C Felonies (2 - 8 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Dealing/Possessing Look-a-Like Substance	35-48-4-4.6	16	7	5	12	9	15	11	13	17	8		8	7	4	2	7	15
Dealing in Schedule V Controlled Substance	35-48-4-4	4	10	5	7	12	10	9	7	17	11		0	0	0	27	17	24
Dealing in Schedule IV Controlled Substance	35-48-4-3										2		17	23	21	2	0	2
Destroying Handgun ID	35-47-2-18										20		9	17	11	13	17	4
Driving after Forfeiture	9-12-3-2	121	1	7	18	4	0	0	0	1	2		2	2	0	1	0	2
Driving while Intoxicated Resulting in Death	9-11-2-5	26	20	14	22	20	0			1	0		5	3	1	1	3	2
Driving while Suspended Resulting in Death	9-24-19-4												0	0	0	0		0
Escape	35-44-3-5	46	35	24	48	66	64	64	66	58	54		38	43	36	52	42	46
Explosive or Inflammable Substance	35-47-5-1	0	3	1	1	0	0	5	0	1	0		0	0	0	0		0
Failure to Register as a Sex Offender	5-2-12-9												7	30	51	68	70	93
Failure to Stop Acc/Death	9-26-1-8										5		9	5	4	5	7	3
Felon in Possession of a Firearm	35-47-4-5												7	15	9	15	12	8
Feticide	35-42-1-6												0	0	1	0		0
Firearm within 1 Mile of School	35-47-2-1						41	97	99	70	79		16	32	39	15	34	49
Forged Prescription	16-6-8-3												0	0	0	0		0
Forgery	35-43-5-2	199	201	154	217	380	376	380	472	489	505		610	590	461	393	373	350
Fraud on Financial Institution	35-43-5-8	19	19	18	19	36	33	33	36	32	39		27	27	33	41	30	21
Gang Intimidation	35-45-9-4												0	0	1	1	1	0
Handgun Violation	35-47-2-7	91	124	74	170	228	138	58	28	32	11		6	7	7	4	0	5
Home Improvement Fraud	35-43-6-13	1	0	0	0	1	3	2	0	2	2		1	2	2	0	4	0
Incest	35-46-1-3								6	7	3		8	9	7	6	11	12
Inmate Fraud	35-42-5-20																	1
Insurance Fraud	35-43-5-4.5																	0
Interference with Medical Services	35-42-2-8													0	0	0		0
Intimidation	35-45-2-1	7	14	2	17	29	31	32	28	40	46		55	49	46	58	42	36
Involuntary Manslaughter	35-42-1-4	11	1	3	6	1	8	8	11	5	4		7	5	3	2	5	4
Loan Sharking	35-45-7-2												0	0	0	0		0
Misappropriated Insurance Funds	35-43-9-7												1	0	0	0	1	0
Money Laundering	35-45-15-5												0	0	0	1	0	4
Neglect of a Dependent	35-46-1-4						3	8	6	7	8		8	14	14	8	14	13
Nonsupport of Dependent Child	35-46-1-5						26	48	79	96	102		110	142	113	115	146	111

Class C Felonies (2 - 8 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Operating After Lifetime Suspension	9-30-10-17		190	101	172	324	324	307	380	474	447		485	444	486	432	352	309
Operating Vehicle-Intoxicated-Death	9-30-5-5						28	29	24	25	26		17	16	12	16	10	9
Operating Vehicle-Intoxicated-Injury	9-30-5-4						5	11	17	14	10		10	8	11	15	9	12
Operating Vehicle - Habitual Violation	9-30-10-16															3	6	1
Operating Vehicle w/minor & injury	9-30-5-3																	1
Operating Vehicle-Schedule I-Death	35-48-2-4												0	0	0	0	0	0
Permitting a Child to Possess a Firearm	35-47-10-7													0	0	0		0
Possession of Cocaine or Narcotic Drug	35-48-4-6	85	107	89	131	177	203	256	282	339	391		456	419	340	235	197	143
Possession of Controlled Substance	35-48-4-7	4	4	8	9	15	38	43	46	43	49		49	59	69	59	56	52
Possession of Legend Drug by Fraud	16-42-19-16																	0
Possession of Marijuana	35-48-4-11										2		2	1	1	0	1	1
Possession of Meth	35-48-4-6.1															1	19	31
Possession of Precursors	35-48-4-14.5									10	28		15	16	14	16	21	17
Possession - Syringe/Needle	16-42-19-18																	1
Possession/Use of Legend Drugs	16-42-19-27												0	1	1	0	1	0
Possession of Destructive Device	35-47.5-5-2												2	3	1	7	9	3
Possession of Explosives by Convicted Felon	35-47.5-5-3												0	0	0	0		0
Possession of a Machine gun or Bomb	35-47-5-8	2	5	0	3	0	2	7	3	2	3		2	1	0	0	3	0
Possession of Sawed Off Shotgun	35-47-5-4.1										1		0	0	0	0	0	0
Promoting Prostitution	35-45-4-4	1	1	2	4	6	3	3	3	5	7		8	9	4	2	3	2
Prisoner Possession Dangerous Device	35-44-3-9.5										1		1	4	0	3	2	2
Reckless Homicide	35-42-1-5	35	36	22	25	35	36	30	37	45	30		21	21	14	17	29	24
Removing/Altering Original Vehicle ID #	9-18-8-12									6	2		0	0	2	0		0
Resisting Law Enforcement	35-44-3-3	0	0	3	2	6	3	2	2	3	3		5	4	6	9	2	7
Robbery	35-42-5-1	164	194	117	170	238	243	258	258	285	258		293	284	245	286	254	258
Security Sale Fraud	23-2-1-12												2	2	0	1	0	0
Sexual Battery	35-42-4-8	5	4	2	7	5	2	1	8	2	2		7	1	0	1	0	1
Sexual Misconduct	35-44-1.5														1	0		
Sexual Misconduct with a Minor	35-42-4-9	29	56	35	69	87	102	108	129	155	146		134	150	124	128	113	115
Stalking	35-45-10-5					13	9	10	22	15	28		17	20	23	17	11	21
Theft, Receiving Stolen Property	35-43-4-2	1	6	7	4	5	7	4	10	4	8		11	4	6	3	9	10
Trafficking with an Inmate	35-44-3-9	0	1	1	2	3	4	2	3	2	6		2	4	0	4	4	14

Class C Felonies (2-8 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Transferring Contaminated Bodily Fluid	35-42-1-7												2	1	0	0		0
Unlawful Transaction as Agent	23-2-1-8												0	0	0	0		0
Vicarious Sexual Gratification	35-42-4-5	1	0	2	2	4	2	8	2	4	1		5	3	2	2	1	0
Violation of Custody Order	35-42-3-4												0	0	0	0		0
Welfare Fraud	35-43-5-7	2	3	2	2	4	3	5	6	3	3		5	6	2	2	2	0
Miscellaneous		4	17	45	33	49	44	15	35	20	0							
Total Class C Felonies		1720	1972	1484	2093	3127	3278	3395	3834	4072	4057	3,991	4307	4488	4115	3996	3730	3571

CLASS D FELONIES

NUMBER OF MALES RECEIVED AT RDC WITH CLASS D FELONY AS MOST SERIOUS OFFENSE

Class D Felonies (6 mos - 3 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Abuse of a corpse	35-46-11-1										1	0	0	0	0	0	0	0
Accident/ Failure to Stop	9-4-1-40	2	9	2	6	5	0	0	0		2	1	2	0	3	2	1	2
Accident/Failure to Stop-Serious Injury-Death	9-26-1-8						8	8	11	10	1	5	2	1	4	5	0	3
Aiding, Inducing, Causing an Offense	35-41-2-4					12	10	22	12	16	8	5	11	19	24	19	19	21
Aiding in Manuf. Of Schedule 2	35-48-4-2										1	0	1	0	0	1	0	0
Animal Fight Contest	35-46-3-9												1	2	1	0	0	3
Arson	35-43-1-1	8	4	5	5	7	8	11	10	10	11	7	5	11	11	14	16	9
Assisting a Criminal	35-44-3-2	2	7	2	7	6	9	7	15	10	17	14	12	14	11	11	12	10
Attempt to Commit a Felony	35-41-5-1					58	56	53	69	92	93	90	106	129	108	90	68	77
Auto Theft	35-43-4-2.5	119	147	106	101	199	186	193	197	204	241	254	254	243	202	175	166	147
Battery	35-42-2-1	82	107	102	151	215	233	287	299	226	220	192	211	175	181	186	153	175
Battery by Bodily Waste	35-42-2-6		10	16	9	31	31	30	38	29	24	27	31	41	46	36	25	29
Battery on Law Enforcement Officer	35-42-2-1																5	5
Bigamy	35-46-1-2													2	0	0	0	0
Burglary	35-43-2-1												1	0	1	1	1	0
Causing Suicide	35-42-1-2															0	0	0
Cemetery Mischief	35-43.1-2-1															0	0	0
Cheating at Gambling	4-33-10-2												1	1	1	0	1	0
Check Deception	35-43-5-5					7	12	18	7	8	16	17	1	1	2	1	0	0
Check Fraud	35-43-5-12											6	22	15	21	22	11	25
Child Exploitation	35-42-4-4	3	2	4	0	3	4	8	7	7	7	10	15	12	12	10	16	11
Child Molesting	35-42-4-3	23	5	3	1	0	1	4	1	3	0	3	0	0	0	2	0	1
Child Pornography	35-42-4-4														0	1	3	8
Child Seduction	35-42-4-7	3	0	0	2	3	1	2	3	3	3	4	2	3	7	3	5	7
Child Solicitation	35-42-4-6		2	4	6	5	8	5	12	13	6	8	13	10	11	12	12	8
Computer Tampering	35-43-1-4															0	0	0
Conflict of Interest	35-41-5-2															0	0	0
Conspiracy	35-41-5-2	2	5	5	1	6	9	9	8	12	10	12	9	18	15	10	10	10
Consumer Product Tampering	35-45-8-3															0	0	21

Class D Felonies (6 mos - 3 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Controlled Substance Registration	35-48-4-14	1	7	2	2	8	15	10	10	12	14	11	6	4	15	16	18	0
Conversion	35-43-4-3															0	0	0
Criminal Confinement	35-42-3-3	23	23	20	23	55	65	84	97	99	96	111	91	102	114	119	95	71
Criminal Deviate Conduct	35-42-4-2												0	0	0	0	0	0
Criminal Gang Activity	35-45-9-3	13	1	1	2	3	3	2	1	2	1	7	2	1	3	5	0	3
Criminal Mischief	35-43-1-2	6	5	4	2	6	9	10	7	11	12	8	13	15	18	21	11	12
Criminal Recklessness	35-42-2-2	107	99	72	91	150	155	162	170	162	147	148	160	177	163	153	125	112
Criminal Trespass	35-43-2-2					2	6	12	13	24	25	29	36	30	32	46	30	41
Cruelty to Animals	35-46-3-12									8	2	7	3	4	1	0	1	0
Cruelty to Law Enforcement Animal	35-46-3-11														0	0	0	0
Cultivation of Marijuana	35-48-4-1					0	3	2	7	7	5	3	2	1	1	2	4	2
Dealing in Counterfeit Substance	35-48-4-5	0	1	1	1	4	0	4	1	0	1	2	2	0	3	1	3	0
Dealing in Marijuana, Hash oil, or Hashish	35-48-4-10	35	47	33	30	63	61	52	54	55	67	52	47	60	63	68	52	56
Dealing Paraphernalia	35-48-4-8.2												1	0	0	0	0	0
Dealing in Schedule V Controlled Substance	35-48-4-4	3	1	2	0	5	1	1	2	3	2	2	2	0	5	1	1	0
Dealing in Substance Represented to be a Controlled	35-48-4-4.5	10	7	5	6	6	5	4	3	7	7	10	6	10	7	14	6	3
Dealing in Sawed-off Shotgun	35-47-5-4.1	5	6	3	2	2	3	5	3	0	0	2	4	2	2	5	3	2
Disorderly Conduct	35-45-1-3																	1
Disposal of Dead Animal	15-17-11-20																2	0
Dispose Solid Waste	13-30-2-1												1	0	0	0		0
Dissem of Matter Harmful to Minor	35-49-3-3						0	3	1	4	0	0	4	5	5	8	2	2
Domestic Battery	35-49-3-3									42	65	75	184	241	295	266	270	245
Driving while Intoxicated	9-11-2-3	509	540	454	505		0	0	0	34	18	29	255	314	285	260	164	115
Driving w/ Intox. Resulting in Bodily Injury	9-11-2-4	16	18	13	18		0	0	0	0	1	0	3	1	0	0	0	0
DWS/Operating Vehicle while HTV	9-30-10-16									7	4	5	11	13	32	50	15	13
Driving while Suspended/Restricted	9-24-18-5	45	3	1	3	14	18	13	13	14	4	1	4	0	1	4	0	
Dump Controlled Substance Waste	38-48-4-4.1												1	0	1	0	2	4
Exploit Endangered Adult	35-46-1-12												1	0	0	0	0	2
Failure to Appear	35-44-3-6	1	1	2	1	5	1	3	7	7	3	6	8	3	8	6	3	5
Failure to Register as a Sex Offender	5-2-12-9						1	4	6	14	38	55	105	102	125	126	93	116
Failure to Remit Money	6-3-4-8															1	0	0
Failure to Remit Sales Tax	6-2.5-9-3												1	1	0	0	0	0

Class D Felonies (6 mos - 3 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Failure to Return to Lawful Detention	35-44-3-5	25	15	6	19	59	48	97	104	106	109	142	126	121	111	108	92	104
Failure to Stop Accident/Injury	9-26-1-1																2	4
Failure to Warn - Communicable Disease	35-42-1-9												1	1	0	1	0	5
False Reporting	35-44-2-2	1	0	2	1	2	2	3	2	1	0	4	1	3	0	4	2	2
Forged Prescription	16-6-8-3											1	0	0	0	0	0	0
Forgery	35-43-5-2						3	2	6	1	0	1	8	8	11	11	14	8
Fraud	35-43-5-4	11	16	11	11	21	20	26	26	33	25	21	25	45	38	47	42	41
Ghost Employment	35-44-2-4															0	0	1
Habitual Offender-Substance Abuse	35-50-2-10						1	6	9	2	5	1		0	0	0	0	0
Handgun Violation	35-47-2-1	16	15	13	13	43	8	6	2	4	2	2	4	0	0	1	1	0
Hazardous Waste Activities	13-30-6-3													0	0	0	0	0
Home Improvement Fraud	35-43-6-12	1	1	0	0	1	2	3	1	0	1	1	2	1	0	0	1	0
Home Improvement Fraud/Enhanced	35-43-6-13												1	2	4	2	3	1
Identity Deception	35-43-5-3.5									12	18	22	24	23	37	34	18	22
Illegal Poss of Firearm - Prior Felon	35-47-4-4																	0
Illegal Poss. of VIN Plate	9-18-8-15															1	0	0
Impersonation of a Public Servant	35-44-2-3	0	0	0	0	1	3	1	2	5	2	5	4	2	3	1	0	2
Incest	35-46-1-3	4	0	0	0	2	0	0	0	1	1	0	0	0	0	0	0	0
Income Tax Evasion	6-3-6-11														0	0	0	0
Intimidation	35-45-2-1	26	58	30	37	66	74	74	100	83	88	97	129	126	126	124	100	109
Invasion of Privacy	35-46-1-15.1									9	23	35	34	38	34	39	50	46
Involuntary Manslaughter	35-42-1-4	0	0	1	0	1	1	0	0	1	1	0	0	0	0	0	0	0
Leaving Scene of PI Accident	9-4-1-42											1	1	2	0	0	0	0
Loan Sharking	35-45-7-2													0	0	0	0	0
Maintaining a Common Nuisance	35-48-4-13	5	7	10	9	24	27	31	45	46	61	0	46	54	67	57	53	60
Manufacturing Paraphernalia																	0	0
Medicaid Fraud																	0	0
Money Laundering	45-45-15																0	1
Moving Body from Scene of Death	36-2-14-17												1	0	0	0	1	0
Neglect of a Dependent	35-46-1-4	4	1	5	12	16	13	21	19	21	21	27	24	26	24	26	20	28
Nonsupport of a Child	35-46-1-5	44	61	50	41	74	95	102	94	135	134	155	156	121	136	120	87	82
Nonsupport of a spouse	35-46-1-6														0	0	0	4

Class D Felonies (6 mos - 3 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Obscene Performance	35-49-3-2	0	0	0	0	0	1	2	0	0	0	0	1	1	0	0	0	0
Obstruction of Justice	35-44-3-4	5	2	3	1	6	4	7	6	5	12	10	11	3	12	16	8	9
Official Misconduct	5-13-14-3													0	0	2	0	1
Operating a Vehicle-Habitual Trfc Offender	9-30-10-16						143	279	240	270	291	252	187	205	197	185	180	168
Operating Vehicle While Intoxicated	9-11-2-3					910	502	17	27	10	0	0	0	0	0	0	14	1
Operating Vehicle While Intoxicated - Endanger	9-30-5-2										11	6	33	84	234	226	149	184
Operating Vehicle While Intoxicated - Cont. Sub.	9-30-5-1																	8
Operating Vehicle While Intoxicated - Injury	9-22-2-4					14	16	23	20	27	37	28	27	22	22	13	11	19
Operating Vehicle While Intoxicated-Prior	9-30-5-3						370	991	1025	1142	1218	1002	614	582	586	547	490	428
Operating Vehicle While Intoxicated-SBI	9-30-5-4															0	0	0
Perjury	35-44-2-1	3	0	4	4	5	5	3	5	1	3	7	4	5	4	7	1	1
Pointing a Firearm	35-47-4-3						6	15	9	16	9	17	17	14	19	10	14	6
Poisoning	35-45-3-1															0	0	0
Possession of Anabolic Steroid	16-42-19-19																1	2
Possession of Cocaine or Narcotic Drug	35-48-4-6	148	175	150	194	330	261	322	417	513	555	604	667	526	408	329	295	257
Possession of a Controlled Substance	35-48-4-7	40	33	41	63	100	129	177	171	169	173	168	182	257	291	315	293	360
Possession of a Controlled Substance Tax	6-7-3-11												26	13	10	10	5	7
Possession of Marijuana, Hash oil, Hashish	35-48-4-11	57	67	75	106	181	197	207	258	287	299	286	349	397	389	439	379	334
Possession of Marijuana Substance Tax	6-7-3-11									1	6	5		0	0	0	1	2
Possession of Methamphetamine	35-48-4-6.1															26	67	96
Possession of Methamphetamine Sub. Tax	6-7-3-11b									2	4	1	55	62	103	97	0	52
Possession of Paraphernalia	35-48-4-8.3	6	7	7	14	13	24	23	32	30	36	47	65	87	76		49	45
Possession of Precursors	35-48-4-14.5						11	38	56	80	101	78	58	59	67	78	86	60
Possession of Presc/Aleg Drug	35-48-3-9									2	2	4	12	11	19	22	12	15
Possession/Use of Legend Drug	16-42-19-13												5	7	8	6	11	3
Poss. -Firearm on School Property	35-47-9-2																	2
Poss. - Handgun w/o License	35-47-2-23																	0
Possession of Sawed-Off Shotgun	35-47-5-4.1						0	1	2	0	1	1	1	0	0	2	3	1
Possession Syringe/Needle	16-42-19-18										5	1	1	3	7	11	17	28
Possession Vehicle w/Alt Rem ID	9-1-5-1	1									1	0	0	2	1	0	1	0
Prescription Fraud	35-43-5-1											2	2	9	8	2	4	1
Promoting Professional Gambling	35-45-5-4	1	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0	0

Class D Felonies (6 mos - 3 yrs)	Code	95-96	96-97	97-98	98-99	99-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Public Indecency	35-45-4-1						2	10	7	8	8	4	7	7	6	5	4	5
Public Intoxication	7-15-1-3														0	0	0	0
Residential Entry	35-43-2-1.5	52	76	63	71	126	146	137	153	131	184	156	173	171	144	169	146	135
Resisting Law Enforcement	35-44-3-3	31	42	45	86	161	188	194	262	289	263	283	271	309	292	291	218	215
Rioting	35-45-1-2															0	0	0
Sale, Dist. or Exhibition of Obscene Material	35-49-3-1	0	0	0	0	0	1	1	0	0	0	0	0	0	1	0	0	1
Sale of Legend Drug	16-42-19-11						0	1	1	3	1	3	1	2	0	5	1	0
Sexual Battery	35-42-4-8	34	31	27	37	60	53	51	39	53	44	58	61	68	50	58	50	48
Sexual Misconduct	35-44-1-5	12	7	12	15	0	2	1	2	3	6	2	4	4	2	30	2	1
Sexual Misconduct with a Minor	35-42-4-9		12	0	0	13	15	32	20	13	17	12	15	40	33	0	15	13
Sex Offender Residency Restrictions	35-42-4-11													4	9	6	7	2
Sex Offender w/o Identification	11-8-8-15																	2
Stalking	35-45-10-5		2	4	10	6	5	12	6	15	8	14	4	12	4	7	8	3
Strangulation	35-42-2-9												67	125	129	111	129	116
Synthetic Identity Deception	35-43-5-3.8																	3
Theft	35-43-4-2	595	640	517	701	1016	1040	1169	1314	1349	1358	1496	1610	1835	1861	1833	1618	1752
Trafficking with an Inmate	35-44-3-9	3	3	0	2	0	0	0	0	0	0	0	0	1	0	0	0	0
Trespass		5	3	4	4	1	0	0	0	0	0	0	0	0	0	0	0	0
Unlawful Use of Body Armor	35-47-5-13											1	0	0	0	1	0	0
Unlawful Use of Stun Gun	35-47-8-5															0	0	0
Use of Legend Drugs							2	3	8	8	13	4				0	0	0
Uttering Forged Perscription	16-42-19-26															0	0	0
Vicarious Sexual Gratification	35-42-4-5	0	0	1	0	0	0	0	1	2	6	10	11	11	4	3	4	4
Violation 1935 Firearms	35-47-5-4.1										4	7	1	7	5	2	4	4
Violation of Custody Order	35-42-3-4												0	1	0	0	0	1
Violation of Fuel Statute	6-6-4.1-18																1	0
Visiting Place Unlawfully Selling Alcohol	7.1-5-10-21															0	4	0
Vote in Other Precinct	3-14-2-11												0	0	0	0	0	0
Voyeurism	35-45-4-5										2	2	2	3	1	3	4	3
Welfare Fraud	35-43-5-7	1	2	0	4	4	0	3	4	0	1	1	2	0	1	0	0	0
Miscellaneous		76	154	135	210	533	144	2	21	20	4	4						
Total Class D Felonies		2225	2487	2078	2640	4669	4486	5121	5600	6056	6353	6305	6788	7305	7438	7217	6215	6296

**NUMBER OF MALES RECEIVED AT INDIANA DOC RECEPTION DIAGNOSTIC CENTER
BY MOST SERIOUS OFFENSE FROM 1996-2012**

Most Serious Offense	96-97	97-98	98-99	99-00	00-01	2002-03	2002-03	2003-04	2004-05	2005-06	2007	2008	2009	2010	2011	2012
Murder	204	181	148	102		94	124	136	85	97	105	91	107	100	84	82
Total Class A Felonies	217	193	255	431	406	472	458	506	558	526	527	586	593	517	559	514
Total Class B Felonies	1,289	1,447	1,254	1,648	2,279	2,471	2,851	3,083	3,313	3,267	3,352	3,597	3,657	3,851	3,848	3,772
Total Class C Felonies	1,972	1,484	2,093	3,127	3,278	3,395	3,834	4,072	4,057	3,991	4,307	4,488	4,115	3,996	3,730	3,571
Total Class D Felonies	2,487	2,078	2,640	4,669	4,486	5,121	5,600	6,056	6,353	6,305	6,788	7,305	7,438	7,217	6,215	6,296
TOTAL	6,169	5,383	6,390	9,977	10,449	11,553	12,867	13,853	14,366	14,186	15,079	16,067	15,910	15,681	14,436	14,235

IMPACT OF SENTENCE CHANGES IN HEA 1006 USING THE ADVISORY AND MEAN SENTENCES

prepared by

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Exhibit 13

CLSP

9/26/13

MURDER

Current Law (45-65)

HEA 1006 (45-65)

(↑ or ↓ Yrs Served)

Advisory Sentence Mean Sentence

Advisory Sentence Mean Sentence

Advisory Sentence Mean Sentence

Change in Good Time Credit (from 50% to 25%)

sentence imposed	55	55	sentence imposed	55	55		
good time credit (50%)	27.5	27.5	good time credit (25%)	13.75	13.75		
time served w/o ECT	27.5	27.5	time served w/o ECT	41.25	41.25	13.75↑	13.75↑

Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)

sentence imposed	55	55	sentence imposed	55	55		
good time credit (50%)	27.5	27.5	good time credit (25%)	13.75	13.75		
time served	27.5	27.5	time served	41.25	41.25		
earned credit time (max. 4 yrs or 33%, whichever is less)	4	4	earned credit time (max. 2 yrs or 33%, whichever is less)	2	2		
time served	23.5	23.5	time served	39.25	39.25	15.75↑	15.75↑

CLASS A FELONY TO LEVEL 1 FELONY

Current Law (20-50)			HEA 1006 (20-50)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
Change in Good Time Credit (from 50% to 25%)							
sentence imposed	30	35	sentence imposed	30	35		
good time credit (50%)	15	17.5	good time credit (25%)	7.5	8.8		
time served w/o ECT	15	17.5	time served w/o ECT	22.5	26.3	7.5↑	8.8↑
Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)							
sentence imposed	30	35	sentence imposed	30	35		
good time credit (50%)	15	17.5	good time credit (25%)	7.5	8.8		
time served	15	17.5	time served	22.5	26.3		
earned credit time (max. 4 yrs or 33%, whichever is less)	4	4	earned credit time (max. 2 yrs or 33%, whichever is less)	2	2		
time served	11	13.5	time served	20.5	24.3	9.5↑	10.8↑

CLASS A FELONY TO LEVEL 2 FELONY

Current Law (20-50)			HEA 1006 (10-30)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
Change in Good Time Credit (from 50% to 25%)							
sentence imposed	30	35	sentence imposed	17.50	20.0		
good time credit (50%)	15	17.5	good time credit (25%)	4.38	5.0		
time served w/o ECT	15	17.5	time served w/o ECT	13.13	15.0	1.9↓	2.5↓
Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)							
sentence imposed	30	35	sentence imposed	17.5	20		
good time credit (50%)	15	17.5	good time credit (25%)	4.38	5.0		
time served	15	17.5	time served	13.13	15.0		
earned credit time (max. 4 yrs or 33%, whichever is less)	4	4	earned credit time (max. 2 yrs or 33%, whichever is less)	2	2		
time served	11	13.5	time served	11.13	13.0	0.13↑	0.5↓

CLASS B FELONY TO LEVEL 2 FELONY

Current Law (6-20)			HEA 1006 (10-30)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
<i>Change in Good Time Credit (from 50% to 25%)</i>							
sentence imposed	10	13	sentence imposed	17.5	20		
good time credit (50%)	5	6.5	good time credit (25%)	4.4	5.0		
time served w/o ECT	5	6.5	time served w/o ECT	13.1	15.0	8.1↑	8.5↑
<i>Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)</i>							
sentence imposed	10	13	sentence imposed	17.5	20		
good time credit (50%)	5	6.5	good time credit (25%)	4.4	5.0		
time served	5	6.5	time served	13.1	15.0		
earned credit time (max. 4 yrs or 33%, whichever is less)	3.33	4.0	earned credit time (max. 2 yrs or 33%, whichever is less)	2	2		
time served	1.67	2.5	time served	11.1	13.0	9.34↑	10.5↑

CLASS B FELONY TO LEVEL 3 FELONY

Current Law (6-20)			HEA 1006 (3-20)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
<i>Change in Good Time Credit (from 50% to 25%)</i>							
sentence imposed	10	13	sentence imposed	6	11.5		
good time credit (50%)	5	6.5	good time credit (25%)	1.5	2.88		
time served w/o ECT	5	6.5	time served w/o ECT	4.5	8.63	0.5↓	2.13↑
<i>Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)</i>							
sentence imposed	10	13	sentence imposed	6	11.5		
good time credit (50%)	5	6.5	good time credit (25%)	1.5	2.88		
time served	5	6.5	time served	4.5	8.63		
earned credit time (max. 4 yrs or 33%, whichever is less)	3.33	4.33	earned credit time (max. 2 yrs or 33%, whichever is less)	1.17	1.62		
time served	1.67	2.17	time served	3.33	7.00	1.66↑	4.83↑

CLASS B FELONY TO LEVEL 4 FELONY

Current Law (6-20)			HEA 1006 (2-12)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
Change in Good Time Credit (from 50% to 25%)							
sentence imposed	10	13	sentence imposed	4	7		
good time credit (50%)	5	6.5	good time credit (25%)	1	1.8		
time served w/o ECT	5	6.5	time served w/o ECT	3	5.3	2↓	1.25↓
Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)							
sentence imposed	10	13	sentence imposed	4	7		
good time credit (50%)	5	6.5	good time credit (25%)	1	1.8		
time served	5	6.5	time served	3	5.25		
earned credit time (max. 4 yrs or 33%, whichever is less)	3.33	4.00	earned credit time (max. 2 yrs or 33%, whichever is less)	1.33	2.00		
time served	1.67	2.50	time served	1.67	3.25		.75↑

CLASS C FELONY TO LEVEL 4 FELONY

Current Law (2-8)			HEA 1006 (2-12)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
<i>Change in Good Time Credit (from 50% to 25%)</i>							
sentence imposed	4	4	sentence imposed	4	7		
good time credit (50%)	2	2	good time credit (25%)	1	1.75		
time served w/o ECT	2	2	time served w/o ECT	3	5.25	1.0↑	3.25↑
<i>Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)</i>							
sentence imposed	4	4	sentence imposed	4	7		
good time credit (50%)	2	2	good time credit (25%)	1	1.75		
time to serve w/o ECT	2	2	time to serve w/o ECT	3	5.25		
earned credit time (max. 4 yrs or 33%, whichever is less)	1.33	1.33	earned credit time (max. 2 yrs or 33%, whichever is less)	1.33	1.33		
time served	0.67	0.67	time served	1.67	3.92	1.33↑	3.25↑

CLASS C FELONY TO LEVEL 5 FELONY

Current Law (2-8)			HEA 1006 (1-6)			(↑ or ↓ Yrs Served)	
	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
<i>Change in Good Time Credit (from 50% to 25%)</i>							
sentence imposed	4	4	sentence imposed	2	3.5		
good time credit (50%)	2	2	good time credit (25%)	0.5	0.88		
time served w/o ECT	2	2	time served w/o ECT	1.5	2.63	0.5↓	0.63↑
<i>Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)</i>							
sentence imposed	4	4	sentence imposed	2	3.5		
good time credit (50%)	2	2	good time credit (25%)	0.5	0.88		
time served	2	2	time served	1.5	2.63		
earned credit time (max. 4 yrs or 33%, whichever is less)	1.33	1.33	earned credit time (max. 2 yrs or 33%, whichever is less)	0.67	0.67		
time served	0.67	0.67	time served	0.83	1.96	0.33↑	1.29↑

CLASS D FELONY TO LEVEL 6 FELONY

Current Law (.5-3)

HEA 1006 (.5-3)

(↑ or ↓ Yrs Served)

	Advisory Sentence	Mean Sentence		Advisory Sentence	Mean Sentence	Advisory Sentence	Mean Sentence
<i>Change in Good Time Credit (from 50% to 25%)</i>							
sentence imposed	1.5	1.5	sentence imposed	1	1.5		
good time credit (50%)	0.75	0.75	good time credit (25%)	0.25	0.38		
time served w/o ECT	0.75	0.75	time served w/o ECT	0.75	1.13	0.00	.38↑
<i>Change in Good Time Credit & Earned Credit Time (4 yrs. To 2 yrs.)</i>							
sentence imposed	1.5	1.5	sentence imposed	1	1.5		
good time credit (50%)	0.75	0.75	good time credit (25%)	0.25	0.38		
time served	0.75	0.75	time served	0.75	1.13		
earned credit time (max. 4 yrs or 33%, whichever is less)	0.50	0.50	earned credit time (max. 2 yrs or 33%, whichever is less)	0.33	0.50		
time served	0.25	0.25	time served	0.42	0.63	0.17↑	0.38↑



Indiana Judges Association

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September 25, 2013

Senator Michael Young, Chairman
Criminal Law and Sentencing Committee
Indiana State House
Indianapolis, IN 46204

Re: HB 1006

Dear Senator Young:

The Indiana Judges Association wants to thank you and the other members of the Committee and General Assembly for the tremendous efforts that have been put into HB 1006.

The IJA continues to take the well-founded position that Judges should be given discretion in sentencing issues within the parameters set forth by the Legislature. The discretion allows a judicial officer to enter an appropriate sentence under the facts, circumstances, and statutes applicable to the case. When the discretion is removed, the hands of all parties involved (Prosecutor, Defendant and Counsel, and the Court) become bound.

As to Advisory Sentences, that is a legislative function just like maximum and minimum sentences for each offense. However, advisory sentences keep all sides in check. They give the parties a starting place. Reasons must be given to increase or decrease. Judges still have discretion and the parties cannot just argue for the maximum or minimum without a reason.

We hope you consider these comments when making a decision.

Sincerely,

JOHN R. PERA
President, Indiana Judges Association