

BEST PRACTICES IN SENTENCING
UTILIZING SOCIAL SCIENCE DATA & RESEARCH
MARCH 2016^a

This document provides social science data and research for the purpose of guiding sentencing decisions. The information is structured by a number of "offender factors" and "social science factors" that may impact recidivism rates,^b followed by select results of evidence-based program implementation studies. An impetus for using social science data and research during sentencing is the reported value of adhering to the "risk-need-responsivity" (RNR) model for effective intervention.¹ Three of the RNR principles are increasingly considered the leading model for guiding offender assessment and treatment:

(1) Risk Principle identifies WHO to target -- The risk principle states that the level of service provided to an offender should match their risk of reoffending. As a result, supervision and treatment should be reserved for "higher risk" offenders, while "low risk" offenders require little to no intervention. In fact, research has found that too much treatment, or the wrong type of treatment, may be detrimental to a "low risk" offender.

(2) Need Principle identifies WHAT to target -- The need principle indicates that treatment should focus on an offender's dynamic risk factors that are most likely to be influencing their criminal activity (criminogenic needs) and prioritize treatment accordingly. This requires the assessments be individualized. Eight central criminogenic risk factors are identified as the key causes of criminal behavior (with emphasis

^a The social science data and research contained in this document are up to date as of March 2016. Subsequent research may support or refute these findings. It is anticipated that this document will continue to be updated. This document was prepared by Abrisham Eshghi with the assistance of Melaine Malcolm, and Gina Vincent.

^b Offender information which may implicate research in this document may be provided according to Mass. R. Crim. P. 28 (d) (2), which notes that " [t]he report of the presentence investigation shall contain any prior criminal or juvenile prosecution record of the defendant....**In addition, the report shall include such other available information as may be helpful to the court in the disposition of the case.**" Id. (emphasis added).

on the first four factors as listed) -- antisocial attitudes, antisocial personality, antisocial behavior, antisocial associates, family/marital, school/work, leisure/recreation, and substance abuse. Research has not established which of these four factors are most important for adolescents, aside from Personality/Behavior and antisocial attitudes.

(3) Responsivity Principle identifies HOW to target -- The responsivity principle attempts to remove barriers to success. General responsivity suggests staff should use interventions known to be effective with offenders (e.g. cognitive behavioral programming). Individual/Specific responsivity indicates staff should tailor interventions to the individual strengths, style, culture and personality of the offender. Both general and individual responsivity should be considered when working with offenders.²

The use of social science data and research for the purpose of guiding sentencing decisions appears to find support in Massachusetts case law.^c "A sentencing judge is given great discretion in determining a proper sentence," Commonwealth v. Lykus, 406 Mass. 135, 145 (1989), and may consider a variety of factors, including: "the defendant's risk of recidivism," "the

^c In what appears to be the first state supreme court in the country to do so, the Indiana Supreme Court held in Malenchik v. State, 928 N.E.2d 564 (Ind. 2010) that using evidence-based assessment instruments (e.g. Level of Service Inventory-Revised) to reduce offender recidivism and improve sentencing outcomes is "supported by the best research evidence, consisting of scientific results related to intervention strategies... derived from clinically relevant research...based on systematic reviews, reasonable effect sizes, statistical and clinical significance, and a body of supporting evidence." Id. at 568, citing Roger K. Warren, *Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy*, 43 U.S.F. L. Rev. 585, 597 (2009). While these assessment instruments are not a substitute for the judicial function of determining a sentence, they can be a significant source of valuable information in "deciding whether to suspend all or part of a sentence, how to design a probation program for the offender, whether to assign an offender to alternative treatment facilities or programs, and other such corollary sentencing matters." Id. at 573. "[T]rial courts are encouraged to employ evidence-based offender assessment instruments...as supplemental considerations in crafting a penal program tailored to each individual defendant." Id. at 575.

extent to which a particular sentence will increase or diminish the risk of recidivism," Commonwealth v. Rodriguez, 461 Mass. 256, 259 (2012), the defendant's behavior, family life, employment history, and civic contributions, as well as societal goals of "punishment, deterrence, protection of the public, and rehabilitation," Commonwealth v. Donohue, 452 Mass. 256, 264 (2008), citing Commonwealth v. Power, 420 Mass. 410, 414 (1995).

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A. OFFENDER FACTORS INFLUENCING RECIDIVISM

I. "Low-Risk" & "High-Risk" Offenders^d

- Length of Incarceration: Research reveals that increasing the length of a prison sentence does not necessarily correlate with lower rates of recidivism. For example, when comparing offenders of equivalent risk level, persons who serve longer prison sentences are slightly more likely to recidivate than offenders serving shorter sentences.³ Recidivism rates are lower when offenders are sentenced to probation, regardless of whether the offenders have prior felony convictions or prior prison incarcerations.⁴
- Intensive Supervision: Intensive probation supervision reduces the recidivism rate of high-risk offenders but increases the recidivism rate of low-risk offenders.⁵ One study found that more intensive supervision resulted in a 20% reduction in recidivism for higher-risk offenders,^e but a 17% increase for lower-risk offenders.⁶ A similar study confirmed these findings, demonstrating that intensive programs worked for higher-risk offenders and led to reductions in recidivism from 10-30%, yet increased the rate of recidivism for lower-risk offenders.⁷
- Low-Risk Offenders: For low-risk offenders, spending less time (approximately 12.9 months) in prison correlates with a 4% lower likelihood of recidivism, as compared to low-risk offenders who spend more time (approximately 30.0 months) in prison."⁸ Research demonstrates that placing low-risk offenders alongside higher-risk offenders in more structured and intensive programs increases the risk that the low-risk offenders will reoffend.⁹ "Low-risk offenders

^d "Low-risk" and "high-risk" refers to the results of an assessment, using a validated evidence-based assessment instrument, as to whether an offender is at a low-risk or a high-risk for recidivism.

^e "Supervision" refers to traditional supervision-oriented programs, including intensive supervision probation, electronic monitoring, day reporting, and work release. Christopher T. Lowenkamp, Jennifer Pealer, Paula Smith, & Edward J. Latessa, *Adhering to the Risk and Need Principles: Does it Matter for Supervision-Based Programs?*, 70 Fed. Probation 3 (2006) (internal citations omitted).

should be diverted from prosecution altogether, fined, or placed in a low-supervision or low intervention program, such as community service or a one-time class."¹⁰ If prison is imposed, the research indicates that sentences should be relatively short so that offenders can maintain their ties to family, employers, and their community, all of which promote successful reentry into society.¹¹

- High-Risk Offenders: Intensive treatment and intervention programs should be reserved for higher-risk offenders, along with greater use of external controls to properly manage and monitor the offenders' behavior, such as intensive probation, day reporting centers, drug tests, frequent probation officer contacts, home detention, and electronic monitoring.¹² *Extremely* high-risk offenders who are not violent or dangerous might still be safely dealt with in the community, but only through the use of sanctions and external controls.¹³ These extremely high-risk offenders should receive sanctions that provide high levels of structure, accountability, surveillance, or incapacitation so that at least during the time they are under correctional supervision, the risk they present is effectively managed.¹⁴ For these offenders, 40%-70% of the crime-prone hours of the day should be structured through supervised activities.¹⁵ Extremely high-risk *chronic* offenders, who are not responsive to intervention, often have relatively short criminal careers -- they may "time out" of a criminal lifestyle after 5-10 years, or "age out" by the time they reach their forties.¹⁶

II. Age of Offender

- The rates of recidivism decline with age.¹⁷ One study noted the re-arrest of aging inmates within the sample generally declined with age; 17% of inmates age 50-54 were re-arrested for a new crime, compared to no re-arrests for released inmates age 70 and older.¹⁸
- Juveniles: "Children are constitutionally different from adults for purposes of sentencing," Miller v. Alabama, 132 S. Ct. 2455, 2464 (2012), with "diminished culpability and greater prospects for reform." Id. See Commonwealth v. Okoro, 471 Mass. 51, 57 (2015), citing Diatchenko v. District Attorney for the Suffolk Dist., 466 Mass. 655, 669-671 (2013). While most young offenders stop breaking the law as they mature, spending time in adult prisons as a juvenile makes them more likely to reoffend.¹⁹ A large body of research exists demonstrating the effectiveness of

diversion programs^f for juveniles, as opposed to incarceration.²⁰ Diversion removes low-risk youth from further processing in the justice system, holding them accountable for their actions with alternatives such as community service, while ensuring that they receive treatment or other forms of support that will contribute to healthy development.²¹ These studies show that diversion models are more effective in reducing recidivism than processing youth in the formal judicial system (e.g. incarceration or fines).²² Further, unnecessary institutional confinement, even for one night,²³ may lead to harmful exposure to negative peer influences, may have the unintended consequences of an adolescent self-identifying as an offender,²⁴ and may increase recidivism rates among youthful offenders.²⁵

- An important caveat to the Risk principle (or the RNR Principles), supported by research, is that providing intensive services to lower-risk youth is not only an inefficient use of resources, it may actually increase the likelihood that those youth will reoffend. In fact, there may be some low-risk youth who are better served by receiving no services."²⁶
- All adolescents need similar resources, opportunities and services to develop and mature healthily and studies indicate that most youth age out of delinquent behavior as they mature.²⁷ This concept is known as desistance and it occurs in the mid-20's (during emerging adulthood). Thus, if an adolescent repeatedly violates the law likely he or she is not sufficiently connected to these resources and thus his or her development is stalled.²⁸ It should be noted that a small group of youths start offending early and persist in

^f There are two types of diversion programs that involve differing levels of intervention: (1) Caution or warning programs are the least invasive and serve to divert the youth out of the system with no further action, aside from a warning or formal caution. (2) Formal diversion programs generally involve some conditions, including an admission of guilt and an agreement to participate in programming. Not all formal diversion programs involve interventions and may simply be based on some sort of surveillance. Successful completion of the conditions of the formal diversion program will generally result in no further actions. Wilson, H. & Hoge, R., *The Effect of Youth Diversion Programs on Recidivism*, Criminal Justice and Behavior 40.5 (2013).

their offending through the lifespan, and are more likely to be violent. Currently, social science has not uncovered a way to predict which trajectory an individual is on.

- When considering the criminogenic needs of a juvenile and how to respond to those needs it is also important to consider "protective factors" also referred to as buffers or strengths. Identifying strengths and protective factors in each individual juvenile is important so that any intervention can be focused to enhance these strengths/protective factors which will further the juvenile along in his healthy development and ultimately decrease the risk of recidivism.²⁹
- Young Adults: Young adults up to age 24 are similar to juveniles in that they are prone to making poor decisions because they do not develop full control over their impulses until their mid-twenties.³⁰ A recent study tracking serious adolescent offenders as they transitioned from youth to early adulthood has concluded that programs that "promote an examination of one's thoughts and actions...combined with opportunities to practice and internalize that thinking" can significantly help youth develop and reduce their offending.³¹ Allowing youth to discover and practice constructive reactions to social situations is a key method for promoting pro-social attitudes.³²

III. Offenders with Mental Illness^g

- The percentage of defendants with mental illness is approximately the same regardless of criminal history, suggesting that mental illness does not indicate an increased risk of recidivism.³³ Although "more likely than the general population to offend generally and violently," offenders with mental illness "are less likely to reoffend, both generally and violently, than a known non-disorder offender population."³⁴

^g One program in Pittsburgh focusing on mentally ill offenders has cut recidivism rates in half (from 33% to 16%) beginning upon the inmate's release by providing inmates with a ride from the correctional facility, clothing, bus passes, temporary housing, help applying for food stamps and other entitlement benefits, and arrangements for health care. Yamatani, H., *Overview Report of Allegheny County Jail Collaborative Evaluation Findings*, Center on Race and Social Problems, School of Social Work, University of Pittsburgh (2008).

- Defendants with mental illness are more prone to being subjected to discipline and mistreatment while in prison. "In addition to their often untreated illness, mentally ill prisoners are more likely than other prisoners to incur disciplinary infractions and suffer punishment as a result, and they are also more likely to be victimized, including sexual victimization, in the course of their confinement."³⁵
- The majority of offenders with mental illness require inpatient treatment for acute psychiatric symptoms during incarceration.³⁶ It is important to note that nearly three out of every four jail detainees with a serious mental illness will also have a co-occurring substance abuse disorder, regardless of gender.³⁷
- Evidence suggests that parole officers and judges apply less severe thresholds for revoking community supervision when the person under supervision has a mental illness.³⁸ "Offenders, both with and without mental illness, are about equally likely to be re-arrested for a new offense."³⁹ "However, those with mental illness are significantly more likely to commit technical violations and to have their community terms suspended or revoked."⁴⁰
- The most important correctional need for inmates with mental illnesses is the availability and acceptance of treatment.⁴¹ Therapeutic mental health court programs designed to treat mental disorders as an alternative to longer prison sentences can reduce recidivism rates after inmates are no longer under the supervision of the court.⁴² Mental health court participants showed a longer time without any new charges or new charges for violent crimes compared with similar individuals who did not participate in the program.⁴³ Evidence-based treatments can achieve, on average, a 15-22% reduction in the incidence or severity of mental illness.⁴⁴ Programs designed to reduce recidivism for mentally ill offenders should be expanded beyond mental health treatment to include cognitive-behavioral treatment about criminal thinking, anger management and other behavioral issues.⁴⁵

IV. Offenders with Substance Abuse

- Substance abuse is associated with a several-fold increase in rates of recidivism.⁴⁶ Between 70-85% of drug-abusing inmates return to drug use within one year of release from prison, and 95% return to drug use within three years of release from prison.⁴⁷
- A large body of research demonstrates that drug treatment is far more effective than expanding mandatory penalties or

use of other law enforcement approaches in reducing drug consumption.⁴⁸ For chronic drug offenders, studies confirm that more time in treatment leads to more positive post-treatment outcomes, including on measures of criminal activity.⁴⁹ Similarly, offenders with extensive prior criminal history benefit more from drug treatment (re-incarceration rates are 15% lower) than offenders with no prior criminal history (re-incarceration rates are only 8% lower).⁵⁰ Evidence-based drug treatments can achieve, on average, a 15-22% reduction in the incidence or severity of chemical dependency disorders.⁵¹ There is good evidence that drug courts run with fidelity to the best practices model work for adults.⁵²

- Three months of outpatient substance abuse treatment appears to be the minimum threshold for detecting dose-response effects from the interventions,⁵³ allowing drug users to learn to manage their own drug problems.⁵⁴ Research suggests that mandated treatment can be just as effective as voluntary admission to rehabilitation centers.⁵⁵ "Treatment can help many drug using offenders change their attitudes, beliefs, and behaviors; avoid relapse; and successfully remove themselves from a life of substance use and crime."⁵⁶ " Treatment can cut drug use in half, decrease criminal activity, and reduce arrests."⁵⁷
- Among drug offenders, the most reliable and robust prognostic risk factors include: (1) early onset of substance abuse or delinquency, (2) prior felony convictions, (3) previously unsuccessful attempts at treatment or rehabilitation, (4) a co-existing diagnosis of antisocial personality disorder, and (5) a preponderance of antisocial peers or affiliations .⁵⁸ Typically, individuals with these high-risk factors must be closely supervised and held accountable for their actions in order to succeed in treatment and desist from substance abuse and crime.⁵⁹
- While providing substance abuse treatment can cut recidivism rates substantially,⁶⁰ "drug offenders are notorious for failing to comply with conditions to attend substance abuse treatment."⁶¹ Without intensive supervision, approximately 25% of offenders referred to substance abuse treatment fail to enroll,⁶² and of those who do arrive for treatment, approximately half drop out before receiving a minimally sufficient dosage.⁶³ In the absence of a treatment component, intermediate programs such as intensive supervision and electronic monitoring do not reduce future recidivism.⁶⁴

- About 50% of drug-involved offenders abuse illicit drugs or alcohol but are not addicted -- formal substance abuse treatment can be contraindicated for such persons.⁶⁵ Placing non-addicted offenders into residential or group treatment has been associated with poorer outcomes and higher recidivism.⁶⁶ Spending time with addicted peers might normalize the drug-using lifestyle, or treatment requirements might interfere with productive activities such as work or school.⁶⁷ Thus, providing too much treatment can lead to worse outcomes.⁶⁸ Accordingly, it is critical that courts use evidence-based assessments prior to ordering formal substance abuse treatment.⁶⁹ This is especially important when the offender is a juvenile.

V. Offenders Convicted of Sex Crimes

- Sex offenders are more likely to recidivate with a *nonsexual offense* than a sexual offense.⁷⁰
- In the largest single study of sex offender recidivism to date, only 5.3% of people imprisoned for sex crimes were rearrested for a subsequent sex offense after three years; where a child was involved, the re-arrest rate dropped to 3.3% after three years; and between two adults, the sexual re-offense rate was 2.2% after three years.⁷¹ However, another study looking at the fifteen-year sexual recidivism rate found that for sex offenders who already had a prior conviction for a sexual offense, the sexual recidivism rate (37%) was nearly twice that for first-time sex offenders (19%).⁷²
- While molesters of boys have the highest short-term and long-term sexual recidivism rates when compared with other types of sex offenders,⁷³ offenders convicted of incest have the lowest sexual recidivism rates.⁷⁴ For offenders who have committed *online* sex offenses involving children, those "who had no history of contact offenses almost never committed contact sexual offenses."⁷⁵
- Reviews of sex offender treatment programs show that cognitive-behavioral therapy, relapse prevention, and self-regulation have proven successful in treating offenders.⁷⁶ There is mounting evidence that the RNR principles of effective intervention are important for sex offender treatment -- adherence to these RNR principles showed the largest reductions in recidivism in one study.⁷⁷ Another study found that, high-risk sex offenders who completed intensive residential treatment had a two-year recidivism rate of 29% for any type of offense, compared to high-risk

sex offenders who did not receive intensive treatment, who had a two-year recidivism rate of 64% for any type of offense.⁷⁸ Conversely, low-risk sex offenders who received intensive treatment were 21% more likely to recidivate after two years than low-risk sex offenders who did not receive intensive treatment.⁷⁹

- A meta-analysis of 23 recidivism outcome studies produced an average sexual recidivism rate of 10.9% for treated offenders and 19.2% for untreated comparison offenders, based on an average follow up period of 4.7 years.⁸⁰
- The evidence regarding the differential recidivism rates of female and male sex offenders suggests that intervention and management practices need to differentiate between female and male sex offenders.⁸¹
- Juveniles: More than 90% of arrests of youth for sex offenses represent a one-time event that will never recur.⁸² Studies of youth repeatedly show low recidivism rates ranging from 3% to 4%.⁸³

B. SOCIAL SCIENCE FACTORS INFLUENCING RECIDIVISM

- ### **I. Positive Youth Development:** Positive Youth Development (PYD) is a strength-based resilience-oriented approach to adolescence and a comprehensive way of thinking about the resources, opportunities, and services that are needed to facilitate a youth's successful transition from adolescence into adulthood.⁸⁴ Using a PYD approach, youth are seen as resources to be developed and not problems to be managed.⁸⁵ The PYD approach recognizes that youth must have their formative needs met in specific domains in order to have a successful transition into adulthood. The most important PYD assets are access to nurturing relationships with caring adults, positive peer relationships, physical and mental health, effective education and job skills, and leadership and autonomous decision-making opportunities. Nurturing adult relationships and positive peer relationships help adolescents access all other resources necessary for PYD. Further, relationships between adolescents and responsible adults are one of the key mechanisms available to promote healthy development. Allowing adolescents to practice leadership and autonomous decision-making (e.g. by valuing their abilities and input)

contributes to their growing sense of responsibility. Research suggests that adolescents are more likely to modify their behavior when they feel like they are fully engaged in the process. Meaningful access to education and job opportunities gives adolescents the motivation and ability to engage productively with society. Finally, access to physical and mental health resources allows adolescents to focus on their abilities rather than their impediments.

There is evidence that youth with these protective factors are less likely to be involved in behaviors including physical fighting, weapons carrying, and substance use and that this approach may be particularly effective for minority youth.⁸⁶⁸⁷

II. Effect of Childhood Abuse & Bullying

- Child abuse and neglect have a profound and often long-lasting impact on a child's development.⁸⁸ Specifically, "brain development is affected, as is the ability to make decisions as carefully as one's peers, or executive functioning; the ability to regulate physiology, behavior, and emotion is impaired; and the trajectory toward more problematic outcomes is impacted."⁸⁹ Studies find that child abuse and maltreatment have several unfortunate outcomes including increases in the likelihood of arrest as a juvenile or adult.⁹⁰⁹¹
- "[B]eing bullied [by peers] has similar and in some cases worse long-term adverse effects on young adults' mental health than being maltreated [by adults]."⁹² "Individuals who were bullied in childhood were more likely to have poorer physical and psychological health and cognitive functioning at age 50."⁹³

III. Effect of Environmental Toxins

- Lead paint exposure, even in low levels, increases a child's risk of dropping out of school and *becoming involved in the juvenile justice system*.⁹⁴ Lead paint poisoning can cause "lifelong learning and behavior problems."⁹⁵
- Findings from studies on the effects of organophosphate pesticides on brain development found subtle but important brain impacts among children who were not visibly sick from exposure.⁹⁶ In addition to lower IQs, they were at higher risk for attention and behavioral problems as well as

dyslexia, had a harder time in school, and were more likely to drop out.⁹⁷ "Further follow-up showed that at 17 or 18, they were more likely to be in trouble with the law."⁹⁸

IV. Effect of Familial Relations

- "The single best predictor of successful release from prison is whether the former inmate has a family relationship to which he can return."⁹⁹ " Studies have shown that prisoners who maintain family ties during imprisonment are less likely to violate parole or commit future crimes after their release than prisoners without such ties."¹⁰⁰
- "The best evidence produced thus far links paternal incarceration to childhood mental health and behavioral problems, problems that are strongly linked to difficulty in school, trouble finding work, and becoming involved in crime."¹⁰¹ Along the same vein, "children born to teen mothers are twice as likely to receive criminal convictions in their lifetimes," when poverty and a host of other factors are controlled for.¹⁰²

C. EVIDENCE-BASED PROGRAM IMPLEMENTATION STUDIES

- There is a constantly growing inventory of research on evidence-based programs and practices in criminal justice and other policy areas. Several organizations have successfully developed clearinghouses of this research that allow users to keep abreast of the most recent research and program innovations. Importantly, these clearinghouses will alert users to programs and innovations that are not supported by evidence as effective. ¹⁰³
- Evidence-based programs targeting offenders implemented with a high degree of fidelity to the program design are far more likely to be successful than those that divert from the program design -- thorough implementation and competent program delivery results in larger reductions in recidivism, while partial implementation and poor delivery can degrade a program's recidivism effect.¹⁰⁴ Excessive adaptation^h of an intervention is a common problems

^h Adaptation: deletions or additions (enhancements) of program components; modifications in the nature of the components; changes in the manner or intensity of administration of program components called for in the program manual, curriculum, or core

associated with program implementation and delivery.¹⁰⁵ One example of excessive adaptation occurred in the re-entry program, Project Greenlight in New York,ⁱ where participants in a short-term, prison-based reentry program fared significantly worse than offenders who did not participate in the program, both in terms of rearrests and parole revocations.¹⁰⁶ Striking an appropriate balance between fidelity and adaptation is necessary to achieve intended effects.¹⁰⁷

- Juveniles on Probation: Implementing a system of incentives and graduated responses to probation violations may enable probation to more accurately account for some adolescents' ability to conform their behavior to long-term rules and expectations.¹⁰⁸ This system is most effective if it takes account of (a) the severity of and the reason for the violation and (b) the adolescent's risk of reoffending.¹⁰⁹ It is well established that in order to bring about a change in behavior, an incentive or sanction need to be immediate, certain, fair, and of the appropriate intensity.¹¹⁰ As abovementioned, a large body of research exists demonstrating the effectiveness of diversion programs for juveniles, as opposed to incarceration.¹¹¹ See Figure 1 Below.
- Incentives & Sanctions: Studies have found that punishment on its own is not an effective way to change long-term behavior -- partly because the punished behavior tends to return when the punishment is discontinued.¹¹² Research also indicates that a combination of punishments (sanctions) and rewards (incentives) is effective in positively-shaping behavior.¹¹³ Correctional interventions with individuals involved in the justice system should consist of positive reinforcements that outnumber sanctions or punishments -- ideally four incentives for every one sanction that is imposed for a violation of supervision.¹¹⁴ While imposing sanctions with swiftness, consistency, and

components analysis; or cultural and other modifications required by local circumstances.

ⁱ Project Greenlight was a broad-based intervention in which all program participants were exposed to the same program elements. Post-release interviews indicated that some participants felt significant frustration and anger about mandatory drug education session attendance when they had no history of substance use. Project Greenlight staff also failed to utilize risk assessment tools.

proportionality^j and granting incentives for desired behaviors among individuals under supervision may be effective independent of one another, they work best in concert.¹¹⁵ Incentives that have been found to be effective in promoting compliance: verbal praise, tokens of appreciation (e.g., a written note of accomplishment or certificate of achievement), material goods, more desirable housing or work assignments, reduced drug testing, reductions in supervision levels, and a system where offenders can earn "compliance credits."¹¹⁶ Sanctions that have been found to be effective in promoting compliance: written assignments, verbal corrective action, behavioral contracts, curfew, community service, more frequent drug testing or supervision visits, home confinement, electronic monitoring, formal written violation reports, and request for a hearing, or short periods of jail incarceration.¹¹⁷

^j One successful example of applying swift and certain graduated, proportional punishment to improve the outcomes of *drug use* and crime is the Hawaii Opportunity Probation with Enforcement (HOPE). HOPE reinforces strong and immediate relationships between probationers' actions and their consequences, sending consistent messages to probationers about personal accountability and responsibility, while directly involving judges. HOPE conducts frequent and random drug tests for high-risk probationers, and responds to detected violations with swift, certain and short stays in jail. HOPE also provides incentives for probationers for negative drug tests and other compliant behavior and mandates treatment upon request. One study by Hawken and Kleiman found that HOPE probationers were 55 percent less likely to be re-arrested, 72 percent less likely to use drugs, 61 percent less likely to skip appointments, and 53 percent less likely to have their probation be revoked, as compared to the control group. Hawken, A., & Kleiman, M., *Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE* (2009); see also <https://www.appa.net.org/eWeb/docs/APPA/pubs/EROBLLPPS-Report.pdf>

Figure 1 -- Examples of Incentives for Youth on Probation.
See *Central and Eastern Oregon Juvenile Justice Consortium, A
Graduated System of Incentives, Interventions and Sanctions
for Youth Offenders on Probation—A Case Management Approach
(2006)*.

**Examples of a Continuum of Incentives and Positive Recognition
For All Youth on Probation**

Positive Acknowledgement and Recognition for Progress and Compliance	Earned Privileges	Modifications to Non-Treatment Conditions of Probations	Reduced Level of Supervision and Early Termination
<ul style="list-style-type: none"> • Regular encouragement and positive recognition by PO and others involved with the youth's supervision whenever there is positive progress in problem areas or compliance issues. • Strength-based approaches that build on and acknowledge positive behaviors and accomplishments. • Certificates for successful completion of classes or programs. • Recognition by the judge in a court hearing for positive progress and compliance with probation conditions. • Individualized acknowledgement and recognition suggested by parents and/or school officials. 	<ul style="list-style-type: none"> • Extended driving privileges. • Permission to participate in certain recreational activities or community events. • Permission for travel or extended travel. • Earned free time with pro-social peers. • Special privileges suggested by the youth and/or parents. 	<ul style="list-style-type: none"> • Adjustments in curfew requirements. • Modifications in reporting requirements. • Modifications in electronic monitoring requirements. • Reduction of community service hours. • Reduction of frequency of drug screens. • Reduction in day reporting requirements. • Reduction in number of required face-to-face contacts with PO. 	<ul style="list-style-type: none"> • Reduced level of supervision and reporting requirements. • Additional earned free time with pro-social peers. • Additional reductions in curfews and monitoring. • Early termination from probation.

¹ [http://www.doc.ri.gov/docs/RNR%20 Report-%202014.pdf](http://www.doc.ri.gov/docs/RNR%20Report-%202014.pdf).

² Id.

³ Paula Smith, Claire Goggin & Paul Gendreau, Center for Criminal Justice Studies, *The Effects of Prison Sentences and*

Intermediate Sanctions on Recidivism: General Effects and Individual Differences (2002).

⁴ Missouri Sentencing Advisory Commission, *Probation Works for Nonviolent Offenders*, 1 Smart Sentencing 1 (June 2009), available at <http://www.courts.mo.gov/file.jsp?id=45429>

⁵ Christopher T. Lowenkamp, Jennifer Pealer, Paula Smith, & Edward J. Latessa, *Adhering to the Risk and Need Principles: Does it Matter for Supervision-Based Programs?*, 70 Fed. Probation 3 (2006), available at http://www.uc.edu/ccjr/Articles/cca_article_federal_prob.pdf.

⁶ Id.

⁷ Id.

⁸ Valerie Wright, Sentencing Project, *Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment* 7 (2010), available at <http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>; see also Paula Smith, Claire Goggin & Paul Gendreau, Center for Criminal Justice Studies, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002).

⁹ Christopher T. Lowenkamp & Edward J. Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Topics in Community Corrections, National Institute of Corrections Annual Issue (2004).

¹⁰ Roger K. Warren, *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries*, National Center for State Courts for the Crime and Justice Institute and the National Institute of Corrections, 48 (Aug. 2007).

¹¹ Valerie Wright, *Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment*, Sentencing Project 7 (2010), available at <http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>.

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