

1 Evidence-Based Practices

Problem

On any given day in this country, over 7 million offenders are under some form of correctional supervision. About 2.3 million adults are in state and federal prisons and jails; more than 5 million are on probation, parole or some form of government supervision after release from prison. About 4 in 10 probationers don't successfully complete their period of supervision, and half of those released from prison wind up back behind bars within three years. This revolving door of offenders contributes to crime in our communities and the exploding cost of corrections.

Solution

Back in the 1970s, it was thought that "nothing works" to set offenders on the straight and narrow. But research and practice over the past 25 years have identified new strategies and policies that can make a significant dent in recidivism rates. Implementing these research-backed programs and procedures is called "evidence-based practice."

Probation and parole agencies across the country are working to adopt these practices, which include using risk assessment tools to determine appropriate levels and types of supervision and ensuring that programs focus on behaviors and attitudes that drive criminal activity. With the active support of policy makers, probation and parole agencies will be able to accelerate their adoption of these and other evidence-based practices, helping offenders stay crime- and drug-free and avoiding the social and financial costs of building more prisons.

This provision:

- Requires that 75 percent of offenders be supervised in accordance with evidence-based practices within four years.
- Requires that 75 percent of state funds for offender programming be spent on programs that are evidence-based within four years.
- Requires community corrections agencies to improve policies and practices for crime victims.
- Requires agencies to provide employees training on evidence-based practices.
- Sets aside a portion of agency funds for research on program effectiveness.

Suggested Language

Section 101. Short Title.

This Act may be cited as the "Recidivism Reduction Act."

Section 102. Definitions.

In this title, the following words have the meanings indicated.

(1) “Agency” means:

(A) The Department of Corrections or the state agency responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail; and

(B) Any regional, local or county governmental agencies responsible for supervising individuals placed on probation by the courts or serving a period of parole or post-release supervision from prison or jail, provided such agencies receive state funding.

(2) “Evidence-based practices” means supervision policies, procedures, programs and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or post-release supervision.

(3) “Community supervision” means:

(A) The placement of a defendant under supervision, with conditions imposed by a court for a specified period during which:

(i) criminal proceedings are deferred without an adjudication of guilt;

(ii) a sentence of imprisonment or confinement, imprisonment and fine, or confinement and fine, is probated and the imposition of sentence is suspended in whole or in part; or

(B) The placement of an individual under supervision after release from prison or jail, with conditions imposed by the releasing authority for a specified period.

(4) “Supervised individual” means an individual placed on probation by a court or serving a period of parole or post-release supervision from prison or jail.

(5) “Supervision officer” means a person appointed or employed by the Agency to supervise individuals placed on community supervision.

(6) “Criminal risk factors” means characteristics and behaviors that when addressed or changed affect a person’s risk for committing crimes. Scientific research identifies these characteristics and behaviors as including: antisocial attitudes, values, and beliefs; poor impulse control; criminal personality; substance abuse; criminal peers; dysfunctional family; and lack of employment or education.

(7) “Case plan” means an individualized accountability and behavior change strategy for supervised individuals that:

(A) Targets and prioritizes the specific criminal risk factors of the offender;

- (B) Matches programs to the offender’s individual characteristics, such as gender, culture, motivational stage, developmental stage, and learning style;
 - (C) Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations;
 - (D) Specifies positive and negative actions that will be taken in response to the supervised individual’s behaviors.
- (8) (A) “Program” means an intervention that:
- (i) is intended to reduce recidivism by supervised individuals; and
 - (ii) is funded in whole or in part by the state or administered by any agency of state government;
- (B) “Program” does not include medical services.

Section 103. Implementation of Evidence-Based Practices to Reduce Recidivism.

- (1) The Agency shall adopt policies, rules and regulations that within [four] years of the effective date of this Act result in at least [75 percent] of supervised individuals being supervised in accordance with evidence-based practices.
- (2) The policies, rules and regulations shall include:
- (A) Adoption, validation and utilization of an objective risk and needs assessment tool;
 - (B) Use of assessment scores and other objective criteria to determine the risk level and program needs of each supervised individual, prioritizing supervision and program resources for offenders who are at higher risk to re-offend;
 - (C) Definitions of low, moderate and high risk levels during the period of supervision;
 - (D) Development of a case plan, based on the assessment, for each individual who is assessed to be moderate to high risk;
 - (E) Swift, certain, proportionate and graduated responses that an Agency employee will apply in response to a supervised individual’s compliant and non-compliant behaviors;
 - (F) Caseload size guidelines that are based on offender risk levels and take into account Agency resources and employee workload; and
 - (G) Establishment of protocols and standards that assess the degree to which Agency policies, procedures, programs and practices relating to offender recidivism reduction are evidence based.
- (3) Within [four] years of the effective date of this Act, [75 percent] of state monies expended on programs shall be for programs that are in accordance with evidence-based practices.
- (4) Within [four] years of the effective date of this Act, the Agency shall eliminate supervision policies, procedures, programs and practices intended to reduce recidivism that scientific research demonstrates do not reduce recidivism.

Section 104. Improvement of Policies and Practices for Crime Victims.

(1) The Agency shall adopt policies, rules and regulations that improve crime victim satisfaction with the criminal justice system, including:

- (A) Payment by supervised individuals of victim restitution and child support;
- (B) The opportunity for victims to complete victim impact statements or provide input into pre-sentence investigation reports;
- (C) Providing victims information about their rights and services, and referrals to access those rights and services;
- (D) Offering victims the opportunity to complete a “victim satisfaction survey,” with data used to measure Agency performance; and
- (E) Facilitate victim-offender dialogue when the victim is willing.

Section 105. Professional Development.

(1) The Agency shall provide its employees with intensive initial and on-going training and professional development services to support the implementation of evidence-based practices.

(2) The training and professional development services shall include assessment techniques, case planning, risk reduction and intervention strategies, effective communication skills, substance abuse and other topics identified by the Agency or its employees.

Section 106. Data Collection, Analysis and Research.

(1) The state [Department of Corrections] shall allocate a minimum of [X] percent of its operating budget to support data collection, analysis and research on supervision and programmatic effectiveness.

(2) The state [Department of Corrections] may form partnerships or enter into contracts with institutions of higher education or other qualified organizations for assistance with data collection, analysis and research.

Section 107. Agency Report.

(1) By [March 1] of each year, beginning in 2010, the Agency shall submit to the Governor, the Legislature and the judicial branch a comprehensive report on its efforts to implement this Act. The report shall include:

- (A) The percentage of supervised individuals being supervised in accordance with evidence-based practices;
- (B) The percentage of state monies expended for programs that are evidence based, and a list of all programs with identification of which are evidence based;

- (C) Specification of supervision policies, procedures, programs and practices that were eliminated;
- (D) The results of victim satisfaction surveys administered under Section 104 of this title;
- (E) The Agency's recommendations for resource allocation, and any additional collaboration with other state, regional or local public agencies, private entities, or faith-based and community organizations.

(2) The Agency shall make the full report and an executive summary available to the general public on its website.

Notes and Drafting Alternatives

Items in [brackets] are terms, figures and timeframes that states may wish to adjust to their individual preferences or circumstances, such as the capacity of their community corrections agencies to implement the policy recommendations.

- Section 102 (agency definition): This definition is a placeholder intended to reflect the broad range of community supervision governing structures in the states. States may want to reflect the name(s) of the relevant corrections agency or agencies. Local government agencies (such as probation or other community corrections agencies) are included in this definition, so long as the local agencies receive state funds.
- Section 102 (program definition): Probation and parole agencies use a wide variety of programs that are intended to reduce recidivism. Those programs are funded by numerous sources, including the agency itself, other state government agencies (such as the health department), private organizations, and offender self-pay. Because this provision measures the percentage of state monies expended on programs that are evidence based, the definition of program is limited to programs administered by the agency or those that receive state money. However, states should make efforts to ensure that all recidivism reduction programs used by community corrections agencies are subject to the standards of evidence-based practice, whether or not the agencies administer or pay for the programs themselves. For clarity, the definition does not extend to programs aimed at collecting victim restitution, administering community service, or overall victim satisfaction with the justice system. Those goals are addressed in other sections of this policy framework.
- Section 103(1) (75 percent requirement): Community corrections agencies vary in their capacity to implement evidence-based practices. States may want to vary the timetable for implementation to be longer or shorter than the recommended four years. States also may want to establish a progressive schedule for implementation, as Oregon did by requiring that in the first two years, 25 percent of state monies be spent on programs that are evidence based, 50 percent in the second two years and reaching the 75 percent goal by the third biennium. The recommended requirement is for 75 percent rather than the full 100

percent to permit agencies to innovate with programs and practices that have a sound basis in theory but have not yet been validated by rigorous research. Also, for agency supervision policies and practices, the provision uses the percentage of “supervised individuals who are supervised in accordance to evidence based practices,” rather than assessing the percentage of supervision procedures that are evidence based. Procedures and practices will still need to be evaluated, but the language seeks to ensure that most of the individuals supervised are being covered by evidence based practices. An agency where 75 percent of practices are evidence based, but the majority of offenders are being supervised using the remaining 25 percent of procedures and practices would undermine the purposes of the provision.

- Section 103 (elimination of ineffective programs): While research identifies policies, procedures, programs and practices that work to reduce recidivism, it also has identified those that do not.¹ This provision is intended to ensure that these ineffective approaches are eliminated quickly, while recognizing that it may take agencies some time to establish new policies, procedures, programs and practices that will meet the evidence-based standard. This provision is not intended to apply to policies, procedures, programs or practices that are aimed at goals other than recidivism, such as victim reparation, community service, or the payment of fines and fees.
- Section 103 (graduated responses): See the “Administrative Sanctions” section of this policy framework for additional guidance on probation/parole revocations and procedures for making responses to compliant and non-compliant behavior more swift, certain, proportionate and graduated.
- Sections 103 and 106 (verification and reporting): States that want to provide additional motivation for agencies to implement evidence-based practices can enhance these sections in two ways. First, states might specify that assessment of fidelity to evidence-based practices be conducted by outside experts, or that the tool used by the Agency to assess fidelity be developed by an external entity. One commonly used commercially available tool is the Correctional Program Assessment Inventory (CPAI-2000). Second, states may want to consider designating an external agency (such as the State Auditor) to monitor compliance with this Act.

Rationale

Agency Policies, Procedures, Programs and Practices Should Be Evidence Based. The implementation of evidence-based practices results in an average decrease in future crime of between 10 percent and 20 percent, whereas programs that are not evidence-based tend to see no decrease and even a slight increase in future crime.² Interventions that follow all evidence-based practices can achieve recidivism reductions of 30 percent.³ Many state statutes and administrative regulations specify that certain correctional services and programs must be evidence-based. Oregon has taken a comprehensive approach by passing legislation in 2003

requiring that by the 2009-2011 biennium, at least 75 percent of all state monies for programming be spent on programs that are evidence-based.⁴

Risk and Need Assessment. Supervision and programs are most effective at reducing future crime when they (i) accurately assess offender risk and need, and (ii) use assessment results to assign supervision levels (more intensive monitoring for offenders with greater risk) and target programs to criminogenic needs.⁵ Assignment of offenders to the correct supervision levels is crucial, since research shows that putting low-risk offenders in intensive programming actually increases their recidivism rates.⁶ Using risk and needs assessments to determine how to supervise offenders allows community corrections agencies to better allocate their resources and focus their supervision on high-risk offenders.

Individualized Case Plans. The value of a risk and needs assessment is that it provides a framework from which quality case planning can occur. Intervention programs are most effective when targeted at higher risk offenders and when targeting their crime-related needs. The individualized case plan is the ideal mechanism with which to ensure that offenders and their supervising officers focus their time, energy, and resources on those activities – such as attending treatment – that are most needed to reduce the likelihood of future criminal behavior. When adopted in conjunction with other effective supervision practices, use of individualized case plans has been shown to reduce new arrests and technical violations of offenders on community supervision⁷ Maryland and some other jurisdictions incorporate the case plan into a signed agreement between supervised individuals and their supervision officers called a “behavioral contract.” The contract approach can boost the effectiveness of the case plan by requiring that the offender discuss and buy in to the expectations set forth in the contract/plan.⁸

Graduated Responses. Research has shown that using “graduated sanctions”—employing structured, swift, and incremental responses to violations—can increase offender compliance. The practice has been used in many jurisdictions to reduce crime and drug use by probationers and drug court participants.⁹ In one study, drug court offenders in a Graduated Sanctions Program, which emphasized administering sanctions for positive drug urine tests swiftly, with certainty, and with increasing severity, had substantially lower rearrest rates (19 percent compared to 27 percent in the control group) two years after sentencing than offenders who were not in the program.¹⁰ In addition, positive responses to offender compliance have been shown to reinforce and motivate offenders to stay on the straight and narrow. [See the Administrative Sanctions section of this policy framework for recommendations on graduated sanctions.]

Caseloads and Workloads. The size of caseloads for parole and probation officers should reflect the level of risk and needs of the offenders being supervised. They also should reflect an analysis of the workload and resources of the agency. By varying caseloads based on the risk of the offenders being supervised, parole and probation officers can focus their resources on higher risk offenders, and use less intense supervision methods for low risk offenders.

Although a number of studies have attempted to identify the “ideal” caseload size for maximum effectiveness, the quality and nature of the contacts between a supervision officer and an offender have been shown to be more important than the quantity of contacts.¹¹ Many states also are adopting geographically-based caseloads (“place-based supervision”). By supervising offenders where they live, fostering relationships with those who know them best, and becoming familiar with local resources and high-risk areas, parole and probation officers are much better positioned to manage their caseloads.

Data Collection, Analysis and Research. A fundamental principle of effective correctional management is the measurement of outcomes.¹² The provision allocating a proportion of the correctional agency’s operation budget to research is intended to promote the implementation and long-term sustainability of data collection, analysis, and research as the collection and analysis of criminal justice data is a critical component to evidence-based practice in community supervision.¹³ These funds can be used to track program outcomes and fidelity to evidence based requirements. [See the Performance Measurement section of this policy framework for recommendations on performance measures of community supervision programs.]

Professional Development. Generally, successful implementation of EBP in community corrections must include adoption of fundamental organizational development principles, such as establishing clear goals and expectations for staff, measuring progress and providing feedback on performance.¹⁴ Research also shows that those correctional interventions that are most effective are those that ensure that staff are appropriately skilled and trained in specific offender management techniques.¹⁵ Several states and counties, including Maryland, Iowa, Oregon, Illinois, Maine, Maricopa County (AZ), and Travis County (TX), have made a substantial commitment to enhancing professional development by training staff on effective supervision techniques, accurate completion of risk assessments, development and use of productive case plans, and use of motivational interviewing in case management.

State Examples

Evidence Based Supervision Practices and Programs

- **Maine:** HB 1327 (requiring that local jurisdictions establish criminal justice planning committees to update and increase the use of evidence-based correctional practices);
- **North Carolina:** General Statutes 143B, article 6a, section 17.15(d) (part of the North Carolina State-County Criminal Justice Partnership Act)(the “Research and Planning Division of the Department of Correction shall review national best practice programs for community corrections and recommend whether the types of programs currently being funded should continue to be funded, and whether alternative programs should be funded if a county wants to expand sanction options.”) See also, Juvenile Justice Reform Act of 1998 (§ 147-33.55) (requires that the state juvenile justice office fund programs “that it determines to be effective in preventing delinquency and recidivism. Programs that have proven to be ineffective shall not be funded.”)

<http://www.ncga.state.nc.us/gascripts/BillLookUp/BillLookUp.pl?Session=1997&BillID=S1260>

- **Oklahoma:** HB 2101 (establishing task force to identify evidence-based programs in reentry support);
- **Oregon:** SB 267, Sections 3-9 of Oregon Laws 2003. This law requires the Oregon Department of Corrections, the Youth Commission and the Criminal Justice Commission to ensure that a specified portion of their programs or interventions are experimentally tested, cost-effective approaches to reducing a person's propensity to commit crimes. For the biennium beginning 2005, 25 percent of programs and interventions are expected to meet these criteria. For the 2007 biennium, this increases to 50 percent and in 2009 and future biennium this increases to 75 percent. The agencies addressed by this legislation must audit and report on their spending on programs and are warned that "the Legislative Assembly shall consider the agency's failure to meet the requirement... of this section in making appropriations to the agency for the following biennium." (<http://www.leg.state.or.us/03orlaws/sess0600.dir/0669ses.htm>)
- **Tennessee:** Public Chapter 585, SB 1790. "The Department of Children's Services, and any other state agency that administers funds related to the prevention, treatment or care of delinquent juveniles, shall not expend state funds on any juvenile justice program or program related to the prevention, treatment or care of delinquent juveniles, including any service model or delivery system in any form or by any name, unless the program is evidence-based." The legislation goes on to protect innovation by stating, "The department shall continue the ongoing research and evaluation of sound, theory-based and research-based programs with the goal of identifying and expanding the number and type of available evidence-based programs, and to that end the department may engage in and fund pilot programs as defined in this section." Like the Oregon law, this legislation includes a "phase in" period, with the percentage of funds spent on evidence based programs rising from 25, to 50, to 75 and then to 100 percent over an eight year period.
- **Texas:** SB 166 (requiring that county grant applications for prison diversion program include an evidence-based assessment process);
- **Washington:** SB 6157 (requiring that analysis be conducted to identify evidence-based reentry practices). See also, SHB 1128, Laws of 2007 (partial veto)(language regarding juvenile programs includes: "Within amounts appropriated in this section, priority shall be given to proven intervention models, including evidence-based prevention and early intervention programs identified by the Washington state institute for public policy and the department.")

In addition, the Iowa DOC requires all Community Based Corrections programs (CBCs) to undergo an annual evaluation on adherence to evidence-based principles, develop Quality Improvement Action Plans, and collect and track specific performance measures.

Risk and Needs Assessment

- **Kansas:** Community Corrections Act, KSA §75-5291(a)(2)(E) (listing as one of its possible eligibility criteria that an offender be classified high risk, high need or both);
- **Virginia:** Sentencing Commission enabling statute, VCA § 17.1-803(5)-(6) (requiring the establishment of a risk and needs assessment to be used for all felony offenders);
- **Washington:** Offender Accountability Act, RCW 9.94A.501 (community supervision limited to offenders with higher risk scores or with certain current or past offenses. Of the remaining offenders eligible for community supervision, those that are lower risk are placed on administrative probation (or “case banking”).

States focusing their resources on high risk offenders and place low risk offenders in an administrative category, or “case banking,” include Washington State (see WA Rev. Code § 9.94A.501, available online at <http://apps.leg.wa.gov/RCW/default.aspx?cite=9.94A.501>), Delaware, Iowa, Oregon and Vermont.

Individualized Case Plans

- **Maryland:** The Maryland Proactive Community Supervision (PCS) model has demonstrated that how an agency provides community supervision case management matters. Maryland has realized a 28 percent reduction in the rate of arrests for new criminal charges by offenders on supervision by implementing (1) valid assessment tools; (2) case plans that are responsive to the criminal risk factors of high and moderate-risk offenders; (3) appropriate services and controls that use social learning or cognitive-behavioral interventions; and (4) an environment where the offender can learn pro-social behaviors and successfully complete supervision.¹⁶

Caseloads

- **Vermont:** Department of Corrections to establish levels of supervision for each offender based on risk assessment, and specific caseload limits are set for different levels of supervision (H.859, 2008).

¹ Aos, Steve, Marna Miller and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, Washington State Institute for Public Policy (Olympia, WA: 2006).

² See, for example, Andrews, D.A. and Craig Dowden, “The Risk-Need-Responsivity Model of Assessment in Human Service and Prevention and Corrections Crime Prevention Jurisprudence,” *Canadian Journal of Criminology and*

Criminal Justice, 49 (4), pp. 439-464 (2007); Aos, Steve, Marna Miller and Elizabeth Drake, *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates*, Washington State Institute for Public Policy (Olympia, WA: 2006); Lipsey, Mark W. and Francis T. Cullen, "The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews," *Annual Review of Law and Social Science*, Vol. 3 (2007).

³ Andrews, D.A. et al, "Does correctional treatment work: A clinically-relevant and psychologically informed meta-analysis," *Criminology*, Vol. 28, pp. 269-404 (1990).

⁴ See Oregon State Law, ORS 185.515-525.

⁵ Gendreau, P., T. Little and C. Goggin, "A meta-analysis of the predictors of adult offender recidivism: What works!" *Criminology*, 34 (4), pp. 575-607 (1996); Bonta, James, "Offender Risk Assessment: Guidelines for Selection and Use," *Criminal Justice and Behavior*, 29 (4), pp. 355-379 (2002).

⁶ Andrews, D.A., "Recidivism Is Predictable and Can Be Influenced: Using Risk Assessments to Reduce Recidivism," *Forum on Corrections Research*, Special Edition, pp. 5-11 (1999). See also, Lowenkamp, C. and E.J. Latessa, "The Risk Principle in Action: What Have We Learned from 13,676 Offenders and 97 Corrections Programs?," *Crime and Delinquency*, No. 51 (2006).

⁷ Taxman, Faye, "No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts," *Criminology and Public Policy*, 7 (2), pp. 275-302 (2008).

⁸ Petersilia, Joan, "Employ Behavioral Contracting for 'Earned Discharge' Parole," *Criminology and Public Policy*, 6 (4), pp. 807-814 (2007).

⁹ Taxman, Faye, David Soule and Adam Gelb, "Graduated Sanctions: Stepping Into Accountable Systems and Offenders," *Prison Journal*, 79 (2), pp. 182-204 (1999). See also information on Hawaii's Opportunity Probation with Enforcement (HOPE), an innovative and successful program in Oahu, available online at http://www.pewcenteronthestates.org/news_room_detail.aspx?id=41950.

¹⁰ Harrell, Adele and John Roman, "Reducing Drug Use and Crime Among Offenders: The Impact of Graduated Sanctions," *Journal of Drug Issues*, 31 (1), pp. 207-232 (2001).

¹¹ See Taxman, Faye, "Supervision – Exploring the Dimensions of Effectiveness," *Federal Probation*, 66 (2), pp. 14-27 (September 2002); Taxman, Faye, "No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts," *Criminology and Public Policy*, 7 (2), pp. 275-302 (2008).

¹² Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (Boston: 2004).

¹³ For resources on criminal justice information systems and reform, see National Conference of State Legislatures, *Integrated Criminal Justice Information Systems*, available online at <https://www.ncsl.org/programs/lis/intjust/report01.htm#Introduction>; Carter, Madeline, *The Importance of Data and Information in Achieving Criminal Justice Outcomes* (Silver Springs, MD: January 2006), available online at <http://nicic.gov/Library/021198>.

¹⁴ Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: Leading Organizational Change and Development* (Boston: 2004).

¹⁵ Latessa, Edward, Francis Cullen and Paul Gendreau, "Beyond Professional Quackery: Professionalism and the Possibility of Effective Treatment," *Federal Probation*, 66 (2), pp. 43-49 (2002); Crime and Justice Institute, *Implementing Evidence-Based Practice in Community Corrections: Leading Organizational Change and Development* (Boston: 2004).

¹⁶ Taxman, Faye, "No Illusions: Offender and Organizational Change in Maryland's Proactive Community Supervision Efforts," *Criminology and Public Policy*, 7 (2), 275-302 (2008).