Probation Effectiveness as Key to Successful Justice Reinvestment

Why is it so Hard?

Dr. Tony Fabelo
Justice Center, Council of State Governments

American Probation and Parole Association Winter Training Institute, Austin, Texas
February 1, 2010
Justice Center

### Who we are

A national nonprofit organization that serves policymakers at the local, state, and federal levels from all branches of government.

Learn more...

### What we do

Provide practical, nonpartisan advice and consensus-driven strategies, informed by available evidence, to increase public safety and strengthen communities.

Learn more...

### Council of State Governments Justice Center

<table>
<thead>
<tr>
<th>Address 1</th>
<th>Address 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>100 Wall Street</td>
<td>4630 Montgomery Avenue</td>
</tr>
<tr>
<td>20th Floor</td>
<td>Suite 650</td>
</tr>
<tr>
<td>New York, NY 10005</td>
<td>Bethesda, MD 20814</td>
</tr>
<tr>
<td>tel: 212-482-2320</td>
<td>tel: 301-760-2401</td>
</tr>
<tr>
<td>fax: 212-482-2344</td>
<td>fax: 240-497-0568</td>
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</table>

504 West 12th Street
Austin, TX 78701

tfabelo@csg.org
Council of State Governments
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THE PEW CENTER ON THE STATES

Public Safety Performance Project

Bureau of Justice Assistance
Justice Reinvestment in the States
The National Summit on Justice Reinvestment and Public Safety
Addressing recidivism, crime, and corrections spending

Panel 3: Implement Effective Community Supervision Policies and Practices
Members of this panel will highlight state-of-the-art community supervision policies and practices, including responses to violations of conditions of probation and parole that are swift, certain, and proportionate. Speakers will also discuss incentives that can help reduce recidivism.

MODERATOR: Amy Solomon, Senior Research Associate, The Urban Institute
• Tony Fabelo, Ph.D., Director of Research, Council of State Governments Justice Center
• Michael Jacobson, Ph.D., President, Vera Institute of Justice
• Honorable Steven S. Alm, Judge, Hawaii First Circuit Court

Congressional Auditorium

KEYNOTE SPEAKERS
• Congressman Alan B. Mollohan, D-WV
• Congressman Frank Wolf, R-VA
• Attorney General Eric Holder, U.S. Department of Justice
• Laurie Robinson, Assistant Attorney General for the Office of Justice Programs, U.S. Department of Justice
• Senator Sheldon Whitehouse, D-RI
• Congressman Adam Schiff, D-CA
• Mark Earley, President, Prison Fellowship
• Honorable Sue Bell Cobb, Chief Justice, Supreme Court of Alabama
• Assemblyman Jeffrion Aubry, Chair, Corrections Committee, New York State Assembly
Overview

Demands on community corrections will continue to increase

We have the knowledge to make community corrections more effective

Why is it so hard to implement this knowledge in practice?
Twenty Years of Increased Incarceration

PRISON COUNT PUSHES UP

Between 1987 and 2007, the national prison population has nearly tripled.


SOURCES: Bureau of Justice Statistics; Pew Public Safety Performance Project
Level of Incarceration Hitting a Limit

One in 100:
Behind Bars in America 2008

1. PRISON POPULATION 1,596,127
   +
   JAIL POPULATION 723,131
   TOTAL BEHIND BARS 2,319,258

2. ADULT POPULATION 229,786,080
   TOTAL BEHIND BARS 2,319,258

3. ONE IN EVERY 99.1
   U.S. ADULTS ARE BEHIND BARS

One in 100:
Behind Bars in America 2008
Public Safety Performance Project
Expenditures for Corrections Up

TWO YEAR OF RISING COSTS

Between fiscal years 1987 and 2007, total state general fund expenditures on corrections rose 315 percent.

- $10.62 billion
- $19.38 billion
- $44.06 billion

Source: National Association of State Budget Officers, "State Expenditure Report" series; Inflation adjusted figures are based on a reanalysis of data in this series.

Note: These figures represent state general funds. They do not include federal or local government corrections expenditures and typically do not include funding from other state sources.
Prisons Consuming Most of the Costs

**PRISONS DOMINATE SPENDING**

Across 34 states, nearly 9 of 10 correctional dollars went to prisons in FY2008.

- **12%**
  - Amount to Probation and Parole: $2.53 billion

- **88%**
  - Amount to Prisons: $18.65 billion

**TOTAL CORRECTIONS SPENDING**

$21.18 billion

**EXPLOSIVE GROWTH IN PRISON SPENDING**

Across 8 states, 89 percent of additional corrections spending since FY1983 has gone to prisons.

- 1983: $136.48 million
- 2008: $741.52 million
- 1983: $930.06 million
- 2008: $5,672.74 million

**SOURCES:** Spending figures were collected from AR, AL, AK, CO, DE, GA, ID, IA, KY, LA, ME, MD, MI, MN, MS, MO, MT, NC, ND, NE, NH, NM, NY, OR, PA, RI, SC, SD, TN, TX, VT, VA and WY.

**SOURCES:** Only eight states could provide 25-year spending histories (AL, GA, LA, MO, MT, NY, OR and WY).

One in 31: The Long Reach of American Corrections

MARCH 2009
Higher Education vs. Corrections

Between 1987 and 2007, the amount states spent on corrections more than doubled while the increase in higher education spending has been moderate.

+127% for Corrections
+21% for Higher Education

SOURCE: National Association of State Budget Officers, 'State Expenditure Report' series; Inflation adjusted general fund figures are based on a reanalysis of data in this series.
Ratio of Expenditures Higher Ed to Corrections

For every dollar spent on higher education, California spent 83 cents on corrections.
Opps!
States Are Broke

How Bad Will It Get?
Total state budget shortfall in each fiscal year, in billions

- 2002: $-40
- 2003: $-75
- 2004: $-80
- 2005: $-45
- 2009: $-80 (reported to date)
- 2010: $-110
- 2011: $-178
- 2012: $-180

Source: CBPP survey

Updated October 20, 2009
Unemployment


Texas Already on the “List” for 2010

<table>
<thead>
<tr>
<th>State</th>
<th>FY2010 before budget</th>
<th>Mid-year gap</th>
<th>FY2010 Total - % of General Expenditure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Maine</td>
<td>$640 million</td>
<td>0</td>
<td>$640 million 21.4%</td>
</tr>
<tr>
<td>Maryland</td>
<td>$1.9 billion</td>
<td>$936 million</td>
<td>$2.8 billion 20.4%</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>$5.0 billion</td>
<td>$600 million</td>
<td>$5.6 billion 20.0%</td>
</tr>
<tr>
<td>Michigan</td>
<td>$2.8 billion</td>
<td>0</td>
<td>$2.8 billion 12.4%</td>
</tr>
<tr>
<td>Minnesota</td>
<td>$3.2 billion</td>
<td>0</td>
<td>$3.2 billion 21.0%</td>
</tr>
<tr>
<td>Mississippi</td>
<td>$480 million</td>
<td>$175 million</td>
<td>$655 million 13.2%</td>
</tr>
<tr>
<td>Missouri</td>
<td>$923 million</td>
<td>0</td>
<td>$923 million 10.3%</td>
</tr>
<tr>
<td>Nebraska</td>
<td>$150 million</td>
<td>0</td>
<td>$150 million 4.3%</td>
</tr>
<tr>
<td>Nevada</td>
<td>$1.2 billion</td>
<td>0</td>
<td>$1.2 billion 37.8%</td>
</tr>
<tr>
<td>New Hampshire</td>
<td>$250 million</td>
<td>0</td>
<td>$250 million 16.2%</td>
</tr>
<tr>
<td>New Jersey</td>
<td>$8.8 billion</td>
<td>0</td>
<td>$8.8 billion 29.9%</td>
</tr>
<tr>
<td>New Mexico</td>
<td>$345 million</td>
<td>$660 million</td>
<td>$1.0 billion 18.2%</td>
</tr>
<tr>
<td>New York</td>
<td>$17.9 billion</td>
<td>$3.0 billion</td>
<td>$20.9 billion 37.7%</td>
</tr>
<tr>
<td>North Carolina</td>
<td>$4.6 billion</td>
<td>0</td>
<td>$4.6 billion 21.5%</td>
</tr>
<tr>
<td>Ohio</td>
<td>$3.3 billion</td>
<td>$296 million</td>
<td>$3.6 billion 13.4%</td>
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<tr>
<td>Oklahoma</td>
<td>$777 million</td>
<td>$206 million</td>
<td>$983 million 17.2%</td>
</tr>
<tr>
<td>Oregon*</td>
<td>$4.2 billion</td>
<td>0</td>
<td>$4.2 billion 29.0%</td>
</tr>
<tr>
<td>Pennsylvania</td>
<td>$4.8 billion</td>
<td>0</td>
<td>$4.8 billion 18.0%</td>
</tr>
<tr>
<td>Rhode Island*</td>
<td>$590 million</td>
<td>$65 million</td>
<td>$655 million 21.3%</td>
</tr>
<tr>
<td>South Carolina</td>
<td>$725 million</td>
<td>$201 million</td>
<td>$926 million 16.0%</td>
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<tr>
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<td>$32 million</td>
<td>0</td>
<td>$32 million 2.9%</td>
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<tr>
<td>Tennessee</td>
<td>$1.0 billion</td>
<td>0</td>
<td>$1.0 billion 9.7%</td>
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<tr>
<td>Texas</td>
<td>$3.5 billion</td>
<td>0</td>
<td>$3.5 billion 9.5%</td>
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<tr>
<td>Utah</td>
<td>$721 million</td>
<td>$279 million</td>
<td>$1.0 billion 19.8%</td>
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<tr>
<td>Vermont</td>
<td>$278 million</td>
<td>$28 million</td>
<td>$306 million 27.3%</td>
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<td>Virginia</td>
<td>$1.8 billion</td>
<td>$1.5 billion</td>
<td>$3.3 billion 20.1%</td>
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<tr>
<td>Washington</td>
<td>$3.4 billion</td>
<td>$195 million</td>
<td>$3.6 billion 23.3%</td>
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<td>West Virginia</td>
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<td>0</td>
<td>$184 million 4.9%</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>$3.2 billion</td>
<td>0</td>
<td>$3.2 billion 23.2%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>0</td>
<td>$32 million</td>
<td>$32 million 1.7%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$162.5 billion</strong></td>
<td><strong>$15.8 billion</strong></td>
<td><strong>$178.3 billion</strong> 26.0%</td>
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DATE: January 22, 2010

SUBJECT: Five (5) Percent Biennial Budget Reduction

In a letter dated January 15, 2010, Governor Perry, Lieutenant Governor Dewhurst, and Speaker Straus asked agencies and institutions of higher education to submit written proposals identifying a five percent biennial reduction to their 2010-11 General Revenue and General Revenue-Dedicated appropriations. Proposals should be submitted in the web-based ABEST system no later than February 15, 2010 and adhere to the following guidelines:
Long-Term Feds Budget Picture Will Force Some Hard Choices

**FIGURE 1:**
Under Current Policies Debt Will Reach 300 Percent of GDP in 2050

**FIGURE 2:**
Medicare and Medicaid Expected to Rise Rapidly, Other Programs (Except Social Security) to Shrink, as Share of GDP

Source: CBPP projections based on CBO data.
# One in 31 Adults in US Under Supervision

## 1 IN 31: DOING THE MATH

### ONE

<table>
<thead>
<tr>
<th>Category</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prison Population</td>
<td>1,512,576</td>
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<tr>
<td>Jail Population</td>
<td>780,581</td>
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<tr>
<td>Probation Population</td>
<td>4,293,163</td>
</tr>
<tr>
<td>Parole Population</td>
<td>824,365</td>
</tr>
<tr>
<td><strong>Correctional Population</strong></td>
<td><strong>7,328,200</strong></td>
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</tbody>
</table>

### TWO

<table>
<thead>
<tr>
<th>Category</th>
<th>Population</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adult Population</td>
<td>229,030,637</td>
</tr>
<tr>
<td><strong>Correctional Population</strong></td>
<td><strong>7,328,200</strong></td>
</tr>
</tbody>
</table>

### THREE

One in every 31 U.S. adults is under correctional control.

**Source:** Calculation based on data from the Bureau of Justice Statistics “Prisoners at Yearend 2007” as well as “Probation and Parole at Yearend 2007” available at [http://www.ojp.usdoj.gov/bjs](http://www.ojp.usdoj.gov/bjs) and the U.S. Census State Population Estimates.

**Note:** Probation, parole, jail and prison populations do not sum to total due to offenders with dual status. Prison and jail populations differ from past reports due to method of counting prisoners held in jail.
WIDE VARIANCE IN CORRECTIONAL CONTROL

Share of adults under correctional control, year end 2007.

Overview

Demands on community corrections will continue to increase

We have the knowledge to make community corrections more effective

Why is it so hard to implement this knowledge in practice?
Goal of Probation Under Evidence-Based Practices

We Know What We Need to Do to Get This

Change Behavior

Motivation and Role Model

Differentiated Supervision Strategies Based on Risk

Sanctions and Incentives

Effective Targeting of Programs
Effective Community Programs More Impactful Than Institutional Programs in Reducing Recidivism

Community Based versus Institutional Programs: Results from Meta-Analyses of Programs Based on Principles of Effective Treatment

What Works and What Doesn’t in Reducing Recidivism: The Principles of Effective Intervention:

Presented by:
Edward J. Latessa, Ph.D.
Center for Criminal Justice Research
Division of Criminal Justice
University of Cincinnati
www.uc.edu/criminaljustice

Risk of recidivism is greatly reduced (10-30% on average) when attention is paid to dealing with criminogenic needs of offenders such as antisocial attitudes, peers and certain personality and temperamental factors.
Principle: Pay Attention to Risk Principle

Most powerful impact on changing criminal behavior and reducing recidivism comes from providing the greatest supervision and treatment to medium- and high-risk offenders, focusing on criminogenic needs, and using cognitive-behavior and behavioral interventions.
Principle: Graduated Sanctions with Treatment

Graduated sanctions (that increase in severity based on nature of violation or number of violations) decrease recidivism.

Intermediate sanctions have little effect on recidivism unless mediated through the provision of treatment.
Principles: Cognitive-Behavioral Programs More Effective

Social learning and cognitive-behavioral interventions and programs are most powerful tools for changing criminal behavior and reducing recidivism.
The quality of the interpersonal relationship between probation/parole officer and the offender and the structuring skills of the officer may be as important or even more important than specific programs.

The use of individualized case plans has been shown to reduce new arrests and technical violations of offenders under community supervision.
Key Elements for More Effective Probation

1. Assessments protocols effectively identify each group

2. Supervision strategies effectively combine “treatment” “control” and “incentives”

3. Programs and standards target appropriate populations

Terms coined by Judge Dennis Challeen of Winona, MI

Judge Challeen quoted in article by Judge Larry Gist in Journal of Texas Association of Court Administration, V. 32, Number 2, April 2008
Operational Goals

Do OK
“No Matter What”

“Swingers”
“It Matters What”

Do NOT do OK
“No Matter What”

May Do OK

May Not Do OK

Reduce the supervision resources spent on this group

Provide reinforcements and incentives to change behavior and provide adequate treatment

Provide surveillance and treatment when appropriate
Progressive Sanctions

- **Do OK**
  - "No Matter What"

- **Do NOT do OK**
  - "No Matter What"

- **"Swingers"**
  - "It Matters What"

Higher tolerance for minor violations of "treatment" conditions and incentives for progress.

Lower tolerance for violations of "control" conditions.

Swift and consistently applied sanctions key to effectiveness.
Overview

Demands on community corrections will continue to increase

We have the knowledge to make community corrections more effective

Why is it so hard to implement this knowledge in practice?
Clash of Realities When Examining Probation

Probation systems that are touted in front of legislative leaders

Probation systems when you look “under the hood”
State Policy Making Expectations

**Expectation of sustained reductions in revocations to prison preferably driven by reductions in re-arrests for new crimes and also in reductions in technical violations**

**Probation system expected by state officials**

Source for cartoons: http://www.projectcartoon.com/create/
Budget crises usually translate into budget cuts for probation and parole system as significant prison savings require the closing of prisons.

State probation funding patterns over-time

Source for cartoons: http://www.projectcartoon.com/create/
Judicial Officials Expectations

Compliance with conditions as main goal, judges sure of their “gut feelings” in setting conditions and sanctions and always afraid of the “poster case” for election

Traditional judicial expectations

Source for cartoons: http://www.projectcartoon.com/create/
“Judges are given the duty to assess punishments, yet most have absolutely no training to assist them in determining the destiny of those who appear in court. They simply begin to act like a judge is ‘supposed’ to act.”

Texas Judge Larry Gist in article referring to Judge Dennis Challeen “myth” from National Judicial College lecture
Most probation departments do not get resources to generate evidence to drive their policies and guide judicial officials.

Probation department research-based resources

Source for cartoons: http://www.projectcartoon.com/create/
Too Many Fingers in the Pot

Accountability to too many people that cannot agree on goals and expectations

Differential workload impact on different parts of the justice system create opposition

Independence of elected judges and DAs use to justify hodge podge of policies
Probation Directors Catch-22

Patronize judicial officials while maneuvering the implementation of a more effective evidence-based operation

Probation directors operational reality

Source for cartoons: http://www.projectcartoon.com/create/
End Result

What probation looks like in most places

Source for cartoons: http://www.projectcartoon.com/create/
## Poor Outcomes in Bexar County (San Antonio)

<table>
<thead>
<tr>
<th>County</th>
<th>Revocations</th>
<th>% Change 2005-2008</th>
<th>Technical Revocations*</th>
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</thead>
<tbody>
<tr>
<td>Harris</td>
<td>3,549</td>
<td>-13%</td>
<td>-7%</td>
</tr>
<tr>
<td>Bexar</td>
<td>816</td>
<td>79%</td>
<td>79%</td>
</tr>
<tr>
<td>Dallas</td>
<td>3,183</td>
<td>-11%</td>
<td>-7%</td>
</tr>
<tr>
<td>Travis</td>
<td>1,052</td>
<td>-20%</td>
<td>-48%</td>
</tr>
<tr>
<td>Tarrant</td>
<td>1,733</td>
<td>-17%</td>
<td>-25%</td>
</tr>
<tr>
<td>El Paso</td>
<td>594</td>
<td>-8.4%</td>
<td>-1.5%</td>
</tr>
</tbody>
</table>

*Administrative violations; non-charged offenses

During this period state spent over $57 million funding the probation department.

Source: Community Justice Assistance Division, Texas Department of Criminal Justice
Organization of Bexar Probation Department

19 Different “Probation Departments” Not Based on Evidence-Based Practices
CLOs and Court Managers Costs Alone Consume 15% of Basic Supervision Budget While Not Supervising Probationers
Specifications from Each Court Go on……..
and Go On
PSI and Intake Documents a Morass
Ineffective and Costly Deployment of Resources

With an Average Caseload of 109 Probationers per Officer, the 595 Probationers Who Live in this Sample Zip Code, Could be Supervised by as Few as Six Officers

But
They Were Assigned by
22 Different Courts

To
113 Different
Probation Officers
HOPE (Hawaii Opportunity Probation with Enforcement) – Elements of Strategy

Randomized drug testing

Guaranteed sanction on first violation – few days in jail – and then escalating

Rules and expectations clearly delineated to the probationers

Prompt hearings

Drug treatment only for those who repeatedly fail

Document Title: Managing Drug Involved Probationers with Swift and Certain Sanctions: Evaluating Hawaii’s HOPE
Author: Angela Hawken, Ph.D. and Mark Kleiman, Ph.D.
Document No.: 229023
Date Received: December 2009

• Honorable Steven S. Alm, Judge, Hawaii First Circuit Court
HOPE – Impact on Positive UAs

Figure 1. Average number of positive UAs, by period.

- Pre (3m): 22% (COMPARISON), 53% (HOPE)
- Followup (3m): 33% (COMPARISON), 9% (HOPE)
- Followup (6m): 19% (COMPARISON), 4% (HOPE)
HOPE – Impact on Revocations

Figure 5. Probation revocation: HOPE versus Comparison Probationers

Percentage

35%
30%
25%
20%
15%
10%
5%
0%

COMPARISON

HOPE

51% 9%
HOPE – Replication Issues

Lack of uniformity in sanctions among judges main complaint

Research showed that more severe sanctions did not produce better results

Workload increase for DA and court personnel

“Poster case” when HOPE participant committed a homicide
Challenge to Consistent Implementation

"Changing addict behavior is easy. Changing judge behavior is hard."

Dr. Adele Harrell, national drug abuse treatment expert, quoted in page 28
HOPE – Differential Workloads

Figure 12. HOPE and Workload

<table>
<thead>
<tr>
<th></th>
<th>Probation Officers</th>
<th>Judges</th>
<th>Prosecutors</th>
<th>Public Defenders</th>
<th>Court Staff</th>
</tr>
</thead>
<tbody>
<tr>
<td>Much more work</td>
<td>0%</td>
<td>43%</td>
<td>25%</td>
<td>18%</td>
<td>55%</td>
</tr>
<tr>
<td>More work</td>
<td>31%</td>
<td>43%</td>
<td>50%</td>
<td>46%</td>
<td>45%</td>
</tr>
<tr>
<td>No effect</td>
<td>23%</td>
<td>0%</td>
<td>25%</td>
<td>27%</td>
<td>0%</td>
</tr>
<tr>
<td>Less work</td>
<td>23%</td>
<td>14%</td>
<td>0%</td>
<td>9%</td>
<td>0%</td>
</tr>
<tr>
<td>Much less work</td>
<td>23%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
<td>0%</td>
</tr>
</tbody>
</table>

Legend:
- Red: Much more work
- Yellow: More work
- Pink: No effect
- Green: Less work
- Light green: Much less work
What We Need to Do

1. Diagnose based on validated assessment tools.
2. Adopt assignments based on the diagnosis information.
3. Differential supervision strategies and conditions.
4. Progressive sanctions for violations.
5. Appropriate targeting for "Programs".
6. Caseload assignments based on risk and needs.
7. Research-based accountability structure.
8. Training and personnel evaluations.
9. Judicial support and agreement.
10. Research recidivism outcomes.
11. Establish research protocols.
12. Strengthen training and personnel evaluations.
13. Activate community support groups to lobby state officials.
14. Negotiate court agreements on swift and consistent sanctions.
15. Lower recidivism.
16. Distinguish programs from services and properly identify target populations.

Interconnections:
- Promote evidence-based risk and criminogenic diagnosis methods.
- Negotiate with judges for matching diagnosis with conditions.
- Research protocols.
- Strengthen training and personnel evaluations.
- Activate community support groups to lobby state officials.
- Negotiate court agreements on swift and consistent sanctions.
- Lower recidivism.
- Diagnose based on validated assessment tools.
- Adopt assignments based on the diagnosis information.
- Differential supervision strategies and conditions.
- Progressive sanctions for violations.
- Appropriate targeting for "Programs".
- Caseload assignments based on risk and needs.
- Research-based accountability structure.
- Training and personnel evaluations.
- Judicial support and agreement.
- Research recidivism outcomes.
- Distinguish programs from services and properly identify target populations.
Key to Success but Not Politically Correct

Judges

Administrative Firewall

Probation
Bottom Line: Probation Key to Success of Justice Reinvestment Reforms

This probation system cannot sustain positive results

Pushing for a probation system that can sustain results critical to states reform efforts

Source for cartoons: http://www.projectcartoon.com/create/
Thank You

http://www.justicecenter.csg.org/

This material was prepared for the American Probation and Parole Association by staff of the Council of State Governments Justice Center. Presentations are not externally reviewed for form or content and as such, the statements within reflect the views of the authors and should not be considered the official position of the Justice Center, the members of the Council of State Governments, or funding agencies supporting the work.