Sentencing and Justice Reinvestment Initiative

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Michigan Law Revision Commission

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Council of State Governments Justice Center and Our Justice Reinvestment Funding Partners

- National non-profit, non-partisan membership association of state government officials
- Engage members of all three branches of state government
- Justice Center provides practical, nonpartisan advice informed by the best available evidence

Justice Reinvestment:

*a data-driven approach to reduce corrections spending and reinvest savings in strategies that can decrease recidivism and increase public safety.*

**Partner with Bureau of Justice Assistance and Pew Charitable Trusts**
Examination of Sentencing, Parole, and Probation is About Justice and Public Safety

Punishing Consistently
Predictably & Proportionately

Reducing Criminal Behavior

Holding Offenders Accountable

Justice & Public Safety
Three Part Framework and Understanding the Implications of Our Research in Michigan

<table>
<thead>
<tr>
<th>Justice and Public Safety</th>
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<tbody>
<tr>
<td><strong>Punishing Consistently</strong></td>
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<tr>
<td>- Fundamental to sentencing guidelines</td>
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<td>- Predictability in sentencing for both victim and the larger system and community</td>
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<tr>
<td>- Proportionate punishment - similar offenses and offenders punished similarly</td>
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| **Reducing Criminal Behavior** |
| - 99% return to community, so reducing criminal behavior of primary importance |
| - Research demonstrates better public safety is possible |
| - Michigan is on a learning curve |

| **Holding Offenders Accountable** |
| - Key piece of effective supervision, i.e., recidivism reduction |
| - Concepts are intuitive but barriers often exist |
| - Michigan is on a learning curve |
Distinct Yet Overlapping Angles of Inquiry into Primary Principles of Justice and Public Safety

Overlapping nature a critical feature...

- If punishments are inconsistent, how can accountability be effective?
- If accountability is weakened, how will criminal behavior be influenced?
- If system does not support reductions in criminal behavior, what are we doing?
I. Recap of Sentencing Findings
II. Reducing Criminal Behavior
III. Holding Offenders Accountable
Recap of Sentencing Findings

Potential for Sentencing Disparity “Built in”
- Most cases fall in cells with wide range of punishment types
- Minimum prison sentence length ranges very wide

Evidence of Disparity
- Geographical
- Similar Offenders in Single Cell
- Minimum prison sentence length

Reducing Criminal Behavior

Holding Offenders Accountable
Punishing Consistently Means Proportionality and Reduced Disparity


(i) Provide for protection of the public.

(ii) An offense involving violence against a person shall be considered more severe than other offenses.

(iii) Be proportionate to the seriousness of the offense and the offender’s prior criminal record.

(iv) Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics and ensure that offenders with similar offense and offender characteristics receive substantially similar sentences.

(v) Specify the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.
Structure of Sentencing Guidelines Allows Limited or Broad Discretion Depending on Where a Case Falls

**Intermediate**
- Allowable punishments:
  - Up to 1 year in jail plus probation
  - Jail only (1 year max)
  - Probation only (5 year max)
  - Fees/fines only

**Straddle**
- Allowable punishments:
  - Prison
  - Up to 1 year in jail plus probation
  - Jail only (1 year max)
  - Probation only (5 year max)
  - Fees/fines only

Most Grid Cells Offer Wide Range of Possible Punishments

- **Intermediate** (62% of Cases) - 89% of cases may get anywhere from probation to jail to both
- **Straddle** (27% of Cases) - Straddle may also get prison... or probation or jail or jail + probation
- **Prison** (11% of Cases)

Comparatively Wide Ranges for Minimum Prison Sentence Lengths

- Non-habitual prison sentence ranges from most frequently used cell in each state’s guidelines.
  - **Michigan**: Range = 130%
  - 10 mos
  - **North Carolina**: Range = 33%
  - 6 mos
  - **Kansas**: Range = 13%
  - 15 mos

Geography Clearly Affects Sentencing

2012 SGL Brand New Cases Sentenced in Grid E ‘Straddle’ Cells
(Non Habitual) – Top 10 Counties by Population

- 6 of the 10 counties didn’t use prison at all
- 1 county used prison for almost a third of cases
- 2 counties used probation for more than half of cases

Actual Sentencing for Like Offenders Shows Very Different Dispositions

Sentencing breakdown of brand new cases in the ‘E’ grid *Straddle cells* (Non Habitual)

Total 2012 Sentences = 1,463

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<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
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<tbody>
<tr>
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<td><strong>402</strong></td>
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<td>IV</td>
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<td>36</td>
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<tr>
<td>VI</td>
<td>7</td>
<td>9</td>
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Despite falling in the same cell on the same grid, defendants punished disparately:

- As little as a few months in jail without any supervision to follow,
- As much as 5 years on probation, or
- Minimum of up to 3 years in prison with potential for additional prison time and/or parole supervision of varying length.

Very different sentencing outcomes...

<table>
<thead>
<tr>
<th>Supervised in Community</th>
<th>“Behind Bars”</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Probation</strong></td>
<td><strong>Prison</strong></td>
</tr>
<tr>
<td>Avg. term imposed = 24 mos.; Range of 9-60 mos.</td>
<td>Avg. min term imposed = 17 mos.; Range of 6-36 mos.</td>
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<tr>
<td></td>
<td><strong>Jail</strong></td>
</tr>
<tr>
<td></td>
<td>Avg. term imposed = 6 mos.; Range of 1-365 days.</td>
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Actual Prison Sentences Demonstrate Use of Wide Discretion in Minimum Length Imposed

Michigan 2012 SGL Non-Habitual Sentences to Prison:

- 73% equal to or more than 110% of min-min
- 27% less than 110% of min-min
- 35% = 110-190% min-min
- 15% = 200-290% min-min
- 6% = 300-390% min-min
- 17% = 400% + min-min

Minimum Prison Sentence Lengths Are Increasing With the Discretion Permitted

Increase for both non-habitualized AND habitualized offenders since 2008.

Increases in sentence lengths across all grids and all cell types (except Class B Straddle Cells).

2012 Prison Sentences

2.7 mos longer on average than in 2008

- = additional 1,971 prisoners on a given day

\[ \times \] $98 per day = $70 million each year

Increase in minimum sentence lengths cannot be attributed to changes in scoring of cases on the guidelines: the cases aren’t falling in more serious grids, or more serious offense levels, or in worse prior history levels.

Preview: Parole and Sentencing Decisions
Consider Many of the Same Factors – Is Consistency Affected?

- Terrorism related
- Psychological Impact to victim’s family

**Sentence**
- **Offender**
  - Criminal history
  - Aggravating circumstances of past crimes
  - Relationship to the criminal justice system
  - Career criminal designation
  - Role in crime
  - Aggravating circumstances of this crime
  - Victim impact and characteristics
  - Crime type

- Age
- Risk of re-offense
- Conduct in prison
- Performance in programs
- Prison housing status
- Situational crime unlikely to reoccur

Presentation Overview

Recap of Sentencing Findings

Reducing Criminal Behavior
- Why it Matters
- Risk – Needs – Responsivity
- Fidelity and Results

Holding Offenders Accountable
Breakdown of Sentences Shows “Brand New” Versus Violators

2012 Guidelines Sentences: 44,049

- **Brand New Cases (58%)**
  - 25,523
  - 3,597 (14%) to Prison
  - 14,115 (55%) to Jail
  - 7,615 (30%) to Probation
  - 196 (<1%) to Other

- **New Offense Violators (31%)**
  - 13,837
  - 4,337 (31%) to Prison
  - 7,082 (51%) to Jail
  - 2,349 (17%) to Probation
  - 69 (<1%) to Other

- **Prob. Compliance Violators (11%)**
  - 4,689
  - 947 (20%) to Prison
  - 3,742 (80%) to Jail

Total Guidelines Sentences to Prison: 8,881

20% of All SGL Sentences

Why It Matters in Michigan: One-Third of New Felony Offense Violators Are Felony Probationers

**2012 New Felony Offense Violators**

(Par/Prob/Pretrial and Pris/Jail)

13,837

- **15%** : 2,101 Defendants out on bond
- **32%** : 4,472 Felony probationers
- **19%** : 2,638 Misdemeanor probationers
- **18%** : 2,464 Parolees
- **16%** : 2,162 Other/Unknown

Almost 7,000 parolees and felony probationers committing new felony offenses each year.

Knowledge on Improving Criminal Justice Outcomes Has Increased Dramatically Over the Last 20 Years

**Academics and practitioners have contributed to this growing body of research**
“RNR” + Fidelity = Results

Proven Principles for Changing Criminal Behavior (RNR)

- **RISK**: Assess risk of re-offense and focus supervision on the highest-risk offenders.
- **NEEDS**: Assess and target the needs & problems related to criminal behavior that can change.
- **RESPONSIVITY**: Deliver in a way that maximizes meaningful understanding and retention by offender.
- **FIDELITY**: Make sure evidence-based programs are implemented as designed.
- **RESULTS**: Greater success changing criminal behavior and reducing re-offense rates.
Risk Is About Sorting and Tailoring Resources to Higher-Risk

Assess for Risk Level...

Risk of Re-offending

LOW 10% re-arrested
MODERATE 35% re-arrested
HIGH 70% re-arrested

...and Focus Accordingly

Assess risk of re-offense and focus supervision on the highest-risk offenders

Low
Supervision/Program Intensity

Moderate
Supervision/Program Intensity

High
Supervision/Program Intensity

LOW
10% re-arrested

MODERATE
35% re-arrested

HIGH
70% re-arrested

Council of State Governments Justice Center
Risk Principle in Action: Keeping High and Low Risk Separate

**HIGH RISK OFFENDERS**
Intensive Services for a longer period of time
- Face to face contacts; home visits, school/work visits
- More drug testing
- Different programs/treatment groups/services for high risk offenders

**LOW RISK OFFENDERS**
- Have fewer problems
- Do not require intensive interventions/supervision
- If they don’t need it; don’t give it to them
Violating the Risk Principle Leads to Recidivism

**HIGH RISK OFFENDERS**

*Under* supervised & *under* treated

Example: High risk substance abuser given AA/NA treatment → increased risk of recidivating.

**WHY?**
- Does not provide enough *supervision/control* to reduce recidivism
- Does not provide enough *intensity of programming* to disrupt risk factors

**LOW RISK OFFENDERS**

*Over* supervised & *over* treated

At *best*, leads to no reductions in recidivism. At *worst*, causes harm and increases recidivism

**WHY?**
- Disrupts the very things that make the offender low risk
- Low risk offenders learn from high risk offenders
Focusing On the Core Antisocial Risk Factors Is Key

Major Risk Factors

- Antisocial attitudes
- Antisocial peers
- Antisocial personality
- Past and Current antisocial behavior
- Family criminality and problems
- Low levels of education/employment achievement
- Lack of participation in pro-social leisure activities
- Substance abuse

Risk factors may be static and/or dynamic. Static are fixed and cannot change, such as age at first arrest. Dynamic are fluid and can change, for example the friends one associates with.

Known as the Big Four

In terms of reducing recidivism, the most successful supervision and programming models address these dynamic risk factors.
“Need” Refers to Which Risk Factors Will Be Targeted

Assess and target the needs & problems related to criminal behavior that can change.

Translating Risk Factors to Need Factors

<table>
<thead>
<tr>
<th>FACTOR</th>
<th>RISK</th>
<th>NEEDS</th>
</tr>
</thead>
<tbody>
<tr>
<td>History of Antisocial Behavior</td>
<td>Early &amp; continued involvement in a number of antisocial acts</td>
<td>Build noncriminal alternative behaviors in risky situations</td>
</tr>
<tr>
<td>Antisocial Personality</td>
<td>Adventurous, pleasure seeking, weak self control, restlessly aggressive</td>
<td>Build problem-solving, self-management &amp; coping skills</td>
</tr>
<tr>
<td>Antisocial Cognition</td>
<td>Attitudes, values, beliefs &amp; rationalizations supportive of crime, cognitive emotional states of anger, resentment &amp; defiance</td>
<td>Reduce antisocial cognition, recognize risky thinking &amp; feelings, build up alternatives, adopt a reformed or anti-criminal identity</td>
</tr>
<tr>
<td>Antisocial Associates</td>
<td>Close association with criminals &amp; relative isolation from pro-social people</td>
<td>Reduce association with criminals, enhance association with pro-social people</td>
</tr>
</tbody>
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New Report on Integrated Reentry and Employment Underscores the Importance of the Big Four Risk Factors

Addressing the hypothesis that “offenders need a job to avoid recidivating.”

**Key Factors for Job Performance:**
- Attitude on the job
- Valuation of work
- Self-control and self-regulation
- Problem-solving skills and coping mechanisms
- Skills (hard and soft) to succeed on the job

**Key Criminogenic Risk Factors**
1) Antisocial attitudes
2) Antisocial peers
3) Antisocial personality
4) Criminal history
An Integrated Approach to Addressing Risk Factors and Job Readiness Results in Better Outcomes

Reducing Criminogenic Risk by addressing anti-social attitudes and behaviors

• Better attitude on the job
• Greater valuation of work
• Conflict resolution skills
• Problem solving skills

Improving Employment Outcomes through workforce development strategies

• Structured time
• Ability to support family
• Pro-social associates
• Job and income stability

Address the top risk factors to see improvements in employment readiness, and then actual, sustained employment

Responsivity Dictates Skillful Program Delivery

Responsivity Factors

**INTERNAL RESPONSIVITY FACTORS**
- Motivation
- Mental health: anxiety, psychopathy
- Maturity
- Transportation
- Cognitive deficiencies
- Language barriers
- Demographics

**EXTERNAL RESPONSIVITY FACTORS**
- Program characteristics
- Facilitator characteristics
- Program setting

**Examples of Responsivity Barriers:**
- Visual learning style in an “audio” program
- Illiterate offender in group with reading/writing requirements
- Single mother with no child care during program time
When Quality Programs Are Implemented Well, the Research Confirms Principle of Focusing on Higher-Risk Individuals

Program Effectiveness

- Based on proven, effective principles
- Implemented as designed
- Performance tracked and measured against expectations

**FIDELITY**

Make sure evidence-based programs are implemented as designed

What works with offender programming?

**Who:**
Programs that target high-risk individuals are more likely to have a significant impact on recidivism.

**What:**
Certain programs are more effective than others - effectiveness can relate to the type of program and where it is delivered (in a prison vs. in the community).

**How Well:**
Assessing how well a program is executed can reveal whether or not a program has the capability to deliver evidence-based interventions.

Who:
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How Well:
Assessing how well a program is executed can reveal whether or not a program has the capability to deliver evidence-based interventions.

Matched with correct client population

Staff trained in assessments and service delivery

Based on proven, effective principles

Implemented as designed

Performance tracked and measured against expectations
The Intensity of Services Can Have Positive or Negative Impacts on Recidivism, Depending on Risk

Intervention Effects on Recidivism among HIGH RISK Offenders

- Minimum Intervention
- Intensive Intervention

Intervention Effects on Recidivism among LOW RISK Offenders

- Minimum Intervention
- Intensive Intervention

Intensive interventions led to **BETTER** recidivism outcomes for HIGH risk offenders, but....

.... intensive interventions led to **WORSE** recidivism outcomes for LOW risk offenders.
Research shows that programs delivered in the community have greater impacts on recidivism.

- Drug Treatment in Prison: -17%
- Drug Treatment in the Community: -24%
- Supervision with Risk Need + Responsivity: -30%

Community + Effective “RNR” = Largest Recidivism Reduction

For those placed on probation:
- How many are higher-risk?
- Of the higher-risk, how many have substance abuse and/or mental health disorders?

Gap Analysis

Based on the risk/needs profile of those being supervised in the community, it’s possible to estimate the resources necessary to provide programming that addresses criminogenic risk factors and also substance abuse/mental health issues.

For those released to parole:
- How many are higher-risk?
- Of the higher-risk, how many have substance abuse and/or mental health disorders?
Presentation Overview

- Recap of Sentencing Findings
- Reducing Criminal Behavior

Holding Offenders Accountable
- Why It Matters
- Key Factors and Barriers
- Examples of Success
Supervision Violators Make Up Almost 60% of All Admissions to Prison – Compliance Violators Alone Account for a Third


2008 Prison Admissions
- New from Court: 42%
- Technical Parole Violators: 16%
- New Offense Parole Violators: 17%
- Technical Probation Violators: 10%
- New Offense Probation Violators: 15%

2012 Prison Admissions
- New from Court: 42%
- Technical Parole Violators: 23%
- New Offense Parole Violators: 12%
- Technical Probation Violators: 9%
- New Offense Probation Violators: 14%

58% of Prison Admissions from Failing Supervision

Current Cost of Incarcerating Technical Violators Exceeds $150M Annually

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<td>2008-12</td>
<td>2008-12</td>
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<td>2,193</td>
<td>1,030</td>
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12.7 month average length of stay yields **2,321** average daily pop
At $98 per day, annual cost to State = **$83 Million**

24.9 month average length of stay yields **2,137** average daily pop
At $98 per day, annual cost to State = **$76 Million**

Key Factors Associated with Successful Models of Swift and Certain Sanctioning

- Clear rules and violation responses so probationer is aware of expectations and consequences
- Strict monitoring
- Prompt sanction within days of detection
- Proportionate sanctions, tied to severity and risk
- Ability to bring violators into custody
- Compulsory treatment when appropriate
Hawaii HOPE Reduces Re-Arrest, Drug Use, Jail Use

**Hawaii HOPE**
Intensive, random drug testing with swift, certain, and brief jail sanctions.

![Graph showing outcomes of HOPE and Control groups](image)

- **Key principles of HOPE** - **swift and certain probation violation response practices** - are being replicated with success in other jurisdictions.

Judge Alm runs Hawaii HOPE from the 1st Circuit in Honolulu which accounts for about 2/3 of all felony probationers. So one judge impacts large volume.

- *In fact, his one court has helped drive a statewide decline in probation revocations to prison.*

That sort of geographical concentration with one court is very hard to replicate.

- **In other words, for the HOPE model to work, enough judges must adopt it for the desired systemic impacts.**
Michigan’s Swift & Sure Program Unfamiliar to Many Judges; Detention Responses Unavailable to Probation Officers

Almost half of Michigan judges don’t know about the State’s Swift & Sure Sanctions Program:

<table>
<thead>
<tr>
<th>Are you familiar with SSSP?</th>
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<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
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Do judges grant probation agents administrative authority to sanction probationers with brief jail stays in swift response to violations?

Almost 2/3 of respondents indicate quick jail-sanctioning authority not granted.

- Of the agents and judges responding yes, most (98% and 81% respectively) believe these sanctions result in improved probationer behavior.
- Judges who don’t grant this authority are concerned about violation of due process and do not believe the authority exists.
Challenges to Implementation of Supervision Practices Utilizing Swift & Sure Principles

Lack of Training
- Critical for judges, prosecutors, and supervision managers and agents to be well-informed about the principles and research behind swift/certain sanctioning

Judicial and Court Staff
- For models relying on court hearings for violation responses

Legal Structure for Administrative Responses
- Necessary for clarifying limited nature of sanctioning authorities available to agents, spelling out judicial oversight, and preservation of due process rights

Collaboration with Key Stakeholders
- Law enforcement resources to assist with arrest and detention

Drug testing
Different Approaches to Swift and Sure Policies Have Yields Positive Results in Other States

**Georgia POM**
Enabling probation officers to employ administrative sanctions & probationers to waive violation hearings **reduced jail time three-fold**, reduced time spent in court, and increased swiftness of responses to violations.

**North Carolina:**
**Justice Reinvestment Act of 2011**

- Sweeping changes to sentencing, supervision and sanctioning practices— including risk/need assessments in targeting treatment & supervision

- Probation agents able to order “quick dip” stays in jail up to 3 days upon detecting a violation

- **Since 2011:** probation revocations to prison are down by 40%, and the prison population has decreased by 9% (4,000 people).

Summary

1. Discretion built into the system leads to major disparities in sentencing outcomes.

2. Key steps and principles for changing criminal behavior:
   1. Assess for RISK of re-offense and focus on higher-risk offenders
   2. Assess and target the specific NEEDS related to criminal behavior
   3. Be RESPONSIVE to risk & needs factors in delivering the services to offenders
   4. Ensure that evidence-based programs are implemented correctly and monitored for results

3. The principles of Swift & Certain resonate with Michigan practitioners and have been successfully implemented in a variety of ways in other states.
Project Timeline

MLRC Meeting #1
- May
- Jun
MLRC Meeting #2
- Sep
MLRC Meeting #3
- Dec
MLRC Meeting #4
- Jan
MLRC Meeting #5
- Feb
- Mar
- Apr

2014

Stakeholder Engagement

Data Analysis

Policy Development
Thank You

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