

***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

JUSTICE ★ **CENTER**
THE COUNCIL OF STATE GOVERNMENTS



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Who we are

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

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What we do

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

[Learn more...](#)

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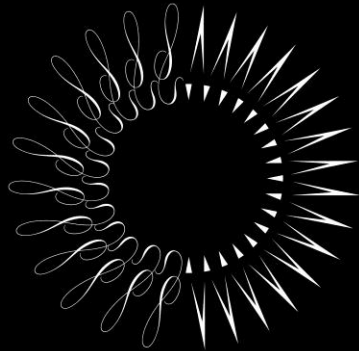
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75 years of capitol ideas

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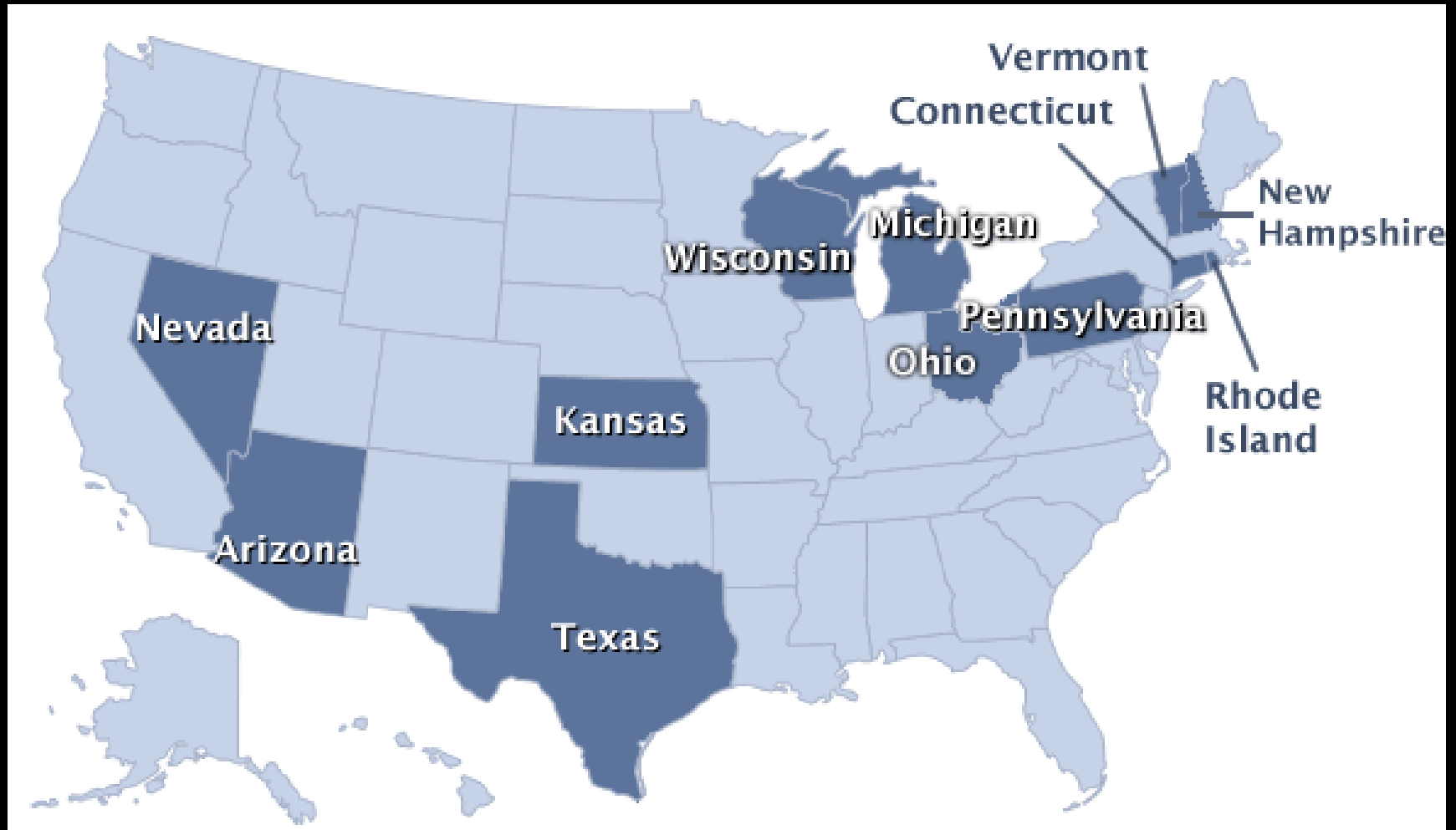
THE
PEW
CENTER ON THE STATES

Public Safety
Performance
Project



BJA Bureau of Justice Assistance

Justice Reinvestment in the States



JR Summit

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

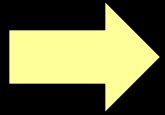
- **Tony Fabelo, Ph.D.**, *Director of Research, Council of State Governments Justice Center*
- **Michael Jacobson, Ph.D.**, *President, Vera Institute of Justice*
- **Honorable Steven S. Alm, Judge**, *Hawaii First Circuit Court*

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

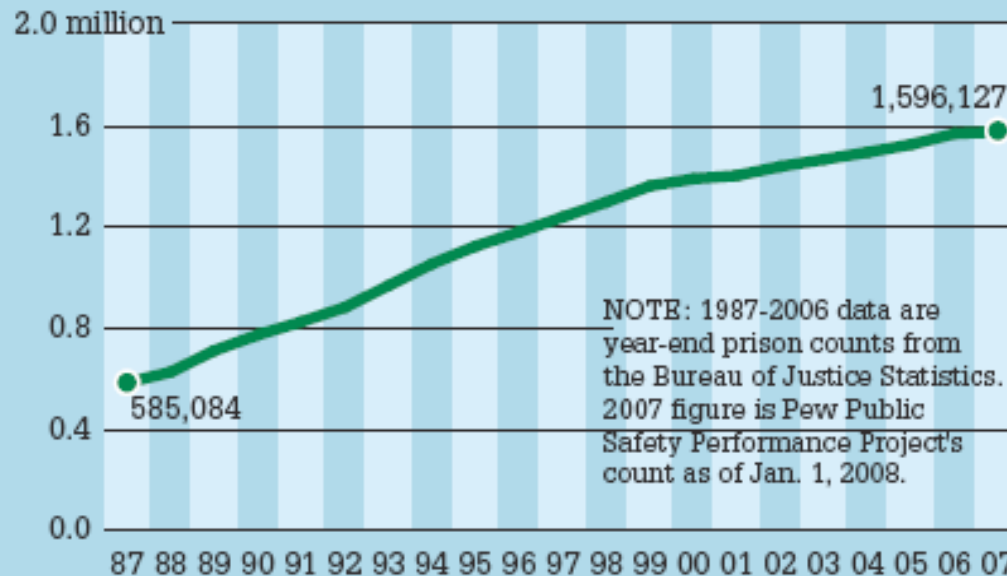
We have the knowledge to make community corrections more effective

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.



NOTE: 1987-2006 data are year-end prison counts from the Bureau of Justice Statistics. 2007 figure is Pew Public Safety Performance Project's count as of Jan. 1, 2008.

SOURCES: Bureau of Justice Statistics; Pew Public Safety Performance Project

One in 100:

Behind Bars in America 2008



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

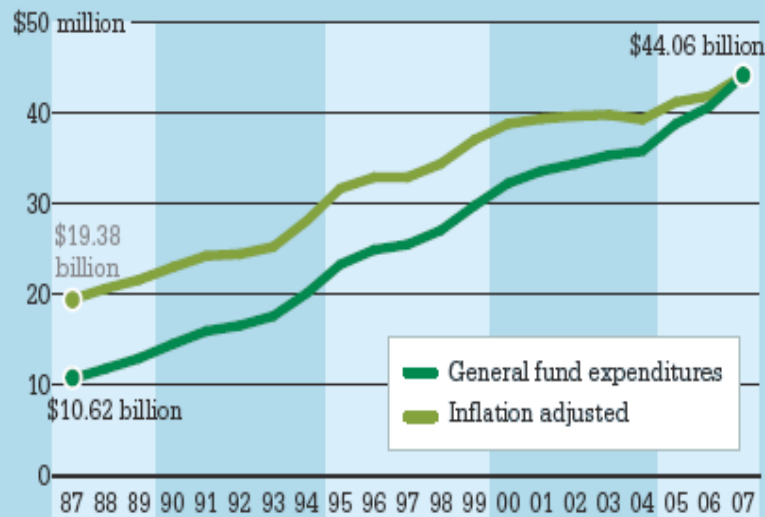


Public Safety Performance Project

Expenditures for Corrections Up

TWENTY YEARS OF RISING COSTS

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



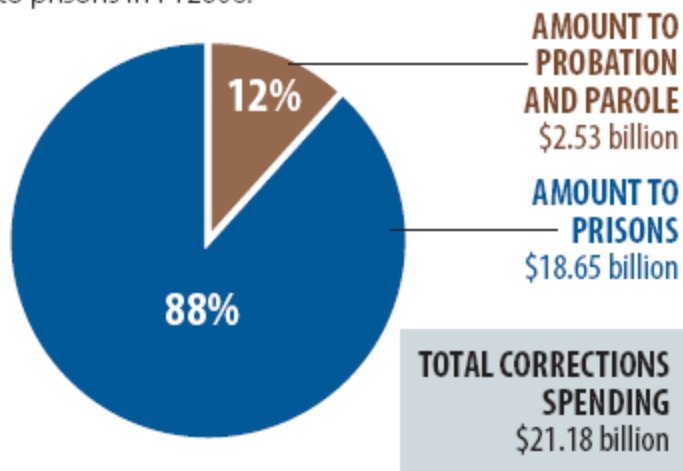
SOURCE: National Association of State Budget Officers, 'State Expenditure Report' series; Inflation adjusted figures are based on a reanalysis of data in this series.

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

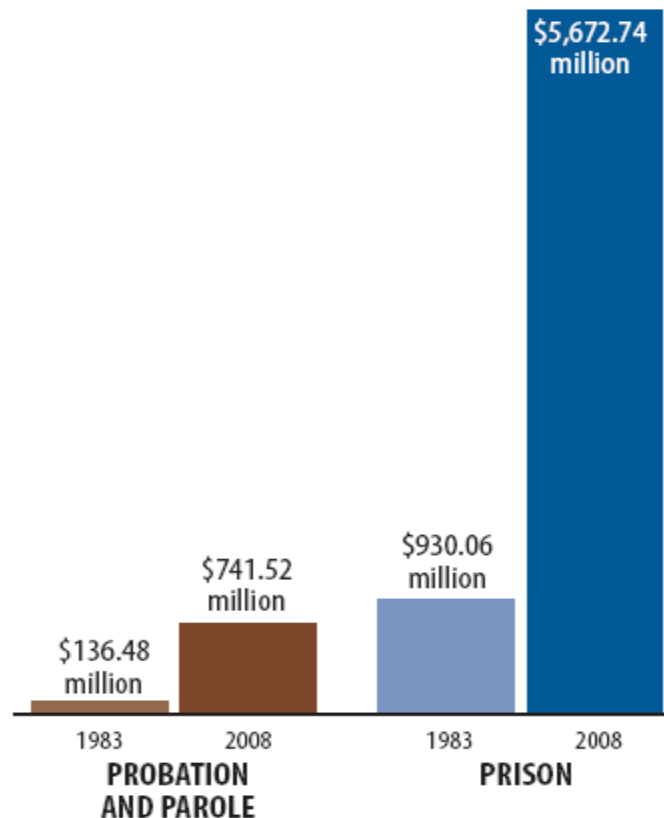
Across 34 states, nearly 9 of 10 correctional dollars went to prisons in FY2008.



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, OK, OR, PA, RI, SC, SD, TN, TX, VT, VA and WY.

EXPLOSIVE GROWTH IN PRISON SPENDING

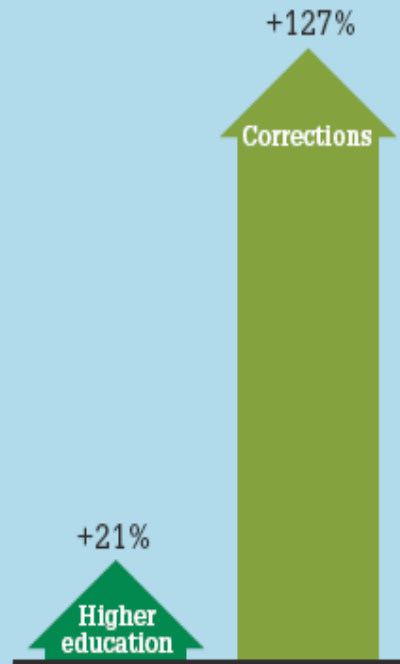
Across 8 states, 89 percent of additional corrections spending since FY1983 has gone to prisons.



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

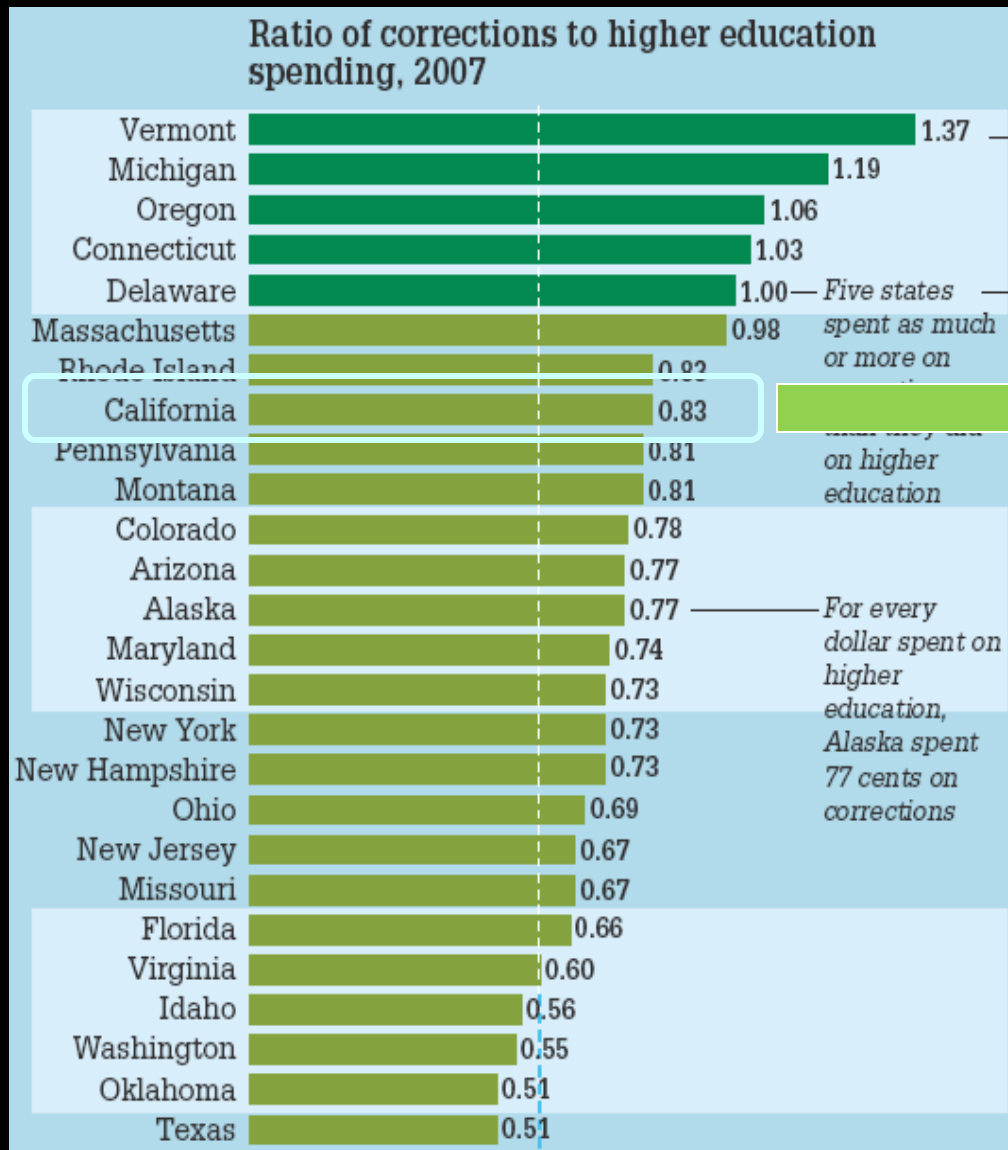
Higher Education vs. Corrections

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



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

One in 100:
Behind Bars in America 2008



Public Safety Performance Project

Opps!

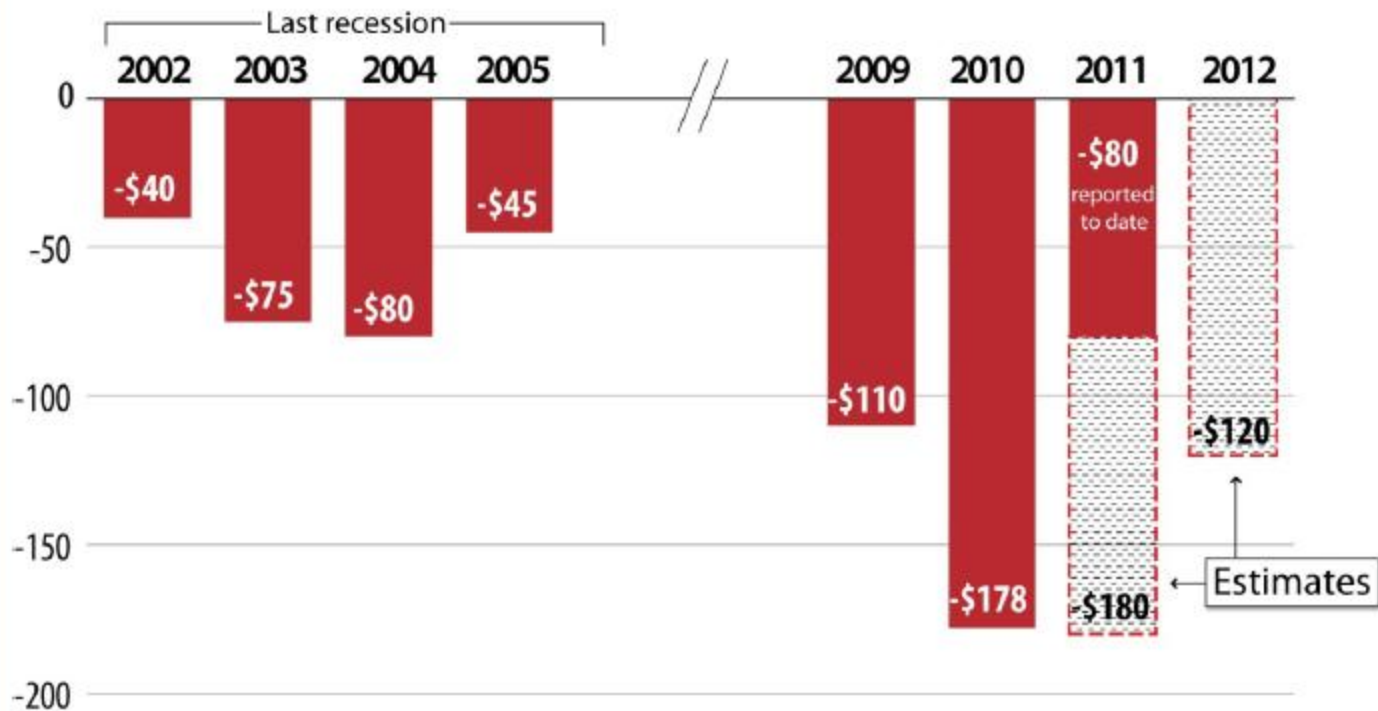


States Are Broke

Updated October 20, 2009

How Bad Will It Get?

Total state budget shortfall in each fiscal year, in billions



Source: CBPP survey

Unemployment

Chart 1. Unemployment rate, seasonally adjusted, February 2006 – January 2009

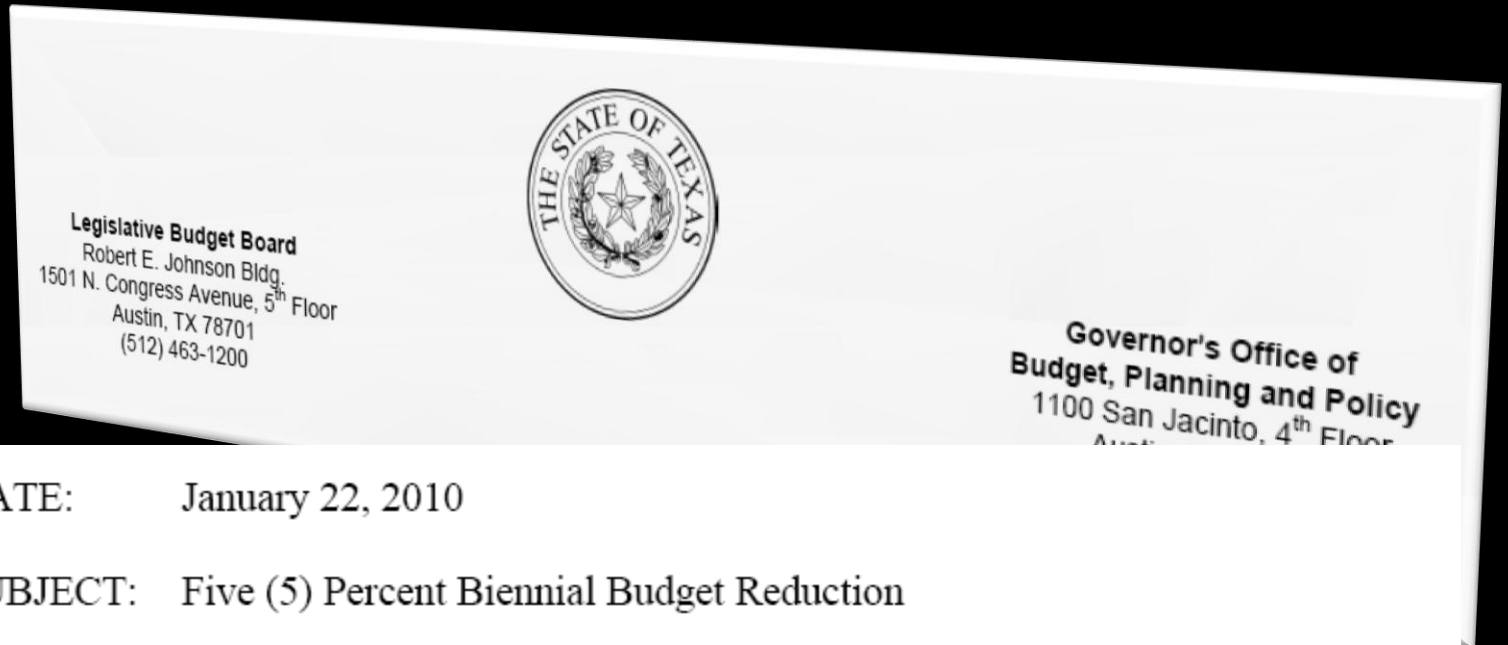


Texas Already on the “List” for 2010

TABLE 2: STATES WITH FY2010 BUDGET GAPS

	FY2010 before budget	FY2010 mid-year gap		FY2010 Total – % of General	
	Maine	\$640 million	0	\$640 million	21.4%
	Maryland	\$1.9 billion	\$936 million	\$2.8 billion	20.4%
Alabama	Massachusetts	\$5.0 billion	\$600 million	\$5.6 billion	20.0%
Alaska	Michigan	\$2.8 billion	0	\$2.8 billion	12.4%
Arizona	Minnesota	\$3.2 billion	0	\$3.2 billion	21.0%
Arkansas	Mississippi	\$480 million	\$175 million	\$655 million	13.2%
California*	Missouri	\$923 million	0	\$923 million	10.3%
Colorado	Nebraska	\$150 million	0	\$150 million	4.3%
Connecticut	Nevada	\$1.2 billion	0	\$1.2 billion	37.8%
Delaware	New Hampshire	\$250 million	0	\$250 million	16.2%
District of Colur	New Jersey	\$8.8 billion	0	\$8.8 billion	29.9%
Florida	New Mexico	\$345 million	\$660 million	\$1.0 billion	18.2%
Georgia	New York	\$17.9 billion	\$3.0 billion	\$20.9 billion	37.7%
Hawaii	North Carolina	\$4.6 billion	0	\$4.6 billion	21.9%
Idaho	Ohio	\$3.3 billion	\$296 million	\$3.6 billion	13.4%
Illinois*	Oklahoma	\$777 million	\$206 million	\$983 million	17.2%
Indiana	Oregon*	\$4.2 billion	0	\$4.2 billion	29.0%
Iowa	Pennsylvania	\$4.8 billion	0	\$4.8 billion	18.0%
Kansas	Rhode Island*	\$590 million	\$65 million	\$655 million	21.3%
Kentucky	South Carolina	\$725 million	\$201 million	\$926 million	16.0%
Louisiana	South Dakota	\$32 million	0	\$32 million	2.9%
	Tennessee	\$1.0 billion	0	\$1.0 billion	9.7%
	Texas	\$3.5 billion	0	\$3.5 billion	9.5%
	Utah	\$721 million	\$279 million	\$1.0 billion	19.8%
	Vermont	\$278 million	\$28 million	\$306 million	27.3%
	Virginia	\$1.8 billion	\$1.5 billion	\$3.3 billion	20.1%
	Washington	\$3.4 billion	\$195 million	\$3.6 billion	23.3%
	West Virginia	\$184 million	0	\$184 million	4.9%
	Wisconsin	\$3.2 billion	0	\$3.2 billion	23.2%
	Wyoming	0	\$32 million	\$32 million	1.7%
	Total	\$162.5 billion	\$15.8 billion	\$178.3 billion	26.0%

Demands for Cuts in Texas Already Starting



DATE: January 22, 2010

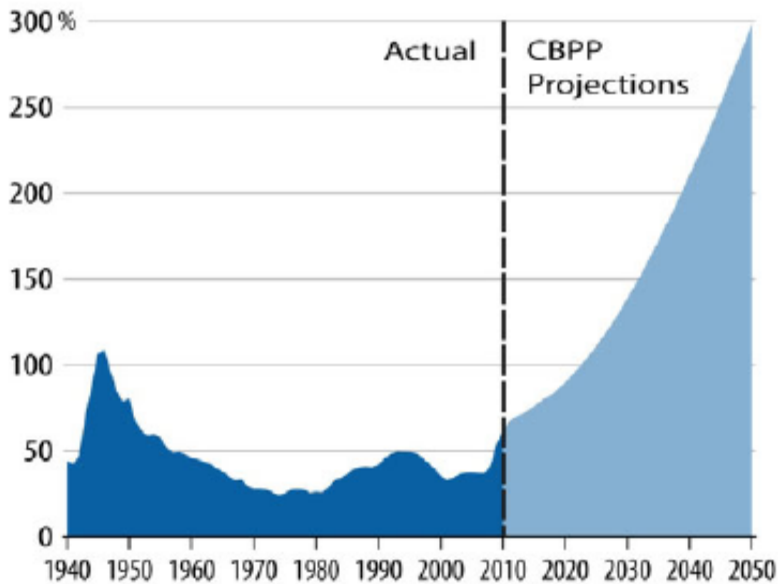
SUBJECT: Five (5) Percent Biennial Budget Reduction

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**

Debt as a Share of GDP, 1940-2050



Source: CBPP projections based on CBO data.

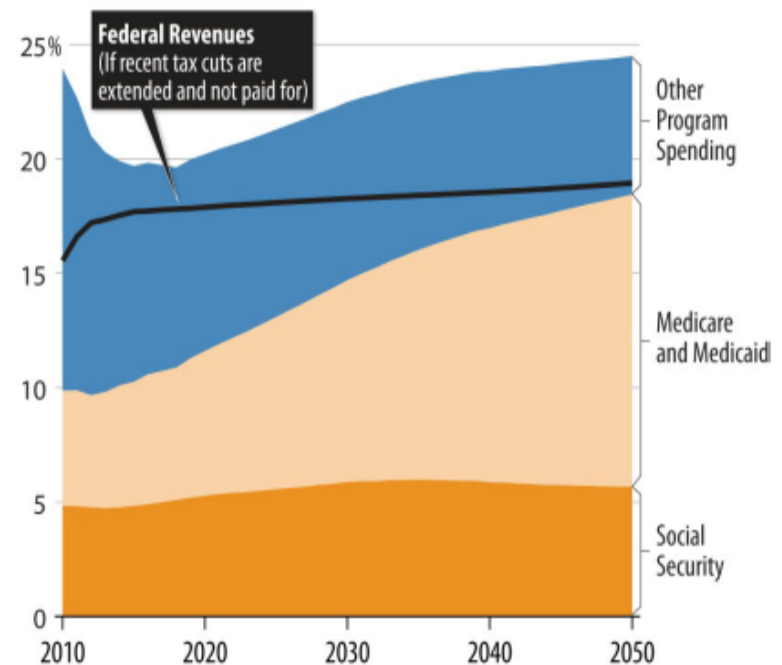
Center on
Budget
and Policy
Priorities

September 30, 2009

FIGURE 2:

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

Program Spending and Revenues as a Share of GDP



Source: CBPP projections based on CBO data.

1 in 31 Adults in US Under Supervision

1 IN 31: DOING THE MATH

ONE

PRISON POPULATION	1,512,576
JAIL POPULATION	780,581
PROBATION POPULATION	4,293,163
+ PAROLE POPULATION	824,365
<hr/>	
CORRECTIONAL POPULATION	7,328,200

TWO

ADULT POPULATION	229,030,637
	\div
CORRECTIONAL POPULATION	7,328,200

THREE

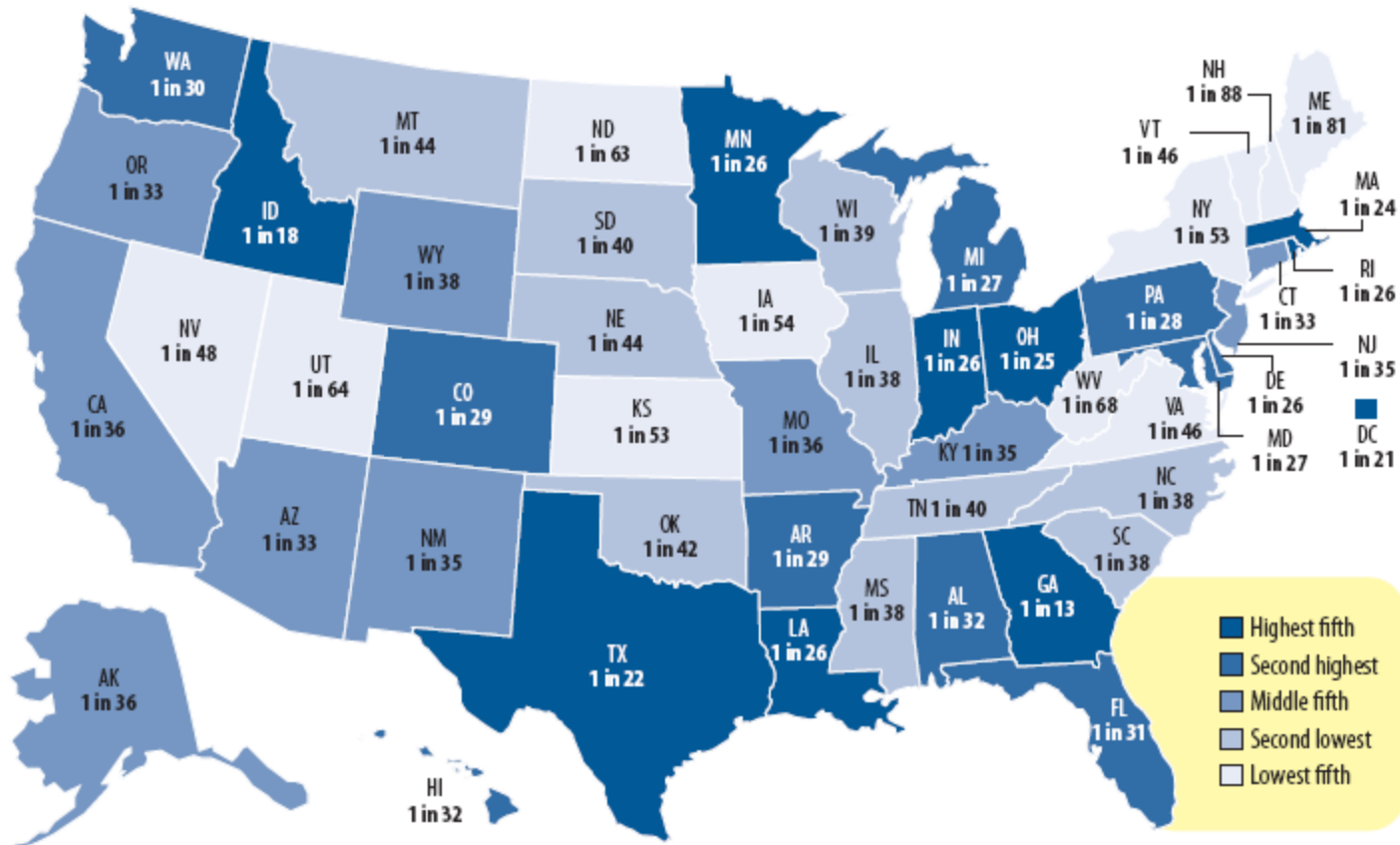
ONE IN EVERY 31 U.S. ADULTS
IS UNDER CORRECTIONAL CONTROL

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> 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

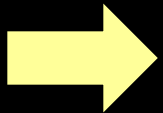
Share of adults under correctional control, year end 2007.



SOURCE: Calculation includes offenders in state and federal jail, prison and community supervision and is based on data from the U.S. Census State Population Estimates, the Bureau of Justice Statistics Correctional Surveys available at <http://www.ojp.usdoj.gov/bjs/glance/tables/corr2tab.htm>, the U.S. Bureau of Prisons, the Administrative Office of U.S. Courts and the Pew Public Safety Performance Project.

Overview

Demands on community corrections will continue to increase

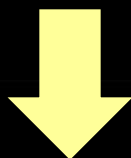


We have the knowledge to make community corrections more effective

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*



www.projectcartoon.com

Change Behavior



*Motivation and Role
Model*

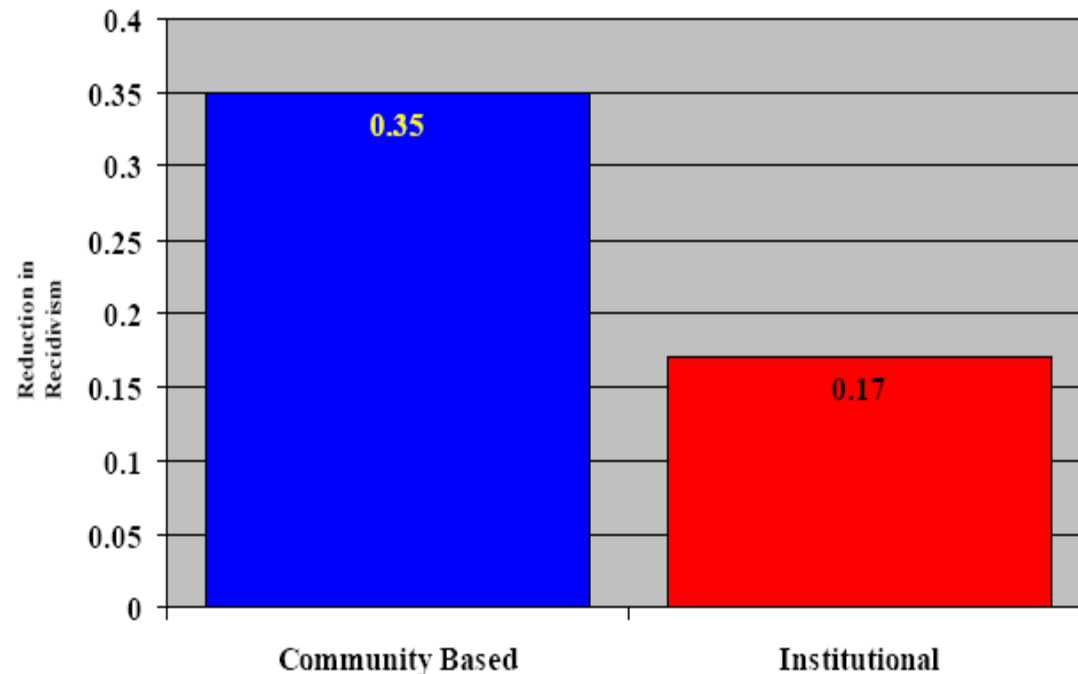
*Differentiated
Supervision Strategies
Based on Risk*

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

Source: Gendreau, P., French, S.A., and A. Taylor (2002). What Works (What Doesn't Work) Revised 2002. Invited Submission to the National Community Corrections Association Monograph Series Project.

Principle: Pay Attention to Criminogenic Needs

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

DRAFT: A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems

A Project of the National Institute of Corrections

A COLLABORATIVE PROJECT BETWEEN THE
CENTER FOR EFFECTIVE PUBLIC POLICY
PRETRIAL JUSTICE INSTITUTE
THE JUSTICE MANAGEMENT INSTITUTE
AND
THE CAREY GROUP

2009

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

DRAFT: A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems

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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

DRAFT: A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems

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2009

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

DRAFT: A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems

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THE JUSTICE MANAGEMENT INSTITUTE
AND
THE CAREY GROUP

2009

Principle: Role of Probation Officer Critical

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 identifies each group

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

NORP
Normal Ordinary
Responsible
People

SLUGS

SLICKS

Terms coined by Judge Dennis Challeen of Winona, MI

3. Programs and standards target appropriate populations

Swamp Water Jurisprudence

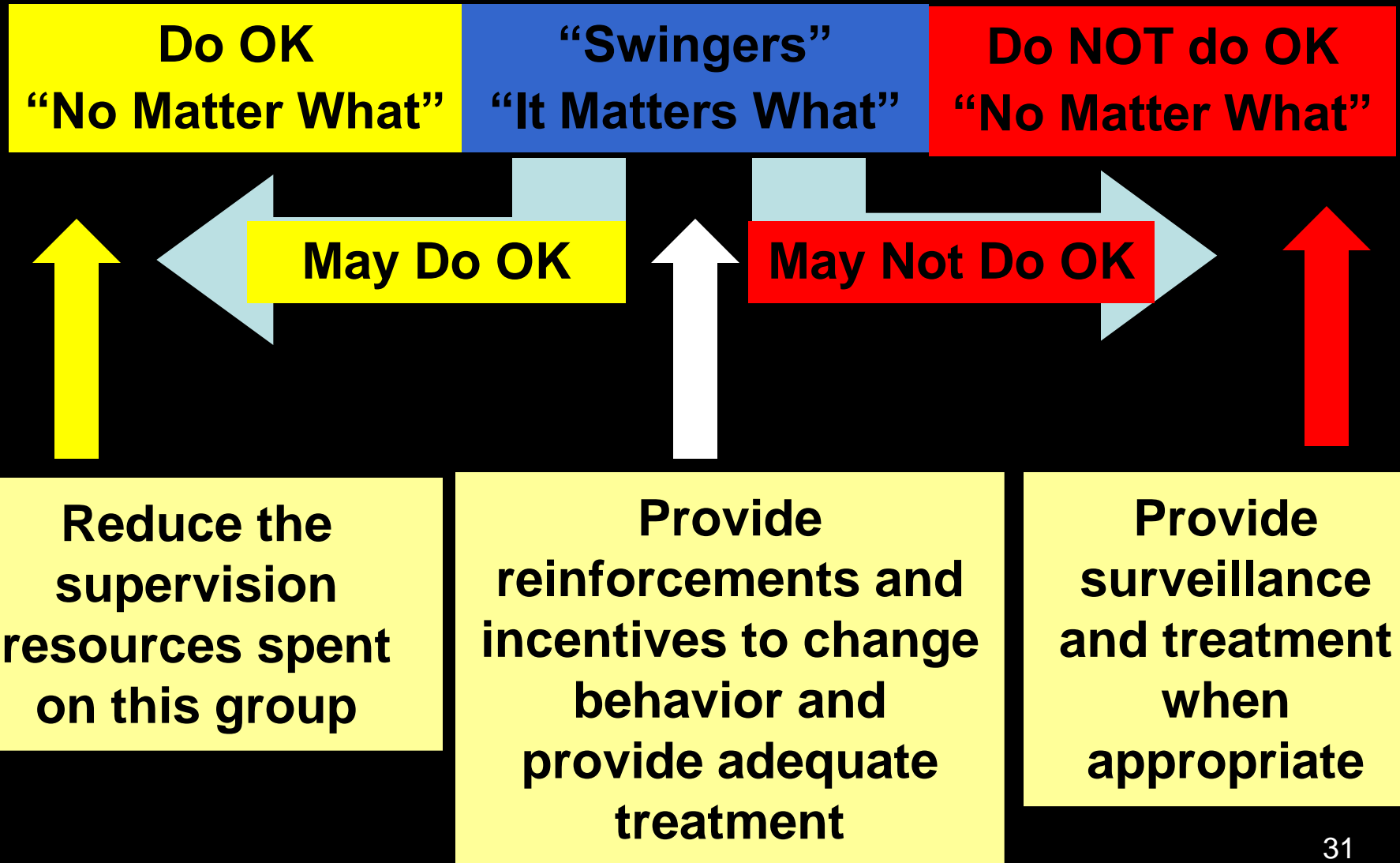
A candid, sometimes humorous journey into the backwaters of the criminal mind and our criminal justice system.

The memoirs of a retired judge.

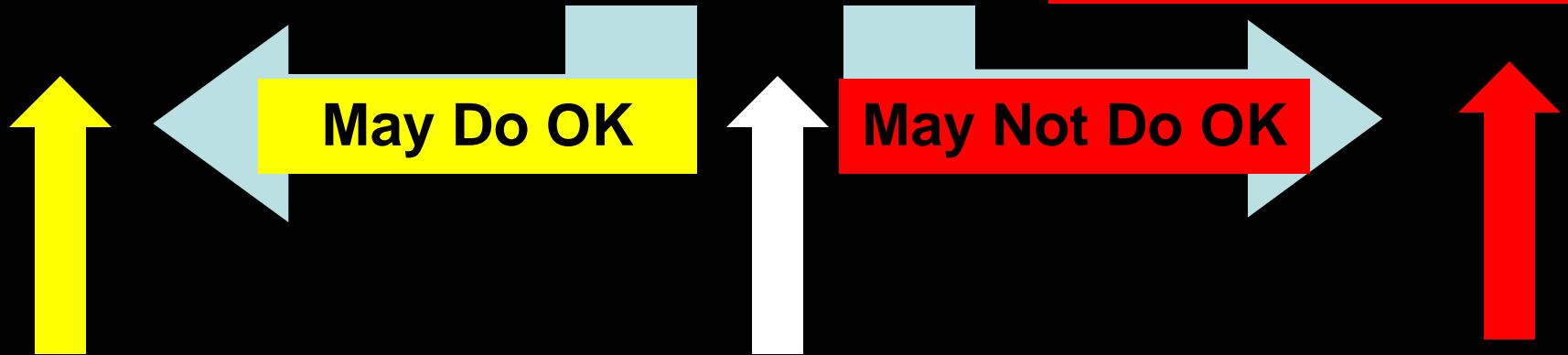
Dennis A. Challeen, J.D.

Proactive sanctions tune to group and consistently applied

Operational Goals



Progressive Sanctions



Higher tolerance
for minor

Higher tolerance for
violations of

Lower
tolerance for

Swift and consistently applied sanctions key to effectiveness

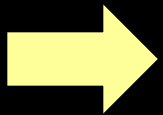
incentives for progress

conditions

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

Long-Term Funding Support from State

Budget crises usually translate into budget cuts for probation and parole system as significant prison savings require the closing of prisons



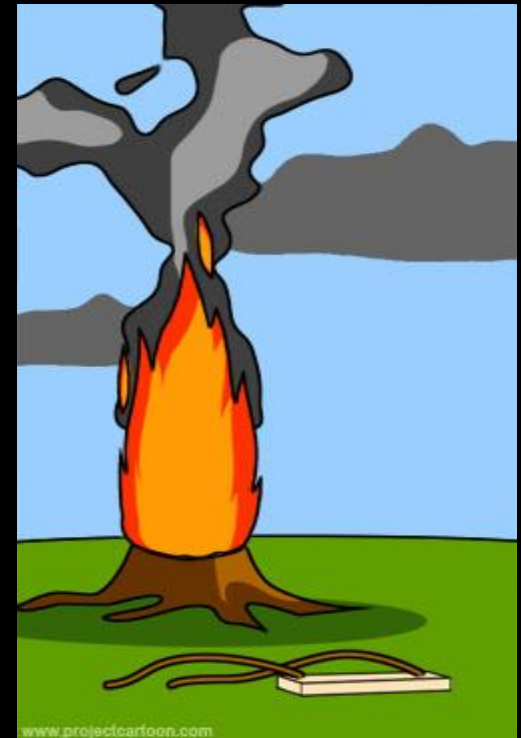
State probation funding patterns over-time

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



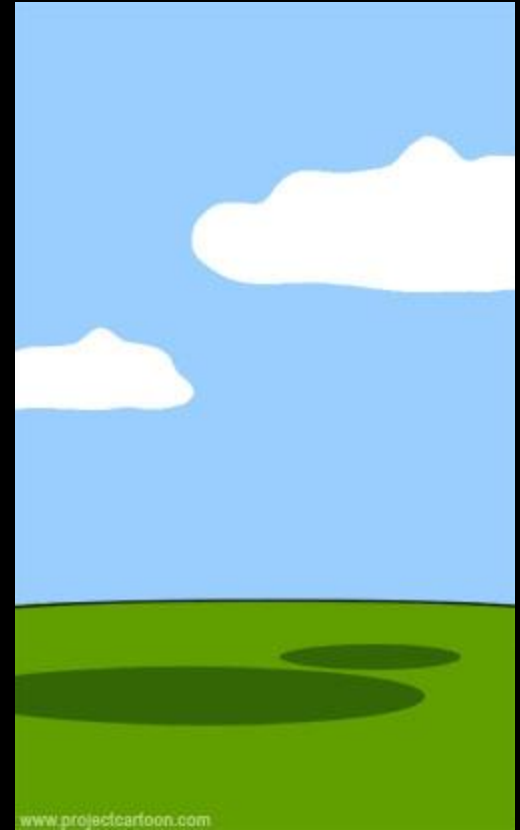
Centuries Old Judicial Traditions and Roles

“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

Lack of Evidence to Drive Probation Practices

Most probation departments do not get resources to generate evidence to drive their policies and guide judicial officials



Probation department research-based resources

Too Many Fingers in the Pot



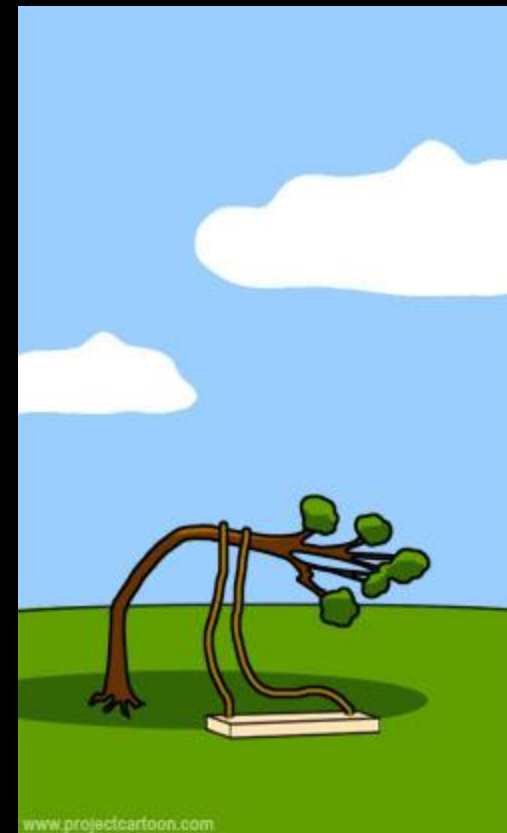
Accountability to too many people that cannot agree on goals and expectations

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

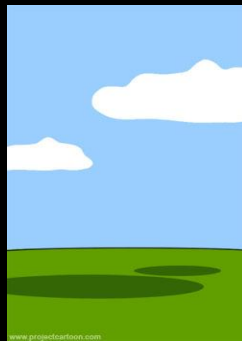
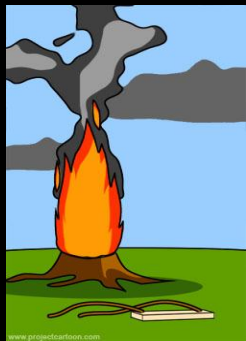
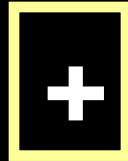
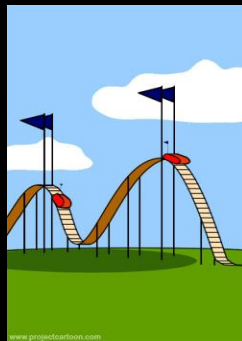
Probation Directors Catch-22

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



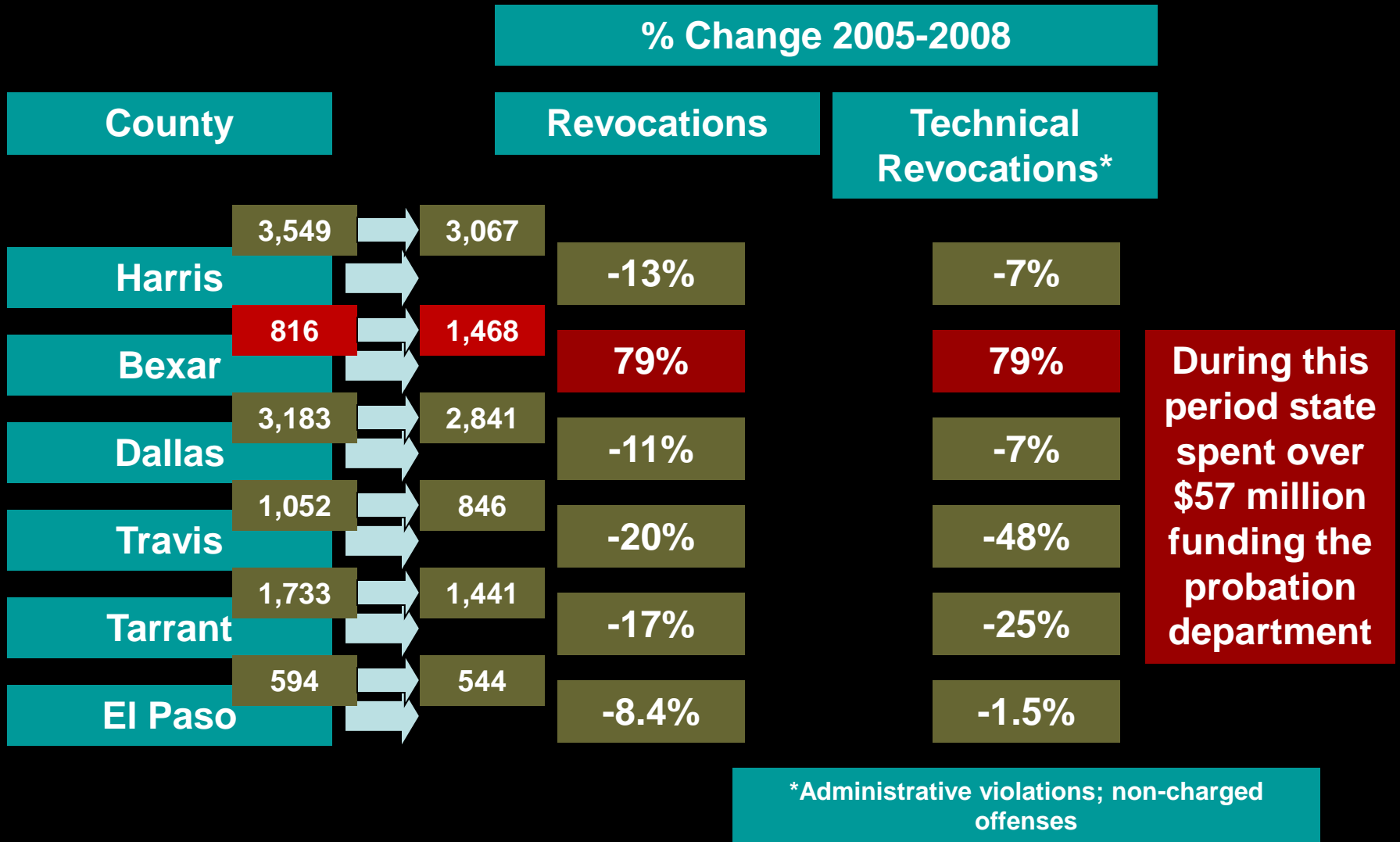
Probation directors operational reality

End Result

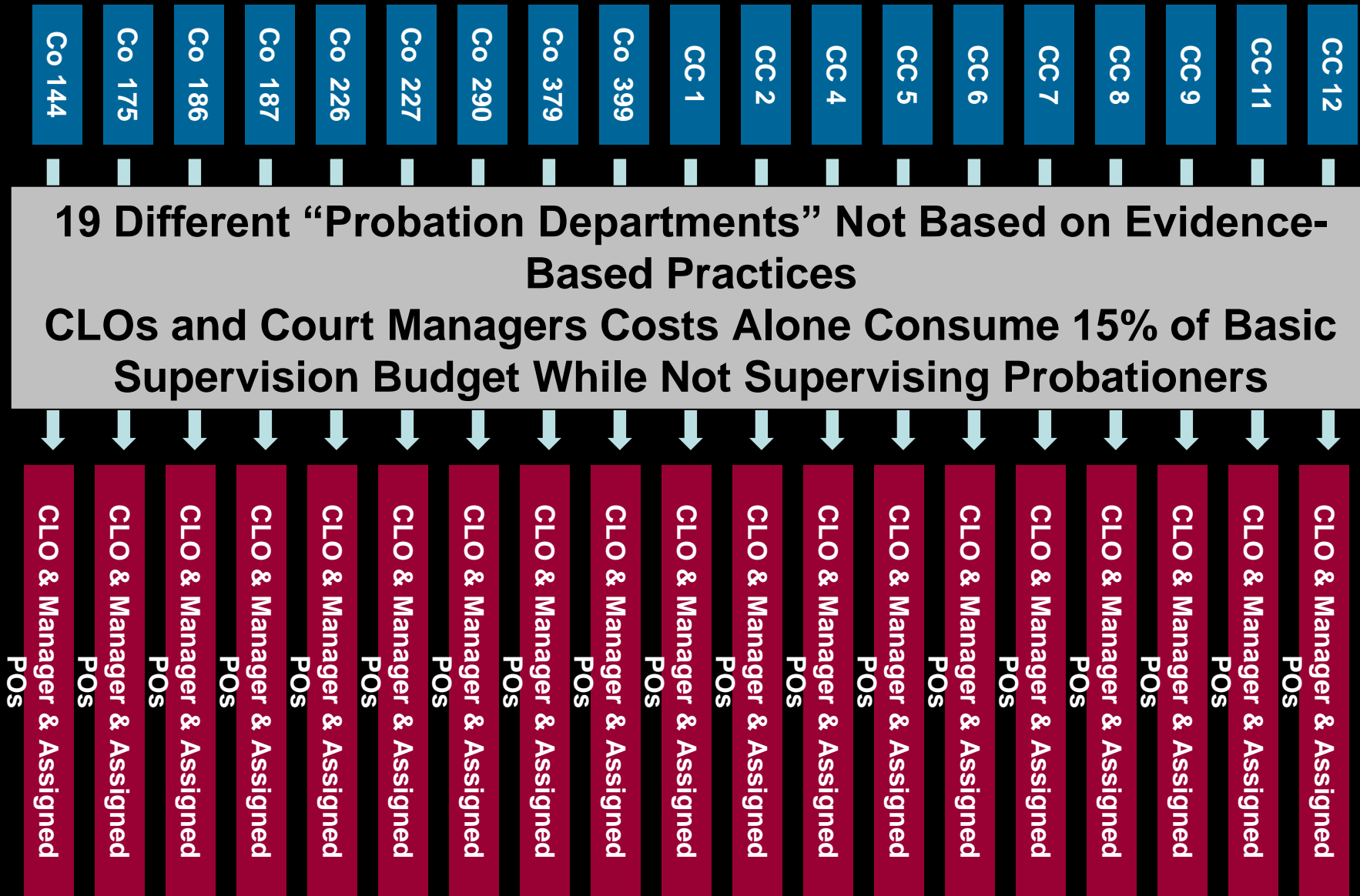


What probation looks like in most places

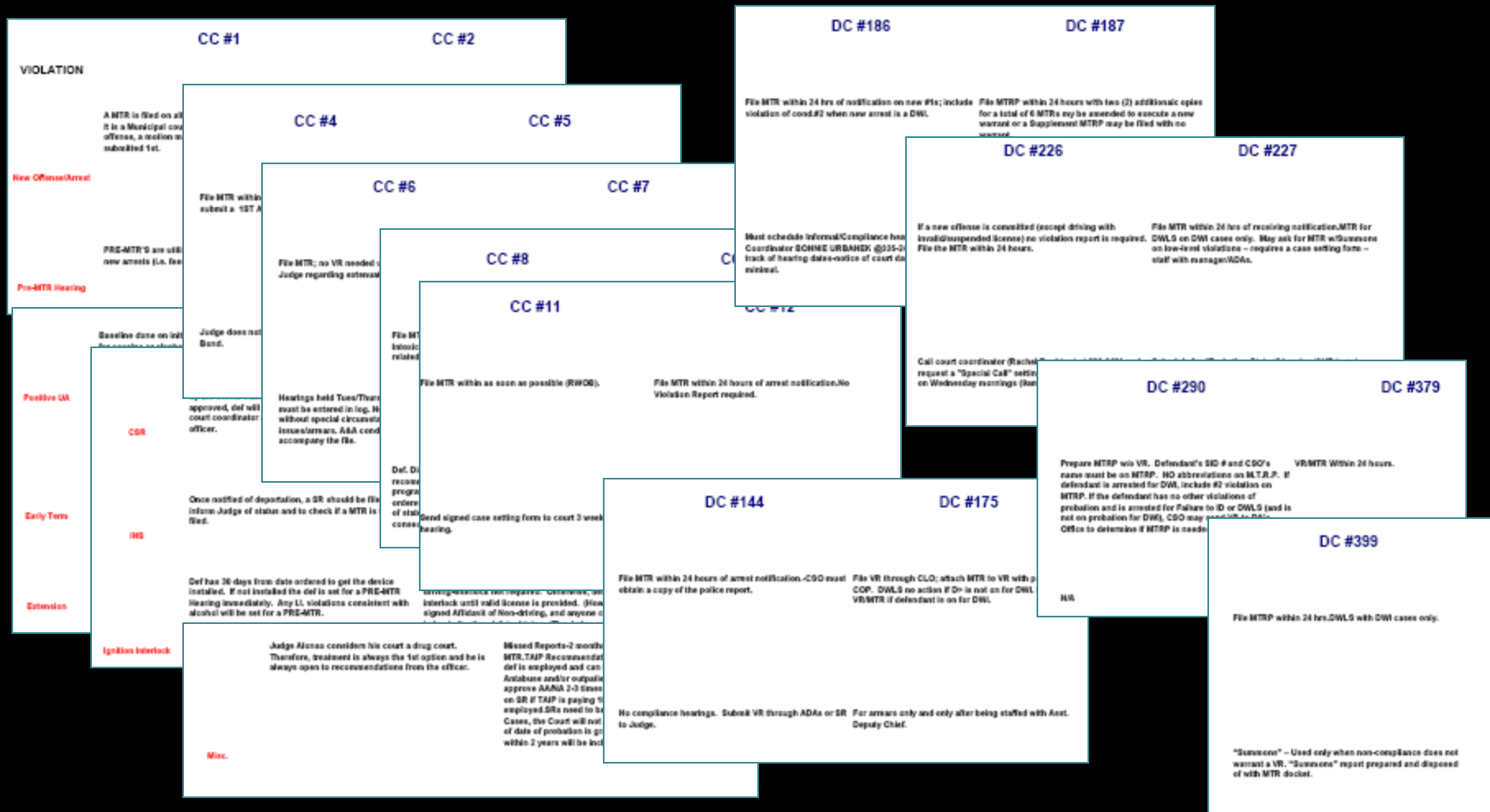
Poor Outcomes in Bexar County (San Antonio)



Organization of Bexar Probation Department



Specifications from Each Court Go on.....



and Go On

County Court #7

RESETS:

In order for a defendant to get a reset, they have to earn it, so to speak. If they are weekly reporting while on bond and been clean, they can be reset to complete whatever obligations. If they have not reported since they bonded out

of jail on MTR, if same day or no you pull the court paperclip on court bond increase will In Court. If Judge the criteria, but d soon as the Judge

COUNTY COURT #8

RESETS:

The CLO does the probation resets. If case is a double all case #s are put on the case setting. Case setting need to be done to click in the back office. If the

JUDGE LAURA SALINAS

COORDINATOR: PAT ALVAREZ

CLERKS: KATHY & MELISSA

BAILIFF: GABE COLUNGA

MANAGER FOR CC # 9 C.S.O.: BRIDGET GUZMAN

COUNTY COURT #11

RESETS:

The CLO handles all probation/MTR resets

PAPERWORK:

The CLO pulls the court jackets for MTRs and PMTRs. The CLO does not write on the court jacket paperwork. The sign paperwork

COUNTY COURT #12

RESETS

The coordinator handles all resets

PAPERWORK

The CLO does not pull the court jackets. The CLO does not write on the court jacket, the Judge/clerk will write on the jackets. The Judge does not need the court jacket with the paperwork. The Judge will sign MTRs before the ADAs sign. The Judge will sign paperwork in chambers before the docket call (if the CLO is there early enough).

HEARINGS

The Judge does ask for Probation's recommendations most of the time. The Judge will withdraw MTRs if continue and deny if terminated. The Judge does not need a copy of the court summary for review. The coordinator will pull the court jacket and give to the Judge once ready on MTRs.

DOCKET CALL

The docket is called at 9:30am (CLO is there by 8:45am).

PMTRs/COMPLIANCE HEARINGS

PMTRs are heard on Tuesday and Friday s and the defendant is required to be at the bench.

DOCKETS/CAPIAS/OTHER PROBATION PAPERWORK

The box where all the dockets/capiases are located next to the clerk's desk.

CAPIAS

The CLO handles the capias and hands them out to the officers.

County Court #1

RESETS

The coordinator resets the cases.

PAPER WORK

1. Resets
Resets are done by the Coordinator (Bertha). Only after the CLO has approved them to get a reset or if the Coordinator indicates that they need to see the Judge before a reset is given. (The Attorney) needs to take the court jacket to the Judges chamber on the case (if still lacking as long of a reset

COUNTY COURT #2

2. Paperwork
In CC#2 you all signatures from on the court jacket to Clerk Rita) a

COUNTY COURT #4

RESETS:

The CLO handles the resets for the MTRs. CLO writes on the court jacket.

PAPERWORK:

The Court 5 Manager will give the C.L.O. all of the paperwork being submitted

DOCKET CALL

AT 9:00 A.M.

PAPERWORK

The Court 5 Manager will give the C.L.O. all of the paperwork being submitted

COUNTY COURT #5

COUNTY COURT #8

RESETS:

The Coordinator handles the resets.

PAPERWORK:

The CLO does not pull or write on any of the court jackets. The Judge get the court jacket just the paperwork. The Judge will sign MTRs only ADAs sign first. Paperwork can be given to the Judge on the bench at docket call. Separate the paperwork and give the originals to the clerk it in the clerk's box.

HEARINGS:

The Judge does ask for Probation's recommendations. The Judge will MTRs and continue instead of withdrawing. The Judge does not need the court summary for review. The Def. Atty will pull the court jacket from coordinator and give to the Judge once they announce ready on MTRs Judge will ask what the situation is and what probation recommends at time you will tell the Judge the facts, when granted/expires, balance out results, programs completed/no completed, reporting status, etc. then recommendation. After the Judge makes his decision and writes on the file, get the court file, and make a copy of the court jacket for the proba and be sure to give the file back to the clerks.

DOCKET CALL:

The docket is called at 9:00am.

PMTRs/COMPLIANCE HEARINGS:

PMTRs are heard on Tuesday s and Thursdays and the defendant is required be at the bench.

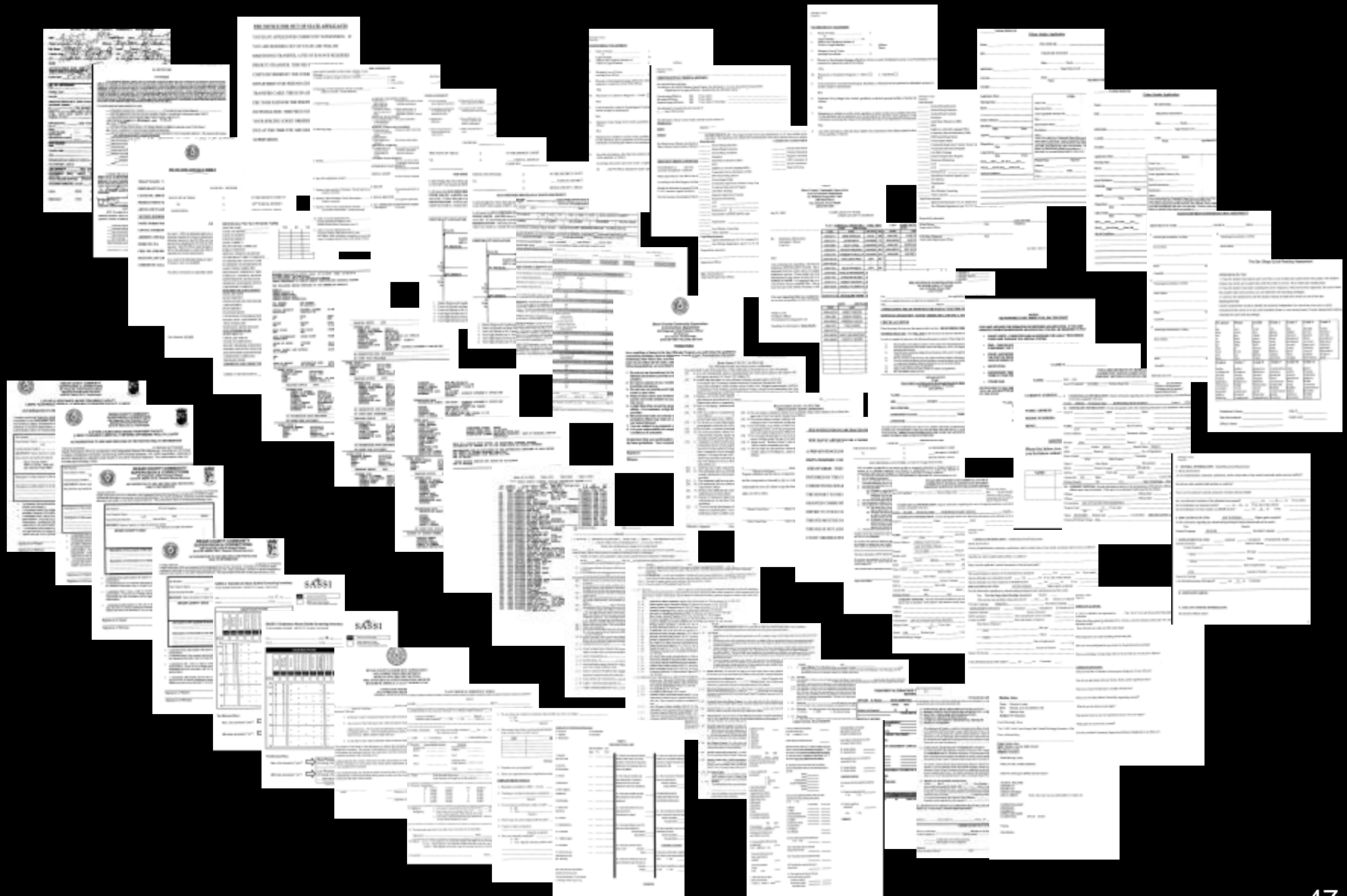
DOCKETS/CAPIAS/OTHER PROBATION PAPERWORK:

The box where all the dockets/capias is located on the first set of filing cabinets to the right as you walk in the office.

CAPIAS:

The CLO handles the capias and hands them out to the officers.

PSI and Intake Documents a Morass

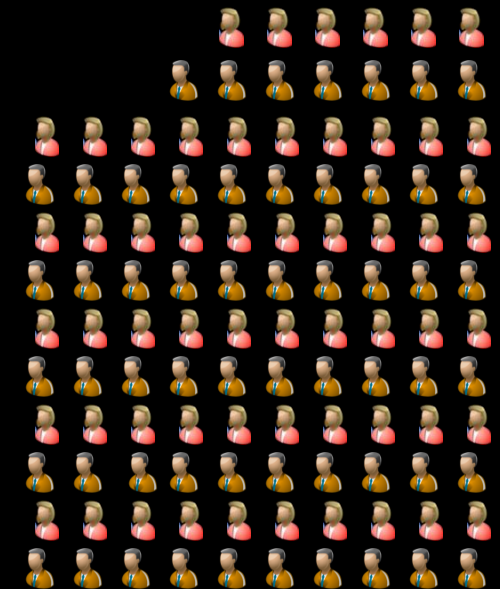
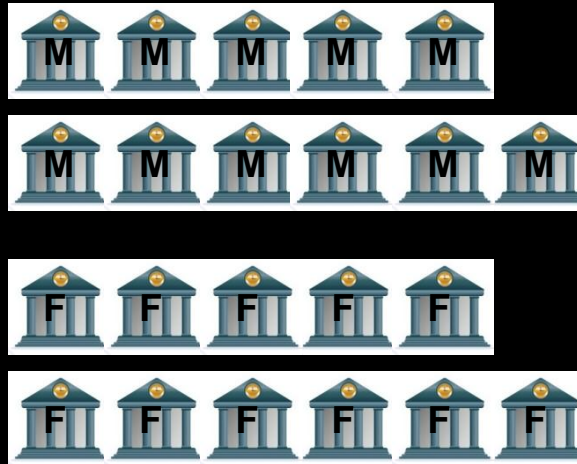


Ineffective and Costly Deployment of Resources

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

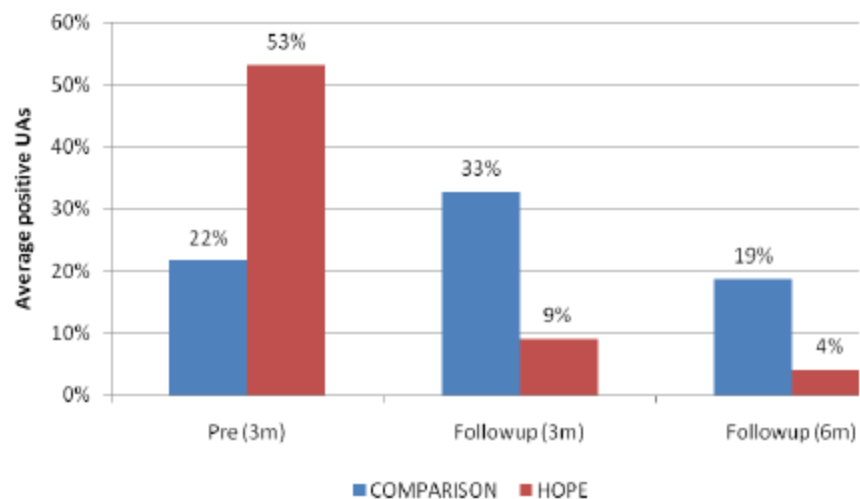
Drug treatment only for those who repeatedly fail

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.



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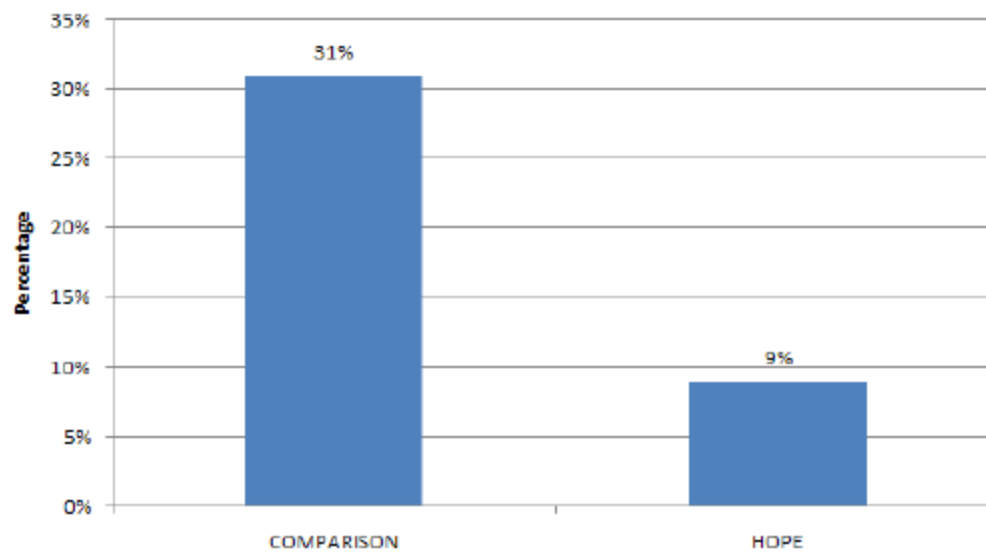
Author: Angela Hawken, Ph.D. and Mark Kleiman, Ph.D.

Document No.: 229023

Date Received: December 2009

HOPE – Impact on Revocations

Figure 5. Probation revocation: HOPE versus Comparison Probationers



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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

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

Challenge to Consistent Implementation

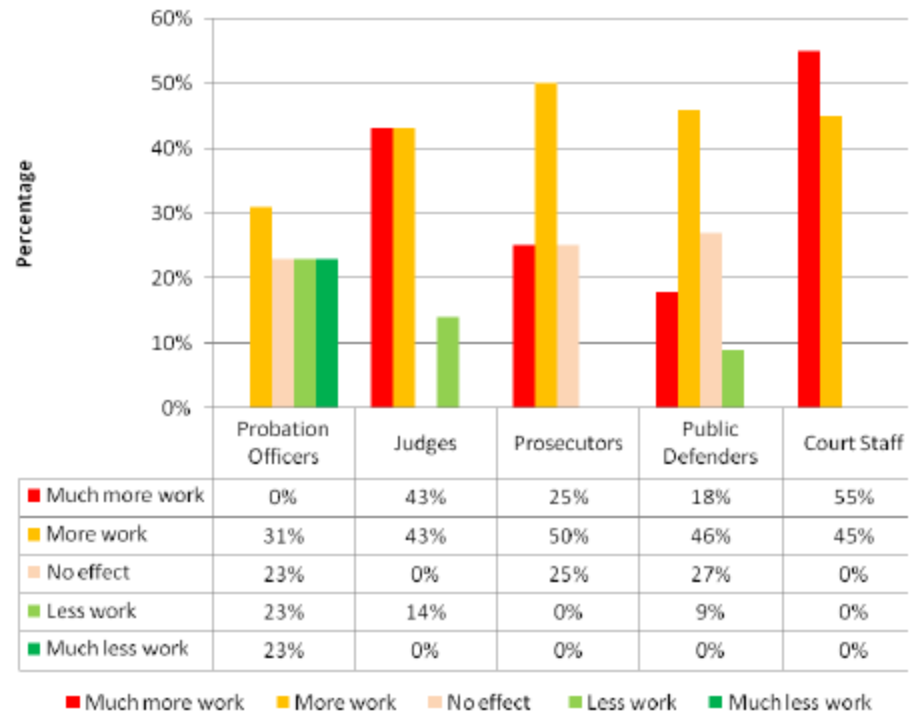
**“Changing addict behavior is easy.
Changing judge behavior is hard.”**

**Dr. Adele Harrell, national drug abuse
treatment expert, quoted in page 28**

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.
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HOPE – Differential Workloads

Figure 12. HOPE and Workload

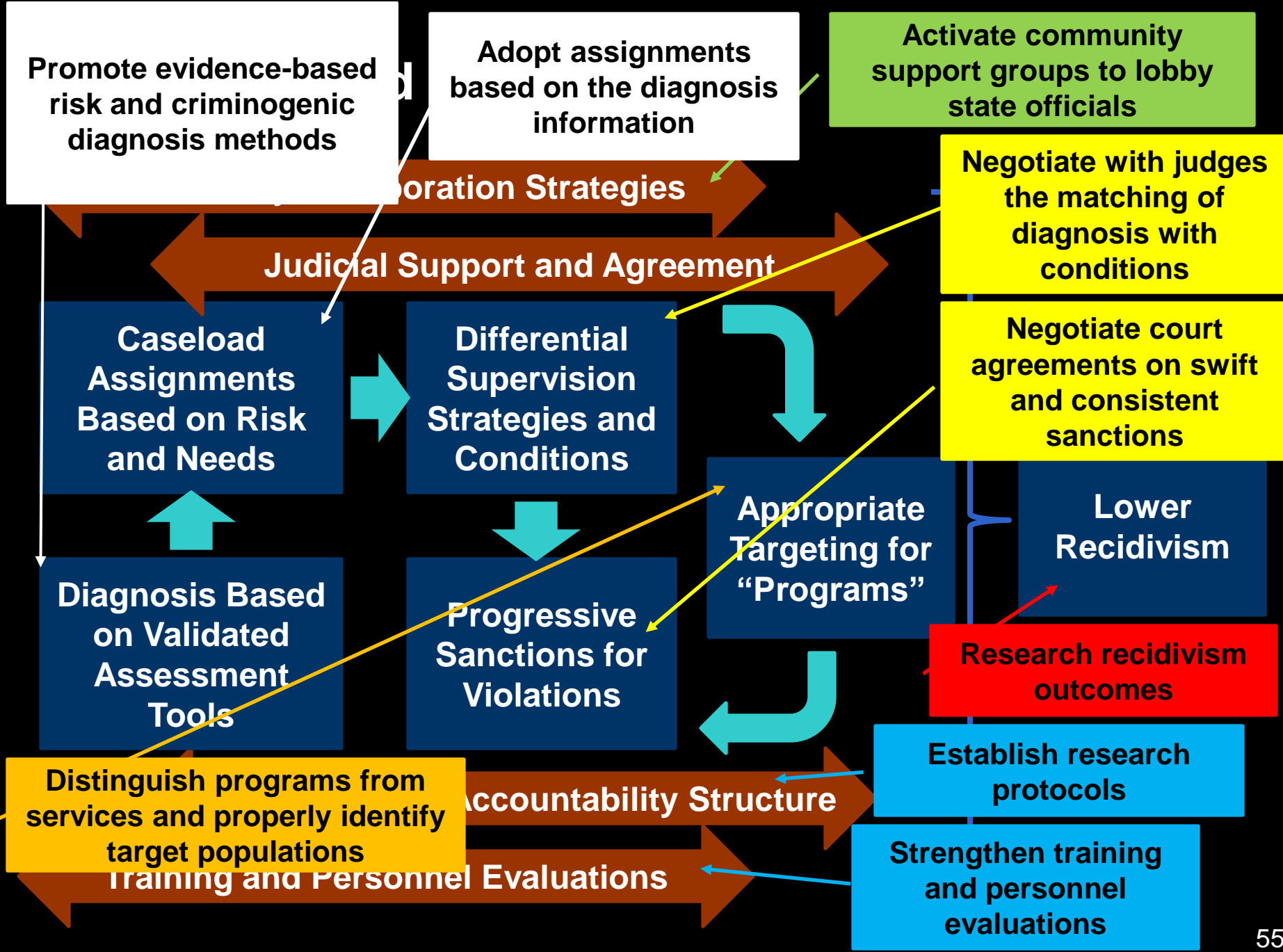


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Promote evidence-based risk and criminogenic diagnosis methods

Adopt assignments based on the diagnosis information

Activate community support groups to lobby state officials

Accountability Structure

Judicial Support and Agreement

Negotiate with judges the matching of diagnosis with conditions

Negotiate court agreements on swift and consistent sanctions

Caseload Assignments Based on Risk and Needs

Differential Supervision Strategies and Conditions

Appropriate Targeting for "Programs"

Lower Recidivism

Diagnosis Based on Validated Assessment Tools

Progressive Sanctions for Violations

Research recidivism outcomes

Distinguish programs from services and properly identify target populations

Accountability Structure

Establish research protocols

Training and Personnel Evaluations

Strengthen training and personnel evaluations

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

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.

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