Sentencing and Justice Reinvestment Initiative

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Michigan Law Revision Commission

Carl Reynolds, Senior Legal & Policy Advisor
Shane Correia, Program Associate
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

Justice & Public Safety

Holding Offenders Accountable
Three Part Framework and Understanding the Implications of Our Research in Michigan

<table>
<thead>
<tr>
<th>Punishing Consistently</th>
<th>Reducing Criminal Behavior</th>
<th>Holding Offenders Accountable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fundamental to sentencing guidelines</td>
<td>99% return to community, so reducing criminal behavior of primary importance</td>
<td>Key piece of effective supervision, i.e., recidivism reduction</td>
</tr>
<tr>
<td>Predictability in sentencing for both victim and the larger system and community</td>
<td>Research demonstrates better public safety is possible</td>
<td>Concepts are intuitive but barriers often exist</td>
</tr>
<tr>
<td>Proportionate punishment - similar offenses and offenders punished similarly</td>
<td>Michigan is on a learning curve</td>
<td>Michigan is on a learning curve</td>
</tr>
</tbody>
</table>
Distinct Yet Overlapping Angles of Inquiry into Primary Principles of Justice and Public Safety

- Punishing Consistently
- Reducing Criminal Behavior
- Holding Offenders Accountable

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

Sentencing Grids Have Allowance for Disparity Built In

Most Grid Cells Offer Wide Range of Possible Punishments

- **Intermediate** (62% of Cases)
- **Straddle** (27% of Cases)
- **Prison** (11% of Cases)

89% of cases may get anywhere from probation to jail to both.

Straddle may also get prison... or probation or jail or jail + probation

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

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...

**Supervised in Community**

- **Probation**
  - Avg. term imposed = 24 mos.;
  - Range of 9-60 mos.

**“Behind Bars”**

- **Prison**
  - Avg. min term imposed = 17 mos.;
  - Range of 6-36 mos.

- **Jail**
  - Avg. term imposed = 6 mos.;
  - Range of 1-365 days.

Total 2012 Sentences = 1,463

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

<table>
<thead>
<tr>
<th></th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td></td>
<td></td>
<td></td>
<td>402</td>
<td>128</td>
<td>103</td>
</tr>
<tr>
<td>II</td>
<td></td>
<td></td>
<td>359</td>
<td>141</td>
<td>69</td>
<td></td>
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<tr>
<td>III</td>
<td></td>
<td>77</td>
<td>26</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>IV</td>
<td></td>
<td>69</td>
<td>36</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>V</td>
<td>10</td>
<td>27</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VI</td>
<td>7</td>
<td>9</td>
<td></td>
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</tr>
</tbody>
</table>

Actual Prison Sentences Demonstrate Use of Wide Discretion in Minimum Length Imposed

Michigan 2012 SGL Non-Habitual Sentences to Prison:

- 27% less than 110% of min-min
- 73% equal to or more 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).

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

- Terrorism related
- Psychological Impact to victim’s family

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

Parole
- Conduct in prison
- Performance in programs
- Prison housing status
- Situational crime unlikely to reoccur

Sentencing

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 25,523 (58%)

New Offense Violators (Par/Prob/Pretrial and Pris/Jail) 13,837 (31%)

Prob. Compliance Violators 4,689 (11%)

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**
  - **13,837**
  - 15%: Defendants out on bond (2,101)
  - 32%: Felony probationers (4,472)
  - 19%: Misdemeanor probationers (2,638)
  - 18%: Parolees (2,464)
  - 16%: Other/Unknown (2,162)


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

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**Risk**

Assess for Risk Level...

<table>
<thead>
<tr>
<th>Risk of Re-offending</th>
<th>LOW 10% re-arrested</th>
<th>MODERATE 35% re-arrested</th>
<th>HIGH 70% re-arrested</th>
</tr>
</thead>
</table>

...and Focus Accordingly

- **Low** Supervision/Program Intensity
- **Moderate** Supervision/Program Intensity
- **High** Supervision/Program Intensity

C Council of State Governments Justice Center 21
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

DO NOT MIX
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

<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>
</table>
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
- Structured time
- Ability to support family
- Pro-social associates
- Job and income stability

Improving Employment Outcomes through workforce development strategies

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

Responsivity Dictates Skillful Program Delivery

**RESPONSIVITY**

Deliver in a way that maximizes meaningful understanding & retention

**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

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.
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

<table>
<thead>
<tr>
<th>Study</th>
<th>Minimum Intervention</th>
<th>Intensive Intervention</th>
</tr>
</thead>
<tbody>
<tr>
<td>O’Donnel et al., 1971</td>
<td>78%</td>
<td>56%</td>
</tr>
<tr>
<td>Baird et al., 1979</td>
<td>37%</td>
<td>18%</td>
</tr>
<tr>
<td>Andrews &amp; Kiessling, 1980</td>
<td>58%</td>
<td>31%</td>
</tr>
<tr>
<td>Andrews &amp; Friesen, 1987</td>
<td>92%</td>
<td>25%</td>
</tr>
</tbody>
</table>

Interventions led to BETTER recidivism outcomes for HIGH risk offenders, but....

Intervention Effects on Recidivism among LOW RISK Offenders

- Minimum Intervention
- Intensive Intervention

<table>
<thead>
<tr>
<th>Study</th>
<th>Minimum Intervention</th>
<th>Intensive Intervention</th>
</tr>
</thead>
<tbody>
<tr>
<td>O’Donnel et al., 1971</td>
<td>16%</td>
<td>22%</td>
</tr>
<tr>
<td>Baird et al., 1979</td>
<td>3%</td>
<td>20%</td>
</tr>
<tr>
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<td>23%</td>
<td>27%</td>
</tr>
<tr>
<td>Andrews &amp; Friesen, 1987</td>
<td>23%</td>
<td>39%</td>
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</table>

.... intensive interventions led to WORSE recidivism outcomes for LOW risk offenders.
Community-Based Treatment and RNR Principles of Programming and Supervision Yield Best Outcomes

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

**Analysis Ongoing:** Does Michigan Have Adequate Resources in Place to Reduce Criminal Behavior

**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 placed on probation:

- How many are higher-risk?
- Of the higher-risk, how many have substance abuse and/or mental health disorders?

### 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


<table>
<thead>
<tr>
<th>Year</th>
<th>2008 Prison Admissions</th>
<th>2012 Prison Admissions</th>
</tr>
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<tbody>
<tr>
<td>New from Court</td>
<td>42%</td>
<td>New from Court</td>
</tr>
<tr>
<td>New from Court</td>
<td>23%</td>
<td>New from Court</td>
</tr>
<tr>
<td>Technical Parole Violators</td>
<td>16%</td>
<td>Technical Parole Violators</td>
</tr>
<tr>
<td>New Offense Parole Violators</td>
<td>17%</td>
<td>New Offense Parole Violators</td>
</tr>
<tr>
<td>Technical Probation Violators</td>
<td>10%</td>
<td>Technical Probation Violators</td>
</tr>
<tr>
<td>New Offense Probation Violators</td>
<td>15%</td>
<td>New Offense Probation Violators</td>
</tr>
</tbody>
</table>

58% of Prison Admissions from Failing Supervision

Current Cost of Incarcerating Technical Violators Exceeds $150M Annually

Avg. Annual Par. Tech. Violator Returns
2008-12
2,193

12.7 month average length of stay yields
2,321 average daily pop

At $98 per day, annual cost to State = $83 Million

2008-12
1,030

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.

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>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>No</td>
</tr>
</tbody>
</table>

Do judges grant probation agents administrative authority to sanction probationers with brief jail stays in swift response to violations?

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 Yielded 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
MLRC Meeting #2
MLRC Meeting #3
MLRC Meeting #4
MLRC Meeting #5

May | Jun | Sep | Dec | Jan | Feb | Mar | Apr

Stakeholder Engagement

Data Analysis

Policy Development

2014
Thank You

Ellen Whelan-Wuest
Policy Analyst
ewhelan-wuest@csg.org

www.csgjusticecenter.org

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