



# EVIDENCE-BASED SENTENCING TO IMPROVE PUBLIC SAFETY & REDUCE RECIDIVISM

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## A Model Curriculum for Judges

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THE NATIONAL  
JUDICIAL COLLEGE



# **Evidence-Based Sentencing to Improve Public Safety & Reduce Recidivism**

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**A Model Curriculum for Judges**

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## **PREFACE AND ACKNOWLEDGEMENT**

This project was funded by the Public Safety Performance Project of the Pew Center on the States and the State Justice Institute through a partnership agreement with the National Center for State Courts (NCSC) directed by Dr. Pamela Casey, principal court research consultant at the NCSC. The curriculum was developed by the NCSC in partnership with The National Judicial College (NJC) and the Crime and Justice Institute (CJI). Robin E. Wosje, director of grant projects & special initiatives at The National Judicial College, coordinated the work of the three organizations in producing the curriculum. The Hon. Roger K. Warren, NCSC president emeritus, led the development of the curriculum's content. CJI Executive Director Elyse Clawson, CJI Project Manager Kimberly A. Weibrecht, NJC Director of Special Projects William Brunson, and NCSC Principal Court Management Consultant Mary T. Sammon provided assistance with content and design expertise.

The curriculum also benefitted from the insights and suggestions of numerous other individuals from the court and corrections communities. The NCSC, NJC, and CJI gratefully acknowledge the contributions of the following individuals who participated in one or more curriculum development meetings: Mark Carey, president, The Carey Group, White Bear Lake, MN; Hon. John Coleman Creuzot, Dallas County Criminal District Court, Dallas, TX; Jake Horowitz, senior associate, The Pew Charitable Trusts, Washington, DC; Richard Jerome, project manager, The Pew Charitable Trusts, Washington, DC; Robert Johnson, county attorney, Anoka County, Anoka, MN; Sally Kreamer, director, department of correctional services, Des Moines, IA; Peter Ozanne, attorney, Portland, OR; and Hon. Ronald S. Reinstein, director, Center for Evidence Based Sentencing, Arizona Supreme Court, Phoenix, AZ. Special thanks also are extended to Mark Carey of the Carey Group for reviewing and revising many of the PowerPoint slides; to Dr. Geraldine Nagy, director of the Travis County Community Supervision and Corrections Department in Austin, Texas, for reviewing the curriculum in detail, providing additional material, and serving as co-faculty for the piloting of the curriculum at The National Judicial College in February, 2009; and to Judge Ronald Reinstein for serving as an observer during the pilot presentation.

Our organizations are also grateful for the thoughtful and constructive feedback offered by the participants of the pilot presentation, including the Hon. Michael Joiner, Hon. William Allen Millican, Assistant Director of Montgomery County Community Corrections Rebecca Johnson, and Director of Field Services for the Board of Pardons & Paroles David P. Still from Alabama; Hon. Sally Duncan, Hon. Nanette Warner, and Education Specialist for the Administrative Office of the Courts Chad Kewish from Arizona; Hon. James H. Fisher, Hon. Chad C. Schmucker, and Supervisor of the Adult Drug Court for the 5<sup>th</sup> Circuit Court Wendy Maloney from Michigan; Hon. Mark Ashford, Hon. Kenneth J. Vampola, and Deputy Probation Administrator Steve Rowoldt from Nebraska; Hon. John C. Creuzot, Hon. Rose G. Reyna, and Director of West Texas Community Supervision and Corrections Department Stephen L. Enders from Texas; Hon. William D. Cohen, Hon. Thomas A. Zonay, and Treatment Court Coordinator for the Court Administrator's Office Karen S. Gennette from Vermont; and Hon. Michael J. Rosborough, Hon. Lisa K. Stark, and Corrections Field Supervisor for the Department of Corrections Donna K. Muller from Wisconsin.

The contributions by many others of specific materials for the curriculum are acknowledged in the curriculum itself. Finally, our organizations also recognize the invaluable assistance of NJC's Christina Nellesmann (graphic designer) and Kelly Unger (course administrator).

# **EVIDENCE-BASED SENTENCING TO IMPROVE PUBLIC SAFETY & REDUCE RECIDIVISM: A MODEL CURRICULUM FOR JUDGES**

## **CURRICULUM OVERVIEW**

This course will assist trial judges in developing sentencing practices that improve public safety and reduce the risk of offender recidivism. It was developed to be presented in a six-hour period, although faculty may customize the material for other timeframes. Using interactive teaching methods, which are strongly encouraged, requires additional instructional time. There are resource materials as part of this curriculum to provide faculty members with background and additional information. The curriculum will be appropriately delivered at state or local judicial conferences.

### ***Learning Objectives***

This curriculum was designed as an introductory overview of the principles of evidence-based sentencing (EBS) practices to assist judges in the development of sentencing practices that improve public safety and reduce the risk of offender recidivism.

At the conclusion of this curriculum, participants will be able to:

- Target those offenders who are most appropriate for recidivism reduction strategies;
- Identify relevant offender characteristics to achieve effective sentencing outcomes;
- Target probation conditions effectively;
- Improve responses to violations of probation;
- Identify the components of effective probation supervision practices and treatment programs;
- Reduce the risk of re-offense through constructive offender interactions;
- Describe the benefits and advocate implementation of EBS practices; and
- Work effectively with other criminal justice agencies to adopt effective sentencing and corrections practices.

## **SUGGESTIONS FOR THE JUDICIAL EDUCATOR**

### ***Faculty Selection***

The curriculum was designed to be presented by a judicial officer paired with someone from probation services. Although the curriculum is designed to be team-taught, the probation presenter may want to take the lead on those portions of the curriculum that draw most directly on probation rather than judicial experience: e.g., probation research (slides 12-15), criminogenic needs (slides 25-31), implementation of treatment reforms (slide 56), handling violations of probation (slides 57-58), and the responsivity principle (slides 60-61).

We encourage training facilitators to select presenters with a strong working knowledge of the covered topics so that they can add their own ideas and experiences to the material. Past experience with facilitation and presentation is also valuable. The presenter should review this faculty manual, PowerPoint presentation, and other documents included with this model curriculum including those contained in the Reference Materials folder. The Reference Materials provide materials for the presenter on evidence based sentencing practices and will help prepare the presenter to teach on this topic.

After the overview of each unit below, there is a reproduction of the PowerPoint slides and the notes contained therein to assist the faculty member with teaching.

### ***Modification of the Curriculum***

This curriculum was developed as an introduction to the subject matter. The presenter may modify the presentation and exercises to meet the needs of the audience, the style of the presenter, and the amount of time allotted for the session. It is highly recommended that presenters tailor the content to identify information and issues specific to the audience. The presenter may modify the material for a more advanced audience with discussion questions that require the participants to use critical thinking.

Please note that the PowerPoint presentation was developed with the Microsoft Office XP version of PowerPoint, but they may be used and modified with any version of Microsoft PowerPoint. For additional information on how to modify a PowerPoint presentation, please refer to the many Microsoft PowerPoint tutorials and references available at book stores and computer stores in your area. A particularly useful guide is MICROSOFT POWERPOINT STEP BY STEP published by Microsoft Press, as it can be used to reference any PowerPoint version available.

### ***Presentation of the Curriculum***

The PowerPoint presentation contains notes for the presenter within the slides. These notes were developed to assist the presenter with his or her presentation. The presenter should review the notes and alter them to meet the needs of the particular audience. Once the presentation is in its final format, the presenter may wish to print the PowerPoint presentation as a handout for the participants. The best handout format is as follows:

Select "print"

Choose "handouts" in the "print what" section

Select 3 slides per page (this allows for note-taking lines on the right)

Select "pure black and white" for color/grayscale.

**NOTE:** We recommend that you DO NOT print Slides 28 and 58, *Criminogenic Needs* and *Elements of an EB Violations Policy* as they provide the answers to the preceding exercises. To do this: in the print dialog box, make sure **Print Hidden Slides** is not selected on the right hand side of the box. Be sure when you are ready to present this PowerPoint presentation that you remove the **Hide Slide** by again right clicking on the slide and selecting **Hide Slide**. If you do not do this, the presentation will skip past this slide in your presentation.

Equipment needed: LCD projector, computer with any version of Microsoft PowerPoint software, and display screen.

### ***Activity Guidelines***

The activities that follow generally utilize small groups, brainstorming, role playing, videos and discussions. For these exercises, please follow the following guidelines:

#### Guidelines for Small Groups

- Give all instructions before splitting them into groups.
- Develop explicit instructions concerning what you want them to do.
- Provide a handout with written as well as oral instructions for the activity.
- Ask each group to select a reporter (if necessary -- for reporting back to the larger class) and a recorder (if necessary -- for producing a written product to be reported back to the larger class)
- Set a time limit. You can be flexible but give them some idea of how long you anticipate the activity to take.
- Before ending the group work, give the students a one-minute time warning telling them to wrap things up.
- If there is a report back, be clear in your instructions about what you expect the reporters to report.

#### Guidelines for Brainstorming

- Provide a clear statement about what you want the students to brainstorm.
- Have a title prepared on your easel pad with a summary of the statement.

- Write each response as it is provided.
- You may seek clarification on each provided point or ask the student, “May I write x” to simplify the entry or otherwise frame it so it fits the objective.
- Don’t critique or allow others to critique.
- Consider asking a student or fellow instructor to capture the responses (ensure they have good handwriting and can spell).
- Provide closure for the brainstorming exercise. State why you solicited ideas and how they fit into the larger educational session.

#### Guidelines for Role Plays

- Provide a cast of role players.
- Provide a script or have students improvise dialogue (the latter is usually preferred).
- Ensure that the role play is relatively brief (3 to 5 minutes at most).
- Base the role play on a factual scenario that is realistic.
- Consider providing differing information to the various role players to more realistically represent the fact that different persons would have access to different information.
- Provide sufficient time to adequately debrief the role play.

#### Guidelines for Discussions

- Plan key questions in advance.
- Consider beginning with simple questions and progressing to the more complex questions.
- Identify what the likely answers will be to your questions.
- Be prepared with follow-up comments or to emphasize the salient issues.

#### ***Components of the Curriculum***

Contained on this CD-ROM are the PowerPoint presentation; precourse materials, learning materials to assist you in teaching; and reference materials to provide you additional information about the topic.

#### Reference Materials:

Included on the CD-ROM are several items to help you obtain more information about evidence-based sentencing practices. The items are as follows:

- *Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention* (2004)
- Roger Warren, *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries* (2007).
- Crime & Justice Institute, *Implementing Evidence-Based Principles in Community Corrections: Leading Organizational Change and Development* (2004).
- Crime & Justice Institute, *Implementing Effective Correctional Management of Offenders in the Community: An Integrated Model* (2004).

## **PRECOURSE UNIT**

### **UNIT OVERVIEW**

#### **Description of the Unit**

In this unit, participants will take some time to prepare for the upcoming training that they will attend. This preparation will help them begin to understand what evidence based practices are.

#### **Approximate Time for Unit**

0.5 hours

#### **Unit Objectives**

At the conclusion of this unit, participants will be able to list the basic elements of evidence-based sentencing (EBS) and evidence-based practice (EBP).

#### **Unit Topics**

- Evidence-Based Sentencing (EBS)
- Evidence-Based Practice (EBP)

#### **Activities & Exercises**

- Sentencing Quiz

#### **Supporting Documents**

- [Handout P.1] Precourse Instructions
- [Handout P.2] Sentencing Quiz
- [Handout P.3] *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries*
- [Handout P.4] EBP Survey



## **UNIT I: WELCOME & INTRODUCTION**

### **UNIT OVERVIEW**

#### **Description of the Unit**

In this unit, participants may take a 10-question self-assessment to establish their baseline levels of knowledge regarding evidence-based practices (EBP). Participants will define evidence-based sentencing (EBS) and explore the general purposes of sentencing.

#### **Approximate Time for Unit**

0.5 Hours (not including an initial 15 minute segment for introductions and ice breaker)

#### **Unit Objectives**

At the conclusion of this unit, participants will be able to:

- Define evidence-based sentencing (EBS) and evidence-based practice (EBP);
- Describe the national research that demonstrates the success of EBP in reducing recidivism; and
- Articulate the relationship of EBS to the overall purposes of sentencing.

#### **Unit Topics**

- Course Goals & Objectives
- Evidence-Based Sentencing (EBS)
- Evidence-Based Practice (EBP)
- Effectiveness of EBP in Reducing Recidivism
- Purposes of Sentencing

#### **Activities & Exercises**

- Faculty & Participant Introductions and Initial Ice-Breaker
- Self-Assessment on Knowledge of EBP

#### **Supporting Documents**

- [Handout 1.1] Self Assessment Answer Sheet
- [Handout 1.2] Research Standards Pyramid

## PowerPoint Slides with Faculty Notes

Slide 1

**Evidence-Based Sentencing to  
Improve Public Safety and  
Reduce Recidivism**

**A Model Curriculum  
for Judges**

This model six hour curriculum was created by the National Center for State Courts (NCSC), The National Judicial College (NJC), and the Crime and Justice Institute (CJI). The production of it was funded by the Public Safety Performance Project of the Pew Center on the States and by the State Justice Institute. The views expressed are those of the authors and do not necessarily reflect the views of The Pew Charitable Trusts or the State Justice Institute.

The curriculum should begin with a 15 minute introduction of the faculty and participants and initial ice-breaker exercise. (This initial 15 minute segment is not included in the 6 hours allocated for presentation of the curriculum.) The ice-breaker might consist, for example, of faculty and participants describing something about themselves that few people know or that is unusual.

Slide 2

**Unit 1: Introduction**

Sentencing is one of the most grave and important responsibilities judges have, and a responsibility that most judges take very seriously. Through the introduction of drug courts, and other problem-solving courts, judges have led innovative efforts to improve the effectiveness of their sentences and reduce recidivism among repeat offenders.

Recent evidence establishes that many current sentencing practices are actually harming the very offenders they were designed to help. Three of the most eminent corrections researchers concluded five years ago “that what is done [today] in corrections would be grounds for malpractice in medicine.” Edward J. Latessa, Francis T. Cullen, and Paul Gendreau, *Beyond Correctional Quackery: Professionalism and the Possibility of Effective Treatment*, 66 Fed. Probation, Sept.

2002, at 43.

Today, however, a body of rigorous research has emerged providing judges with innovative suggestions on how they may do an even better job in protecting public safety, reducing victimization, saving tax payer money, lowering crime rates, reducing the family breakdowns and other social and economic costs resulting from crime. In this course we are going to review these EBPs and learn what judges can do to improve the effectiveness of their sentencing practices.

At some early point in the course, advise participants that as they raise questions, challenges, concerns, or obstacles to implementation, the faculty will briefly respond as appropriate, but may then “park” the concern on an easel chart for further consideration in Unit 5. See slide 71.

Slide 3

**Objectives**

**At the conclusion of this program, you will be able to:**

1. Target those offenders who are most appropriate for recidivism reduction strategies;
2. Identify relevant offender characteristics to achieve effective sentencing outcomes;
3. Target probation conditions effectively;
4. Improve responses to violations of probation;

Lecture (2-3 minutes): There are 7 objectives for this curriculum listed on this and the next slide.

Slide 4

**Objectives (cont.)**

**At the conclusion of this program, you will be able to:**

5. Identify the components of effective probation supervision practices and treatment programs;
6. Reduce the risk of re-offense through constructive offender interactions; and
7. Work effectively with other criminal justice agencies to adopt effective sentencing and corrections practices.

Continued from previous slide.

**Self-Assessment  
True or False**

1. The seriousness of the committing offense is more important than the offender's personal characteristics in predicting the likelihood of further crimes.
2. Jails and prisons are effective in changing offender behavior if the conditions are severe enough that offenders don't want to return.
3. The manner in which court proceedings are conducted is not a significant factor affecting offender recidivism.

**Sentencing Quiz and/or Self-Assessment Exercise (5-9 minutes total):**

If participants completed the pre-course unit, including the reading materials, Sentencing Quiz, and Survey, their responses to the Sentencing Quiz and/or Survey may be a more appropriate topic of initial discussion at this point than this self-assessment which is primarily designed for participants with little or no prior exposure to evidence-based sentencing. On the other hand, the self-assessment may be a good tool to engage members of the audience even if they do have prior exposure to the concept of EBS, either through reading the pre-course materials or otherwise.

You may choose to provide the answers as you go through the presentation or you may want to give the answers at the end of your presentation. Whichever method you pick, once you have provided the answers, be sure to handout the Self-Assessment Answer Sheet, Handout 1.1, in the handout materials to reinforce the answers to these statements. Explain the self-assessment as follows:

1. I would like you to jot down your answers to the following 10 questions.
2. As you participate in the presentation, you are welcome to change your answers.
3. At the end of the presentation, I will provide you with the answers to all 10 questions.

OR

1. During the presentation, I will provide you with the answers to all 10 questions.
2. If you miss any of the questions, please tell me so I can clear up any misunderstandings.
- This will not be graded or in any way affect "your permanent record." The assessment is for your use

only.

An automated audience response system can also be used for this self-assessment.

Slide 6

**Self-Assessment (cont.)**

4. Probation officers will be more effective if they have lower caseloads.
5. Programs like "Scared Straight" and Boot Camp are particularly effective for youthful offenders.
6. An offender doesn't need to be "motivated" in order for treatment to be successful.

Continued from previous slide.

Slide 7

**Self-Assessment (cont.)**

7. The most cost effective strategy is to deliver treatment to the extremely high risk offender.
8. It is better to invest in treatment of low risk offenders than high risk offenders because their criminal tendencies are less hardened.

Continued from previous slides.

Slide 8

**Self-Assessment (concluded)**

9. Most offenders don't handle stress well, so anxiety & stress reduction programs like yoga & meditation are helpful in reducing recidivism.
10. Intensive probation supervision tends to reduce recidivism better than regular probation supervision.

Continued from previous slides.

### What Is EBS?

- Evidence-Based Sentencing (EBS) practices are “sentencing” practices based on “corrections” principles of Evidence-Based Practice (EBP) used to reduce recidivism.
- EBP: professional practice supported by the “best research evidence:”
  - Rigorous evaluation (i.e. use of control groups)
  - Multiple studies
  - Systematic review (meta-analysis)

Lecture (1-2 minutes)\*

The concept of Evidence Based Practice (EBP) originated in the medical field and then spread into mental health, psychology, and corrections.

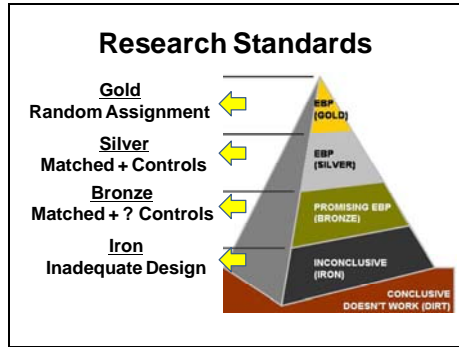
### EBP in community corrections:

Those practices used in the field of community corrections that are proven by the best research evidence to reduce offender recidivism. Evidence-based sentencing practices are sentencing practices, especially with regard to offenders sentenced in the community (rather than to state prison), based on principles of EBP in community corrections.

### Best research evidence:

Rigorous evaluation requires a control group or well matched sample; results must be found across multiple studies not merely 1 or 2, typically in the form of “a study of studies” or “meta-analysis” that analyzes multiple studies, discounts the results for researcher bias and other infirmities, and averages results across those multiple discounted studies (e.g., Washington State Institute for Public Policy, Campbell Collaborative, etc.).

\* You may wish to ask the participants this question and see how they answer it versus just providing the definition. However, if you do this, be sure to not include this slide in the printed materials.



Gold: participants randomly assigned to experimental and control groups  
Silver: well-matched control group with statistical controls to account for dissimilarities

Bronze: well-matched control group but statistical controls are not complete

Iron: inadequate research design

Dirt: Gold or silver standard evidence that intervention doesn't work

Gold, Silver, and Bronze all show significant recidivism reductions by preponderance of the evidence across multiple studies/replications.

The research evidence underlying EBS is all Gold, Silver, or Bronze standard.

This slide with additional information about each standard has been reproduced to be provided to participants as Handout 1.2, Research Standards Pyramid.

Source: Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention (Boston: 2004) available online at <http://cjinstitute.org/files/evidencebased.pdf>.

See also Lawrence W. Sherman, et al., National Institute of Justice, Preventing Crime: What Works, What Doesn't, What's Promising (1998), NCJ 171676 available online at: <http://www.ncjrs.gov/app/publications/abstract.aspx?ID=171676>.

**Washington Public Policy  
Institute Studies**

- Meta-analysis of 571 studies
- “Cautious” approach
- Adult EB programs cut recidivism 10-20%
- EB programs have benefit/cost ratio of 2.5:1
- Moderate increase in EBP would avoid 2 new prisons, save \$2.1 billion, and reduce crime rate by 8%.

**Lecture (3-5 minutes)**

The Washington State Institute of Public Policy (WSIPP) was created in 1983 by the Washington State Legislature to carry out practical, non-partisan research—at legislative direction—on issues of importance to Washington state.

Types of programs found to reduce recidivism include:

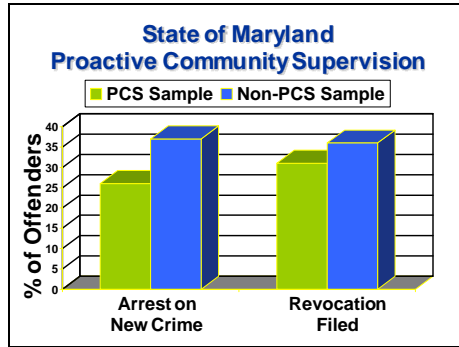
- Drug treatment in the community (9.3% reduction in recidivism)
- Adult drug courts (8-10% reduction in recidivism)
- Intensive probation supervision *when combined with treatment* (16.7%)

Types of programs that failed to reduce recidivism include: adult boot camps, domestic violence education, and life skills education.

To reach its bottom-line cost conclusions, WSIPP employed a complex cost benefit analysis: benefits were estimated by calculating the value to both victims and taxpayers of “avoided crime” in those programs that reduced recidivism. The avoided crime cost to taxpayers included factors such as the criminal justice resources used in the investigation, prosecution, and incarceration of criminal offenders, but did not include avoided social welfare costs. The avoided cost to victims included the monetary costs of crime victimization as well as the quality of life costs as determined by a U.S. Department of Justice study. These benefits were then compared to the participant cost of each of the programs.

Source: Steve Aos, et al., Washington State Institute for Public Policy, Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs, and Crime Rates (Olympia, 2006).





Lecture (4-6 minutes)

While the WSIPP study determined what categories of offender “programs” tend to reduce recidivism, other studies found correlations between evidence-based probation supervision practices and reduced recidivism. Jurisdictions that implemented such supervision practices in their offender supervision systems have had success in reducing recidivism.

### 3 Examples

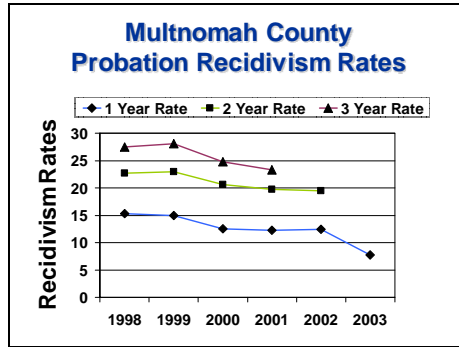
1. Maryland (an example of use of research evidence obtained through the use of a control group)

Maryland’s model (using evidence-based principles) emphasized the use of a risk needs assessment for offenders entering the program and assigned offenders to treatment and supervision services based upon the assessment results. In this study, offenders were assigned to the PCS (Proactive Community Supervision) program or to a control group. During the observation period, the number of arrests for new crimes and revocations filed were compared between the PCS group and the non-PCS group.

The above chart shows that the PCS offender sample had a 28% reduction in the rate of arrests for new criminal charges and a 12.5% reduction in revocations filed as compared to the non-PCS sample.

Source: Faye Taxman, *No Illusions: Offender and Organizational Change in Maryland’s Proactive Community Supervision Efforts*, 7 Criminology Pub. Pol’y 275-302 (2008).

Slide 13



Continued from previous slide.

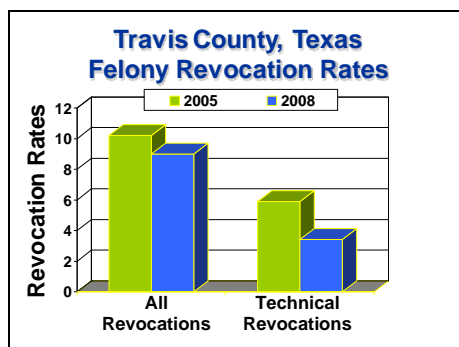
2. Oregon (an example of the use of statistical evidence not resulting from the use of a control group, but showing recidivism reduction over time)

Similarly, over the past decade, Oregon has implemented several evidence-based initiatives designed to improve the effectiveness of community supervision. The impact of its efforts can be seen in the slide above.

The above chart shows the percentage of all defendants sentenced to felony probation during the first six months of each calendar year who were convicted of another felony within 1, 2, or 3 years after beginning probation. For example, of those defendants beginning probation in the first six months of 1998, approximately 15% were convicted of another crime within a year, 23% were convicted of another crime within two years, and 28% were convicted of another crime within three years.

Source: Oregon Department of Corrections, Community Corrections Outcome Measures Report 108 (2005), available at [http://www.oregon.gov/DOC/TRANS/C/Docs/pdf/1st\\_Half\\_2004\\_outcome\\_measures.shtml](http://www.oregon.gov/DOC/TRANS/C/Docs/pdf/1st_Half_2004_outcome_measures.shtml).

Slide 14



Continued from previous slide.

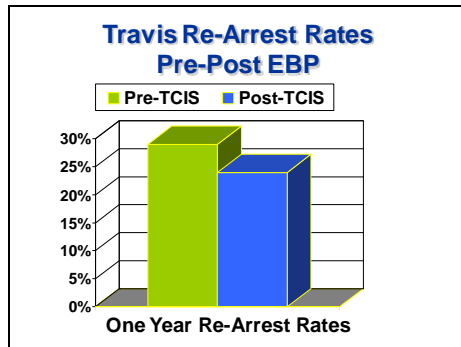
3. Texas (examples of statistical evidence resulting from the use of a control group consisting of similar offenders under supervision before implementation of EBP)

Travis County, Texas initiated the Travis Community Impact Supervision (TCIS) project in 2005 to pilot the implementation of evidence-based practices, including the use of alternative sanctions in lieu of probation revocation.

The above data compares felony revocation rates (the number of felony revocations out of the total felony population under supervision) for both pre & post implementation of TCIS. The data is as follows: All Revocations: 2005 = 10.2 to 2008 = 9.0; Technical Revocations: 2005 = 5.9 to 2008 = 3.4.

Source: Council of State Governments Justice Center, Justice Reinvestment in Texas: Assessing the Impact of the 2007 Justice Reinvestment Initiative (New York: Council of State Governments Justice Center, 2009).

Slide 15



This slide shows a comparison of the re-arrest rates between 1,287 felons placed on probation pre-TCIS from January to June, 2006, and 614 post-TCIS probationers placed on probation from July to October, 2007. Both groups were tracked for 1 year after placement for new arrests using the statewide Department of Public Safety database. For purposes of comparison, the risk levels of the two groups were determined. The data showed that 59% of the pre-TCIS cases were high-risk, while 67% of the post-TCIS cases were high-risk. Thus, the reduction in recidivism rates is even more significant given the percentage of high risk offenders in the post-TCIS group. That is a 17% decline in the recidivism rate between the pre-TCIS and the post-TCIS.

Slide 16

### Why EBS?

1. reduces crime
2. more cost-effective;
3. avoids future victimizations;
4. reduces prison populations & costs;
5. reduces social, economic, & family costs;
6. frees prison beds for more serious offenders; and
7. allows states to re-focus spending on other priorities.

Lecture (1-2 minutes)

Emphasize that what is especially noteworthy about these various research studies is not just the quality of the evidence involved but that the evidence is of recidivism **reduction**, not just low recidivism rates. In the absence of evidence of recidivism **reduction**, low recidivism rates may merely reflect that the participants in the program were persons who were not likely to re-offend in the first place—as we will discuss in the next section of the course.

Summarize the preceding slides by pointing out the benefits of EBP

EBP & EBS build on the successful experience of many drug courts and drug treatment programs and take courts' recidivism reduction efforts to the next level because the underlying principles of effective sentencing and corrections are not restricted to low level drug cases but cut across the entire criminal caseload.

Slide 17

### Purposes of Sentencing

- “Just deserts”: punishment proportionate to the gravity of the crime
- Public safety
  - Rehabilitation/specific deterrence [recidivism reduction]
  - General deterrence
  - Incapacitation/control
- Restitution/restoration

Lecture (3-4 minutes)

EBS focuses only on the sentencing purpose of rehabilitation or recidivism reduction. Recidivism reduction is not the only, nor probably even the most, important purpose of sentencing.

Rehabilitation may be a poor descriptor because:

- it comes from the medical model that underlies the indeterminate sentencing regimes of old;
- it infers that the offender was once healthy or habilitated before falling into the illness of criminality; and
- it doesn't focus on crime reduction as the objective.

Broadly speaking, there are three purposes of sentencing in an individual case:

- “**Just deserts**”: to punish in accord with the gravity of offense in light of

the blameworthiness of the defendant and the extent of injury and damage done.

- **Public safety:** utilitarian strategies to promote public safety: reduce recidivism through rehabilitation and/or specific deterrence; prevent future crime by the offender through incapacitation or lesser behavioral controls; or deter crime by others through general deterrence, sending a message, etc.
- **Restitution/restoration of victim, community**  
See ALI Model Penal Code on Sentencing, Tentative Draft No. 1, Section 1.02 (2)(a) (2007).

Emphasize that recidivism reduction is only one purpose of sentencing, and that recidivism reduction and punishment should not be viewed as an either/or proposition. Use of EBS practices designed to reduce recidivism must be integrated with any other provisions of the sentence intended to carry out other applicable sentencing purposes.

## **UNIT 2: THE RISK AND NEEDS PRINCIPLES OF EBP**

### **UNIT OVERVIEW**

#### **Description of the Unit**

In this unit, participants will explore the risk and needs principles of EBP. Participants will identify criminogenic and non-criminogenic needs and their function in recidivism reduction and will learn the use of actuarial risk assessment instruments in effectively assessing offender risks and needs. Participants will explore the application of these core principles and of actuarial risk assessment information in common sentencing situations.

#### **Approximate Time for Unit**

1.75 Hour

#### **Unit Objectives**

At the conclusion of this unit, participants will be able to:

- Target those offenders who are most appropriate for recidivism reduction;
- Identify the relevant offender characteristics to achieve effective sentencing outcomes;
- Recognize the distinction between criminogenic and non-criminogenic needs;
- Assess the clinical and statistical research regarding predictors of recidivism;
- Describe the importance of actuarial risk assessment in reducing recidivism;
- Use risk assessment information appropriately; and
- Target probation conditions effectively.

#### **Unit Topics**

- Criminogenic Needs/Dynamic Risks
- Actuarial Risk Assessment
- Pre-sentence Reports
- Effective Use of Probation Conditions
- Sentencing Scenarios # 1 and 2

#### **Activities & Exercises**

- Criminogenic Needs Exercise
- Sentencing Scenarios #1 and 2

#### **Supporting Documents**

- [Handout 2.1] Allen Smith Case Summary
- [Handout 2.2] Criminogenic Needs
- [Handout 2.3] LSI-R Sample Profile
- [Handout 2.4] A Brief Memo on Probation Conditions
- [Handout 2.5] Travis PSR
- [Handout 2.6] Pre-Sentence Investigation Report
- [Handout 2.7] Sentencing Scenarios

## PowerPoint Slides with Faculty Notes

Slide 18

### Unit 2: The Risk and Needs Principles

Slide 19

#### Principles of EBP

1. Risk Principle  
Who
2. Needs Principle  
What
3. Treatment & Responsivity Principles  
What Works  
How

Lecture (3-5 minutes)

The principles of EBP are distilled from the research about what works to reduce recidivism. Based on that research we can discern certain common threads or “principles” that account for why some interventions are more effective than others in reducing recidivism (“Interventions” refer to “planned activities with an offender for the purpose of reducing the risk of the offender’s recidivism,” such as treatment programs, probation supervision strategies, and professional interactions.) The principles of EBP suggest that effective interventions “target,” or focus their efforts and resources, not on the nature of the offense committed, but on certain characteristics of the individual offender: specifically the offender’s risk to reoffend and the offender’s “criminogenic needs.” Then, for appropriate offenders, effective interventions “treat,” or address, those characteristics in ways that are matched to the individual offender’s characteristics.

The 3 basic principles are referred to as:

- RISK: Who is put in a program – focuses activities on offenders of certain risk levels
- NEEDS: What offender traits are focused on – focuses activities on certain “criminogenic” needs of those

offenders

- **TREATMENT & RESPONSIVITY:**

How we address those traits – use behavioral approaches and match the intervention to the traits of the offender.

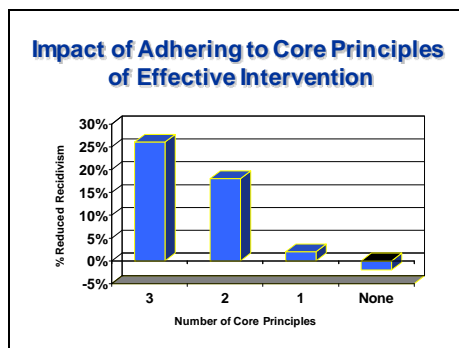
Although these concepts are discussed in detail later, some discussion of social science terminology may be warranted here. Familiarize the students with “criminogenic” and “responsivity” as those concepts dominate both the academic and practitioner literature and discussion.

**Definitions** (a glossary of terms is also contained in the handout materials as Handout 5.7.)

Criminogenic: characteristics that effect the likelihood of future criminality

Responsivity: matching the characteristics of the treatment program and treatment provider to characteristics of the individual offender

Slide 20



Lecture (1 minute):

Reductions in recidivism increase with adherence to more of the core principles. If an intervention targets only one principle (such as targeting the right risk level), only small to modest reductions will result. The best results occur when all three principles are followed.

Outcomes refer to the extent (percentage points) to which recidivism rates are reduced.

This meta-analysis is based on 60 tests of effectiveness for interventions using all three principles, 84 tests for two principles, 106 tests for one principle, and 124 tests for interventions not based on any of the principles.

Source: D.A. Andrews & James Bonta, *The Psychology of Criminal Conduct* 74 (4<sup>th</sup> ed., Anderson Publishing 2006).



Slide 21

**Risk Principle  
(Who)**

**The level of supervision or services should be matched to the risk level of the offender: i.e., higher risk offenders should receive more intensive supervision and services**

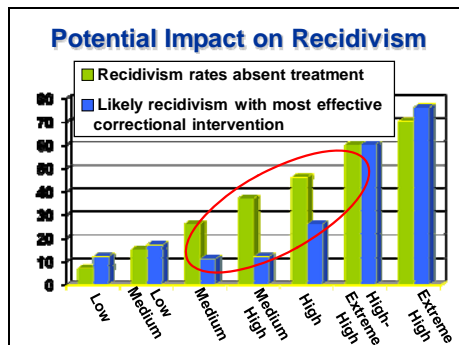
Lecture (3-4 minutes)

Risk refers to the risk of committing another offense, not the risk of committing a violation of probation, risk of violence or dangerousness, or risk of committing a particular kind of offense.

Distinguish between level of risk of re-offense and level of seriousness of an offense, e.g., a low risk offender committing a high level (serious) crime, or high risk offender committing a low level crime.

The basic concept here is we do not want to expend or waste resources on low risk offenders who are not likely to re-offend in the first place, or on extremely high risk offenders who are not amenable to treatment and are likely to re-offend no matter what we do.

Slide 22



Lecture (2-3 minutes)

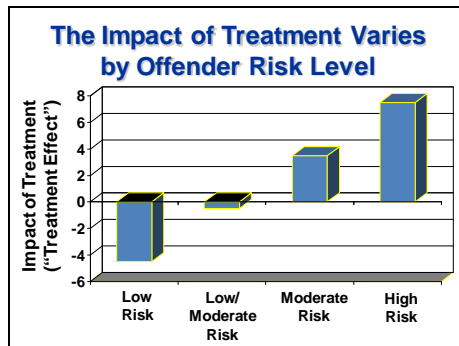
Composite of meta-analysis studies (2007):

This is a graphic of several studies and was prepared by Mark Carey & reviewed by Ed Latessa.

The green bars represent recidivism rates we would expect based on R/A (risk assessment) scores from the most common R/A tool, the LSI-R, in the absence of treatment. The blue bars show the actual recidivism rates after treatment based on principles of EBP. Risk assessment refers to the “likelihood” or “risk” that an offender will commit another crime based on use of certain risk assessment tools that we will discuss in some detail in a few minutes.

NOTE: The extreme high risk bar showing an increase in recidivism is based on the experience of most programs currently in place for that population that are inadequate in intensity and length and which often target the wrong traits.

Slide 23



Used LSI scores as follows:

Low	0-10
Low medium	11-19
Medium	20-23
Medium High	24-27
High	28-31
High-Extreme High	32-35
Extreme High	36+

Lecture (5 minutes)

“Treatment Effect:” the difference in the recidivism rate of the control group versus the group that received high-intensity treatment intervention (e.g., halfway house).

Higher intensity treatment interventions are most effective when reserved for moderate/high risk offenders.

The Ohio study compared recidivism rates of offenders placed in residential facilities to offenders not placed in residential facilities (control group). After two years, the re-incarceration rate for the offenders in the residential facilities was (as expected) lower than the control group (34% vs. 39%).

When the study looked at how these re-incarceration rates compared by risk level, a trend emerged that illustrates the “risk principle.” The difference between the re-incarceration rates of the experimental group and the control group (the “treatment effect”) varied widely depending on what risk level the offenders were.

For high risk offenders, the re-incarceration rate for the treatment group was 7.5% lower than the control group. Thus, the treatment intervention of a residential facility was effective at reducing the re-incarceration rate for high risk offenders. For the low risk offenders, the opposite was true: the re-incarceration rate for the treatment group was 4.5% HIGHER than the control group. In other words, placement in a residential facility actually increased the re-incarceration

Slide 24

<b>Travis Co., Texas: Impact of Supervision by Risk</b>			
Risk Level	% Rearrest		% Change in Rate
	Pre-TCIS 1/06-6/06 N = 1287	Post-TCIS 7/07-10/07 N = 614	
Low	26%	6%	-77%
Medium	26%	13%	-50%
High	34%	31%	-9%
Overall	29%	24%	-17%

rate for low risk offenders.

Source: Christopher T. Lowenkamp, Christopher and Edward Latessa, University of Cincinnati, Center for Criminal Justice Research, Evaluation of Ohio's Community Based Correctional Facilities and Halfway House Programs (2002).

Continuation from previous slide. This slide shows the **overall impact** of EBP in a probation department when **both supervision and treatment** are re-aligned with risk-level in accordance with the risk principle. Prior to EBP it was common practice in Travis County to provide the same supervision for low risk and high risk probationers. Furthermore, low risk probationers were more likely to be ordered to educational classes and treatment programs. This slide shows that once you supervise low risk offenders appropriately, their recidivism rate drops significantly. At the same time, treatment resources were re-directed towards the higher risk offenders. Officers also began to provide more meaningful supervision to higher risk individuals using motivational interviewing to engage them in treatment. The data shows a significant reduction in recidivism for both medium and high risk offenders.

Slide 25

Needs Principle (What)
<p>The targets for interventions should be those offender characteristics that have the most effect on the likelihood of re-offending.</p>

Lecture (3-4 minutes)  
Some human characteristics are criminogenic which means they affect the likelihood of future criminality; a person having those characteristics is more likely to commit crimes than a person not having those characteristics. Other characteristics are non-criminogenic, meaning they do not affect the likelihood of committing a crime.

“Risk Factors:” those characteristics of an offender that affect the likelihood of recidivism.

Slide 26

#### **Risk of Heart Attack**

1. Elevated LDL and low HDL levels
2. Smoking
3. Diabetes
4. Hypertension
5. Abdominal obesity
6. Psychosocial (i.e., stress or depression)
7. Failure to eat fruits and vegetables daily
8. Failure to exercise

There are two types of risk factors:

- Static: characteristics of an offender that affect the likelihood of recidivism and that are constant or historical and cannot be changed, factors such as: age, gender, number of prior arrests, prior convictions, age at first arrest, and alcohol/ substance abuse history.
- Dynamic: characteristics of an offender that affect the likelihood of recidivism and that are subject to change through appropriate intervention.

In order to reduce an individual's likelihood of committing a crime, it is important to focus on those characteristics that affect the likelihood of committing a crime (criminogenic) and that are changeable (dynamic). Those characteristics are referred to as "dynamic risk factors" or "criminogenic needs."

Lecture (3 Minutes)

Some criminogenic needs are more criminogenic than others, i.e., more highly predictive of the likelihood of recidivism.

By analogy, there are some risk factors for heart attack that are more highly predictive of having a heart attack than others.

The risk of a heart attack for individuals who had all of these factors, amazingly, was almost 130 times higher than for somebody with none of them. The first two of these risk factors, however, (bad lipid readings and smoking), predicted 2/3 of all heart attacks.

Adapted from slides of Chris Lowenkamp.

1. International study that studied the risk factors associated with heart attack
2. Gathered data on all heart attacks
3. Compared to case-matched controls

### Allen Smith Case Summary

- ✓ Read the case summary and identify 6 needs that are predictive of re-offending.
- ✓ Prioritize those criminogenic needs from most important to least important.
- ✓ Identify any needs that you consider non-criminogenic (not predictive of re-offending).

**The Allen Smith Exercise (about 15 minutes):** Explain that the purpose of the exercise is to increase understanding of the characteristics that are most closely linked with criminality and on which the judge should, therefore, focus his or her recidivism reduction efforts and resources. Review the Guidelines for Small Groups in the Faculty Handbook prior to conducting this exercise.

- Refer the class to the Allen Smith Case Summary, Handout 2.1 in the handout materials.
- Ask each group to select a reporter however the group wishes to do so.
- Break the class into groups of 4-10 depending on the size of the class (smaller groups for a small class; bigger groups for a big class).
- Have each group review the case and record on an easel chart the answers to the three requests on the slide (10 minutes).
- Facilitate a discussion of the case by reviewing the groups' answers to the three requests.
- In your discussion, make sure that participants recognize that the major criminogenic needs in the Allen Smith Case Summary, Handout 2.1, are: anti-social attitudes, anti-social friends and peers, anti-social personality pattern, and family and/or marital factors. These are the same factors listed above the line in the next slide and are the most statistically predictive of recidivism.
- Other factors in the case are: substance abuse history, lack of education, poor employment history, lack of pro-social leisure activities. These are also criminogenic but less predictive and are below the line in the next slide.
- Some non-criminogenic needs in this case are: anxiety/depression, physical health, low self-esteem.

Slide 28

**Criminogenic Needs  
(likely to effect future crime)**

1. Anti-social attitudes
2. Anti-social friends and peers
3. Anti-social personality pattern
4. Family and/or marital factors
5. Substance abuse
6. Lack of education
7. Poor employment history
8. Lack of pro-social leisure activities

Lecture (3 minutes)

**CAUTION:** Make sure NOT to print this slide in your handout materials for participants. To avoid printing it, right click on the slide and select **Hide Slide**. Then when you are ready to print, in the print dialog box, make sure **Print Hidden Slides** is not selected on the right hand side of the box. Be sure when you are ready to present this PowerPoint presentation that you remove the **Hide Slide** by again right clicking on the slide and selecting **Hide Slide**. If you do not do this, the presentation will skip past this slide in your presentation.

Generally, the degree of correlation with likelihood of future crime is as listed above. Certainly, though, the top four are more important than the lower four criminogenic needs. See D. A. Andrews and Craig Dowden, *The Risk-Need-Responsivity Model of Assessment and Human Service in Prevention and Corrections: Crime-Prevention Jurisprudence*," 49 Can. J. Criminology & Crim. Just. 439-464 (2007).

Refer to Major risk/need (criminogenic) factors and associated dynamic needs, Handout 2.2, in the handout materials to assist you with this slide. Prepare the handout to give to the class after you have completed the Allen Smith Case Summary.

Slide 29

**Anti-Social Personality Pattern**

- Lack of self-control
- Risk taking
- Impulsive
- Poor problem solving
- Lack of empathy
- Narcissistic
- Anger and hostility

Lecture (1-2 minutes)

This is a more detailed description of what is meant by number 3 on Slide 28: anti-social personality pattern.

**Non Criminogenic Needs  
(not likely to effect future crime)**

Anxiety/stress  
Low self esteem  
Intelligence  
Health and physical conditioning  
Mental health

Lecture (2-3 minutes)

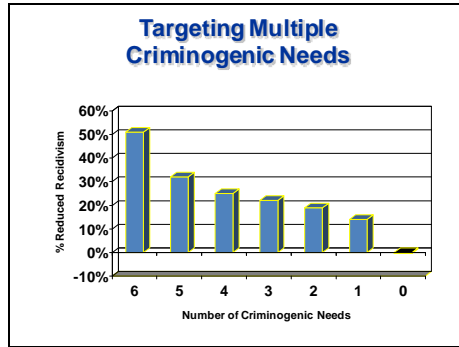
Although non criminogenic, you may still need to address some of these factors in order to successfully address a related criminogenic need. For example, mental health may need to be addressed in order to address substance abuse issues, e.g., co-occurring disorders. Such factors are referred to as responsivity factors. There is more on responsivity factors in Unit 4.

Mental health

A 2006 study found that serious mental illness and substance abuse had little effect on future criminality. The study concluded that: "Unless factors unique to serious mental illness can be specifically associated with behavior leading to incarceration, the criminalization hypothesis should be reconsidered in favor of more powerful risk factors for crime that are widespread in social settings of persons with serious mental illness." John Junginger, Ph.D., et al., *Effects of Serious Mental Illness and Substance Abuse on Criminal Offenses*, 57 Psychiatric Services 879-882 (June 2006).

These results are similar to the 2008 work compiled by Skeem, et al. where they indicate that the mentally ill offender is more likely to possess more of the eight criminogenic needs which could be one of the reasons why so many mentally ill offenders are in the justice system. There is evidence, however, that offenders with psychotic disorders are more likely to commit violent crimes. See Jennifer L. Skeem and Jennifer Eno Loudon, *Toward Evidence-Based Practice for Probationers and Parolees Mandated to Mental Health Treatment*, 57 Psychiatric Services 333-342 (Mar. 2006).

Slide 31



Lecture (1-2 minutes)

This chart shows the effectiveness of addressing criminogenic needs. It does not mean that one should address all six criminogenic needs simultaneously -- in any individual case.

Source: D.A. Andrews & James Bonta, *The Psychology of Criminal Conduct* 74 (4<sup>th</sup> ed., Anderson Publishing 2006).

Slide 32

**Risk/Needs Assessment**

- 1<sup>st</sup> generation: subjective professional/clinical judgment
- 2<sup>nd</sup> generation: actuarial, static risk factors
- 3<sup>rd</sup> generation: actuarial, dynamic risk factors
- 4<sup>th</sup> generation: incorporates recommend interventions

Lecture (5 minutes)

#### How to Determine Risk/Needs?

- 1<sup>st</sup> generation relied on subjective or professional (clinical) judgment to assess risk and needs.
- 2<sup>nd</sup> generation turned to actuarial R/A tools that predicted the likelihood of recidivism based on certain static actuarial factors that could be measured: age, gender, prior convictions, age at first offense, nature of present offense, etc. These factors were proven through research to be positively associated with the likelihood of recidivism. 2<sup>nd</sup> generation tools were 4-6 times more effective than professional judgment alone in predicting recidivism. C.E. Goggin, *Clinical Versus Actuarial Prediction: A Meta-Analysis* (1994) (unpublished manuscript, University of New Brunswick, Saint John, New Brunswick); D. A. Andrews and Craig Dowden, *The Risk-Need-Responsivity Model of Assessment and Human Service in Prevention and Corrections: Crime-Prevention Jurisprudence*, 49 Can. J. Criminology & Crim. Just. 439-464 (2007).
- 3<sup>rd</sup> generation tools include an assessment of dynamic risk factors or criminogenic needs. 3<sup>rd</sup> generation tools are not better than 2<sup>nd</sup> generation tools in predicting recidivism in the absence of treatment, but, unlike 2<sup>nd</sup> generation



Slide 33

### **Risk/Needs Assessment**

- The engine that drives EBP and EBS
- General v. specialized tools
- Proprietary v. non-proprietary
- Validation, reliability, training, & cost
- Intended to inform not replace professional judgment
- Re-assessments

tools, it provides guidance in reducing recidivism by addressing criminogenic needs. See copy of LSI-R Sample Profile, Handout 2.3, in the materials, the most widely used 3<sup>rd</sup> generation tool.

- Most recently, 4<sup>th</sup> generation tools...also incorporate recommended case management/supervision plans.

### **Lecture (5 minutes)**

- Use of an actuarial risk assessment tool is the engine that drives successful assessment, intervention, management and programming.
- Our focus is on general tools, although some tools target specific kinds of offenders or subsequent offenses (e.g., sex, domestic violence, DUI).
- Some tools are proprietary (e.g. LSI-R) and others were developed by government agencies (OST).
- Risk assessment tools must be validated and are best if validated on the population on which they are being used. There is a necessity of training staff to gain inter-operator reliability (i.e., two persons assessing the same individual should get the same result). Cost and time to use the assessment tool are major considerations.
- Use of risk assessment tools is not intended to totally replace professional judgment, but to better inform it. On the other hand, if risk assessment information is routinely ignored, there is something wrong. Professional overrides of actuarial information should be under 10% (per Mark Carey).
- Risk is dynamic and should be re-assessed to measure progress and when circumstances change. Use of re-assessments is believed to increase the ability to accurately predict recidivism significantly.

Slide 34

**Use of Risk/Needs Assessment Information at Sentencing**

- Identify offenders who should be targeted for interventions.
- Identify dynamic risk factors to target with conditions of probation.
- Risk scores are not intended to determine the severity of the penalty or whether an offender is incarcerated.

Lecture (5-8 minutes)

Under the third bullet mention that the risk/needs assessment tools being discussed were not developed or intended to be used for the purpose of determining the severity of the criminal penalty or as a major criterion for deciding whether an offender should be imprisoned. (Email correspondence of Roger Warren with Don Andrews and Steve Wormith, developers of the LSI-R.)

See LSI-R Manual, Page 3, last paragraph:

“This instrument was designed to assist in the implementation of the least restrictive and least onerous interpretation of criminal sanction, and to identify dynamic areas of risk/needs that may be addressed by programming in order to reduce risk. This instrument is not a comprehensive survey of mitigating and aggravating factors relevant to criminal sanctioning and was never designed to assist in establishing the just penalty.”

Slide 35

**Setting Probation Conditions**

- Target criminogenic needs & dynamic risk factors
  - Treatment conditions → successfully complete a treatment program
  - Monitoring/control conditions → drug testing, intensive supervision
- Avoid less relevant conditions
- Be realistic
- Provide flexibility to the PO

Continuation from previous slide.

The basic mission of probation is to improve public safety through effective supervision and treatment of those offenders placed on probation.

Two kinds of probation conditions are essential to that basic mission of probation:

- treatment conditions
- monitoring/control conditions.

They are both aimed at reducing recidivism and anti-social behavior.

A further discussion of probation conditions is contained in the handout A Brief Memo on Probation Conditions, Handout 2.4, contained in the handout materials.

## Slide 36

LOW RISK	MEDIUM RISK	HIGH RISK
Lowest reporting requirements	Increased reporting requirements	Highest reporting requirements including field visits
No need for intensive discretionary programs	Discretionary programs depending on clinical determination of need	Use of surveillance programs, Most intensive cognitive based treatments
Caseload 500-1,000	Caseload 65-75	Caseload 10-15 Extreme High Risk, 65-75 High Risk

## Lecture (5 minutes)

This slide shows the general relationship between risk assessment and the conditions of probation and includes reporting requirements and programs/treatment. This is a conceptual diagram. The specific conditions would depend on the criminogenic needs identified for that particular individual. The idea is that effective assessments “drive” conditions, which then “drive” the supervision practices, which then determine appropriate caseload size.

Source of recommended caseload sizes: American Probation and Parole Association

## Slide 37

Pre-Sentence Reports			
Motivation	Amount of support	Posture	
Age	Scars/tattoos	Race/ethnicity	Current emotional disposition
Self esteem	Past supervision	Gender	Employment history
	Military record	Parental influence	Degree of deference
Substance abuse	Physical attractiveness	Educational achievement	
Height/weight	Prior record	Physical health	Medications
Previous treatments	IQ	Verbal intelligence	Previous abuse history
Poor self control	Neighborhood	Instigator/follower	
Mental Health	Siblings	Prior successes	Finances
Prior failures	Level of violence	Attitude/beliefs	
Peers	Nationality	Family name	

## Lecture (5-10 minutes)

This slide is purposefully cluttered with bits and pieces of information, the same way many pre-sentence reports (PSRs) are cluttered with bits of information that may or may not be relevant to the sentencing issues before the judge. The problem with many of today’s full PSRs is that they contain too much information, or too little relevant information, without any indication as to how the information is relevant to the sentencing decision the court must make. They don’t help the court focus on the critical dynamic risk factors in the case.

See the Travis County PSR, Handout 2.5, included in the course materials. In Travis County, each individual is first assessed using the Wisconsin Risk Assessment instrument. The score leads to a classification of low, medium, or high risk. Travis County then uses an instrument called *Strategies for Case Supervision* that defines the individual’s criminogenic needs and classifies the offender into 1 of 5 categories, ranging from most pro-social to those with the most criminal lifestyles, often with multiple criminogenic needs. Travis County probation then conducts a

“diagnosis” of the offender’s situation and in its PSR to the court focuses the court’s attention on the specific risk factors in the offender’s case, recommends appropriate treatment and control conditions, and indicates how it will supervise the offender if he or she is placed on probation.

See also the Illinois PSR exemplar, Handout 2.6, also in the materials, demonstrating another approach to formatting a PSR to focus on the offender’s dynamic risk factors as revealed by use of an LSI-R risk assessment tool.

Slide 38

### **Summary**

1. Assess offender risk factors through use of actuarial risk/needs assessment tool and professional judgment.
2. Avoid significant intervention with low risk offenders.
3. Target moderate to high risk offenders.

Lecture (1-2 minutes)\*

\*Rather than listing the 5 summary items, you may wish to ask your group what they learned from this Unit and then share the items listed on this and the next slide.

Slide 39

### **Summary**

4. Target criminogenic needs in setting conditions of probation, and in identifying appropriate programs.
5. Do not distract the offender and impede probation by imposing additional conditions of probation beyond those directly related to an offender’s risk/needs.

Continuation from previous slide.

Slide 40

### Sentencing Scenarios 1 & 2

Hypothetical Exercises (20-30 minutes)

The Sentencing Scenarios, Handout 2.7, are contained in the handout materials. Be sure to review the Activity Guidelines in the Faculty Handbook.

The **Tony** scenario, in two parts, demonstrates the importance of the availability of relevant offender dynamic risk information to effective sentencing decision-making.

Although it contains some ambiguity, the **Jim** scenario highlights a low risk offender where the court should avoid intensive supervision or programming.

If time constraints preclude consideration of both scenarios, faculty may want to consider the **Tony** scenario first.

Slide 41

### Purposes of Sentencing

In sentencing an offender in the community, sentencing provisions intended to reduce recidivism must be successfully integrated with appropriate intermediate sanctions & behavioral controls to achieve other sentencing objectives.

This slide is to remind participants as they consider the sentencing scenarios that recidivism reduction is only one purpose of sentencing, that recidivism reduction and punishment should not be viewed as an either/or proposition, and that EBS provisions designed to reduce recidivism in sentencing an offender in the community (i.e., placing the offender on probation, not sending the offender to prison) must be integrated with any other provisions of the sentence intended to carry out other applicable sentencing purposes, such as punishment and behavioral control.

## **UNIT 3: THE TREATMENT PRINCIPLE**

### **UNIT OVERVIEW**

#### **Description of the Unit**

In this unit, participants will explore the principles of social and behavioral psychology that underlie effective supervision and treatment including social learning theory and cognitive behavioral treatment. Participants will also explore the research that supports these treatment approaches, and discuss what works and what doesn't work to reduce recidivism. Participants will apply these principles in discussing appropriate responses to typical probation violations.

#### **Approximate Time for Unit**

1.25 Hour

#### **Unit Objectives**

At the conclusion of this unit, participants will be able to:

- Analyze treatment programs for effectiveness in reducing recidivism;
- Analyze probation supervision practices for effectiveness in reducing recidivism; and
- Support responses to probation violations that reduce the risk of re-offense.

#### **Unit Topics**

- Social Learning Theory
- Cognitive Behavioral Treatment
- Corrections Programs that Work
- Corrections Programs that Do Not Work
- Handling Violations of Probation
- Violation of Probation Exercise

#### **Activities & Exercises**

- Violation of Probation Exercise

#### **Supporting Documents**

- [Handout 3.1] CCJ Resolution 12
- [Handout 3.2] HOPE Research Brief
- [Handout 3.3] Travis County Progressive Sanctions & Incentives
- [Handout 3.4] Elements of an EB Violation Policy

## PowerPoint Slides with Faculty Notes

Slide 42

### **Unit 3: The Treatment Principle (What Works)**

Lecture (2 minutes)

This unit covers the treatment principle. There are certain features that must be present in order for treatment to be effective in reducing recidivism. It is important that judges understand the key features so if they hear about programs that use other techniques they can insist on seeing the evidence that these other programs work. Often, treatment programs sound good but there is no empirical evidence to support their effectiveness in reducing recidivism. The key features of effective programs and offender supervision should be clearly understood by all referral sources--and the evidence of effectiveness should be compelling. In the absence of compelling evidence of effectiveness, the program should, at best, be considered either as a promising practice or an experimental practice. In either case the program should be evaluated before the court bestows confidence in it.

Slide 43

### **Conference of Chief Justices (Resolution No. 12)**

Judges should "educate themselves about the effectiveness of community based corrections programs in their jurisdictions," and "advocate and ... make use of those programs shown to be effective in reducing recidivism."

Lecture (1 minute)

Refer to the Conference of Chief Justices and Conference of State Court Administrators, *Resolution 12 In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism*. A copy of this resolution, Handout 3.1, is located in the handout materials.

Slide 44

**Treatment Principle**

**The most effective services in reducing recidivism are cognitive behavioral interventions based on social learning principles.**

Lecture (1 minute)

If you take away only one thing from this unit, it should be this. There are virtually no serious competitors for the above proposition when it comes to changing criminal behavior. The goal is behavioral change, compliance with probation conditions and court orders, and, ultimately self management.

Under social learning theory (e.g., B.F. Skinner) social behaviors are learned over time through processes of social consequences, both positive and negative: carrots and sticks, rewards and punishments. The consequences of past behaviors influence future behaviors: antecedents, behaviors, consequences (ABC's).

Slide 45

**Social Learning:  
Behaviors Have Consequences**

<u>Positive</u>	<u>Negative</u>
<ul style="list-style-type: none"><li>• Rewards</li><li>• Incentives</li></ul>	<ul style="list-style-type: none"><li>• Swift, certain, proportionate, and graduated sanctions</li><li>• Severe sanctions not necessary</li></ul>

Lecture (5-7 minutes)

- Both positive consequences and negative consequences (rewards and sanctions; carrots and sticks) are important, but people respond better and maintain learned behaviors longer in response to carrots (incentives) than sticks. For optimal learning, positive feedback should outweigh negative feedback 4:1.

See Francis T. Cullen, *Rehabilitation and Treatment Programs, in Crime: Public Policies for Crime Control* (James Q. Wilson & Joan Petersilia eds., 2d ed. 2004) 253–289; D.A. Andrews & James Bonta, *The Psychology of Criminal Conduct* 355-356 (4<sup>th</sup> ed., Anderson Publishing 2006).

- This is especially true with offenders, many of whom tend to dismiss sanctions, blaming others or not taking responsibility. Positive affirmations are intrinsically rewarding, resulting in a greater tendency to accept them and desire to repeat the experience. We tend to undervalue the effectiveness of positive consequences as a means of promoting positive behavior change on the part of offenders.



- Withdrawal of a sanction (e.g., relaxation of reporting or monitoring requirements) as reinforcement or reward for positive behavior is referred to by social scientists as “negative reinforcement” because removing the sanction creates a positive consequence for the individual. Removing sanctions as a response to positive behavior can be more effective in changing behavior than the threat of imposing future sanctions (e.g., tightening reporting requirements) for improper behavior that create a “negative consequence for the individual”.
- Consequences for anti-social behavior must be swift and certain, but need not be severe. Failure to sanction misbehavior is an implicit approval of bad behavior. **Refer to “HOPE Probation” materials, Handout 3.2, in the handout materials to demonstrate the effectiveness of using swift, certain, and mild sanctions.**
- Not all people respond the same to a given consequence. Therefore, consequences need to be individualized. Offenders who have previously experienced a lot of harsh punishment tend to become somewhat immune to the effects of such punishment. Many higher risk offenders choose jail or prison over community supervision because they view it as less onerous than having to deal with treatment and supervision conditions.

**Social Learning Involves....**

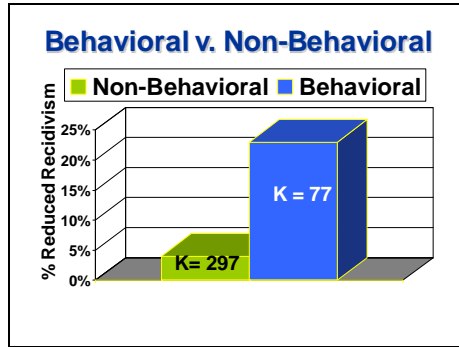
- Role models
- Demonstration
- Role play
- Feedback
- Skill practice

Lecture (3-4 minutes)

Offenders must have the ability to do the right thing; judges cannot merely scare, punish, educate or challenge offenders into doing the right thing. Some offenders do not understand how to accomplish basic tasks such as setting an alarm clock to make sure they get up on time for a meeting with their parole officer. Offenders can be taught these skills through:

- **Modeling.** Offenders are more likely to learn from someone when they relate to and respect the person. When the person models the expected behavior, such modeling has a much larger impact on the offender than when done by someone else.
- **Demonstration.** When staff demonstrates appropriate behavior, greater learning occurs than when it is “just talk.” When the offender then demonstrates the same behavior, even more learning occurs.
- **Role-Playing.** To demonstrate real life situations, practitioners must be prepared to role play by setting-up opportunities for practice—both in group settings and in the community.
- **Feedback.** Feedback should be immediate, with corrective coaching provided. (See for example, D.A. Andrews & James Bonta, *The Psychology of Criminal Conduct* 351-354 (4<sup>th</sup> ed., Anderson Publishing 2006).)
- **Skill Practice. See next slide**

Slide 47



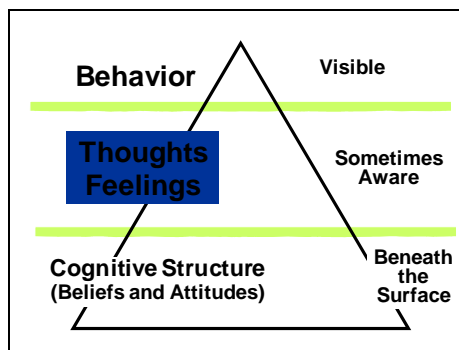
Lecture (1-2 minutes)

**Skill Practice: continuation from previous slide**

This meta-analysis, based on 374 tests ("k" in the chart) of the effects of judicial and correctional interventions on recidivism, shows nearly a six-fold reduction in recidivism when a behavioral approach is used. (The authors define behavioral approaches as including "behavioral/social learning/cognitive behavioral" approaches.) A behavioral approach requires offenders to practice the skills they acquire in treatment and relies on strategies such as modeling/demonstrating a skill, reinforcement for appropriate behavior, role playing, graduated practice of skills, and extinction of inappropriate behavior.

Source: D.A. Andrews & James Bonta, *The Psychology of Criminal Conduct*, 4<sup>th</sup> ed. 337 (Anderson Publishing, 2006).

Slide 48



Lecture (1-2 minutes)

In implementing behavioral approaches to changing offender behaviors one must also address the beliefs and attitudes that underlie those behaviors. This schematic demonstrates the issue. The behavior is the visible part that all can see, but underneath that behavior are thoughts and feelings of which others and even the offender may or may not be aware until after the behavior occurs. Beneath the surface is an underlying cognitive structure or belief system that lays even deeper in the subconscious.

**Cognitive Behavioral Programs**

- Interrupt anti-social thinking patterns – restructure
- Create dissonance/ambivalence
- Provide skills to handle situations such as conflict management, problem solving

**Lecture (3-4 minutes)**

Cognitive programs provide information to disrupt beliefs that are generally accepted by offenders and often unconscious. They may have learned these beliefs early in life and think of them as normal and functional. In reality, they cause emotions and behaviors that lead to trouble. For example, a male offender who is accidentally bumped by another person in a crowded space may jump to the conclusion that the other person did it on purpose and is “disrespecting” him. He may think he has to defend his honor. These thoughts can easily lead to anti-social actions (e.g., an angry response leading to assaultive behavior). Cognitive programs are designed to help the offender pause and reflect on the incident and allow other interpretations to be considered.

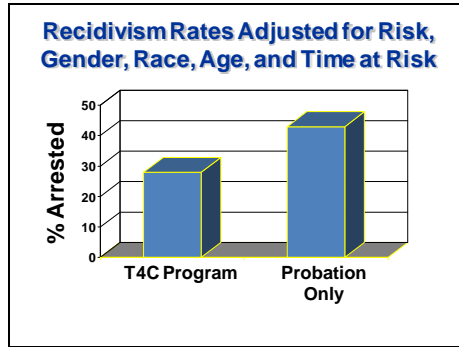
Cognitive programs are usually delivered in a small group setting of 8-12 offenders. The program is run by a trained facilitator who uses a manual that has specific modules that are followed in a particular sequence. The lessons require the offender to describe his/her beliefs and thoughts and the beliefs are examined by other group members. The differences between what the offender wants (e.g., a home, job, and people allowing the offender to act independently) and the consequences of the offender's behavior are identified, causing dissonance. Most people become uncomfortable when the consequences of their behavior conflict with their beliefs, prompting some change to reduce the anxiety.

Once the offender is ready, certain skills, such as how to resolve a conflict peacefully, are taught to help the offender deal with problems that can lead to crime.

Cognitive Behavioral Approaches Based on Social Learning Theory	
Cognitive Restructuring (What we think: content)	Cognitive Skills Development (How we think: process)

Lecture (3-4 minutes)

- Most medium and high risk offenders respond best to a cognitive behavioral program. It takes a cluster of criminogenic needs for an individual to become higher risk. A cognitive behavioral approach should be used to address one or more of these needs (especially those in the “big four” most influential needs).
- Cognitive behavioral programs address the offender's underlying thinking and attitudes and interrupt underlying anti-social thinking patterns (cognitive restructuring).
- Thinking affects behavior. Anti-social thinking leads to anti-social behaviors. Thinking can be changed, however, causing changes in how an offender feels and behaves.
- Cognitive restructuring gets at the underlying beliefs of the offender. If the offender believes, for example, that everyone does crime but that not all get caught, he/she justifies anti-social acts. As another example, if offenders interpret normal social interactions as threatening, they are more likely to respond in defiance or self defense. Restructuring involves an examination of the beliefs that underlie the behavior and a reconsideration of those beliefs.
- Cognitive skills consist of a set of thinking skills that can help an individual cope with disappointment and problems without getting in trouble. They can include conflict resolution, anger management, problem solving, developing creative solutions, asking for help, and general life skills.



Lecture (2-3 minutes)

This graph depicts the results of an evaluation of a cognitive-behavioral program *Thinking for a Change* (T4C) that was conducted in Tippecanoe County, Indiana. The graph shows that the recidivism rate for those who participated in the program was 15% lower than for those who received traditional probation (28% v. 43%). The T4C program consists of 22 sessions, focused on developing prosocial skills and attitudes, delivered across 11 weeks. T4C was developed by and is available for free from the National Institute of Corrections.

Source: C. T. Lowenkamp et al., *A Quasi-experimental Evaluation of Thinking for a Change: A "Real-world" Application*, 36 *Crim. Just. Behav.* 137-146 (2009). An unpublished version of this study also showed that those who successfully completed the program recidivated at a rate one half of the recidivism rate of those on probation only, reinforcing the importance of keeping offenders in treatment and encouraging successful completion.

T4C is a cognitive-behavioral program. Analyses show that cognitive-behavioral programs are more effective than behavioral programs alone. For example, Milkman & Wanberg (2007, p. 36) reviewed the literature on cognitive-behavioral programs and reported:

A meta-analysis of 69 studies covering both behavioral and cognitive-behavioral programs determined that the cognitive-behavioral programs were more effective in reducing recidivism than the behavioral programs (Pearson et al., 2002). The mean reduction in recidivism was about 30 percent for treated offenders. Other meta-analyses of correctional treatment concluded that cognitive-behavioral methods are critical aspects of effective correctional

treatment (Andrews et al., 1990; Losel, 1995). Yet another study similarly determined that the most effective interventions are those that use cognitive-behavioral techniques to improve cognitive functioning (Gendreau and Andrews, 1990).

Source: H. Milkman & K. Wanberg, Cognitive-behavioral Treatment: A Review and Discussion for Corrections Professionals (National Institute of Corrections 2007) (Accession Number 021657).

Slide 52

**What Doesn't Work  
to Reduce Recidivism: Sanctions**

- Punishment, sanctions, or incarceration
- Specific deterrence, or fear-based programs, e.g., Scared Straight
- Physical challenge programs
- Military models of discipline and physical fitness - Boot Camps
- Intensive supervision without treatment

**Lecture (3-4 minutes)**

Punishment in the justice system takes many forms. The items on this slide represent some of the common ones used. In the absence of a treatment component, none of these sanctioning programs has been shown to be effective in reducing recidivism as they do not change the thinking patterns of offenders, target criminogenic needs, or teach pro-social skills and behaviors. In fact some sanctioning programs actually increase recidivism slightly. A meta-analysis by Smith et al. (2002), for example, found that incarcerated offenders had a recidivism rate approximately seven percent higher than offenders in the community, and inmates with longer sentences (average of 31 months) had a recidivism rate three percent higher than inmates with shorter sentences (average of 13 months). Because many of the studies included in the meta-analysis were methodologically flawed, the specific recidivism rates need to be confirmed by more rigorous research; but overall they suggest an increase in recidivism for imprisoned offenders rather than a decrease. In addition, offenders tend to commit less crime as they get older, however, recidivism rates will likely decrease for older prisoners. The Bureau of Justice Statistics has reported, for example,

that the average age of violent felons in large urban counties is 29 with only 14% being older than 40 (B. A. Reaves, Violent Felons in Large Urban Counties (Bureau of Justice Statistics 2006) (NCJ 205289)).

Offenders who appear to be resistant to punishment include psychopathic risk takers, those under the influence of substances, and those with histories of being punished. Most medium and high risk offenders have one or more of these traits. This doesn't mean that these sanctioning programs are necessarily inappropriate when they serve other sentencing purposes, e.g., punishment, incapacitation, or control; but absent an effective treatment component, they likely will have no or an increased effect on recidivism.

Sources: Mark W. Lipsey and Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews* 3 Ann. Rev. L. Soc. Sci. 297 (2007); Paula Smith, et al., Center for Criminal Justice Studies, *The Effects of Prison Sentences and Intermediate Sanctions on Recidivism: General Effects and Individual Differences* (2002); Don M. Gottfredson, National Institute of Justice, *Effects of Judges' Sentencing Decisions on Criminal Cases*, Research in Brief (Nov.1999).

Slide 53

Typical Effects of Sanctions-Based Programs	
Program	Change in Recidivism
Intensive Supervision (no treatment)	0.0%
Electronic Monitoring	0.0%
Adult Boot Camps	0.0%
Juvenile Boot Camps	0.0%
Wilderness Challenge	0.0%
Intensive Supervision (Juveniles)	0.0%
Scared Straight	+6.1%

Lecture (1-2 minutes)

The Washington Institute for Public Policy conducted a systematic review of all research evidence on programs designed to reduce crime. Meta-analyses of sanctions-based programs revealed, at best, no effects on reducing recidivism. The authors used conservative criteria in conducting the meta-analyses, weighting studies based on the quality of their research design and discounting results if the intervention was a demonstration of a program (ensuring the best application



Slide 54

**What Doesn't Work to  
Reduce Recidivism: Services**

- **Shaming programs**
- **Drug education programs**
- **Drug prevention classes focused on fear or emotional appeal**
- **Non-action oriented group counseling**

of the intervention) rather than a more “real world” application in a typical setting.

Source: E. K. Drake, et al., *Evidence-based public policy options to reduce crime and criminal justice costs: Implications in Washington State*, 4 Victims Offenders 170-196 (2009).

Lecture (3-4 minutes)

This list represents interventions that have not worked in reducing recidivism (or have no or insufficient evidence) as they do not use the techniques described in social learning theory:

- **Shaming Programs** that are designed to shame offenders (such as hanging a sign around their neck and having them stand at a street corner).
- **Drug education programs** that are lecture-oriented and attempt to simply provide awareness do not work. Offenders in these classes do not have to learn or practice any skills and do not have to be heavily involved in the class. Furthermore, they rarely are long term nor intense enough.
- **Drug prevention classes focused on fear or emotional appeal** that might provide a short term motivation effect, but the effect wears off quickly. Furthermore, most prevention classes focus on the wrong risk level (low).
- **Non-action oriented group counseling** that get groups together for counseling but do not require members to learn new skills, apply them in the community and report back on them and do not generally change offender behaviors.

Source: For this and the next slide, see D.A. Andrews & James Bonta, *The Psychology of Criminal Conduct*, 4<sup>th</sup> ed. 337 (Anderson Publishing, 2006); F. T. Cullen, *Rehabilitation and Treatment*

Slide 55

**What Doesn't Work to  
Reduce Recidivism: Services**

- **Bibliotherapy**
- **Freudian approaches**
- **Vague, unstructured rehabilitation programs**
- **Self-esteem programs**
- **Non skill-based education programs**

*Programs, in Crime: Public Policies for Crime Control* 253-289 (James Q. Wilson & Joan Petersilia eds., 2004); E. J. Latessa, Francis T. Cullen, & Paul Gendreau, *Beyond Correctional Quackery—Professionalism and the Possibility of Effective Treatment*, 66 Fed. Probation 43 (2002); T. R. Tyler, et al., *Reintegrative Shaming, Procedural Justice, and Recidivism: The Engagement of Offenders' Psychological Mechanisms in the Canberra RISE Drinking-and-Driving Experiment*, 41 Law & Soc'y Rev. 553 (2007).

Lecture (2-3 minutes)

- **Bibliotherapy** that requires the offender to read a book and report on the lessons from it are not effective because they, too, are non-behavioral.
- **Freudian or psychodynamic approaches** may work for non-offenders to reduce symptomology but have not worked with offenders to reduce risk of recidivism.
- **Vague, unstructured rehabilitation programs** that do not have a clear theory with a structured manual and progressive steps have not been successful.
- **Self esteem programs** that target self esteem are not targeting criminogenic needs and do not produce reductions in recidivism.
- **Non skill-based education programs** that do not teach skills tend to have little to no effect.

Research on the effectiveness of self help-type programs like AA is discussed below:

**Self Help groups:** There is a fair amount of controversy on this subject, especially as it relates to AA. This is a hard area to research because AA is anonymous. Furthermore, there are few studies that single out offenders and look primarily at recidivism.

As a general rule, the research suggests that as a primary treatment AA is not effective in reducing recidivism, but that AA may be effective as an aftercare intervention if the offender completes treatment and is motivated. Speculation on why this is true includes that the offender does not practice skills in AA, there is no way to know who attends AA meetings and how well they serve as role models, AA tends to focus only on substance abuse and not other criminogenic needs, and coerced attendance does not promote offender motivation.

A 1999 study by Richard Kownacki and William Shadish entitled *Does Alcoholics Anonymous Work? The Results from a Meta-Analysis of Controlled Experiments* indicated that "Randomized studies yielded worse results for AA than nonrandomized studies, but were biased by selection of coerced subjects. Attending conventional AA meetings was worse than no treatment or alternative treatment; residential AA-modeled treatments performed no better or worse than alternatives; and several components of AA seemed supported (recovering alcoholics as therapists, peer-led self-help therapy groups, teaching the Twelve-Step process, and doing an honest inventory)."

Another study (2003) entitled *Is Attendance at Alcoholics Anonymous Meetings after Inpatient Treatment Related to Improved Outcomes?* by Michael Gossop, et al, National Addiction Centre, Maudsley Hospital/Institute of Psychiatry, looked at the relationship between attendance at AA meetings prior to, during, and after leaving treatment. It found significant improvements after leaving treatment in drinking behaviors (frequency, quantity and reported problems), psychological problems and quality of life. Frequent AA attendees had superior drinking outcomes to non-AA attendees and infrequent attendees.

Slide 56

### **Implementing Effective Treatment Programs**

1. Employ and train effective staff
2. Use the proper dosage/intensity
3. Involve the family and community
4. Provide aftercare
5. Monitor treatment through quality assurance

Those who attended AA on a weekly or more frequent basis after treatment reported greater reductions in alcohol consumption and more abstinent days. The findings support the role of Alcoholics Anonymous as a useful aftercare resource.

Lecture (about 5 minutes)

Assuming the availability of well designed cognitive-behavioral program models based on social learning theory, the ultimate effectiveness of the treatment programs in reducing recidivism depends on how well and faithfully the program models are implemented in the jurisdiction. Effective program implementation is a significant challenge and consists of at least five aspects.

Slide 57

### **Exercise: A Framework for An EB Probation Violations Policy**

1. What would be 3-4 key principles of an EB approach?
2. How would this framework provide for an appropriate use of sanctions?
3. What administrative authority should probation have regarding sanctions & incentives?

Exercise (20-25 minutes, including the following slide)

To begin the discussion, ask the group to move beyond their normal judicial role and assume that they are considering a new violations policy with the courts and probation department in their local jurisdiction. Ask the group to consider what they have learned regarding risk and needs and the setting of probation conditions and the elements of a social learning/behavioral approach to changing behavior as they answer the questions on the slide. Emphasize that they should discuss the **general principles** of an effective violations policy, including the use of sanctions and incentives.

Time permitting, students can work in small groups initially. Facilitate the discussion as a large group, asking for the reactions/perspectives of the probation directors as you receive input from the judges in the audience. The idea here is to draw out the concepts on the next slide (hidden) and Handout 3.3. on sanctions and incentives that accompanies the slide. Also, be sure to draw out the value of an administrative sanctions policy within the probation

Slide 58

**Principles of an EB Violation Policy**

- One size does not fit all
  - Adjusted level of risk
  - Severity of violation
  - Nature of the condition: Treatment or Control
  - Extent of prior compliance
- Graduated continuum of both sanctions and services
- Swift, certain, and proportionate sanctions for technical violations: Administrative sanctions policy that allows flexibility by probation
- Incentives for compliance: 4 rewards for every sanction

department and the importance of allowing flexibility within the probation department to respond to violations. Elements of an EB Violation Policy, Handout 3.4 in the handout materials should be provided to the class at the conclusion of this exercise.

This slide is hidden but the information is available as a handout, along with the rationale and research citations regarding the principles related to sanctions. Use this as a way to review key points and to highlight any areas that were not discussed. Then refer students to the Travis County Graduated Sanctions and Incentives Model, Handout 3.3., in the handouts. It describes various levels of available sanctions that are dealt with administratively. Those levels depend on the severity of the violation, risk level of the offender (yellow, red, or blue), the type of condition violated, and the number of prior violations.

In Travis County, Level 4 sanctions (residential treatment, jail) cannot be imposed by the officer, but an officer does provide the court with a recommendation from the Level 4 “menu” using the model. Point out that the details of any model need to be worked out locally, and that there are other models.

## **UNIT 4: THE PRINCIPLE OF RESPONSIVITY & OFFENDER MOTIVATION (HOW)**

### **UNIT OVERVIEW**

#### **Description of the Unit**

In this unit, participants will explore ways in which sentencing and corrections practices must be matched to the unique characteristics of each offender, and how to use the stages of change model and motivational interviewing (MI) to promote offender behavioral change. Participants will apply what they have learned in Units 1-4 to several hypothetical sentencing situations.

#### **Approximate Time for Unit**

1.25 Hours

#### **Unit Objectives**

At the conclusion of this unit, participants will be able to:

- Identify the principal offender characteristics to which interventions must be matched;
- Summarize the stages of change involved in changing behavior;
- Define the appropriate responses at various stages of change;
- Promote offender motivation through use of constructive offender interaction techniques; and
- Employ the basic principles of EBP in common sentencing situations.

#### **Unit Topics**

- Principle of Responsivity
- Stages of Change Model
- Promoting Offender Motivation
- Sentencing Scenarios # 3 & 4

#### **Activities & Exercises**

- Sentencing Scenarios # 3 & 4

#### **Supporting Documents**

- [Handout 4.1] Stages of Change
- [Handout 4.2] Motivational Interviewing for Judicial Officers
- [Handout 2.7] Sentencing Scenarios

## PowerPoint Slides with Faculty Notes

Slide 59

### Unit 4: The Principle of Responsivity & Offender Motivation (How)

Responsivity: matching the characteristics of the treatment program and treatment provider to characteristics of the individual offender.

Slide 60

### Responsivity Principle

- To the intervention, treatment, program, or supervision
- To the personnel delivering the service to the offender

Lecture (1-2 minutes)

The responsivity principle is sometimes referred to in the literature as the principle of “specific responsivity.” When the term “specific responsivity” is used in the literature to describe this principle, it is to contrast this principle with the previous principle we discussed, the “treatment” principle, which is then referred to in the literature not as the ‘treatment’ principle but as the principle of “general responsivity.” These semantic distinctions have proven frustrating in presenting this curriculum to judges. We include this note to faculty only in case a question on this point arises.

Slide 61

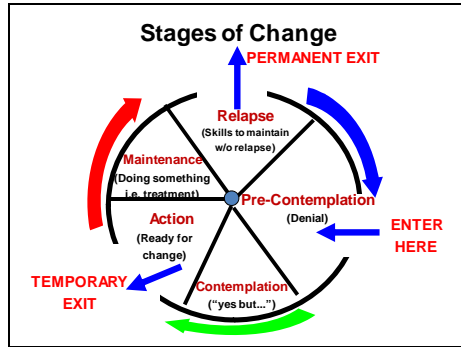
### Responsivity Factors: Offender Characteristics

- Age
- Gender
- Culture
- Learning Style
- Intelligence
- Mental Health

Lecture (3-4 minutes)

What are the offender characteristics that need to be “matched” to characteristics of the intervention and/or provider? They are often called “responsivity factors” and these are a few of the most common ones. See research on mental health at slide 30 and see Jennifer Skeem, et al., *Assessing Relationship Quality in Mandated Community Treatment: Blending Care with Control* 19 Psychol. Assessment 397-410 (2007); Jennifer Skeem, et al., *Exploring “What Works” in Probation and Mental Health*, 2008; Skeem, Manchak, and Johnson, *Specialty Mental Health vs. Traditional Probation*, 2008.

Slide 62



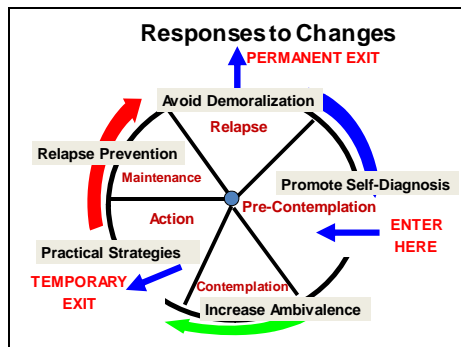
Lecture (8-10 minutes)

Another important responsivity factor is the offender's readiness to change.

Adapted from: Prochaska & Diclemente.

Refer to Stages of Change, Handout 4.1, for information to assist you with this slide and the next slide.

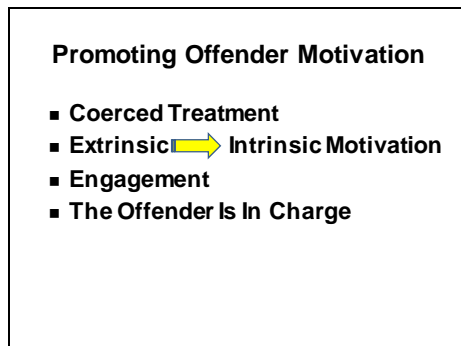
Slide 63



Continuation from previous slide.

Adapted from: Prochaska & Diclemente.

Slide 64



Introductory Lecture (5 minutes)

The last responsivity factor we will discuss and perhaps the most important is "offender motivation."

- Coerced treatment is effective; offenders are rarely motivated to change behavior at the outset, and coercion can get the offenders into treatment and keep them there longer. But, external pressure and controls only work as long as the pressure is applied. The goal is to avoid the condition where the offender is only entering or remaining in treatment under coercion and going through the motions of compliance.
- Ultimately, offenders must become self-motivated; they must progress from "extrinsic" to "intrinsic" motivation. The ability to change must ultimately be accompanied by a willingness and a desire to change.
- The way the court and judge interact with the offender can play a



major role in either promoting or retarding the development of intrinsic motivation. The court can play an important role in preparing the offender to change by engaging the offender in the change process.

- 30% of the likelihood of a successful outcome depends on the offender's engagement in the change process which is in large part the result of an offender's relationship with a change agent—a friend, probation officer, therapist, or judge who inspires, initiates, promotes, or supports the offender's commitment to the change process.
- The first step in the engagement process is to acknowledge that the offender is in charge and controls the result; even if the offender has the ability to change, change will not occur until the offender decides to make some changes.
- Respecting that the offender is in charge of whether the offender—and judge—will succeed in changing the offender's behaviors, places responsibility and accountability for those changes squarely on the offender as the starting point for the change process.

Slide 65

**Promoting Offender Motivation  
Procedural Fairness**

**Better results when the offender views the court process as "fair":**

- Views bench as impartial
- Has an opportunity to participate
- Is treated with respect
- Trusts the motives of the decision maker

**Lecture (3-4 minutes)**

At a basic, minimal level the court's ability to have a positive influence on the offender depends on the extent to which the offender views the court process as being "fair." There is a body of research in the field of "procedural fairness" that describes the qualities of "procedural fairness" from the point of view of one coming into contact with a police officer or judge. The slide identifies those four qualities. When criminal defendants feel they have been treated "fairly," the research indicates they are more likely to accept the court system as legitimate, more likely to voluntarily comply with court

Slide 66

**Promoting Offender Motivation**  
**Motivational Interviewing**

- Use open-ended questions
- Listen reflectively
- Develop discrepancy/dissonance
- Support self-efficacy
- Roll with resistance; deflection
- Avoid argument, lecture, shaming, threats, or sympathizing

orders and directives, and more likely to obey the law thereafter.

See Tom R. Tyler & Yuen J. Huo, *Trust in the Law: Encouraging Public Cooperation with the Police and Court* (Russell Sage Foundation, 2002).

**Lecture & Discussion (10 minutes)**

- Beyond treating the defendant fairly, one of the most effective ways to engage the offender in the change process, learn more about the offender's specific risk factors, and take a first step in developing intrinsic motivation is a communication technique called "motivational interviewing" (MI).
- MI, a process of "speaking positively with someone who is failing," is an interviewing technique of asking open-ended questions to get offenders thinking and talking about why they have engaged in anti-social behaviors, what their primary dynamic risk factors are, and their own "ambivalence" as we discussed during the discussion of cognitive programs and stages of change.
- It consists of these key components on the slide.
- Although MI is frequently used in drug court-type settings, and is more easily adaptable to many post-conviction status hearing calendars, there are frequently time constraints to its full use in handling traditional crowded dockets. There are also constraints in its use while also seeking to achieve other sentencing purposes, including general deterrence and services to victims.
- To the extent that recidivism reduction is a primary sentencing objective, however, the judge should at least seek to avoid behaviors that undermine the development of offender motivation, and, especially at the critical point

of handing off supervision responsibilities to probation, seek to maximize the offender's readiness, willingness, desire, and/or commitment to change.

- See Motivational Interviewing for Judicial Officers, Handout 4.2, in the handout materials.

Slide 67

**Summary**

1. Treatment must be matched to the offender's individual characteristics.
2. Use the "Stages of Change" model
  - Useful tool for understanding offender readiness to change
  - Offers corresponding strategies to facilitate behavioral change
3. Intrinsic motivation is a critical requirement for offender behavioral change.

Lecture (2-3 minutes)

Rather than listing the 6 summary items, you may wish to ask your group what they learned from this unit and then share the items listed on this and the next slide.

Slide 68

**Summary**

4. The judge can be a change agent by treating the defendant fairly and encouraging the offender's engagement in the sentencing process.
5. Use "motivational interviewing" skills
6. Avoid threatening, lecturing, arguing, shaming, or sympathizing

Lecture continued.

Slide 69

**Sentencing Scenarios 3 & 4**

Hypothetical Exercises (25-35 minutes)

These scenarios are contained in the Sentencing Scenarios, Handout 2.7, in the handout materials. If time constraints preclude consideration of both scenarios, faculty may want to consider the **Lydia** scenario first.

## **UNIT 5: OVERCOMING CHALLENGES IN THE IMPLEMENTATION OF EBS**

### **UNIT OVERVIEW**

#### **Description of the Unit**

In this unit, participants will explore the system-wide challenges presented in the implementation of EBS. Participants will identify and prioritize several of the most significant challenges in implementing EBS and explore actions that can be taken to address those challenges, including through collaboration and promoting organizational development

#### **Approximate Time for Unit**

1.25 Hours

#### **Unit Objectives**

At the conclusion of this unit, participants will be able to:

- Identify the challenges facing trial judges in implementing EBS practices;
- Describe steps that judges and courts can take to address these challenges; and
- Collaborate with criminal justice partners to adopt EBS practices

#### **Unit Topics**

- Need for Systemic Reform, Collaboration & Organizational Development to address foreseeable challenges including the absence of:
  - Actuarial Risk Assessment Information & Pre-Sentence Reports
  - EB Plea Bargaining Practices
  - Effective Probation Supervision Practices & Programs
  - Effective Public Communications
- Small Group Exercise

#### **Activities & Exercises**

- Small Group Exercise

#### **Supporting Documents and Information**

- [Handout 5.1] 13 Questions Judges Should Ask their Probation Chiefs
- [Handout 5.2] Communications Plan Talking Points
- [Handout 5.3] 20 Evidence-Based Sentencing Practices
- [Handout 5.4] 8 Evidence-Based Practices Principles
- [Handout 5.5] Bibliography
- [Handout 5.6] Website List
- [Handout 5.7] Glossary

## PowerPoint Slides with Faculty Notes

Slide 70

### Unit 5: Overcoming Challenges in the Implementation of EBS

Slide 71

#### Overcoming Challenges Exercise

- Plea bargaining practices
- Absence of R/A information and pre-sentence reports
- Absence of effective probation supervision practices or treatment/sanctioning programs
- Lack of public understanding or community support for EBP and EBS

#### Small Group Exercise (45-60 minutes)

This list of 4 challenges is provisional. Refer now to the easel chart where challenges have been “parked” during the course (See notes in slide 2). At the outset of Unit 5, students will prioritize the accumulated list of challenges, including the four above, and the top several (4-5) challenges will then be the subject of the Unit 5 exercise.

Break the class into groups (see Guidelines for Small Groups in the Faculty Handbook), have each group discuss one of the selected topics focusing on identifying the various ways in which the concern may be manifested and potential strategies to overcome the challenge. Then have each group report on its deliberations in the plenary session.

A number of challenges may create barriers to achieving the full promise of EBS. For example, courts must address challenges arising from:

- Plea bargaining practices that do not take EBP or recidivism reduction into account as a sentencing objective;
- The absence of risk assessment information or pre-sentence reports in some or many cases in which EBS might be appropriate;
- The absence of effective probation supervision practices, treatment programs, or sanctioning

alternatives. This topic may include the absence of quality assurance programs that train, monitor, and supervise key probation and program provider personnel and the absence of process and outcome data regarding effectiveness. See the handout 13 Questions Judges Should Ask Their Probation Chiefs, Handout 5.1, in the handout materials; and

- Lack of public understanding or community support for EBP & EBS, or concern that EBS may be perceived as “soft on crime.” See Communications Plan Talking Points, Handout 5.2, in the handout materials.

Another potential concern not addressed here are state sentencing policies or guidelines that restrict the exercise of judicial discretion in instances in which a probationary sentence and risk reduction strategy might be an appropriate sentencing objective.

Other potential challenges are: resistance to change on the part of probation officers, judges, prosecutors, defense counsel or other criminal justice practitioners and lack of financial resources or technical assistance, especially in rural areas, to implement evidence-based supervision and treatment services.

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Discussion and Wrap-up (10-15 minutes)

To conclude you will want to do a wrap-up exercise of what has been learned.

Some options may be:

- review of self-assessment questions/answers, if not done earlier;
- address any issues or concerns that occurred during the course and still seem unresolved;
- use the 20 EBS practices, Handout 5.3., contained in the handout materials as a vehicle for quickly summarizing some of the major teaching points of the course; or
- ask what are the 1-3 things that students will do, or do differently, in light of this course.

The handout materials also include the following:

- The 8 Evidence Based Practices Principles to Reduce Risk of Reoffending, Handout 5.4
- Bibliography, Handout 5.5
- Website List, Handout 5.6
- Glossary, Handout 5.7