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# State Judicial Branch Leadership In Sentencing and Corrections Reforms

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RESEARCH DIVISION | NATIONAL CENTER FOR STATE COURTS**

*November 2013 Draft*



Center for Sentencing Initiatives



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National Center for State Courts

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*November 2013*

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To promote the rule of law and to improve the administration of justice in the state courts and courts around the world.

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## **Acknowledgements**

On behalf of the National Center for State Courts and its Center for Sentencing Initiatives, Judge Roger Warren and Dr. Pamela Casey gratefully acknowledge the willingness of State Court Administrators and other court leaders in Arizona, Arkansas, Georgia, Idaho, Indiana, Kentucky, Nebraska, South Carolina, South Dakota, West Virginia, and Wisconsin to participate in interviews and share their experiences for this report.

We also extend our appreciation to the Pew Public Safety Performance Project for its support of this effort. For more information on the Pew project, please visit

[www.pewstates.org/publicsafety](http://www.pewstates.org/publicsafety)



## **Center for Sentencing Initiatives**

This report was produced by the National Center for State Courts' Center for Sentencing Initiatives (CSI). CSI conducts research, provides information and tools, offers education and technical assistance, facilitates cross-state learning and collaboration, and works closely with the Conference of Chief Justices and the Conference of State Court Administrators to implement their resolution In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism. To learn more about CSI, visit [www.ncsc.org/csi](http://www.ncsc.org/csi).

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## I. National Judicial Branch Reform Initiatives

In August 2007, the Conference of Chief Justices (CCJ) and Conference of State Court Administrators (COSCA), the highest state court leaders in the country, formally agreed to “support state efforts to adopt sentencing and corrections policies and programs based on the best research evidence of practices shown to be effective in reducing recidivism....”<sup>1</sup> Their resolution noted that recidivism rates had continued to rise in the US despite increasing use of incarceration and greater spending on corrections and that “the judiciary, consistent with its obligation to provide just and effective punishments for criminal offenders, has a vital role to play in ensuring that criminal justice systems work effectively and efficiently to protect the public by reducing recidivism and holding offenders accountable....” The resolution pointed out that the use of a validated offender risk and need assessment tool was “critical in reducing recidivism.” In conclusion, the resolution urged “each chief justice and state court administrator to work with members of the executive and legislative branches as appropriate to promote policies and practices that place properly identified offenders in corrections programs and facilities shown to be effective in reducing recidivism” and urged “all members of the judiciary to educate themselves about the effectiveness of community-based corrections programs in their jurisdictions and to advocate and, when appropriate, make use of those programs shown to be effective in reducing recidivism.”

Following the resolution, CCJ and COSCA established a Joint Standing Committee on Criminal Justice to provide national judicial branch leadership on criminal justice issues, including the use of evidence-based sentencing practices to reduce recidivism and the development of effective responses to probation violations. With the Committee’s support and guidance, a National Working Group of sentencing and corrections experts developed guiding principles on the use of actuarial risk and needs assessment information in state sentencing proceedings, and CCJ and COSCA subsequently endorsed the principles as a valuable tool for state courts and encouraged state and local courts to work with their justice system partners to incorporate risk and needs assessment information into the sentencing process.<sup>2</sup>

A primary function of the Criminal Justice Committee is to encourage the Chief Justices and State Court Administrators to take leadership roles in their own states in addressing sentencing and corrections reform, and encouraging courts to work collaboratively with other justice system partners regarding criminal justice issues. This report highlights a number of such initiatives undertaken by state court leaders as examples of the significant work that has been and is underway to advance evidence-based sentencing and corrections reforms. It summarizes several of the major initiatives state court leaders have undertaken for the purpose of informing other court leaders, state policy makers, corrections leaders, potential funders, and program and service providers, who may seek to promote or support similar reforms in their jurisdictions.

The report is based on interviews with state court administrators and other court leaders

involved in the state initiatives.<sup>3</sup> It focuses on judicial leadership in the development and implementation of evidence-based sentencing and corrections reforms in eleven states. The report is not intended to be a comprehensive record of activity across all states or within each state interviewed; rather it offers a national view of the kinds of reform efforts state courts have promoted, supported, and implemented. It also does not address reforms focused on other sentencing and corrections issues, such as prison administration, parole, or the punishments prescribed for various classes of offenses.

The National Center for State Courts' Center for Sentencing Initiatives extends its sincere appreciation to the State Court Administrators and other court leaders in Arizona, Arkansas, Georgia, Idaho, Indiana, Kentucky, Nebraska, South Carolina, South Dakota, West Virginia, and Wisconsin for their contributions to this report.

## II. Overview of the Report

The report begins with a summary of three broad areas of reform: a) those focused on evidence-based probation supervision, b) those involving interbranch justice reinvestment initiatives, and c) those focused on using risk and needs assessment information to inform sentencing decisions. Following this summary, the report provides some brief observations about the varying ways in which judicial leadership has been exercised in the eleven states. The report concludes with interviewees' responses, often in their own words, to questions about what motivated the initiatives, the perceived benefits achieved, the obstacles confronted, the factors contributing to the success of the initiatives, and lessons learned that might be

shared with others contemplating similar activities.

## III. State Reform Initiatives

### A. Evidence-Based Probation Supervision

In states in which responsibility for probation administration rests with the judicial branch, judicial leaders have often played important roles in incorporating evidence-based practices (EBPs) into probation supervision practice. Three examples follow.

In Arizona, Adult Probation Services is a Division of the Administrative Office of the Courts (AOC). The incorporation of EBPs into Arizona probation supervision traces back to 2003 when the AOC rolled out statewide, and subsequently automated, its recently validated actuarial risk and needs assessment tool, the Offender Screening Tool (OST).<sup>4</sup> Implementation of the risk assessment tool was supported by ongoing training of probation officers and adoption of administrative rules in the Arizona Code of Judicial Administration requiring probation departments to obtain AOC approval of new evidence-based supervision and case-planning processes and the departments' quality assurance policies. The administrative rules are further enforced through periodic "operational reviews" that serve as AOC "performance audits" of the policies, procedures, and training programs in the 15 county probation departments.

In 2009, as a result of the recession, Arizona faced the largest financial crisis in its history resulting in the potential layoff of hundreds of Arizona probation staff. The Adult Probation Services Division had calculated

that 43% of Arizona’s annual prison admissions resulted from probation revocations and that 80% of the revocations were because of technical violations, not commission of new crimes. To avoid the threatened drastic reduction in probation staffing and, instead, reduce prison costs, the Chief Justice entered an Administrative Order that required presiding judges to develop plans to reduce revocations to prison by 5% and ordered that any proposed probation reductions “be consistent with evidence-based practices and supervision strategies.”<sup>5</sup> In light of Arizona’s significant use of private prison beds, the reduction in prison revocations would result in substantial immediate savings. The AOC’s evidence-based supervision practices resulted in a 12% reduction in prison revocations the following year, and in reduction in commission of new felonies by probationers as well.

The Adult Probation Services Division has recently revalidated its assessment tool, continues to train and certify probation officers in its probation training academy, provides annual “booster training” to probation officers, and in 2012 provided “refresher training” to probation officers in all fifteen counties. In 2013 the AOC also provided Effective Practices in Correctional Settings II (EPICS II) and motivational interviewing training to probation officers.

Indiana provides a second example of implementing evidence-based probation supervision practices. Although probation is a county function in Indiana, it is administered by the state judicial branch through the Judicial Conference of Indiana and its staff agency the Indiana Judicial Center whose Executive Director is appointed by the Chief Justice. In Indiana, the incorporation of EBPs into probation supervision practices also began with

development, validation, and implementation of a new risk and needs assessment tool. The Indiana Judicial Center created an interagency task force including representatives from the judiciary, probation, community corrections, parole, and the Department of Corrections. The task force worked closely with the School of Criminal Justice at the University of Cincinnati to adapt and validate the Ohio Risk Assessment System (ORAS) for use in Indiana as the web-based Indiana Risk Assessment System (IRAS). The Judicial Center requires assessment officers to complete a two-day assessment training program and pass a certification examination. The Center provided training to all users at the outset and continues to offer training on a monthly basis. The Division of State Court Administration and the Supreme Court’s Judicial Technology and Automation Committee (JTAC), the committee responsible for the development and oversight of the judiciary’s robust platform for interagency data-sharing, automated the tool and integrated the resulting offender risk and needs assessment information into its statewide criminal justice database. A state work group is currently utilizing the aggregated offender risk and needs assessment data to quantify, for example, the number of low-risk offenders for whom less intensive interventions may be appropriate and the number of offenders scoring as high risk in the substance abuse or criminal thinking domains for whom specialized treatment programs may be appropriate.

The Indiana Judicial Center is also supporting a work group of judges, probation officers, prosecutors and defense attorneys in the development of a probation incentives and sanctions grid which they intend to pilot by the end of 2013.

The third example of evidence-based probation supervision comes from Nebraska. The Nebraska Office of Probation Administration is located in the Nebraska judicial branch and its Director reports directly to the Nebraska Supreme Court. The Nebraska Office of Probation Administration has been using the Level of Service/Case Management Inventory (LS/CMI) risk and needs assessment tool for many years. The incorporation of EBPs into Nebraska probation practices has been a strong commitment of its Director since she took office in 2005. Recent efforts have focused on developing an award-winning specialized substance abuse supervision program, an infrastructure of day reporting centers for high risk offenders that offer relapse prevention, pretreatment programming, employment services, and statewide training for all officers on motivational interviewing and the skills to conduct cognitive behavioral group programs.

## B. Justice Reinvestment

Among the eleven states featured in this report, judiciaries in six (Arkansas, Georgia, Kentucky, South Carolina, South Dakota, and West Virginia) led or actively participated in a Justice Reinvestment Initiative (JRI), a joint initiative by the leaders of all three branches of state government to enact a legislative package of sentencing and corrections reforms.<sup>6</sup> In some of the states, the role of the state court leader was instrumental in obtaining the initial support of the national technical assistance providers and the initial cooperation and participation of executive and legislative branch leaders in their states. In South Carolina, one of the earliest states to participate in JRI, it was the Chief Justice who first reached out to the Pew Public Safety Performance Project and to other leaders in South Carolina to initiate the JRI

project. The Chief Justice was also instrumental in the formation and early activities of the Reform Commission that led the initiative, and she continued to support the work of the Commission through State of the Judiciary presentations, legislative hearings, and speeches around the country. The Commission's work resulted in significant reform of the state's sentencing and corrections system as a whole rather than in specific court reforms.

Similarly, in Arkansas it was the Chief Justice and State Court Administrator who first contacted the Pew Public Safety Performance Project and the Chief Justice who initially secured the Governor's interest and cooperation. The Chief Justice and Governor served as co-chairs of the interbranch work group that led the initiative and which also included the State Court Administrator and two trial judges. The Chief Justice, with experience in corrections as a former member of the state parole board, saw JRI as a real opportunity for the court to be involved appropriately in system reform. Through the Arkansas Judicial Council, all Arkansas general jurisdiction criminal judges were regularly invited to attend quarterly educational meetings as the project progressed. The AOC also sponsored many judicial education events, including events with prosecutors and defense attorneys, during the first 18 months of implementation. The legislation requires the Department of Community Corrections to develop and implement a graduated sanctions grid, including short jail stays, which is reported to be supported by trial judges and working well.

The State Court Administrator in West Virginia also has a corrections background, serving earlier as Director of a Regional Jail Authority and co-founder of day reporting centers in the state. As a Board member for

the Council of State Governments (CSG) Justice Center, a JRI technical assistance provider, he spearheaded formal outreach to CSG on behalf of all three branches of West Virginia government. He also represented the state judicial branch on the Justice Reinvestment Working Group. Although the chief justice position rotates annually in West Virginia, the justice serving as chief during the state's participation in JRI were extremely supportive.

In Kentucky, the Chief Justice was an active member of the Task Force on the Penal Code and Controlled Substances Act, and the policy making process included many AOC-organized meetings with trial court judges and clerks, especially regarding pretrial and drug court issues. Following enactment of the legislation, the Department of Corrections consulted with the AOC in developing a system of graduated administrative sanctions, including short jail stays, for probationers.

In both Georgia and South Dakota, the participation of the judicial branches in JRI arose in large part due to their Supreme Courts' strong commitment to drug and mental health courts. The Chief Justice in Georgia was an active participant and subcommittee chair on the JRI Special Council on Criminal Justice Reform. Two trial judges also played leadership roles on the Council. The Chief Justice had previously served on a trial court that featured use of active drug courts and had spoken about the effectiveness of drug courts in her State of the Judiciary presentation to the Legislature. Several drug and mental health court judges had met initially with the Governor, whose son serves as a drug court judge, to discuss ways in which expanded and improved accountability courts could contribute to public safety in Georgia. The largest impact

of the resulting 2012 JRI legislation on Georgia courts was provision of additional funding for drug and mental health courts and creation of an AOC certification process for accountability courts.

Similarly, in South Dakota the judiciary had been in discussions with the legislature regarding improving the performance of and funding for drug courts when the Governor asked the Chief Justice, a strong advocate of drug courts, to join the JRI and to convene a focus group of judges and probation officers from around the state. In preparing its reform proposals, the JRI project ultimately convened over 25 focus groups around the state, including many convened by the Chief Justice consisting of trial court judges, presiding judges, and probation officers. The burden of implementing many provisions of the South Dakota JRI legislation also fell largely on the judicial branch and included, for example, data collection and reporting responsibilities and administering a new financial accountability system to improve collection of the court-ordered financial obligations of offenders no longer on probation or parole. Working groups of judges, probation officers, prosecutors, defense attorneys, and court administrative staff also developed an administrative sanctions grid that was approved by the Supreme Court.

### C. Including Risk and Needs Assessment in Presentence Reports

Perhaps the most significant achievement of state court leaders since adoption in August 2007 of the CCJ and COSCA resolution, which noted that "the best research evidence has shown that use of validated offender risk and need assessment tools is critical in reducing recidivism," has been incorporation of risk and needs assessment

information into pre-sentence investigation reports (PSRs) for use by trial court judges in sentencing proceedings.<sup>7</sup>

In October 2007, the Chief Justice of the Arizona Supreme Court created the Center for Evidence-Based Sentencing to lead efforts on behalf of the Supreme Court to incorporate objective risk and needs assessment information into presentence reports in all felony cases to ensure the design of supervision plans for offenders placed on probation that are effective in reducing recidivism and that facilitate better use of public resources. The Chief Justice announced that the Center's first efforts would be "to provide information about evidence based sentencing and risk analysis to judicial and probation officers, and to other criminal justice stakeholders statewide."<sup>8</sup>

The Center's part-time Director, a well-regarded former prosecutor and trial court judge, subsequently teamed with the AOC's Adult Probation Services Division to determine how to incorporate the OST risk and needs assessment information into all felony PSRs statewide and to conduct extensive and recurring training programs for judges, probation officers, prosecutors, and defense counsel throughout the state. A statewide task force also reviewed the inconsistent use of a wide variety of probation conditions throughout the state and modified or eliminated those not consistent with EBPs or other legitimate public safety objectives. As a result of its evidence-based probation supervision and sentencing initiatives, the Arizona judicial branch was successful by FY 2012 in reducing revocations to prison by 44% and reducing new felony convictions among probationers by over 37% compared to a FY 2008 baseline.

The Wisconsin court system took a different path, a grass roots approach in which the state judiciary fostered and supported pilot projects across the state that ultimately led to a statewide implementation. The Effective Justice Strategies Subcommittee of the Supreme Court's Planning and Policy Advisory Committee created the Assess, Inform, and Measure (AIM) project in 2006.<sup>9</sup> The AIM project, staffed by the Wisconsin AOC, provided staff support to pilot projects in eight different jurisdictions experimenting with the use of risk and needs assessment information in sentencing proceedings. The project used a variety of different local risk and needs assessment tools and dealt with a variety of different offender populations. Ultimately, the state Department of Corrections adopted the Correctional Offender Management Profile for Alternative Sanctions (COMPAS) risk and needs assessment tool for statewide use, and COMPAS risk and needs assessment reports now accompany PSRs statewide in most felony cases.

The Effective Justice Strategies Subcommittee also spearheaded a project that led to coordination of the services of the state's 52 treatment courts, 40 local Criminal Justice Coordinating Councils and 8 AIM pilot sites through a newly formed statewide Criminal Justice Coordinating Council and its two sub-committees: one on Problem Solving Courts and the other on EBPs. The Effective Justice Strategies Subcommittee, AOC, and AOC's EBPs staff coordinator also developed a curriculum on Effective Sentencing Practices that is currently being delivered to county-based stakeholder teams throughout the state.

The Probation Director in Nebraska was aware of the leadership of the Chief Justice in Arizona in spearheading EBPs in that state and sought support from the Supreme

Court and trial judges for similar reforms in Nebraska. Although initially not a high priority for the Supreme Court, the Chief Justice agreed to appoint a Supreme Court Committee on EBP composed of trial court judges and chief probation officers to assist the Probation Director in implementing EBPs across the state. The Committee's first Chair, a trial court judge, became an enthusiastic supporter and additional judicial education programs on EBPs followed. In 2009, the Chief Justice readily accepted an invitation to send a team of judges and probation leaders to participate in a 2-day evidence-based sentencing "Train the Trainers" judicial education curriculum program sponsored by the National Center for State Courts, the National Judicial College, and the Crime and Justice Institute.<sup>10</sup> With the Probation Director, he identified a team to represent Nebraska. The participating judges later presented the evidence-based sentencing curriculum to their Nebraska colleagues, and the judicial response was more positive. With the growing success and benefits of probation's EBPs implementation and the Chief Justice's strong leadership across the state and all branches of government in support of EBPs, Nebraska now includes the LS/CMI risk and needs assessment information in all PSRs and has trained all judges on the use of the information.

The Idaho judiciary has a long tradition of working collegially with other branches of government on court improvement projects, including, for example, on the development and funding of problem-solving courts, through the state Criminal Justice Commission. Evidence-based sentencing initiatives in Idaho have been largely driven by the Supreme Court's Committee on Felony Sentencing. Created in 2008 and consisting of nine judges drawn from trial and appellate courts, the Administrative

Director of the Courts, the Supreme Court legal counsel, and the Felony Sentencing Alternatives Specialist, the Committee is charged, among other things, with reviewing the research on evidence-based corrections practices, considering what works to reduce recidivism, improving the quality of information available to judges at sentencing, developing sentencing curricula for new and sitting judges, and acting as a liaison to the Department of Corrections on sentencing matters.<sup>11</sup> Idaho incorporated the Level of Service Inventory-Revised (LSI-R) risk and needs assessment information into its felony PSRs several years ago and in March 2013 incorporated substance abuse and mental health assessment information as well. Judges are periodically provided with training on the LSI-R and use of risk and needs assessment information in sentencing proceedings. The AOC is currently recruiting a staff sentencing specialist to work with judges on EBPs along with a behavioral health specialist to work with problem-solving courts.

The Indiana Supreme Court is the first and only state Supreme Court to address legal issues regarding the use of risk and needs assessment information in felony sentencing proceedings. As the Indiana Judicial Center was developing its IRAS tool, several lower court decisions questioned the use of risk and needs assessment information in sentencing proceedings. The Indiana Supreme Court heard the issue in *Malenchik v. State* and, after a lengthy discussion of the topic in an opinion authored by the current Chief Justice, unanimously endorsed the use of risk and needs assessment information by sentencing judges in determining whether to grant probation, the appropriate terms and conditions of probation and treatment services to be ordered, and other such sentencing considerations.<sup>12</sup> The Indiana Judicial Center and JTAC Committee

partnered with the Probation Officers Advisory Board and Probation Committee of the Judicial Conference to incorporate the automated IRAS risk and needs assessment information into newly designed and automated felony (and juvenile) PSRs and Probation Violation Reports. Extensive training on the IRAS and on the use of IRAS information in the sentencing process has been provided to judges and other stakeholders in many different settings. In 2011, for example, the Indiana Judicial Center co-sponsored “A Summit on Evidence-Based Practices and Risk Assessment” for over 800 judges, probation officers, prosecutors, defense attorneys, treatment providers and other criminal justice stakeholders.

The incorporation of risk and needs assessment information into felony PSRs has also been a common feature of state sentencing and corrections reforms resulting from state participation in recent Justice Reinvestment Initiatives. Pursuant to Kentucky’s Justice Reinvestment legislation, for example, LS/CMI risk and needs assessment information has been incorporated into all felony PSRs, and several judicial education programs have been conducted to train judges on EBPs, the risk assessment tool, and the use of risk and needs assessment information in the sentencing process.

South Dakota, Arkansas, and West Virginia provide additional examples. As a result of its 2013 JRI, the South Dakota Court and Department of Corrections have recently agreed to include summary graphs of offenders’ LSI-R risk and needs assessments in the state’s PSRs. Although PSRs are not commonly used in Arkansas because of resource constraints in the Department of Community Corrections, the recent Arkansas JRI resulted in creation of a pilot

project in one judicial circuit in which PSRs containing information from the Department’s recently-developed risk and needs assessment tool are provided to the three criminal judges in the circuit. The pilot court judges have also participated in education sessions on the use of such information.

In the midst of West Virginia’s recent JRI, the Supreme Court issued an Administrative Conference order directing that LS/CMI risk and needs assessment information be included in felony PSRs. As of early November 2013 about 500 such assessments had been concluded. As in Indiana the assessment information is also being used to create a database of offender information which can ultimately be combined with outcome data to determine what works and for whom. As in Kentucky, training on the use of risk and needs assessment information has been included in West Virginia’s judicial education programs.

Although Georgia’s 2012 JRI legislation does not provide for use of risk and needs assessment information in PSRs, it does require that the Board of Corrections use a risk and needs assessment tool in managing probationers, that the AOC use risk assessment tools in its administration of the state’s accountability courts, and that the Department of Corrections develop a risk assessment tool to assist judges in identifying lower risk, non-violent offenders who can be safely diverted from prison.

## **IV. The Exercise of Judicial Leadership**

The roles of judicial leaders in JRI states are quite different from the roles of judicial leaders in non-JRI states. By definition, the role of the Chief Justice or State Court

Administrator in a JRI is to personally represent the judicial branch on a high-level interbranch working group, including the Governor (or Governor’s designee) and legislative leaders, that is committed to securing enactment of a package of legislated sentencing and corrections reforms. In non-JRI states, judicial leadership in the field of evidence-based sentencing initiatives is exercised in diverse ways, depending on the governance structure of the particular judicial branch, but almost never through the legislative process.

In South Carolina and Arkansas, as noted earlier, the Chief Justices personally took the lead in the formation of the JRI. In South Carolina, the Chief Justice used her “political capital” to promote the initiative. The Arkansas State Court Administrator noted that impetus for the Arkansas JRI “all came from the court, and JRI wouldn’t have happened otherwise.” The Chief Justice in Arkansas, like the Chief Justices in Georgia and South Dakota, had personal as well as institutional interests in sentencing reform. This is true, as well, of the State Court Administrator in West Virginia who drew upon his previous corrections experience in concluding that a state cannot simply build its way out of a prison overcrowding situation. “They just seem to continue to fill if you don’t have a certain measure of justice reform,” he reported. He dealt “one on one” with all of the key players in West Virginia to bring about the JRI project.

The personal brand of leadership exercised by some of the JRI court leaders contrasts somewhat with the more institutionally-based forms exercised by most of the court leaders in the non-JRI states where court leaders exercised their institutional authority in ways consistent with the governance structures of their respective court systems.

In Arizona, where the Chief Justice is responsible for the Supreme Court’s administrative supervision over the trial courts and county probation departments, the Chief exercised her authority through formal administrative orders, creation of the Center for Evidence-Based Sentencing, and support for the work of the Center and the Director of Adult Probation Services. In Idaho, Indiana, and Wisconsin, leadership was exercised through Supreme Court committees and other judicial branch entities: the Felony Sentencing Committee and Administrative Conference in Idaho, the Planning and Policy Advisory Committee and its Effective Justice Strategies Subcommittee in Wisconsin, and the Judicial Conference and Judicial Center in Indiana. In Nebraska, where the Director of Probation Administration reports directly to the Supreme Court, the Chief Justice has provided institutional support to the Director for her probation and evidence-based sentencing reform initiatives through the Supreme Court’s Evidence-Based Practices Committee.

Finally, the Indiana Supreme Court provided extraordinary support to evidence-based sentencing initiatives not only in Indiana but across the country with the 2010 opinion in Malenchik. As noted earlier, this is the first state Supreme Court opinion to explicitly discuss and approve the use of risk and needs assessment information in felony sentencing proceedings.

## V. Follow-up Questions

In conducting the interviews with court leaders, the interviewers inquired not only about some of the specific provisions of the evidence-based sentencing initiatives in which the court leaders had participated, but

also sought their opinions regarding aspects of the initiatives that might be most helpful to leaders in other jurisdictions who may wish to pursue similar initiatives. Summaries of the court leaders' responses to these additional questions follow.

## 1. Why Did You Become Involved in These Activities?

In JRI states, unsurprisingly, the most commonly cited reasons were the states' current fiscal and budget challenges, the escalating costs of prisons, and prison overcrowding. In the words of one administrator:

I think the timing was right in the sense that there was a general view that there was a need for change, that we couldn't continue down the path of mandatory minimums and three strikes and all of that, how it has impacted the court system as well as the corrections system. I think that was probably one of the biggest factors—knowing from a financial standpoint that something needed to be done.

Court leaders also often echoed the theme that they saw a clear role for the courts in JRI projects and believed their participation presented unique opportunities for the courts, including, for example, the opportunity for better collaboration with the other branches of government. “We saw the benefit, and coming in 2009 when the economy was completely tanked, it was like ‘we've got to make this whole thing work better and the way to do that is collaboration’,” remarked one leader. Other leaders mentioned the “reinvestment” goal of JRI. One leader hoped that the courts too would benefit from reinvestment. “So, there is money being saved on the back end.... [The courts] want to have some of that

money plowed back in to help them,” he said.

On the other hand, prison overcrowding, the costs of prison, and state fiscal challenges were rarely mentioned by court leaders in non-JRI states. In non-JRI states the most commonly mentioned reasons were judicial frustration with seeing the same offenders recycle through the system, long waiting lists for treatment, the EBPs research, recidivism reduction, and the opportunity to use better information in making sentencing decisions, provide more sentence options, and expand and institutionalize drug courts. One court leader summarized:

I think the evidence was overwhelming that there was a better way of doing work in the criminal justice system. I think many of our judges, they just get tired of seeing the same people over and over again, and they really wanted tools that would help them be more effective in dealing with the offenders and reducing recidivism.

A Senior Supreme Court Judge spoke of the different perspectives of judges and legislators: “Well, my sense is that judges – I'm speaking categorically here – judges are far more interested in the outcomes and less recidivism than they are the costs.”

Court leaders in JRI states sometimes echoed these views as well:

Well, of course, we're seeking to achieve less recidivism. Judges don't want to see these people come back and back and back. We don't want to see their families come back and back and back.

## 2. What Have Been the Benefits of These Initiatives?

The perceived benefits of the various state initiatives tend to track with the reasons that court leaders became involved in the initiatives in the first place. In JRI states, the reduction of prison overcrowding and avoiding the need to build new prisons were often mentioned, sometimes as benefits that were especially important to the legislature. Another benefit often mentioned was the extent to which the initiatives brought people together. “We started to work together to solve these problems instead of working in silos,” replied one leader. One court administrator remarked that “this is really unique ... for us to come together the way that we did.” Another court leader noted that the new sentencing structure was fairer: “Lots of changes were made that I think have a greater impact from a fairness standpoint, and also more diversion of non-violent offenders from prison.”

In non-JRI states, and a few JRI states as well, the most frequently cited benefits are reductions in recidivism and revocations and the focus on EBPs. As noted earlier, Arizona court leaders cite a 38% reduction in felony convictions and 44% reduction in revocations to prison among probationers over the period FY 2008 to FY 2012. Other court leaders discuss changes in attitude on the part of judges and the Governor. The Wisconsin Court Administrator mentioned the state’s recent creation of a statewide Criminal Justice Coordination Council and inclusion of specific language about EBP in the Governor’s executive order creating the Council. A court leader in a JRI state discussed the benefit of a stronger focus on EBP:

Certainly a stronger focus on evidence-based practice in general and the role

that scientific research plays in developing our policies and our programs going forward. I guess that’s some of the cultural change that I’m talking about....We are now requiring, just on the administrative level, that all of our contracts with Drug Court treatment providers use evidence-based practices and we are going to audit those.

## 3. What Obstacles Have You Encountered?

“Resistance to change” was clearly the most frequently cited obstacle, mentioned by a majority of court leaders in both JRI and non-JRI states. Resistance to change was attributed to probation staff, judges, prosecutors, defense attorneys, and corrections officials. Other obstacles mentioned were disagreements in the Legislature or Governor’s office with specific proposed provisions of JRI legislation, the private prison lobby, turnover in the legislature, “lock ‘em up and throw away the key” mentalities on the part of some policy makers and practitioners, the absence of good data, the burdens of data identification and collection, the need for drug court evaluation and performance tools, and the absence of sufficient treatment programs. In at least one JRI state, legislative reaction to the recent commission of a serious crime by a parolee may interfere with ongoing implementation of the initiative.

Another often cited obstacle was the lack of sufficient time or resources to properly and effectively implement the reform initiatives. “The reality,” one State Court Administrator stated, “is that the implementation side of this takes a long time and will continue to take a long time.” Another recalled that “we were still trying to educate our judges on a

piece of legislation that was already in effect.”

#### 4. To What Factors Do You Attribute Your Success, and What Have You Learned As a Result of Your Efforts?

Some of the success factors cited by court leaders were unique to the special circumstances of their own particular states or reforms. Other success factors were unique to JRI states, such as the high-level interbranch effort; the “stars being aligned” (referring to the willingness of the Governor, Legislature, and Judicial leaders to work together); a good working relationship between members of the court’s Legislative Committee and members of the Legislature’s Judicial Committee; the Governor’s commitment to the project; and the commitment to pass the JRI legislation in one legislative session. Another success factor not unique to JRI states but more frequently cited in those states was the use of data to drive policy making and “to tell a story.” The compilation and use of data is, of course, an essential component of JRI’s data-driven approach to sentencing and corrections policy reform.

Several of the most important success factors cited, however, appear to be generally applicable to most states and were referenced by court leaders in both JRI and non-JRI states. The most frequently cited factor was effective judicial leadership, usually in reference to the leadership of the Chief Justice. In the words of one State Court Administrator, “Leadership is everything. Leadership is *everything*.” Court leaders also spoke of the importance of identifying a small group of dedicated champions to assume responsibility for day-to-day leadership of the reform initiative, persons who are prepared to work hard and

well together to drive the initiative forward. Effective interagency working relationships were also frequently referenced. In some states, such relationships existed prior to the current reforms. For example, one administrator said, “We have always believed it is important for all three branches of government to work together to accomplish a significant improvement relating to the courts.” In other states, effective interagency relationships evolved during the initiative itself. “I think it was just the right circumstances, right people, and a willingness to actually work together because we all had different motivations for solving the same problem,” replied another interviewee.

In fact one of the lessons sometimes cited was increased awareness of the substantial support in other agencies and branches of government for the use of problem solving courts and EBPs in sentencing and corrections such that both topics created useful platforms for ongoing interagency and interbranch activities. As one court leader put it, “It’s a way to get your foot in the door as it were for other cooperative efforts.”

A third success factor was the active involvement and participation of judges (and, in some cases, probation officers, prosecutors, and defense attorneys) in the development of the reform proposals and in their implementation. This was typically accomplished by keeping judges and other stakeholders informed of ongoing developments through a website or distribution of minutes or summaries of policy-making meetings, and the use of focus groups or committees of judges and other stakeholders to provide reactions and recommendations to policy makers. One court leader, for example, described why meeting minutes were disseminated:

Everybody wanted to know what the discussion was and for them to actually see it, I think, calmed some fears. I think it was important to keep some lines of communication very clearly open for all the stakeholder groups.

An important lesson learned from the experiences of the eleven states surveyed is to get the judges engaged and invested in the initiative early and often. One court leader put it this way:

I think the most important thing is that you can't communicate enough with your stakeholders. You can't get the judges involved too early in the process.

The importance of getting stakeholders involved early is highlighted by the experience of one state in developing its risk and needs assessment tool:

You know, one of the things we learned from the risk assessment project is that we did not include prosecutors or public defenders in the discussions on developing the risk assessment, and they have been our major detractors probably for the first two years of implementation.

Other leaders emphasized the importance of sharing the research about EBPs and the lessons learned from other states with judges “upfront” and having judges from other states available “who can talk about the pros and cons or where the pitfalls are because it always helps judges to hear from other judges.”

A related success factor in the implementation of reform initiatives is the development of effective initial and continuing education and training programs for judges and other stakeholders. The

states that had involved judges and other stakeholders early in the development phase of the initiative and then again through education and training programs in the implementation phase appeared to face fewer implementation challenges and less resistance to reform objectives. In light of turnover among judges and other stakeholders, the use of continuing education programs also appears to be critical.

Although policy makers sometimes view implementation issues as someone else's job or questions to be addressed another day, one of the important lessons learned from the initiatives reviewed here is that it is important to consider foreseeable implementation issues in the policy making process in order to ensure that the policies can realistically be implemented within the time frames and with the resources available. One court leader summarized the lesson learned as, “Don't ignore the fact that you're going to have to implement this at some point. Be thinking of your resource needs as you go through it.” Explaining more fully, she said,

I understand that it's hard to talk about implementation when you don't know yet what you're going to be implementing, but it's a double-edged sword because if you don't talk about implementation, then your success in implementation is really compromised because you end up trying to put into motion something that doesn't make sense and doesn't have a prayer of moving forward. On the other hand, I will add that if you let the issue of money get in the way, you'll never get anything done.

## VI. Conclusion

Since 2007, through the force of several joint resolutions, the CCJ and COSCA Committee on Criminal Justice, a National Working Group on Using Offender Risk and Needs Assessment Information at Sentencing, and the work of their staff organization, the National Center for State Courts, CCJ and COSCA have provided strong national leadership in support of state evidence-based sentencing initiatives to reduce recidivism, manage offender risk, and hold offenders accountable. For much of the last decade, court leaders in many states across the country, including the eleven featured here, have developed and implemented evidence-based sentencing initiatives.

Across these eleven states, judicial leadership took different forms, was exercised in different ways—depending on the governance structure of the state judiciary, the context, and sometimes the personal background or interest of the leader—and, in different states, was exercised towards quite different ends. But, as the interviews make clear, judicial leadership was invariably indispensable.

It is too early in most of the states featured here to know how well the evidence-based sentencing initiatives are actually working in achieving their objectives. In Arizona, an early adopter of evidence-based sentencing reforms, the results have been positive, and quite dramatic. The future for such reforms appears promising. The author hopes that this report proves useful to those who would pursue similar reforms in other jurisdictions.

### Endnotes

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<sup>1</sup>Conference of Chief Justices and Conference of State Court Administrators.

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(2007). *Resolution 12 In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism*.

Williamsburg, VA: National Center for State Courts (available

<http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/08012007-Support-Sentencing-Public-Safety-Reduce-Recidivism.ashx>).

CCJ and COSCA include the highest ranking judicial officer and court administrator from every state and U. S.

Territory.

<sup>2</sup> Casey, P., Warren, R. K., & Elek, J.

(2011). *Using Offender Risk Assessment Information at Sentencing: Guidance for Courts from a National Working Group*.

Williamsburg, VA: National Center for State Courts (available

<http://www.ncsc.org/sitecore/content/microsites/csi/home/Topics/~media/Microsites/Files/CSI/RNA%20Guide%20Final.ashx>).

The monograph also called upon state and local judicial leaders to provide the leadership for implementation of such evidence-based sentencing practices and recognized specific examples of such leadership across the country (pp. 37-41). For the resolution endorsing the guiding principles, see

Conference of Chief Justices and Conference of State Court Administrators.

(2011). *Resolution 7 In Support of the Guiding Principles on Using Risk and Needs Assessment Information in the Sentencing Process*.

Williamsburg, VA: National Center for State Courts (available

<http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/08032011-Support-Guiding-Principles-Using-Risk-Needs-Assessment-Information-Sentencing-Process.ashx>).

<sup>3</sup> Judge Roger Warren and Dr. Pamela Casey conducted the interviews during the summer and fall of 2013. The interviewers reviewed state court administrator responses to the CCJ and COSCA Survey of Evidence-Based Practices in Sentencing and Probation conducted in 2011 and 2012 in combination with their own knowledge of state reform efforts to identify potential state reforms to feature in the report. The final set of states

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was selected based on the variety of reforms, leadership approaches, and geographic diversity the states offered.

<sup>4</sup> The Offender Screening Tool initially was developed and validated in Maricopa County (Phoenix).

<sup>5</sup> See p. 3 in Arizona Supreme Court (2009). *Administrative Order No. 2009- 01: Budget reductions in the judicial branch of Arizona*. Phoenix, AZ: Author (available <http://www.azcourts.gov/portals/22/admorder/orders09/2009-01.pdf>).

<sup>6</sup> Indiana and Wisconsin also participated in a JRI but the efforts did not result in enactment of comprehensive JRI legislation. Idaho is currently involved in a JRI. A JRI typically brings together leaders from all three branches of state government to enact legislative policies that improve public safety, reduce recidivism, hold offenders accountable, and reduce corrections spending. These efforts have been supported by the Pew Public Safety Performance Project (<http://www.pewstates.org/projects/public-safety-performance-project-328068>) and, more recently, the Office of Justice Programs, Bureau of Justice Assistance (<http://www.ojp.usdoj.gov/BJA/JRI>) and their partner organizations. For more information, see Urban Institute. (2013). *The Justice Reinvestment Initiative: Experiences from the States* (NCJ 243201). Washington, DC: Bureau of Justice Assistance (available <https://www.bja.gov/Publications/UI-JRI-State-Experiences.pdf>).

<sup>7</sup> See Conference of Chief Justices and Conference of State Court Administrators (2007) at endnote 1.

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<sup>8</sup> Arizona Supreme Court. (2007, October). *News release: Chief Justice Ruth V. McGregor announces Center for Evidence Based Sentencing*. Phoenix, AZ: Author (available <http://www.supreme.state.az.us/media/archive/2007/10-10-07CenterEBSent.pdf>).

<sup>9</sup> See Wisconsin Court System, Court Programs, Effective Justice Strategies webpage at <http://www.wicourts.gov/courts/programs/alternatives.htm>.

<sup>10</sup> The Train the Trainers program used the *Evidence-Based Sentencing to Improve Public Safety and Reduce Recidivism: A Model Curriculum for Judges*, available on the CSI website at <http://www.ncsc.org/sitecore/content/microsites/csi/home/Education.aspx>.

<sup>11</sup> Supreme Court of the State of Idaho. (2008, May). *Formation and membership of the Felony Sentencing Committee*. Boise, ID: Author. Also see Judicial Branch, State of Idaho. (2009). Report to Governor C.L. “Butch” Otter and the 1st Regular Session of the 62nd Idaho Legislature: Felony sentencing alternatives—Implementing evidence-based practices. Boise, ID: Author (available <http://www.isc.idaho.gov/links/2012YearlyFelonySentencingAlternatives.pdf>).

<sup>12</sup> Malenchik v. State, 928 N.E.2d 564 (2010). (available <http://www.in.gov/judiciary/opinions/pdf/06091001bd.pdf>)