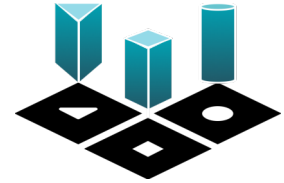




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March 7, 2017

Kathleen Cooper Grill  
General Counsel  
U.S. Sentencing Commission  
One Columbus Circle, NE  
Suite 2-500 South Lobby  
Washington, DC 20002

Dear Honorable Members of the U.S. Sentencing Commission:

I greatly appreciate the opportunity to provide you with information about alternatives to incarceration programs, particularly court programs. I will limit my comments to the issues with alternatives to incarceration programming and efforts, to the design of solid problem-solving courts (drug courts), to how best to view the evidence about effectiveness, and to the role of the judges in this process.

### **Alternatives to Incarceration *are* Mainstream Punishments**

The concept of “alternatives to incarceration” were that these are a secondary set of punishments or sanctions that can be offered in lieu of incarceration. The “in lieu” suggests that it is an alternative instead of a legitimate, primary tool to punish or sanction a person. In the 1970’s and onward, the notion that these sanctions grew out of the notion that there are a range of punishments that are valid and could be offered as a substitute for incarceration. Hence, the focus on alternatives. Over nearly 50 years, these alternatives have now become mainstream where they are integrated into justice systems, and moreso have become routine components for community corrections (probation systems). Drug treatment courts are legitimate tools to provide a vehicle to addressing the addiction disorders that affect involvement in criminal behavior, and utilize justice resources of judges, prosecutors, defense, treatment and probation/case mangers to address these drivers of criminal behavior.

More importantly, these alternatives are effective in reducing recidivism, even more than incarceration. In fact, incarceration has been determined to be criminogenic according to a number of scholars (see Cullen, Jonston, & Nagin, 2011), and long prison terms are considered to be ineffective and also have a harmful (iatrogenic) effect. Overall the punishments that reduce recidivism, based on the available literature and meta-analyses, are: drug treatment courts (Mitchell, et al., 2012), therapeutic communities (Inciardi, 1999), Risk-Need-Responsivity Supervision (Caldwell, et al., 2014; Drake, 2012), cognitive behavioral therapy (NIDA, 2009) with supervision, contingency management (NIDA, 2009). And, research finds that providing medically assisted treatments (such as buprenorphine, suboxone, methadone, etc.) before release from prison followed by continued treatment in the community are effective in

reducing recidivism, increasing continued care in the community, and reducing mortality. These models reduce recidivism, and also serve to protect the community.

In the problem solving court literature, the drug treatment model reduces recidivism (Mitchell, et al., 2012) but studies have not found that other problem solving models for DUI, juvenile drug use, reentry, or other targeted models to achieve the same results. The difference between the drug court model and these other court models is that the focus is on using addiction treatment programs to supplement the court and supervision components of drug testing, status hearings, case management meetings, and ancillary services. Drug treatment courts focus on one behavior—drug use and abuse—whereas some of the other problem solving courts are less specific. And, the therapeutic interventions are less directive and theoretically clear. That could be why those courts do not demonstrate as clear of a pattern of reduced recidivism since the behaviors that they are trying to address do not have a defined set of evidence-based treatments.

### **Risk and Need Assessment: Assignment to Interventions/Drug Courts**

A major challenge confronting judges and corrections is what type of person should be placed into what type of program or service? Risk and need assessment tools are designed to conduct an assessment of the factors that should drive placement in programs or services. These tools are critically important to identify the key drivers of factors that affect which programs/services/correctional options that would benefit the person. The Administrative Office of the Courts has a well-designed tool (PCRA) that could be useful for identify which individuals might be better served by different types of correctional or court programs. The U.S. Sentencing Commission may also desire to have a third or fourth generation risk and need assessment tool to identify who could benefit from different options, and also to assess which criminogenic factors are affecting involvement in criminal behavior.

Risk-need assessment tools are important vehicles to: 1) identify risk factors that affect the likelihood of involvement in the justice system; 2) identify dynamic needs (also risk factors that more likely to be changeable) that affect involvement in criminal behavior; and 3) other factors that affect stability such as housing stability, food stability, motivation to change, developmental issues, intellectual disabilities, and so on. These factors are important to consider in terms of placement in appropriate programs and services—with the general rule that dynamic needs should drive the type of program placement. Risk and other factors should drive the intensity of the programming, as well as the degree to which more social controls are needed as part of a strategy to address public safety factors.

The translation of information from a risk and need assessment tool to determining the appropriate programming options—that is, the option that will result in the reduction of recidivism—requires consideration of prioritizing risk and need information. To facilitate this process, the Center for Advancing Correctional Excellence (ACE!) developed a decision-support tool to advance these decisions. The *RNR Simulation Tool* ([www.gmuace.org/tools](http://www.gmuace.org/tools)) is designed to take information from a risk and need assessment tool as feeders into a empirically-derived formulas which then identify the programs that are most likely to reduce recidivism. (And, if a jurisdiction has used information to classify programs in the community, then the identification refers to local programs. (For more information, see Taxman, Pattavina, & Caudy, 2014). This process enhances evidence-based practices by focusing attention on using information from risk-needs assessment tools to identify the appropriate programs and services.

In general, drug courts should serve those with substance use disorders but primarily those where the substance use is the primary driver of criminal behavior. Drug courts are well-suited for those with addiction-type disorders. Individuals with addiction disorders need structured, intensive interventions to achieve recovery, and drug courts provide that vehicle. Risk level matters in terms of the length of the program, and the type of social controls that are used to help support recovery. But, drug courts are designed for those with high tolerance for substances, particularly illicit ones where structure, reinforcement, and responses are needed to shape recovery.

### **Program Quality: Standards**

Adhering to quality indicators for programs and services is a major challenge facing programs designed to reduce recidivism. Program quality has been one of the drivers of ineffective efforts to reduce recidivism—that is, many programs, regardless of their name or title, do not necessarily include all of the vital components of a program. Part of this dilemma is due to the lack of specificity in the research literature as to the core components that affect individual-level outcomes, whereas some of it due to programs trying to do too much in too short period of time, without proper staff or resources to replicate the research literature, or without having the quality assurance and control mechanisms in place to know when programs/services are not providing the actual programming to make a difference. Program quality is a critical issue that can not be understated.

The National Association of Drug Court Professionals (NADCP) issued a two-set volume on standards for problem solving courts that describe the rationale for the standard, the scientific premise, and the core components (see <http://www.nadcp.org/Standards>). There are 10 standards including target populations, inclusion of disadvantaged individuals, role and responsibility of judges, substance abuse treatment, status hearings with sanctions/incentives, drug testing, multidisciplinary teams, supplemental services, evaluation and monitoring. This well-documented set of standards lays a foundation for the design and features of effective drug treatment courts, and problem solving courts. It provides a toolkit to help problem solving courts design and monitor their implemented programs/services.

As part of the continuing support to address quality in programs, the **RNR Simulation Tool** has an online survey that program administrators can complete. In the *Assess the Program* arena, the administrator can complete a 90-minute survey of the program and it will generate a report card of how the program meets the standards of evidence-based programming and treatments. Besides scoring the program in six areas (i.e. risk principle, need principle, responsivity, dosage, implementation/staffing/quality improvements, and special features), the results include a list of enhancements that can be used to strengthen the program. We also have a special report for Problem Solving Courts and Reentry Case Management given that there are slightly different standards and evidence-based practices for these efforts than other correctional interventions.

The question is frequently raised regarding an outcome study versus a process or implementation study. Given the robust literature on the effectiveness of drug treatment courts and the reoccurring themes regarding program quality issues, it is important to conduct a process evaluation or at a minimum of program inventory (such as the *Assess the Program* survey). Such efforts will document the current status of the programs in terms of meeting the NADCP standards, evidence-based practices and treatments, and the management of the program to be high fidelity or adherence to the features that are most important to deliver results. For small programs like problem solving courts with under 30 people, it is worthwhile to

begin with a program review (process evaluation or program inventory). Although, I believe this review is critical for any size of a program to get a better handle on how the program is structured and resourced. Valuable evaluation resources can be devoted to how well the program is structured to meet the standards of evidence-based practices, and what are the areas that need attention to advance practice.

A program quality issue is the working relationship between the individual and the justice actors, particularly the judge in a drug court environment. The general literature reinforces the importance of a working relationship that is built on trust, caring, and respect. In the probation and parole literature, there is clear research literature that supports the importance of the working relationship in improving outcomes; individuals are more likely to be open and feel that they have a voice when the environment supports behavioral change, and its difficult twists and turns with relapse and remissions. Creating a drug court environment that supports behavioral change and has the judge, prosecutor, and defense attorney provide a supportive platform are important to make headways in fostering behavioral change.

## Conclusion

In conclusion, the empirical literature recognizes that drug treatment courts are part of the landscape of effective programs. Incarceration is costly to the individual (in terms of social loss and difficult to regain citizenship) and society (in terms of fostering criminogenic behaviors and not breaking the cycle of justice involvement). A full continuum of sanctions is recommended to better use justice resources first, but also to provide punishments that can serve the goals of deterrence, rehabilitation, incapacitation, and retribution. The proliferation of evidence-based practices and treatments now means that there are standards that the system can rely upon for programs and services that are better suited to reduce recidivism. Drug courts are one model that has been shown to be effective just like the risk-need-responsivity supervision model that the Administrative Office of the Courts and federal probation offices are implementing.

The U.S. Sentencing Commission has an opportunity now to revisit the question of what is the most effective punishment given our state of scientific knowledge about effective interventions. As discussed in the attached paper (Taxman, F.S., & Breno, A. (2017, in press) *Alternatives to incarceration are no longer alternatives (hint: they are now mainstream sentencing options)*,<sup>2</sup> to be published in ***Oxford Research Encyclopedia of Criminology and Criminal Justice***, there are a number of mainstream punishments, many of which are more effective than incarceration. Drug treatment courts and RNR Supervision are readily available to address the recidivism reduction issue.

Thank you for this opportunity to share our research findings with you. Feel free to contact me at [ftaxman@gmu.edu](mailto:ftaxman@gmu.edu) or 571-205-8282.

Sincerely,



Faye S. Taxman, Ph.D.  
University Professor

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**Alternatives to incarceration are no longer alternatives**  
**(hint: they are now mainstream sentencing options)**

Faye S Taxman and Alex Breno

To be published in *Oxford Research Encyclopedia of Criminology and Criminal Justice*

**Summary**

Alternatives to incarceration are more than options, they have evolved into sentences of their own accord. Originally, probation and prison were the two major sentences however the concept of intermediate or graduated sanctions emerged in the 1980s, and evolved throughout the 1990s. While alternatives to incarceration were considered options, they are now recognized as intermediate sanctions, graduated sanctions, and just plain sentencing options. This emergence occurred during the time that probation plus conditions sentences spiked so that the average probationer now has over 17 standard conditions (Taxman, 2012). With Justice Reinvestment Initiatives as a national effort to reduce the impact of mass incarceration policies, it has served to legitimize sentences that used to be considered “alternatives”, by incorporating risk-need assessments, legislation to reduce sentence lengths and incarceration sentences, and changes in practices to address non-compliant probationers and parolees. In this paper, a new conceptual model is proposed that integrates sentencing options with results from a risk and need assessment depending on various types of liberty restrictions. Given the need to reduce prison overcrowding, there is an even further need to examine how different sentencing options can be used for different type of individuals.

**Keywords:** Alternatives, sanctions, Justice Reinvestment Initiative, sentencing, probation, incarceration

Alternatives to incarceration is a term coined to signify justice responses that are designed to avoid the use of incarceration at various points in the justice system—arrest, pretrial, jail, prison, and semi-incarceration facilities. For adjudicated individuals, alternatives to incarceration generally signal sentences or sanctions that are provided *in lieu* of a jail or prison sentence, hence the term alternative. These alternatives could actually be considered a class of sentences justified on their own accord as fair, parsimonious, and proportional to the convicted criminal behavior. The term alternative can also signify that the system has a number of sentencing options where incarceration can be used. The distinction between a justified replacement for an incarceration sentence and an appropriate sentence in its own right depends on the state of sentencing in different jurisdictions. Probably most perplexing is that the same sentencing options can be considered both rightful sentences and alternative sentences in the same jurisdiction. In many instances, alternatives are used as sanctions for individuals on probation or parole, only adding to the many ways alternatives are being used. The concept of “alternative” can have different meaning in various contexts, both at the systematic level, as well as individual sentencing level.

Essentially, the concept of alternatives to incarceration is no longer an alternative but part of the legitimate sentencing options. We will first look at what the sentencing options look like, as well as some of the literature behind the various forms. Then, we will examine the legitimatization of sentencing options by looking at the Justice Reinvestment Initiative. We then conclude with a discussion of how these options can build on reducing recidivism, through sentencing options that meet the needs of individuals in the system.

### **What do sentencing options look like?**

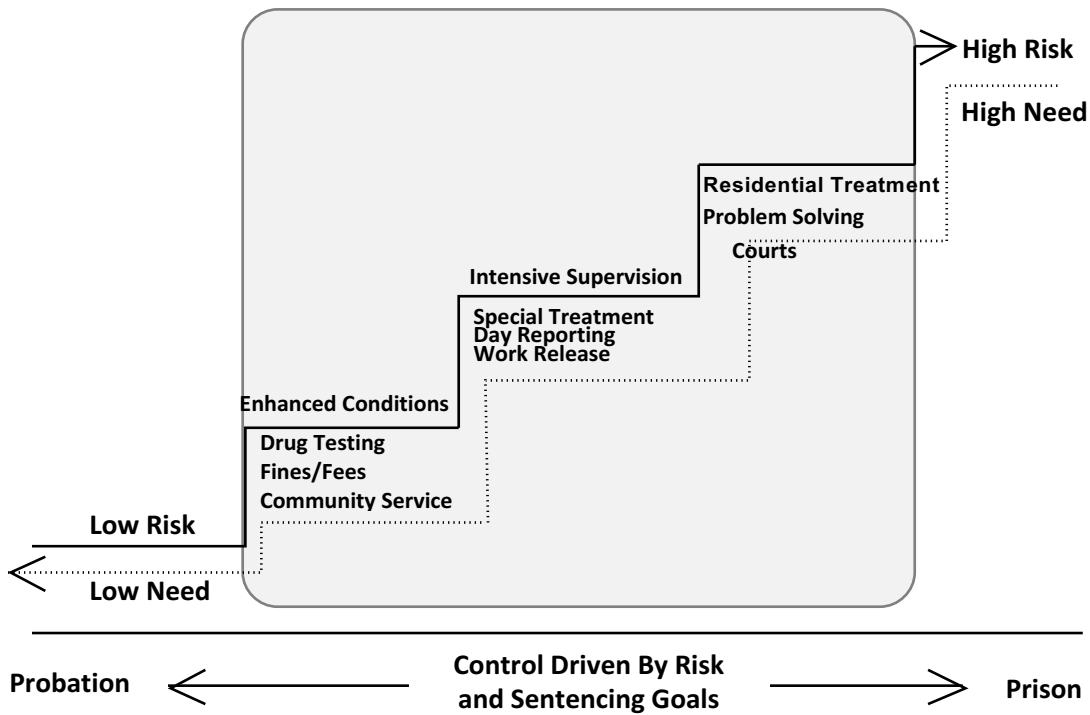
Within the framework of sentencing options, there are two polar extremes: probation and prison. Probation is generally considered the sentence option for less serious offenses, and individuals with less serious criminal histories. Incarceration is generally reserved for those with more serious offenses and histories. In-between probation and prison are a number of sentencing options that use features from both probation and incarceration to impose punishment and controls on the individual (Morris and Tonry, 1991). The placement in different settings (incarceration vs. probation) often depends on the sentencing culture of a jurisdiction including guidelines and/or normative expectations. Generally, the sentence is influenced by the severity of the offense, the criminal history of the individual, and the nature of “like” sentences in a jurisdiction. The decision about what type of punishment to use also considers whether the goal is incapacitation, rehabilitation, retribution, or deterrence. Often times the sentencing goals are convoluted with an emphasis on more than one area. However, as shown in Figure 1 below, the sentencing options use a variety of restraints, restrictions, and controls as punishment but can offer a series of treatments, services, and interventions alongside these controls. More specifically, a number of these sentencing options can be, and are, used as a means to reintegrate offenders back into the community, such as halfway houses, some intensive supervision probations/paroles, and electronic monitoring (Bonta & Motiuk, 1987; Hartman, Friday, & Minor, 1994; Petersilia & Turner, 1993; Finn & Muirhead-Steves, 2002).

Below is a depiction of the optimal sentencing scheme that offers a number of options that range from probation to prison. The community sanctions vary based on the number and type of restrictions that occur. Figure 1 predisposes the placement based on the risk and *needs* that an individual presents (to be discussed below). This figure integrates the use of risk for future justice involvement and *needs* (for factors that are changeable) in terms of identifying the



appropriate sentencing option. The degree of restriction is often viewed as a form of punishment, which is based on different application principles.

**Figure 1: Overview of Conceptual Model of Sentencing Options**



A few cautionary notes regarding intermediate sanctions falling between probation and prison. First, an individual has the right to choose to participate in the programs, particularly treatment programs such as problem solving courts, that new sentencing options offer. For example, an individual may be sentenced to a residential treatment facility, but the individual has the right to refuse participation in the treatment facility. The second issue stems from the question of how individuals are selected for these sentencing options. Some of the programs/options have set eligibility criteria while others do not. That is, a limitation is that sentencing judges can determine a probation or prison/jail sentence but many of the sentencing

options that fall between “probation and prison” often require the agreement of the individual that they would like to participate in this program/sentencing option.

### **Setting as the Form of Structural Liberty Restrictions**

The setting for the punishment outlines the amount and degree of liberty restrictions over an individual. Besides the setting of where the person is serving their sentence, the requirements of the sentence may also define the restrictions, limitations, and civic responsibilities of an individual. That is, the greater the number of restrictions imposed, the more the individual’s daily activities are being monitored and/or controlled by the state. This has implications whether the setting of the punishment, or the number of limitations, defines the controls imposed on the individual. With the advent of controls in the community, the line between incarceration and community is often blurred, and this affects the sentencing options. It should also be noted that the length of time that the punishment is imposed—the sentence length—varies by jurisdiction, and that the longer a sentence, the more of an impact the setting (and conditions imposed) has on the person. Following, we discuss the literature on the effectiveness of incarceration and numerous alternatives that have emerged over the past few decades.

### ***Incarceration***

Incarceration can occur in a prison or jail setting. The imposition of an incarceration sentence punishes the person by imposing the most extreme liberty restrictions that include total confinement (that is, 24/7) as well as total control over daily decisions. Liberty restrictions during confinement involve a loss of the ability to make decisions about movements and activities as well as key survival decisions of food, clothing, and shelter. The “total institution” actually exercises controls over every aspect of a person’s life, including psychological, spatial,

and financial, to the point where they remove the person from their support systems, such as families and children.

With all these restrictions, the question then becomes “is incarceration worth it?” given the overall effectiveness of incarceration on future offending behavior. How well does incarceration do at preventing individuals from committing more crime? In a meta-analytic study of the relationship between incarceration and recidivism, Gendreau, Goggin, Cullen, and Andrews (2000) found that the more time an individual spends in prison, the more likely they are to recidivate. They argue that prisons are actually “schools of crime” rather than a deterring presence. Mears and Bales (2009) found that simply being admitted to a super-max prison increased an individual’s likelihood for committing another violent crime within three years of release. Nagin and Cullen (2007) found that incarceration does not reduce recidivism and might be iatrogenic, or increasing failure rates. Since incarceration has not been proven to reduce recidivism, and it seems to increase it, alternatives are seen as suitable punishments that achieve desired goals but do not have the same negative impacts on the ability of individuals to be crime- and/or drug-free (Sung & Lieb, 1993; Gendreau, Goggin, Cullen, & Andrews, 2000; Mears & Bales, 2009).

### ***Shock Incarceration or Boot Camps***

The notion of “shock” incarceration is exposure to the prison environment may serve as a deterrent. This is the premise that the “scared straight” program in the early 1980s was built on, even though research studies that it did not affect recidivism (Finckenauer, et al., 2003). The notion of shock incarceration was reformulated in the 1990s via boot camps. Boots camps were designed as a short-term incarceration experience designed to reduce recidivism which again evaluation studies found that the boot camps did not achieve that goal (see MacKenzie, 2006). It

appears that adding incarceration does little to reduce recidivism, even when combined with short-term experiences. The previous literature, stemming from the 1980's to the 2000's, evaluating boot camp programs does not lead to a promising outlook on their effectiveness to reduce recidivism. Sechrest (1989) performed a study in Florida assessing how well the prison boot camps influenced offenders return to prison rates, technical violation rates, and absconding rates. Those who participated in the boot camp program, compared to matched non-participants, were not significantly different in the number of technical violations or return to prison rates (Sechrest, 1989). This finding is consistent with others studies that concluded that juveniles that participated in boot camps perceived their environment more positively, were less hostile toward others, but viewed they had less freedom than juveniles in traditional facilities. This led to individuals becoming less antisocial and less depressed (MacKenzie, Wilson, Armstrong, and Gover, 2001). Ultimately, boot camps are viewed as ineffective in reducing recidivism. However, participants in therapeutic boot camps fared better than punishment-oriented boot camps (Biere, et al., 2009).

### ***Semi-Incarceration or Half-Back Programming***

A series of semi-incarceration facilities exist that serve to incapacitate a person but for shorter periods of time and to provide other forms of punishment: residential treatment facilities, halfway houses, work release centers, and other facilities. Such facilities tend to be smaller facilities (under 200 people) than the traditional jail or prison, and the facilities typically allow for more movement and independent living under the watchful eye of the state. And, these facilities offer offer programs to address factors that affect involvement in the justice system. Most sentences are shorter than a prison and/or jail sentence, and sometimes placement in these programs is similar to transitional release from prison or jail to assist with reentry phase. Except

for residential treatment programs, most individuals are involved in some type of work on or off the premises of the facility.

A plethora of literature has been published assessing the effectiveness of halfway houses throughout the United States and Canada. Generally, studies have found that halfway houses tend to have differential effects depending on the risk level of the individual. Lowenkamp & Latessa (2005) found that participants in halfway houses that were lower risk tended to have higher recidivism rates than those that were higher risk. In other words, higher risk participants of halfway houses fared better.

### ***Day Programming, Intensive Supervision Probation, Problem Solving Courts, and Other Intensive Community Controls***

A semi-restrictive environment is a series of programming that exercise more control over the individual in terms of various forms of restrictions that affect the psychological, spatial, or financial resources of an individual. Significant periods of the 24 hour days restrict or define the daily movements of the individual. This serves to place limits on the individual while pursuing options to address substance abuse, mental illness, criminal cognitions, or other factors that affect the individual's ability to be a productive, proactive citizen.

Intensive supervision probations/paroles (ISP) are of the most common types of intensive community controls. ISP are sometimes used in conjunction with other forms of intermediate sanctions, such as electronic monitoring and house arrest (Marciniak, 2000) or even referrals to treatment. The effectiveness of these ISP's varies depending on the goal set by the program. In a review of ISP studies, Byrne (1990) found that there are four different goals that can be identified in an ISP program: punishment, diversion, cost effectiveness, and recidivism. Petersilia and Turner (1991, 1993) studied the relationship between offenders being sentenced to

ISP's and different outcome measures (depending on the goal set). The study included 14 ISP programs that served about 2000 offenders who were randomly assigned to either ISP or routine probation. ISP increased number of contacts with officer and number of drug tests. ISP resulted in more face to face contacts with their officers (average of 5 per month compared to 1.75 per month), underwent more drug testing (1.5 per month compared to .4 per month), received more counseling (48% compared to 22%), and had higher levels of employment (59% compared to 38%) (Turner, Petersilia, and Deschenes, 1992). ISP did not reduce recidivism and, in some sites, the ISP increased technical violations (Petersilia and Turner, 1993).

In the 1990s, the concept of problem solving courts were developed as part of an effort to better handle those that were drug-involved. The problem solving court is generally considered a judicial alternative since it is administered by the court (judge) armed with prosecutors, defenders, treatment providers, probation officers/case managers, and coordinators. Drug treatment courts are considered effective in reducing recidivism in a number of meta-analyses and systematic reviews (Mitchell, Wilson, Eggers, & MacKenzie, 2012). The court model advances comprehensive programming that includes status hearings to monitor the progress of the individual, drug testing, drug and/or other treatment, vocational training or employment options, and a myriad of issues to assist the individual with their drug problem.

### ***Probation***

Probation is the least restrictive form of punishment in lieu of incarceration, given that individuals remain in their own residence and are responsible for the conditions of supervision. The conditions of probation may define different ways that an individual can be restricted, even as severe as the ultimate restrictions consistent with incarceration. Since a probation sentence requires the individual to report their whereabouts daily to a third party, it also requires other

conditions. A recent study found that probation can have an average of 17 conditions (Corbett, 2014) such sometimes includes house arrest, financial penalties that restrict oftentimes consume discretionary income which limits the individual's ability to pay for food and clothing, timely meetings with the probation officer and other limitations. Oftentimes, drug and/or alcohol testing are required.

Increasingly, curfews, house arrest, and electronic monitoring are being used for individuals on probation. Probationers participating in electronic monitoring Gainey, Payne, and O'Toole (2000) often have to pay for their equipment, pay for electricity and phone connection, and respond to computer signals. A recent study found that the the number of days on electronic monitoring increased, the chance of re-arrest decreased (Gainey, Payne, and O'Toole, 2000). Electronic monitoring has mixed conclusions (Padgett, Bales, & Blomberg, 2006; Bonta, Wallace-Capretta, & Rooney, 2000; Renzema & Mayo-Wilson, 2005; Finn & Muirhead-Steves, 2002).

### **Nature of Restrictions as a Form of Punishment**

As shown above, there are a number of different strategies to enhance the punishment and to transform the sanction to be tailored to the needs to either treat or control the individual. While sentencing used to be about the setting (i.e. prison/jail or the community), the development and utilization of various forms of rehabilitative and social control techniques have altered the nature of the sentences drastically. The degree of liberty restrictions depends on the setting, but it also depends on the conditions of the sentence that have an impact on the psychological, spatial, and/or financial restrictions that can be imposed directly by the sentencing judge, or even by the probation/correctional system. These are collateral forms of punishment. (Note: these are separate and apart from the collateral consequences such as housing restrictions,

voting restrictions, employment restrictions, and other forms of limitations on participation in civil society activities or what is part of the role of a citizen.) Sentences can be configured to be responsive to the needs of the individual, as well as advance social control.

The emergence of the variety of conditions has transformed probation considerably. In the past, most of the conditions were generally programmatic (i.e. substance abuse treatment, employment, education, etc.). But, as shown above, the advent of a variety of treatment and control conditions has transformed the probation sentence considerably. This has led to increases in various forms of direct and indirect punishments that are inherent in the probation sentence.

### ***Psychological Restrictions***

A number of conditions refer to the improvement in the mental health and overall functioning of the individual. Special conditions may include requirements to be evaluated and/or participation in treatment for mental health issues, substance abuse, and/or criminal cognitions. These conditions necessitate the person to attend to physical or mental health issues as part of their sentence. An evaluation is usually part of assessing whether the person has a preexisting condition that affects their involvement in criminal behavior, functionality as a citizen, and ability to be prosocial. Psychological treatment is considered as a means to assist the person in better understanding their own behavior (cognitions) and potential to learn new behavior, skills, or approaches to different matters (behavioral). Both evaluations and treatments are considered appropriate, and used frequently as sentencing conditions. Unless the individual is a harm to him/her self, or a danger to society, sentences cannot generally require the individual to take medications (as per the due process clauses of the fifth and 14<sup>th</sup> amendment). The individual must make their own independent decisions to take medications for mental illness or



substance use disorders, but the system can also use different incentive structures to encourage the use of medications or participation in behavioral therapies.

Other forms of psychological restrictions refer to the civil life of the individual. Usually being on supervision places pressure on a person, especially with more intensive reporting requirements and having to provide documentation of one's whereabouts to a third party. Another form of psychological strain may involve the number and type of requirements for supervision—in fact, most probationers have an average of 17 conditions (Taxman, 2012), which means that the probation supervision affects many aspects of their lives. For example, probation can involve requirements to be employed, to stay away from certain friends or family members, to perform community service (even in a place that the person may not desire to be at), and other intrusions in a person's life. The degree of psychological strain is two-pronged: the number of requirements; and, the degree to which they affect daily activities and the potential threat of being considered non-compliant and subject to revocation. The degree of psychological strain has not been measured, although there is increasing attention to this issue. One particular example in the early years of probation programming with strict conditions, Petersilia and Deschenes (1994) found that one-third of probationers prefer jail to an intermediate sanction sentence (probation with many conditions).

### ***Spatial restrictions***

More conditions refer to spatial constraints that limit the movement of the individual person. These include curfews, area restrictions, requirements to be in a particular place for a set period of time (i.e. for treatment, for community service, etcetera), and requirements that limit interaction with friends, colleagues, or support systems. House arrest is one specific form of spatial restriction that involves total control over the areas a person can occupy. Additionally, as

discussed earlier, there are geographical tools to monitor the location of an individual, such as electronic monitors or Global Positioning Systems, trackers on cell phones, and other technological tools. These restrictions can create “walls” in the community by placing barriers on geographical areas that one can travel.

### ***Financial restrictions***

Being on probation, as compared to incarceration, can involve a number of financial obligations. These include probation fees, drug testing fees, mandated restitution or other fee payments, and the use of other financial requirements that use the individual’s resources as a form of punishment. Each type of financial burden may have a different purpose, but collectively they impose a burden and responsibility on the individual. The various forms are: 1) restitution for the victim; 2) probation fees for being in the community instead of being incarcerated; 3) program fees pay for services; 4) court fees pay for the cost of the courts; 5) punishment specific fees, an example includes paying for electronic monitoring equipment; and 6) other financial penalties such as transaction fees, activities fees, etcetera. That is, many jurisdictions have imposed fees on those who are supervised in the community, whereas an incarceration sentence does not have that type of penalty. It is quite probable that in some of the residential programming and/or day programming that fees will be imposed. One study found that the average probationer paid \$1.57 per day to be on probation (consequentially in this same jurisdiction, they contributed \$1.63 per day for probation services which means that the probationers are partially paying to be on probation) (Alper & Ruhland, 2016). Other studies have noted that the financial burdens from being on probation contribute to further involvement in the justice system, and create an unequal justice system (Human Rights Watch, 2014).

### **Identifying Who Should Receive What Type of Sentence**

The decisions about who receives what type of sentence, and what types of restrictions are included in the sentence, are generally left to the sentencing judge. Or, it could be that certain regulations define the programs, services, and components of the program. This means that the conditions and requirements may or may not be most appropriate for the person. In 21 states and the federal government, there are sentencing guidelines that define who is likely to be incarcerated based on the person's criminal history and offense severity. However, mandatory guidelines are in 10 states and 11 states have more "voluntary" guidelines, where the judge has more discretion over the incarceration decision. The presence of guidelines, however, are predominantly used to define the "incarcerated/not-incarcerated" decision, where the additional requirements are left to the judge, but sometimes they are used to determine the length of the sentence.

A current movement in the field is to use a risk-*need* assessment tool (RNA), preferably one that includes static risks and dynamic risks (*needs*) to inform the decisions of the sentencing judge and/or the probation system. That is, the RNA is promoted as an objective tool to identify which individuals need what types of controls and treatments to reduce their likelihood of participating in criminal behavior. Additionally, the RNA has the potential to identify major *needs* and then relate those *needs* to the setting and restrictions needed to promote positive behavior. The risk-*need* framework offers the potential to consider how best to use alternatives to incarceration to promote balanced distribution of restrictions to be sensitive to the public safety factors of the individual.

The RNA framework outlines the necessity to consider risk for future criminal justice involvement as a major premise as well as the *needs* of the individual. We can divide the *needs* into areas that affect criminal behavior, and should guide the nature and type of sentencing

system to respond to these *needs*. That is, as risk increases so does the need for more restrictions, including the use of confinement as a tool to address risk behaviors; but, as *needs* increase so should the use of psychological restrictions or semi-incarceration facilities to assist with handling risky *need* behaviors. Also, the type of restrictions can be tied to the risk-*need* profile of the individual. In Table 1 below, the application of the setting and restrictions to the risk-*need* profile of individuals is depicted. The conceptual model is that the higher the risk level, the more there is a need to use confinement or semi-incarceration settings for individuals. Similarly, the greater the *need*, the more there is a need for psychological interventions (restrictions) as part of the effort to minimize the *needs* of the individual.

A key to this utilization is that the type of *needs* of the individual has to be discerned. Meaning, it is important for the *needs* to be identified based on areas that are linked to criminal behavior, or that affect stability in the community, and the completion of supervision conditions. The simplistic version of this application is that as the risk level increases, so should the number of restrictions with more spatial restrictions for moderate and high risk offenders. There needs to be a cap on the restrictions given that there is a human capacity to manage multiple restrictions simultaneously, and those that are devoted to cognitive or behavioral change have an even greater impact since implicitly they require the person to make changes in related facets of their lives, such as social support networks, living arrangements, travel routes, and so on. More importantly, the focus of the attention is on obtaining gains in these areas.

**Table 1: Imposition of Setting and Restrictions Based on Risk and Needs**

	<i>Needs</i>		
Risk	High	Moderate	Low
<b>High*</b>	Confinement or Semi-Incarceration Setting tailored to psychological restrictions and spatial restrictions	Confinement or Semi-Incarceration Setting tailored to psychological restrictions and limited spatial restrictions	Confinement
<b>Moderate</b>	Semi-Incarceration or Probation with Tailored psychological and limited spatial restrictions	Semi-Incarceration or Probation with Tailored Psychological Conditions	Probation with Financial Penalties
<b>Low</b>	Probation with Tailored Psychological Conditions and limited Spatial Restrictions	Probation with Tailored Psychological Conditions	Probation with Financial Penalties

\*High risk would have to be defined as those that are a threat to public safety which may require reducing the number of criminal convictions for low level offenses (i.e. public disorder, petty theft, etc.) that may be included in some risk assessment tools.

This framework reframes sentencing guidelines and/or practices that focus only on the “incarceration,” or not, dilemma. Instead, the focus should be on transforming risk-*needs* information into a grid that redefines this incarceration dilemma. As shown in Table 1, incarceration is recommended to be limited to those individuals that are high risk according to a standardized risk-*need* assessment tool. This generally amounts to around 20 to 25 percent of the population, where the majority of the individuals are placed in community settings. Although, there is an argument for using semi-confinement facilities for specialized programming to assist individuals, who have behavioral health or criminal cognitions, make a transition to begin the recovery process. In the end, prison or incarceration is then only used for those individuals that are considered a threat to public safety or harm to themselves.

## **Exploring the Justice Reinvestment Initiative as Legitimate Sentencing Options**

In 2010, the Bureau of Justice Assistance, with the PEW Foundation Public Safety Performance Project, launched an approach to tackle problems in the criminal justice realm, appropriately titled Justice Reinvestment Initiatives (JRI's). JRI's provide states with numerous means to accomplish the goal of reducing the demand for incarceration by reducing correctional spending and reinvesting through known recidivism-reducing strategies. Another related goal is to strengthen neighborhoods with concentrations of criminal justice populations by addressing the factors that are correlated with criminal behavior while increasing public safety.

JRI is a data driven process to facilitate system change. Beginning with an interagency team (typically including all political perspectives), the emphasis is on using data to understand how the system works and areas where policy enhancements are needed. This process breaks down into two phases. Phase 1 includes:

- Analyze data: sites receive intensive, on-sight assistance to analyze crime, arrest, conviction, jail, prison, probation, and parole data for the last 5-10 years including the cost effectiveness of the systems' policies, practices, and programs.
- Develop policy options: develop practical, data-driven, consensus-based policies that reduce spending on corrections to focus on public safety.
- Adopt new policies: Legislative bodies transform initiatives into active policies.<sup>1</sup>

Phase 2 includes:

- Implement new policies: after legislation, implementation should proceed as a deliberative change process.
- Reinvest: with the estimated savings, reallocate that money to public safety strategies and programs in the community.

- Measure performance: all sites monitor their performance and outcome measures to make sure they achieve projected outcomes and goals. The performance reports are provided to oversight communities to assess how well the initiative is doing.<sup>ii</sup>

The states who are currently participating in the JRI framework include: Alabama, Alaska, Arkansas, Delaware, Georgia, Idaho, Hawaii, Kansas, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Washington, and West Virginia. Those who have used JRI's, or JRI policies, also include: Arizona, Connecticut, Nevada, Texas, Vermont, and Wisconsin. Collectively, 33 of the 50 states are using, or have used, some kind of JRI framework to actively impact their sentencing and justice systems.<sup>iii</sup>

The common issue addressed focuses on the factors behind prison growth and corrections spending. These influential factors are: parole/probation revocations, sentencing policies for low risk offenders to incarceration, inefficient community supervision, and parole system processing delays and denials.<sup>iv</sup> These issues have led to a number of policy responses in a majority of the state sites that ranged on where they're targeting. Many sites started integrating risk and *needs* assessments, accountability measures, incentives for community compliance, sentencing changes, swift and certain responses to technical violations, mandatory supervision post-incarceration, conflict-resolving courts, quicker and more expansive parole process, and more inclusive re-entry programs.<sup>v</sup>

### ***Impact of JRI***

There have been a few evaluation studies assessing the influence that JRI's, or JRI type policies, have on the issues of the criminal justice system. The VERA Institute of Justice assessed that the judicial and probation systems are the reason for Delaware's prison

overcrowding. A majority of Delaware's prison population consisted of those who were awaiting trial, people who were over-supervised on probation, and long sentences without an opportunity for reduction (James and Agha, 2013). In response to these issues, Delaware drafted Senate Bill 226, requiring risk assessments to be performed and available to judges, and create incentives for those who are incarcerated to complete evidence-based programs (James and Agha, 2013). The reasons for this legislation are to allow magistrates and judges to make precise risk assessment decisions when it comes to sentencing people and/or selecting people for parole, as well as decreasing the likelihood of recidivism for those who are completing the scientifically proven programs.

Another assessment of JRI programs was performed by the Urban Institute in their review of 17 JRI using states. Consistent with the assessment of Delaware, they found that the largest influences on prison population and cost include parole and probation revocations, sentencing policies, ineffective community alternatives, and parole system delays/denials (LaVigne et al., 2014). Over the 17 states, however, there was a wide array of policies that were put into action to target the different influences each state faced. A majority of these policies focused on: performance and use of risk and *needs* assessments, accountability measures, credit earnings, more intermediate sanctions, community based treatment, sentencing policy changes, problem solving courts, and revise parole system processes (LaVigne et al., 2014). Similarities exist across systems regarding the drivers of incarceration and the facilitators for changing practices.

The estimated monetary savings for the 17 states is \$4.6 billion, ranging from saving \$7.7 million to \$398 million over 5 years per state (LaVigne et al., 2014). All of these costs stem from the averted operating and construction costs of prisons. Additionally, as stated before, JRI



policies reinvest the money saved. The URBAN report discusses two different types of reinvestment that occur. The first is reinvesting money that has already been saved from previous years; the second is investing money that is anticipated to be saved in future years. So far, from all 17 states, \$23.7 million have been invested from previous savings and \$142.1 million have been invested in anticipation of future savings (LaVigne et al., 2014). In addition to the monetary benefits, 8 of the 17 states (Arkansas, Hawaii, Louisiana, Kentucky, New Hampshire, North Carolina, Ohio, and South Carolina) reduced their prison populations within one year and all states anticipate their prison population reductions will range from .6% to 19% (LaVigne et al., 2014).

In a similar effort, a case study of prison reductions in New York, New Jersey, Michigan, and Kansas from 1999-2009 revealed interesting changes in sentencing. New York and New Jersey, from 1999-2009, experienced a 20% and 19% reduction, respectively, while Michigan experienced a 12% reduction from 2006-2009 and Kansas experienced a 5% reduction from 2003-2009 (Greene and Mauer, 2010). The different drivers of change were:

- New York:
  - o Revised Rockefeller drugs laws to reduce mandatory sentences and use more community based options.
  - o Identify individuals who can be involved in drug treatment alternatives.
  - o Gave inmates good time credit incentives for participating in educational and vocational training and treatment.
  
- Michigan:
  - o Revised 650 Lifer Law,<sup>vi</sup> eliminated mandatory minimums for drug offenses, and restructured community corrections to create incentives to target “straddle-cell”

cases with intermediate sanctions.<sup>vii</sup>

- Identify lower risk individuals for intermediate sanctions and designation of two reentry prisons to help plan for future releases.
- Established Michigan prisoner reentry initiative, which implemented local services targeting aspects that make it difficult to reenter society.
- Kansas:
  - Revised sentencing guidelines to use treatment for drug possession rather than prison and eliminated sentence enhancements for prior convictions.
  - Provide services in community setting to reduce rule violations.
  - Allocated funds to community programs that strengthened the neighborhood, substance abuse and mental health treatments, and housing services.
- New Jersey:
  - Permitted “open pleas” in lower level drug free zone cases.<sup>viii</sup>
  - Used risk assessments for individuals going onto parole, as well as, used daily reports and electronic monitoring for those on parole.
  - Set up regional assessment centers which allowed for information to be given to parole board on whether violators should be allowed to continue on parole.<sup>ix</sup>

The common features of the four states in targeting prison overcrowding and cost include: using risk assessments, revising sentencing guidelines, and expanding sentencing options.

Taxman, Pattavina, and Caudy (2014), performed hypothetical simulations to assess how JRI treatment policies, using the RNR tool,<sup>x</sup> would affect individual offenders within a prison system. Their four measures included the availability rate, the participation rate, the access rate, and the responsivity rate (percentage of offenders with a specific *need* who can access services

for that *need*) for each prison. In order to assess how these measures influenced recidivism, two different analyses were performed, an outcome oriented analysis, which tested how re-arrest was influenced by expanding access to, and effectiveness of, treatment, and a process oriented analysis, which tested how re-incarceration was affected by improving the quality of treatments and using risk, *needs* assessments. The outcome oriented analysis found that the more people who are treated, the stronger the effects are going to be; the example given is increasing the percentage of inmates receiving treatment from 10% to 50% decreases the recidivism rate by 8% (Taxman, Pattavina, and Caudy, 2014). Additionally, as more people are exposed to treatment, it becomes more frequent within the prison leading to an increase in the quality of treatment. In conjunction with the findings for the outcome oriented analysis, the process oriented analysis found that using the RNR tool, alone, will reduce re-incarceration by 3.4% in 9 years (Taxman, Pattavina, and Caudy, 2014). If the quality of treatments are improved, the reduction becomes 6.7% (Taxman, Pattavina, and Caudy, 2014). Overall, the results suggest that allowing treatment options as part of sentencing to be more available coupled with matching the treatment to the specific *needs* of the individual, will not only enhance the reduction in recidivism, but accelerate the time it takes for the treatment to be effective. The analyses found that applying the risk-*need* framework reduced 1 recidivist event for every 5 people, whereas the incarceration model reduces 1 recidivist event for every 33 people. The JRI framework enhances change in recidivism behavior.

### ***Case study: Texas***

Fabelo (2010) compared California to Texas in terms of how prison overcrowding is addressed. California and Texas are extremely similar in terms of the size of their prison system; as of 2008, California had 173,320 inmates, whereas Texas had 173,232 inmates. Both were

operating at or over their limit, however, California spent four times the amount that Texas was spending.

Texas had problems with prison overcrowding due to long sentences and increasing intakes into the system. Consistent with the previous literature discussed, the 300% increase in Texas's prison population from 1980 to 2005 was a direct result of probation revocations, lack of treatment and diversion programs, and low parole grant rates. In 2007, their political officers debated on spending half a billion dollars to build and operate new prisons. However, they decided against this, and instead, decided to launch the Public Safety Performance Project. Texas allocated \$241 million specifically for the use of diversion and treatment programs. This amount, plus the reductions spent on the construction and operation of prisons, resulted in net savings of \$443.9 million (Fabelo, 2010). The legislation Texas implemented consisted of:

- Establishing maximum caseloads of 60 probationers/parolees per officer.<sup>xi</sup>
- Reducing maximum probation terms from 10 years to 5 years for drug and property offenders.
- Providing funding for counties who use progressive sanctions for violators which included the development of semi-incarceration and residential treatment program for those that are having difficulties on probation/parole.
- Expand drug and specialty courts to ensure that lower risk offenders received treatment instead of prison.

Aside from the monetary savings, the results of the legislation primarily affected lower risk individuals. Fabelo (2010) compared recidivism rates for the offenders before the legislation went into effect, during the transition period when the legislation was being put into effect, and after the legislation went into effect. He found the recidivism rates, overall, were 29%, 26%, and

24% for the three groups, respectively; however, when he specifically looked at lower risk offenders, the numbers differed significantly with 26%, 10% and 6% for the three groups, respectively (Fabelo, 2010).

### ***Case Study: California***

In May of 2011, the Supreme Court stated that California was in violation of the 8<sup>th</sup> amendment with their prisons being cruel and unusual punishment. The mass amount of overcrowding in their prison systems resulted in the lack of proper health care for the confined individuals. California passed the Assembly Bills 109 and 117, referred to as the policy initiative of Realignment. This set of legislation authorized California to divert and relocate thousands of their low-level, non-serious, non-violent offenders from state prisons to local jails and probation/parole programs to allow these local authorities to manage these individuals.<sup>xii</sup> The main goal of Realignment is to decrease the state-prison population. In 2014, the citizens passed a ballot initiative, Proposition 47, which downgraded the sentencing of drug possession to a misdemeanor as well as authorized misdemeanor sentencing for petty theft. As part of the Realignment initiative, funding from the state was allocated to local communities to enhance their jail and probation/parole efforts. Specifically, funds were allocated to enhance probation and parole services to manage the individuals released early from prison to the communities, as well as to enhance treatment programming. Each county could exercise their own efforts to enhance efforts to manage the population in the community and in the county instead of a state prison.

Turner, Fain, and Hunt (2015) examined the impact of Realignment on whether individual counties made changes to their corrections systems or if they continued to rely on state prisons. The study was of 12 counties: Alameda, Fresno, Kern, Los Angeles, Orange, Riverside,

Sacramento, San Bernardino, San Diego, San Francisco, Santa Clara, and Stanislaus counties. California's prison population decreased by 20.4% from 2009-2010 fiscal year to the 2012-2013 fiscal year.<sup>xiii</sup> For these 12 counties, all of them experienced decreases in sentences to prison admissions and standing prison populations from their counties. San Francisco experienced the biggest reductions of 52.1% and 33.7%, respectively, with Fresno having the smallest reduction of 20.3% for prison admissions and Riverside with 12.8% for standing prison population (Turner, Fain, and Hunt, 2015). In this study, they noted that the local jail population for California increased by a total of 12% from June 2011 to June 2012. Funding from Realignment was also used to enhance their services for education, employment, drug treatment, and mental health treatment for those in the community setting (Turner, Fain, and Hunt, 2015). Realignment, in the early years, led to a larger local jail population but after the imposition of Proposition 47 (which reduced the sentencing of drug possession and petty theft to a misdemeanor), the incarcerated jail populations also declined.

A question is raised about the impact of Realignment on recidivism and crime rates. It was expected that Realignment could influence recidivism rates by having increased resources from the state to expand local criminal justice services and implement effective interventions. Also, the local communities would be more vested in addressing individual needs to reduce recidivism.<sup>xiv</sup> A study found that the percentage of early releases from state prison (referred to as AB 109), who committed a crime and returned to prison, dropped 25 percentage points. This also resulted in a reduction of 7% of new intakes to prison from parole revocations (Bird & Grattet, 2016). The overall re-arrest and reconviction rates were not as substantial with only a 2 percentage point reduction in recidivism, and the reconviction rate decreased by 1 percentage point for felonies and .2 percentage points for misdemeanors. These results suggest that the

primary objective of Realignment was accomplished, with the reduction of people in state prisons. Another study found that early release from prison reduced incarceration, and the use of a variety of local sentencing options had no impact on violent or property crimes; there was a minor impact on auto theft in one-year post-Realignment, but no long term effects (Sundt, Salisbury, & Harmon, 2016).

### ***Justice Reinvestment Initiatives Internationally***

Internationally, there has not been nearly as much of an effort with JRI's as there has been in the United States (Fox, Albertson, and Warburton, 2011), but it is a growing effort. Two studies, in particular, looked at JRI's, for the over-incarcerated indigenous population in Australia and a pilot study in England. In both studies, they discuss the reasons why JRI's were not effective in their respective communities.

Schwartz (2010) examined the incarceration options for the indigenous population in Australia. The population is imprisoned at a rate of 1,891 per 100,000, as compared to the non-indigenous at a rate of 136 per 100,000; 73% of the indigenous prisoners have prior criminal justice experience (Schwartz, 2010). One of the main reasons why they are so heavily concentrated in the prison system is a result of 25% living in remote locations, where community supervision cannot thrive. In addition, there is very little public support for the indigenous population. They are social outcasts, and as Schwartz (2010) states, public support is crucial in order for the JRI policies to work in Australia, such as examples of Kansas or in Oregon with the juvenile offender initiative (Tucker and Cadora, 2003; Council of State governments, 2010).<sup>xv</sup>

In England, Wong et al. (2013) assessed a local justice reinvestment initiative using interviews, focus groups, and workshops, where the JRI-like initiative rewarded partners if they reduced the demand on criminal justice services by 5% for adults and 10% for juveniles. From

these qualitative assessments, they found that only one of the six sites, Manchester, experienced any type of benefit. In Manchester, the project managers provided narratives to help stakeholders buy into the project, used the best available data to make decisions, and had cooperation from numerous agencies (Wong et al., 2013), which was not the case in other areas of the UK. For the other five sites, the emphasis for potentially making the process better modeled after what worked in Manchester and included: better reinforcing incentives, better leadership and communication for the goals/aims, better performance management, use of the best evidence available, and integration of all agencies involved (Wong et al., 2013). More work is needed to see what type of sentencing options can be developed and implemented.

## **Conclusion**

In the 1990's the concept of alternatives to incarceration or graduated sanctions gained favor as a strategy to expand sentencing between prison and probation. In the 1990's, there was a push to develop new efforts to expand the probation-plus options that was designed to enhance the punitiveness of probation as well as give new options to avoid incarceration. In that era, the concept of shock incarceration/boot camps, day reporting programs, probation with numerous required mandates, treatment with sanctions, and other variations of identifying needs that could be diverted to treatment programs were tested with varying success. Programs were designed and tested but funding and available resources limited the options. Even so, in the mid-2000's, a survey of jails, prisons, and community corrections reported that around 10 percent of the correctional population could take advantage of the programming and sentencing options (Taxman, Perdoni, & Harrison, 2007). Drug treatment courts were developed for drug offenders but, even with their available funding, less than 3 percent of the estimated drug involved offenders participate in specialized courts (Taxman, Perdoni, & Harrsion, 2007), demonstrating



the great challenges of shifting populations into an array of sentences. Part of the drawback was that alternatives to incarceration were still considered alternatives—sending a symbolic message that these are not necessarily legitimate sanctions.

Justice reinvestment offered the political coverage to expand the use of a broad array of correctional options as sentencing alternatives, with the emphasis on legislation that altered the “incarceration/not” rules. JRI initiatives focused on the intake to prison which included downgrading the sentences for some offenders and altering how probation and parole revocations are handled—both of these efforts were to reduce the intake into prison/jails (incarceration) and to use community options to address the offenders. JRI-related efforts have not drastically affected the length of sentence for most offenders, except in a few states that have downgraded sentence structures for drug offenders that are treatment eligible to semi-incarceration settings, probation with treatment or other treatment options. But, the efforts have also served to improve the acceptability of “alternatives to incarceration” as rightful sentences that align with socio-political dynamics in reform states. This lays the groundwork for longer term changes in the political acceptability of using a broader range of sentences and perhaps reducing the sentence lengths.

A pressing is the development and maintenance of consensus among policymakers (LaVigne et al., 2014). With the quick turnover for political offices, results need to be immediate; therefore, if results do not occur quickly, funding may be revoked, or even the initiative all together. While more than half of the 50 states have used JRI’s, where almost all have seen some kind of benefit in the short term, the question is whether funding will be available to develop community based services. And, the question becomes whether individuals will be placed into

these options instead of traditional sentences of incarceration, either in terms of long or short term periods of incarceration. Generally these incarceration sentences also include probation.

The concept of alternatives to incarceration is morphing into sentencing options, options that are legitimate and that draw upon the broad variety of sanctions that are needed to adequately punish (and treat) the incarcerated population. The proposed risk-need framework integrated objective, standardized tools into the decision-making framework where judges and others are guided by the answer to three questions: 1) what is the likelihood that an individual will recidivate for a serious crime? 2) what are the underlying needs that affect involvement in criminal behavior that are amendable to treatment; and, 3) what combination of restrictions are needed to facilitate punishment and change in the behavior of individuals. Table 1 presents a vision of sentencing where the risk and needs are combined to provide the most suitable sentence, and restrictions are used interchangeably to tailor to the individual. In a nutshell, this model embraces proportionality and parsimony in the sentencing framework. In many ways, it also tries to integrate the concept of citizenship—maintaining the concern for preserving the positive role of the individual in the sentencing process. It also serves to hold the system accountable for using the least restrictive means that can be beneficial to the individual in how they are treated by the justice system. The end result is justice served.

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<sup>i</sup> Taken from [https://www.bja.gov/programs/justicereinvestment/what\\_is\\_jri.html](https://www.bja.gov/programs/justicereinvestment/what_is_jri.html)

<sup>ii</sup> Taken from [https://www.bja.gov/programs/justicereinvestment/what\\_is\\_jri.html](https://www.bja.gov/programs/justicereinvestment/what_is_jri.html)

<sup>iii</sup> For more information on any or all of these specific states, visit <https://csgjusticecenter.org/jr/>



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<sup>iv</sup> Taken from: <https://www.bja.gov/funding/JRImaximizing.pdf>

<sup>v</sup> Taken from: <https://www.bja.gov/funding/JRImaximizing.pdf>

<sup>vi</sup> 650 Lifer Law imposed life sentences for drugs offenses of over 650 grams, regardless of prior offense history.

<sup>vii</sup> There are three types of “cells.” The most serious receives prison, the least serious receives a non-custodial penalty, and the “straddle-cell” allows the judge to choose either prison or intermediate sanction.

<sup>viii</sup> These are cases where the individual was in possession of drugs within 100 feet of a school related area or 500 feet of a public park, public building, or public housing building.

<sup>ix</sup> All of these states were described in Greene, Judith and Marc Mauer. 2010. *Downscaling Prisons: Lessons from Four States*.

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<sup>x</sup> RNR tool stands for Risk, Needs, and Responsivity tool. It is an assessment to identify an individual’s risks and needs that need to be targeted.

<sup>xi</sup> Texas Legislature, House Bill 3736, “An Act Relating to Establishing Parole Officer Maximum Caseloads,” enacted 2007.

<sup>xii</sup> Taken from <http://www.cdcr.ca.gov/realignment/docs/realignment-fact-sheet.pdf>

<sup>xiii</sup> Dropped from 167,176 inmates to 133,217 inmates.

<sup>xiv</sup> The ability of sending revocations to prison was revoked with Realignment.

<sup>xv</sup> Juvenile Offender Initiative placed juveniles on community supervision and partnered with organizations, such as Habitat for Humanity, and substantially gained public support due to actively helping the community.



January  
2013

## Solutions For Justice Professionals

With goals to safely manage the offender population, justice professionals are tasked with responding to the risk and needs of individuals.

The RNR Simulation Tool is designed to help corrections and treatment agencies meet demands to be responsive to the needs and risks of individuals in the justice system. Increasing responsivity is needed to reduce the risk of future offending.

Decision-support tools were funded by the Center for Advancing Correctional Excellence (ACE!) at George Mason University, the Bureau of Justice Assistance (2009-DG-BX-K026), the Substance Abuse and Mental Health Services Administration (202171), and The Public Welfare Foundation.

## The Risk-Need-Responsivity Simulation Tool

For people involved in the criminal justice system, evidence-based practice (EBP) and treatments emphasize that assessment and programming should target criminal justice, criminogenic need, and other behavioral issues. The notion is that individual outcomes can be improved by assessing for a number of related and often overlapping dimensions such as offending (e.g. criminal history risk), needs (e.g. antisocial peers, antisocial cognitions, antisocial values/thinking) and behavioral health factors (e.g. substance use, mental health, trauma). This evidence-based practice is referred to as the Risk-Need-Responsivity (RNR) Model (Andrews and Bonta, 2010; Caudy et al., 2013).

Another component of the EBP model is the nature of the programs and interventions offered to individuals. Effective programs must be able to address the criminal justice, behavioral health, and criminogenic needs of individuals to achieve positive results.

The RNR framework focuses on improving outcomes by encouraging the justice system to respond to its clients in a manner that is likely to yield better outcomes. While effective *programs* can reduce recidivism for *individual* offenders, effective *systems* can reduce recidivism for *populations* of offenders. This requires individual assessments to pay particular attention to a broader range of factors that directly relate to individuals' risk for

reoffending and prioritize these needs for targeted treatment. It also requires practitioners to implement programs that target certain profiles of offenders with specific needs. The RNR framework reinforces the need for jurisdictions to have a range of effective, well-implemented programs that target the varying needs of the justice-involved population. It is important to address gaps in services to develop responsive programs and ultimately, a responsive system.

This web-based decision-support system—the RNR Simulation Tool—was developed to help jurisdictions and providers implement the RNR framework. The system assists justice and behavioral health agencies (government, private, or non-profit) who wish to translate EBPs into practice. This approach integrates the science around effective screening, assessment, programs, and treatment matching (responsivity) to improve individual and system outcomes. To that end, the RNR Simulation Tool has three portals: 1) The RNR Program Tool for Adults; 2) Assess an Individual; and 3) Assess Jurisdiction's Capacity.

This document provides users with general information about each portal and the intended uses. Please email [rnrtool@gmu.edu](mailto:rnrtool@gmu.edu) for more specific information or to answer any questions about the tool. The RNR Simulation Tool is available online at: <http://www.gmuace.org/tools/>



# Three Easy-to-Use Web Portals

## THE RNR PROGRAM TOOL

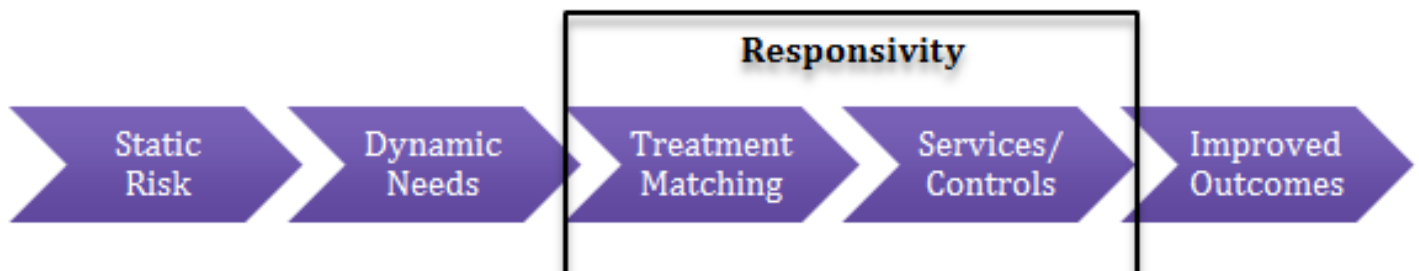
This 30-minute program assessment tool examines the content, quality, dosage, and other factors of services/treatments/controls offered for justice-involved individuals. Jurisdiction administrators or program managers simply input information about a specific program offered and the tool provides detailed feedback indicating what risk-need profiles the program is best suited to meet. The portal also rates the program's overall quality according to the RNR principles and core correctional practice. When applicable, the tool provides recommendations for how program administrators can refine the program to better achieve responsivity and improve outcomes. The three main goals of the program tool are: 1) to classify programs to facilitate treatment matching, 2) to explore how programs currently target the risk level and criminogenic needs of their clients, and 3) to assess programs on their use of evidence-based practices. The tool is intended to help criminal justice agencies better understand the resources available to them and to foster responsivity to specific risk-need profiles.

## ASSESS AN INDIVIDUAL

The Assess an Individual portal emphasizes using data from criminal justice and behavioral health screenings and assessments to determine the most effective type of program and controls to reduce individual recidivism. This portal can be used with a jurisdiction's instruments, by itself, or in combination with other tools. Designed for line staff, users are asked to answer 17 questions about individual offenders' risk, needs, and lifestyle factors. The system then provides a recommendation regarding the type of program that would best fit the individual and lead to the greatest recidivism reductions. If certain information is not available, the RNR Simulation Tool will rely upon its underlying database of offender risk-need profiles to estimate likely attributes based on the prevalence of each attribute in the national population. Users can integrate jurisdiction-specific data regarding the prevalence of individual attributes to produce customized feedback. This portal also estimates a percent reduction in recidivism that one might expect if the offender is matched to the level of programming that is consistent with their unique needs (i.e., a program of best fit).

## ASSESS JURISDICTION'S CAPACITY

The Assess Jurisdiction's Capacity portal uses inputted information to assess a jurisdiction's capacity to be responsive to the risk-need profiles of individuals in its jurisdiction. Based on data from 18 questions about the prevalence of risk and needs of individuals in the jurisdiction, the portal provides an initial recommendation of the amount and type of programming needed to adequately respond to the jurisdiction's population. When users enter information regarding the available programs in a jurisdiction, the portal also identifies system-level gaps in the jurisdiction's capacity to provide responsivity and recommends levels of programming the jurisdiction may need to augment in order to better respond to the needs of their population.



## EYE ON IT

The latest on evidence-based programming.

While there is no magic program that will work for every offender every time (Lipsey & Cullen, 2007), recent meta-analytic research indicates that certain correctional treatments tend to be more effective than others. Programs showing some of the largest reductions in offending include Cognitive-Behavioral Therapy (CBT), Medically-Assisted Treatment (MAT), Drug Courts, and Therapeutic Communities (TCs) (see Caudy et al., 2013).

**The RNR Simulation Tool** relies on these types of evidence to provide feedback to users. The RNR Program Tool portal allows users to enter information for each program or service they offer, whether it exists as a separate program or within a justice setting. The tool also includes the latest in implementation knowledge to assist programs with determining the degree to which their program adheres to the RNR model.

## The RNR Program Tool



Assess your current programs based on treatment offered, content, quality, and other factors.

The **RNR Program Tool** portal uses program-specific information to categorize programs into six different program groups. Each group has a different target area that reflects the program's focus to address offending behaviors.

### Q: What are some essential features of effective correctional programs?

A. There are many different factors that can impact the effectiveness of a program including risk, needs, responsiveness, implementation, and dosage. Programs with good adherence to each of these key features tend to have better outcomes. The key is what criminogenic behaviors the program ad-

GROUP A	• Dependence on "Hard" Drugs
GROUP B	• Criminal Thinking/Cognitive Restructuring
GROUP C	• Self Improvement & Management
GROUP D	• Interpersonal Skills
GROUP E	• Life Skills
GROUP F	• Punishment Only

### RNR Program Group Primary Target Areas

\*Hard Drugs are those substances that exhibit a direct link with offending behavior. These substances include amphetamines, opiates, and crack/cocaine.

resses and the different cognitive and behavioral tools used to assist individuals in changing these behaviors. The RNR Program Tool provides users with feedback and scores on the essential features of programs to allow users to understand a program's strengths and areas where it

can be improved. The tool also provides examples of high-quality programs to guide improvements. Program managers can use overall program ratings or scores on essential features to work with justice agencies to maximize exposure to effective programs.

## High-Quality Programs:

- Use cognitive behavioral therapy (CBT) and social learning interventions that focus on assisting with restructuring prosocial thinking;
- Offer programs that adhere to a core model, use an evidence-based treatment curriculum, and have staff that are skilled in service delivery;
- Manage dosage and intensity of interventions based on criminal justice risk factors, criminogenic needs, and behavioral health needs;
- Identify a primary target for cognitive interventions (e.g. substance dependence, criminal thinking);
- Collaborate with justice agencies to ensure that controls are integrated into treatment programming;
- Create an environment where individuals can improve by emphasizing motivation to change and building commitment to treatment; and
- Provide feedback to individual participants in programs to ensure long-term success.

# Example of the RNR Program Tool Feedback Report for a Reentry Program

Below is a sample feedback report from the RNR Program Tool portal for a jail-based program that primarily targets criminal thinking. The feedback includes a summary of program components and scores in each of the six scoring areas as well as suggestions for improvement where applicable.

## RISK: 100%

- Program targets moderate- to high-risk offenders.
- Program uses a validated risk-needs instrument.

## NEED: 100%

- Program targets criminal thinking including antisocial thinking, criminal peers, and self-control.
- Program uses target-specific assessment criteria or instrument to determine eligibility.

## RESPONSIVITY: 100%

- Research indicates the primary modality used in the program is effective (CBT, specifically the *Thinking for a Change* curriculum).
- The program uses both rewards and sanctions.
- The program is available for specific offender populations (e.g. offenders who are 18-30 years old).

## IMPLEMENTATION: 64%

- Program requires attendance at a minimum of 75% of sessions for successful completion.
- Program is administered by either clinical staff or a mix of clinical and corrections staff.
- All program staff have at least a bachelor's degree and prior experience delivering the *Thinking for a Change* curriculum.
- Program staff regularly communicate with supervision staff about participants' progress.
- Program has been externally evaluated.
- Program uses *Thinking for a Change* manual to guide implementation.
- Program uses trained supervisors to coach staff on questions that arise during the course of instruction.
- Program has an internal team that monitors quality assurance.

## To Improve Score:

- Change program completion criteria to require change in thinking errors.
- Integrate staff who have advanced degrees (e.g., MASW, LCSW, PhD).
- Program director can arrange for external evaluation of the program.

## DOSAGE: 40%

- Program provides approximately 180 hours of treatment to participants.
- Treatment is spread across 13 to 17 weeks.
- Services are provided on a daily basis, for approximately 10 to 14 hours per week.

## To Improve Score:

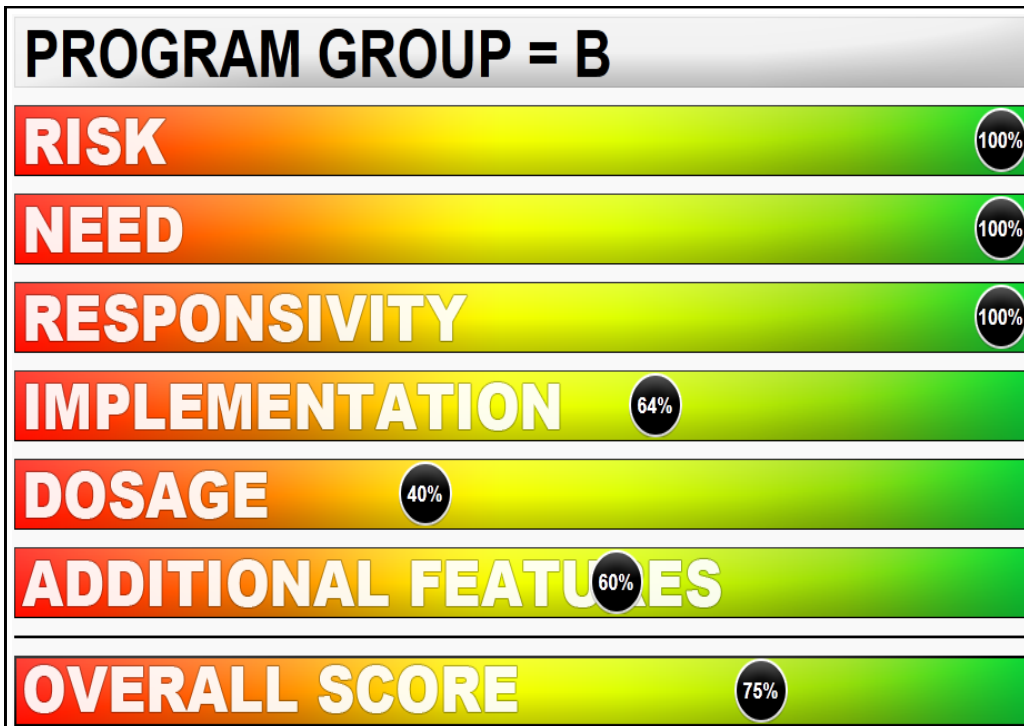
- Increase dosage to provide 200+ hours of direct treatment to participants.
- Extend program length to deliver services for 26+ weeks.
- Increase program hours to 15+ hours per week or 3+ hours per day.
- Offer program in phases and include aftercare.

## ADDITIONAL FEATURES: 60%

- Program includes a number of complementary programming including: contingency management, educational services, psychosocial education, alcohol or drug education, moral reasoning, relapse prevention, and motivational interviewing.
- Program is located in a criminal justice facility (local jail).
- Program includes random monthly drug testing.

## To Improve Score:

- Increase participation in other programs to complement the *Thinking for a Change* curriculum.



## Assess An Individual



Assess offenders or estimate the reduction in recidivism by matching individuals to treatment programs.

# Finding the Right Programs for Justice-Involved Individuals

USING RISK AND NEED INFORMATION TO IMPROVE RESPONSIVITY AND REDUCE OFFENDING.

The **Assess an Individual** portal of the RNR Simulation Tool assists users in selecting appropriate controls and treatment for individuals.

### Q: What type of programming would this individual benefit from?

A. The first step in matching offenders to appropriate programming groups is to identify their risk of recidivism and criminogenic needs. Risk information includes criminal history, age at first arrest, prior terms of probation or incarceration, and violations. Needs information refers to factors that influence an individual's current situation, such as substance abuse or dependence, mental health, employment, associates, and criminal thinking. Often, this information can be obtained from a jurisdiction's validated risk and need assessment instrument. Certain information (e.g. substance use severity and mental health) may require additional assessment. To determine what programming would most benefit an individual, agencies should prioritize individuals' needs to ensure that criminogenic needs (those related to offending behaviors) receive immediate treatment.

Review case information with offenders to build an understanding of risk and to reinforce strengths.

### Q: What if the type of program recommended is not available?

A. The Assess an Individual portal provides three recommendations of programming for each individual. The "best fit" programming recommendation will result in the highest recidivism reduction. The tool also provides second- and third-best fitting program recommendations. For each program recommendation made, the model also provides estimated reduced recidivism rates based on completion of a program. Users should keep in mind that the highest recidivism reductions will result from the best fitting programs.

### Q: Does the tool consider individual strengths?

A. The RNR Simulation Tool assesses individual strengths to recognize the positive factors in individuals' lives. Strengths include education, housing stability, employment, financial stability, and prosocial supports. These positive factors act as important stabilizers to help a person successfully complete supervision and treatment, and take positive steps in their lives. Reviewing the risk and need profile with an individual builds their knowledge and understanding of their own needs and helps strengthen commitment to address these factors.

## THE CASE OF THE MODERATE-RISK OFFENDER

Moderate-risk offenders may pose a special challenge for justice professionals. While they tend to have shorter criminal histories than higher-risk offenders, they may also have a number of criminogenic needs and destabilizing factors which contribute to the risk of reoffending.

For example, a young adult with few prior arrests, but who is dependent on heroin, may be classified as moderate-risk despite a clear dependence disorder. It is important to assess criminogenic needs in addition to risk to determine factors linked to offending behaviors.

In responding to moderate-risk offenders, interventions should emphasize their criminogenic needs. Often such individuals do not need the same level of supervision controls placed on them. However, they may still benefit from evidence-based programming to help reduce their needs and build stabilizers in their lives.

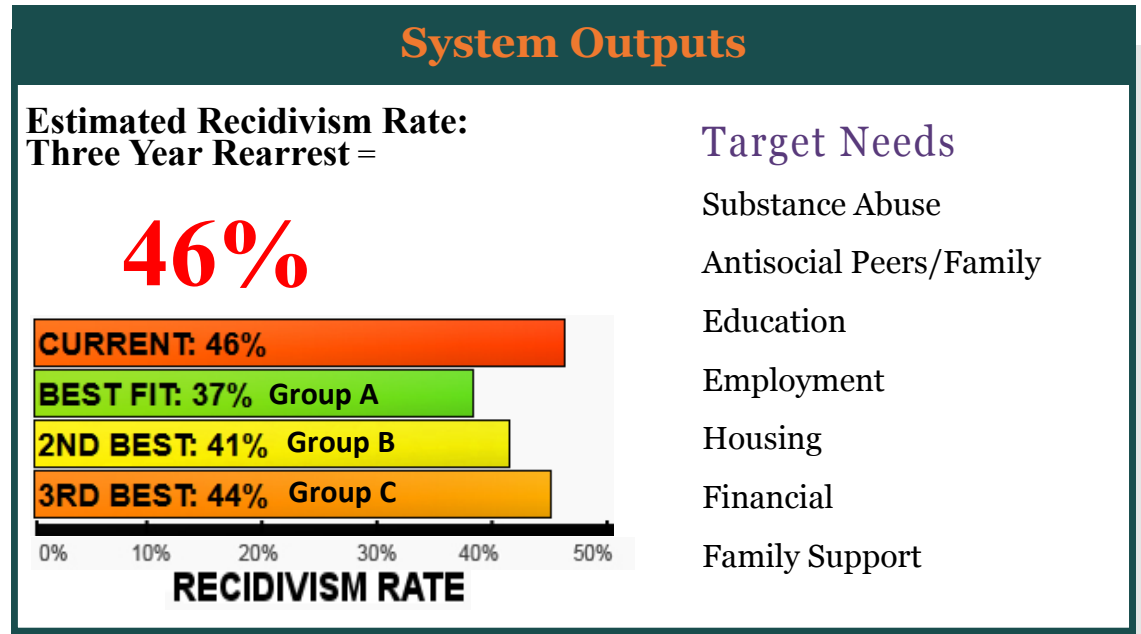
# Example of the RNR Simulation Tool Individual Assessment

## A DRUG-ADDICTED OFFENDER:

Jessica is a 39-year-old female offender on probation for possession of cocaine. She is a moderate-risk offender with a DSM-IV classification of dependence on cocaine. She does not display any patterns of criminal thinking, nor does she have any mental illness. She has someone she can depend on for emotional support. She does not have a high school diploma, and is not employed. She regularly depends on public shelters and has many financial difficulties. She also has a number of friends that are criminally active. Her environment does not promote a drug- and crime-free lifestyle.

## Best Fit Program: Group A

## Prioritize Treatment to Address Substance Dependence



The RNR Assess an Individual portal estimates that an individual like Jessica has a 46% chance of being rearrested within three years. Although she is only moderate-risk, given her substance dependence the tool recommends that a program in Group A would be the “best fit” for her and result in the greatest reduction in recidivism. As indicated, the system estimates Jessica’s likelihood of being arrested within three years can be reduced to 37% if she successfully completes a Group A program. In the event that such a program is not available, the system also provides second- and third-best fitting program recommendations. Since Jessica is a female offender, a Group A program that targets females may provide increased responsiveness.

Jessica is a moderate-risk offender with a primary need of substance dependence. It is important to target this primary need for treatment to elicit the largest recidivism reduction.

## PROGRAM GROUP A - SUBSTANCE DEPENDENCE

Group A programs predominately target drug dependence on hard drugs (e.g., crack/cocaine, opioids, and amphetamines), but also include interpersonal and social skills interventions. These programs target offenders with substance dependence, and offer a range of dosage levels across a continuum of care. Staff who implement these programs should have advanced degrees and use an evidence-based treatment manual. Program settings may include residential drug treatment, therapeutic communities, specialty courts, or intensive outpatient treatment.

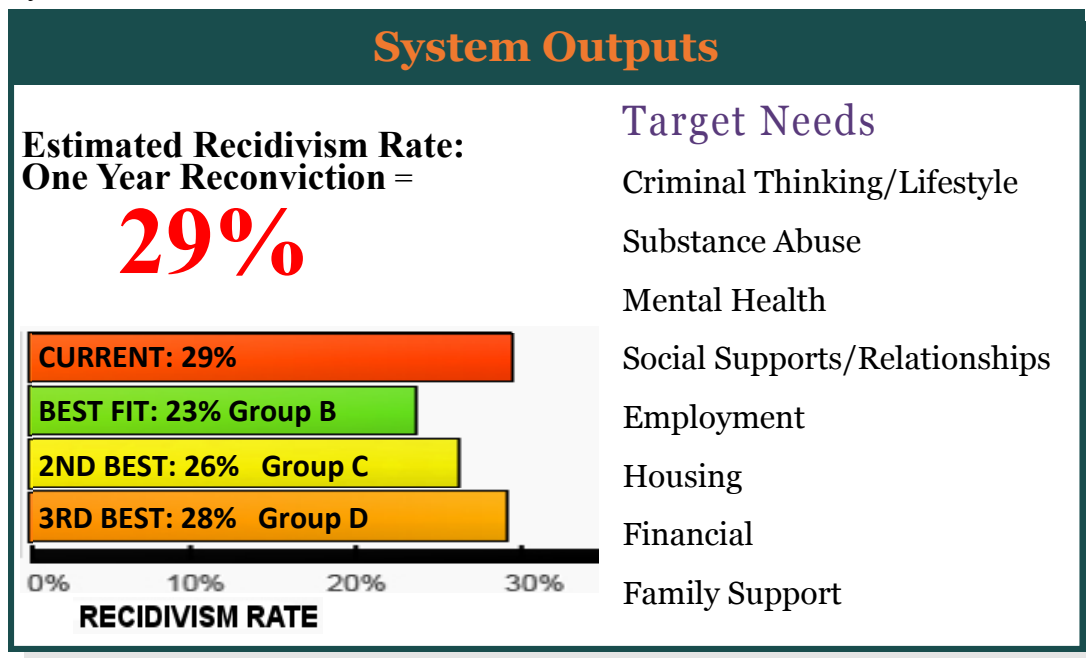
## AN OFFENDER WITH CRIMINAL THINKING:

Connor is a 30-year-old male who was just released from jail. He served a sentence for breaking and entering (general offender). He has a long criminal history (both juvenile and adult) and is a high-risk offender with criminal thinking patterns. He meets DSM-IV criteria for dependence on marijuana and has a mental health condition. He says that he has no one he can count on for emotional or social support. He graduated from high school, but he does not currently have a job. He often sleeps at his friends' houses and occasionally will stay at a shelter. He uses his money to buy marijuana and often has trouble meeting his financial

obligations. His friends are not criminally involved, but his environment is not supportive of a drug- and crime-free lifestyle.

### Best Fit Program: Group B

Prioritize Treatment to Address Criminal Thinking and Co-Occurring Substance Dependence



The RNR Assess an Individual portal estimates that an individual like Connor has a 29% chance of being reconvicted within one year. Given his criminal thinking/lifestyle and other risk and need factors the tool recommends that a program in Group B would be the “best fit” for him and result in the greatest recidivism reduction. As indicated, the system estimates that Connor’s likelihood of recidivism can be reduced to 23% if he successfully completes a Group B program. In the event a Group B program is not available, second- and third-best fitting program recommendations are also provided.

Connor is a high-risk offender with a primary need of criminal thinking. He also has co-occurring substance dependence and mental illness. Treatment should be prioritized to target criminal thinking while also working to stabilize his substance use and mental illness.

## PROGRAM GROUP B - CRIMINAL THINKING

Group B programs primarily target criminal thinking/lifestyle by using cognitive restructuring techniques, but also include interpersonal and social skills interventions. These programs use cognitive-behavioral or behavioral based methods and offer a range of dosage levels across a continuum of care. Staff who implement the program should have advanced degrees in related fields and use an evidence-based treatment manual. Programs in Group B may include cognitive-based criminal thinking curricula, therapeutic communities, behavioral interventions, and intensive supervision paired with treatment to change criminal thinking patterns.



# Building a Responsive System

## CLOSING THE GAP BETWEEN RISK-NEED PROFILES AND AVAILABLE SERVICES

The **Assess Jurisdiction's Capacity** portal uses population-level data to assess a jurisdiction's capacity to provide responsiveness. Based on inputted data about the prevalence of aggregate risk and needs in a jurisdiction, the tool will recommend the type and quantity of services that would best match the needs of that jurisdiction. For maximum responsiveness, we recommend jurisdictions use this portal in

conjunction with the RNR Program Tool portal.

**Q: How can my jurisdiction keep track of what programs we have available?**

A. The RNR Simulation Tool offers a unique opportunity for program administrators to enter and save information about the programs they have available in their jurisdiction. Other site users can then view the available programs, includ-

ing the programs' intended targets (e.g., substance abuse, criminal thinking), to guide responsiveness and effectively match offenders to available programs.

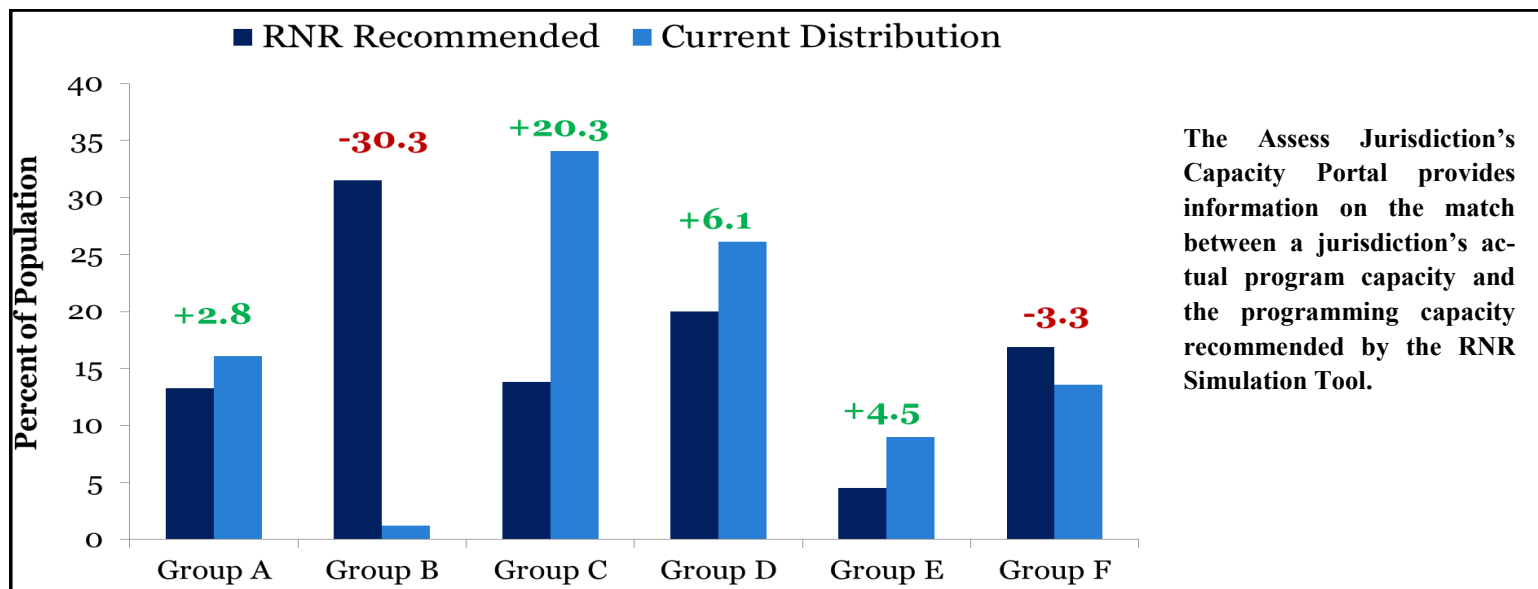
**Q: How can the RNR Simulation Tool help my jurisdiction prepare for changes associated with the Affordable Care Act (ACA)?**

A. The RNR Simulation Tool will assist justice professionals in preparing for and responding to the ex-

pected influx in offender populations who will require access to behavioral health treatment services under the Affordable Care Act. The tool enables jurisdictions to classify their programs based on offender needs and helps determine if adequate programming exists to accommodate the offender population. Where sufficient programming is lacking, the portal provides recommendations to fill the treatment gap.

### Assess Jurisdiction's Capacity

Use client population data & current programming to identify programs that meet your population's needs.



The **Assess Jurisdiction's Capacity Portal** provides information on the match between a jurisdiction's actual program capacity and the programming capacity recommended by the RNR Simulation Tool.

# Example: Reducing Recidivism through System-Wide Responsivity

Jurisdiction A serves over 35,000 justice-involved individuals with community-based substance abuse and mental health treatments. Fifty-five percent of the population is high risk, 26% is moderate risk, and 19% is low risk.

The individuals in this jurisdiction also have varying substance use disorders. Thirteen percent of the population meets DSM-IV criteria for substance de-

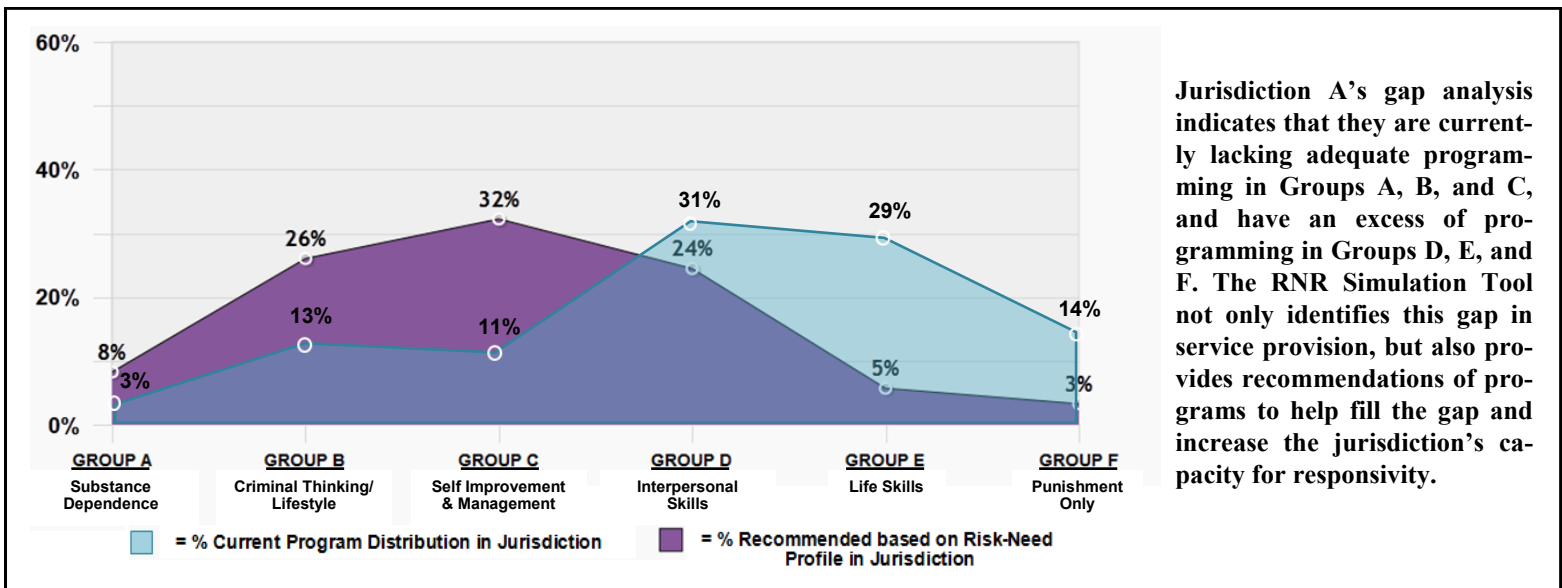
pendence on a criminogenic drug, 32% is dependent on marijuana or alcohol, 38% abuses a non-criminogenic drug, and 17% of the population does not meet DSM-IV criteria for substance use disorder. The population is also characterized by a number of other dynamic needs, with 68% of the population in need of employment assistance, 54% in need of educational services, 2% in need of housing assistance,

and 41% in need of a combination of two or more services.

The RNR Simulation Tool performed a gap analysis to determine if treatment needs are being met by the programs in this jurisdiction. This gap analysis revealed that despite the availability of programming, a gap exists for services which target the most severe substance dependencies. At the same time,

there is an excess of programming that targets interpersonal skill development (Group D).

Administrators can use this information to build the capacity of their system to provide appropriately targeted treatment to meet the needs of their offender population. This should help reduce offender needs, reduce individuals' risk of recidivism, and increase public safety.



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The RNR Simulation Tool is part of a larger suite of web-based translational tools for practitioners. The CJ-TRAK Knowledge Translation Tool Suite is also home to SOARING 2, an eLearning software package to train community corrections officers in evidence-based practices, and EMTAP, a synopsis of research findings in corrections and related fields. For more information on these or other ACE! projects, please contact [ace@gmu.edu](mailto:ace@gmu.edu).

# CJ-TRAK

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Evidence Mapping
Assess an Individual
The RNR Program Tool
Assess Jurisdiction's Capacity
SOARING 2

## Welcome to the CJ-TRAK Knowledge Translation Tool Suite

### Assess An Individual



Assess offenders or estimate the reduction in recidivism by matching individuals to treatment programs.

[LAUNCH](#)

### The RNR Program Tool



Assess your current programs based on treatment offered, content, quality, and other factors.

[LAUNCH](#)

### Assess Jurisdiction's Capacity



Use client population data & current programming to identify programs that meet your population's needs.

[LAUNCH](#)

### SOARING2



A suite of tools to help learn about the EBP concepts.

[LAUNCH](#)

### Evidence Mapping



View synthesized data from meta analyses and systematic reviews on what works in corrections and health.

[LAUNCH](#)

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CJ-TRAK was developed by the Center for Advancing Correctional Excellence (ACE!) ([www.gmuace.org](http://www.gmuace.org)) at George Mason University. The RNR Simulation Tool involved the contributions from the Center for Advancing Correctional Excellence (ACE!), the University of Massachusetts, Lowell; Maxarth, LLC; and Slonky, LLC under grant BJA 2010 DG-BX-K026, with additional funding from SAMHSA under grant number 202171, the Public Welfare Foundation, and ACE!.