

“Evidence-Based” Sentencing

The Who, What, Why & How of Incorporating Principles of Effective Intervention into Sentencing, Supervision & Treatment



Utah Sentencing Commission

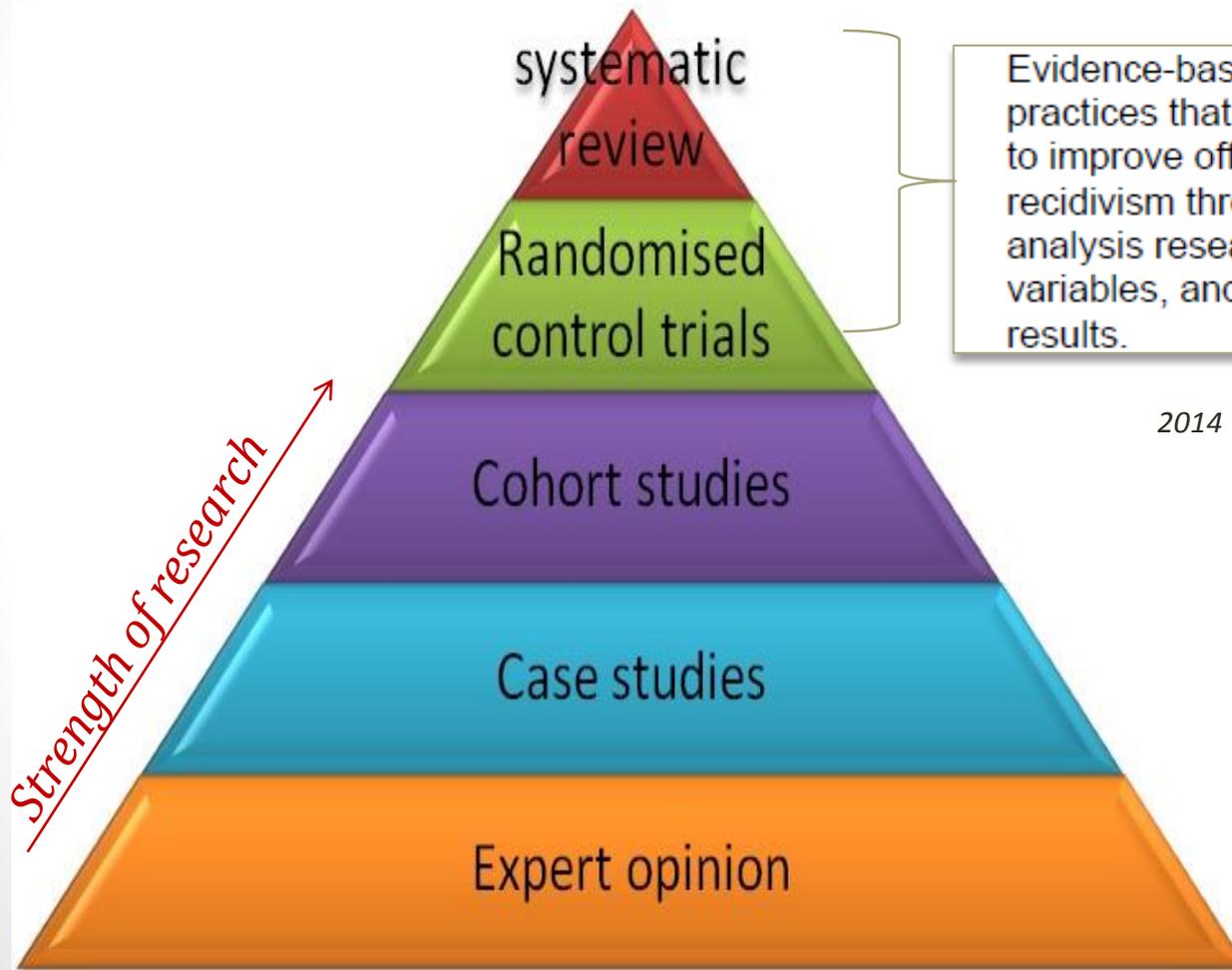
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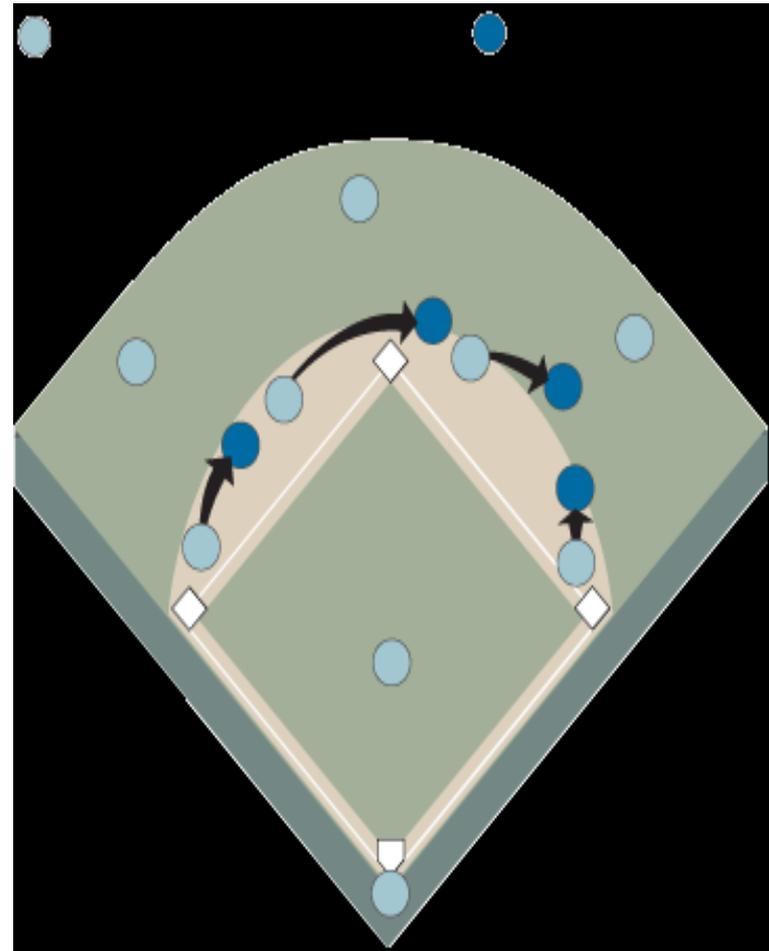
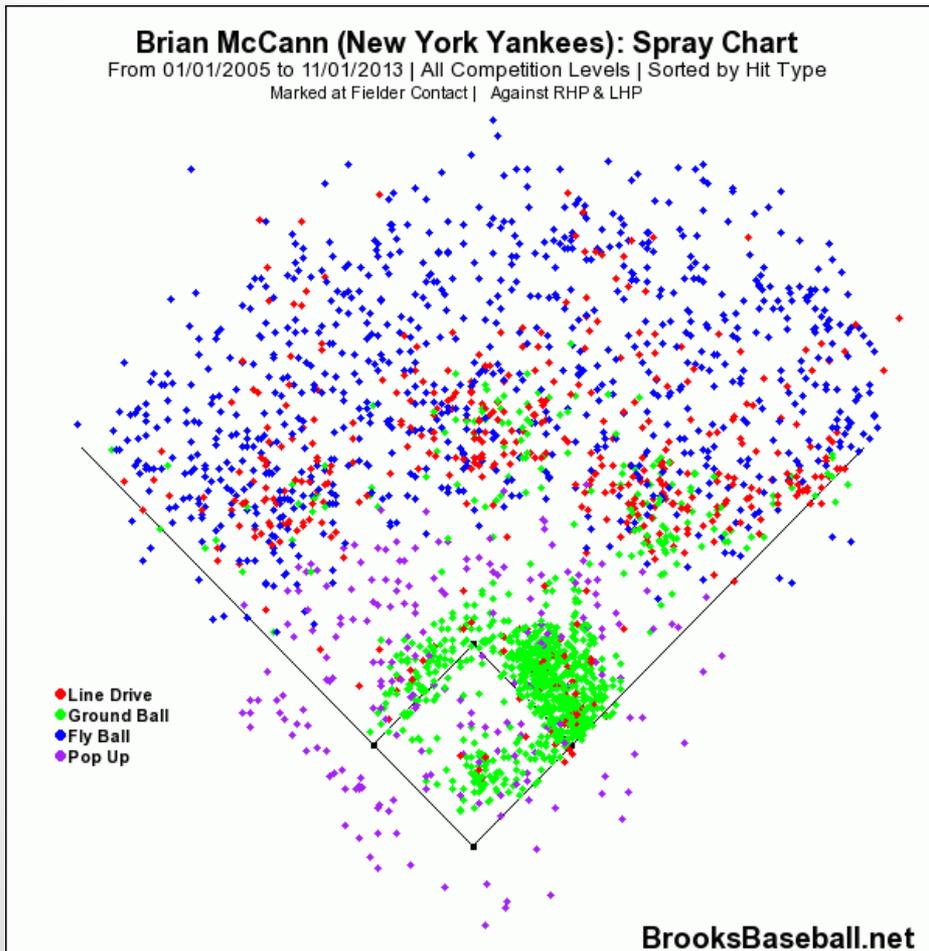
Not the Kind of “Evidence” You Learned in Law School....



Evidence-based practices are those practices that have been empirically shown to improve offender outcomes and reduce recidivism through an emphasis on meta-analysis research, control of confounding variables, and cross-site replication of results.

*2014 Utah Adult Sentencing Guidelines
p. 3*

“Evidence-Based” Approaches in Other Fields: Baseball – Defensive Shift



Medicine – High Blood Pressure

Other risk factors, asymptomatic organ damage or disease	Blood Pressure (mmHg)			
	High normal SBP 130–139 or DBP 85–89	Grade 1 HT SBP 140–159 or DBP 90–99	Grade 2 HT SBP 160–179 or DBP 100–109	Grade 3 HT SBP ≥180 or DBP ≥110
No other RF	• No BP intervention	• Lifestyle changes for several months • Then add BP drugs targeting <140/90	• Lifestyle changes for several weeks • Then add BP drugs targeting <140/90	• Lifestyle changes • Immediate BP drugs targeting <140/90
1–2 RF	• Lifestyle changes • No BP intervention	• Lifestyle changes for several weeks • Then add BP drugs targeting <140/90	• Lifestyle changes for several weeks • Then add BP drugs targeting <140/90	• Lifestyle changes • Immediate BP drugs targeting <140/90
≥3 RF	• Lifestyle changes • No BP intervention	• Lifestyle changes for several weeks • Then add BP drugs targeting <140/90	• Lifestyle changes • BP drugs targeting <140/90	• Lifestyle changes • Immediate BP drugs targeting <140/90
OD, CKD stage 3 or diabetes	• Lifestyle changes • No BP intervention	• Lifestyle changes • BP drugs targeting <140/90	• Lifestyle changes • BP drugs targeting <140/90	• Lifestyle changes • Immediate BP drugs targeting <140/90
Symptomatic CVD, CKD stage ≥4 or diabetes with OD/RFs	• Lifestyle changes • No BP intervention	• Lifestyle changes • BP drugs targeting <140/90	• Lifestyle changes • BP drugs targeting <140/90	• Lifestyle changes • Immediate BP drugs targeting <140/90

BP = blood pressure; CKD = chronic kidney disease; CV = cardiovascular; CVD = cardiovascular disease; DBP = diastolic blood pressure; HT = hypertension; OD = organ damage; RF = risk factor; SBP = systolic blood pressure.

What Does an “Evidence-Based” Approach in the Criminal Justice System Incorporate?



Have We Incorporated the Best Research & Data?

*“What is done [today] in corrections
would be grounds for malpractice in
medicine.”*

(2002) Latessa, Cullen, and Gendreau,
“Beyond Correctional Quackery...”

Public Input / Concerns

KEY TAKEAWAYS

1. American voters believe too many people are in prison and the nation spends too much on imprisonment.
2. Voters overwhelmingly support a variety of policy changes that shift non-violent offenders from prison to more effective, less expensive alternatives.
3. Support for sentencing and corrections reforms (including reduced prison terms) is strong across political parties, regions, age, gender, and racial/ethnic groups.

THE BOTTOM LINE...

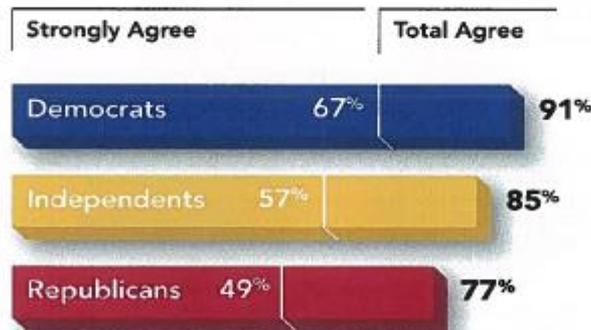
"Some of the money that we are spending on locking up low-risk, non-violent inmates should be shifted to strengthening community corrections programs like probation and parole."

Overall

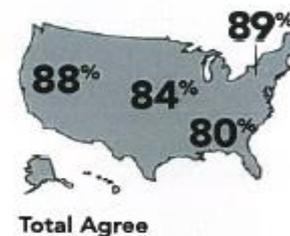


Total Agree / Strongly Agree

By Party Identification



By Region

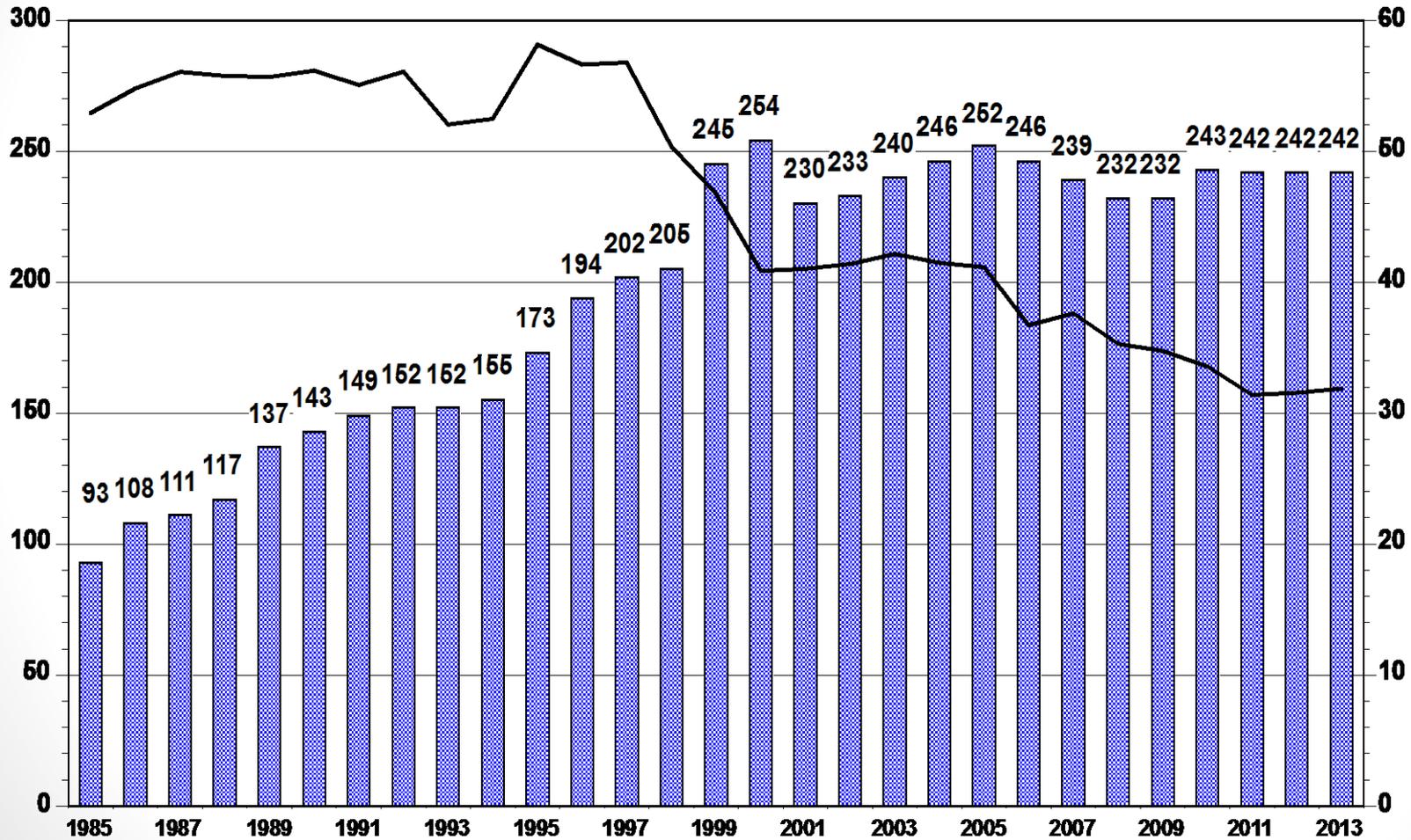


Top Concerns of State Trial Judges:

1. High rates of recidivism
2. Ineffectiveness of traditional probation supervision in reducing recidivism
3. Absence of effective community corrections programs
4. Restrictions on judicial discretion

-Conference of Chief Justices
National Center for State Courts, 2008

Index Crime Rate per 1,000 versus Utah Incarceration Rate per 100,000 1985 - 2013

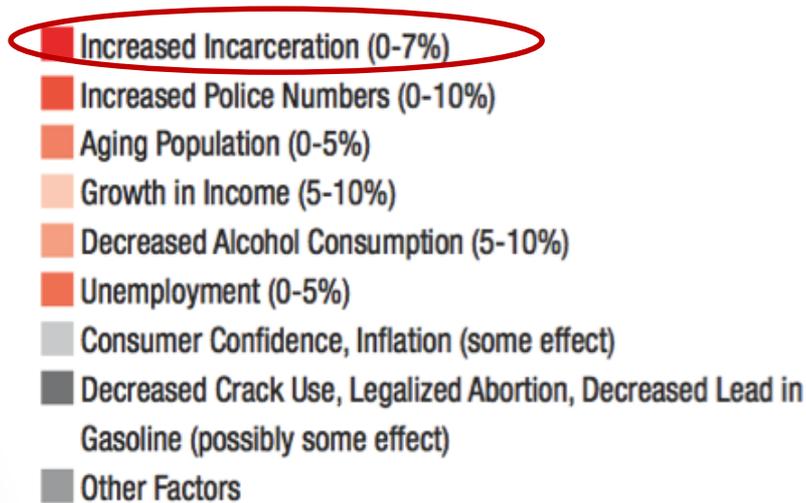


Utah's Prison Population

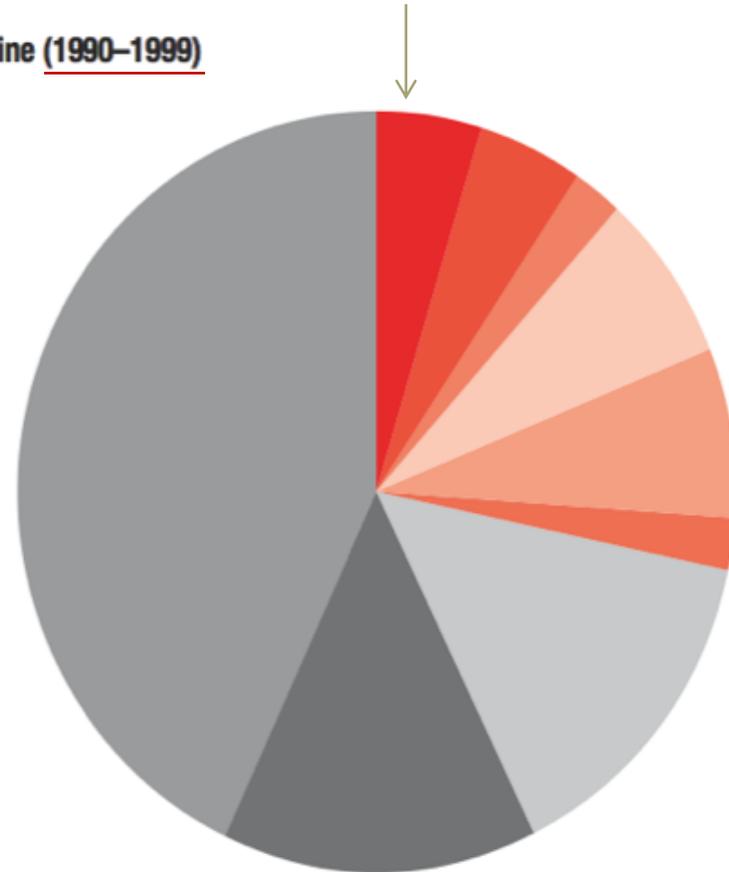
- Grew 22% in last 10 years
- Anticipated to grow 37% next 20 years (with no changes)
- Increased 6% in last 3 years in contrast to national decrease of 4%
- Total length of stay increased 20%
- LOS increased for all but 2 grids for non violent crimes
- Offenders serving 4.6 months longer than a decade ago
 - *even controlling for demographics, criminal history, offense characteristics, sentence type, release type and court district

Theories on Cause of Nationwide Crime Decline

Percent of Crime Decline (1990–1999)



*Use of Death Penalty, Enactment of Right-to-Carry Laws (no evidence of an effect)



Brennan Center for Justice, NYU Law School
'What Caused the Crime Decline?' February 2015

Percent of Crime Decline (2000–2013)



- Increased Incarceration (0-1%)
- Growth in Income (5-10%)
- Decreased Alcohol Consumption (5-10%)
- Introduction of CompStat (some effect)
- Consumer Confidence, Inflation (some effect)
- Other Factors

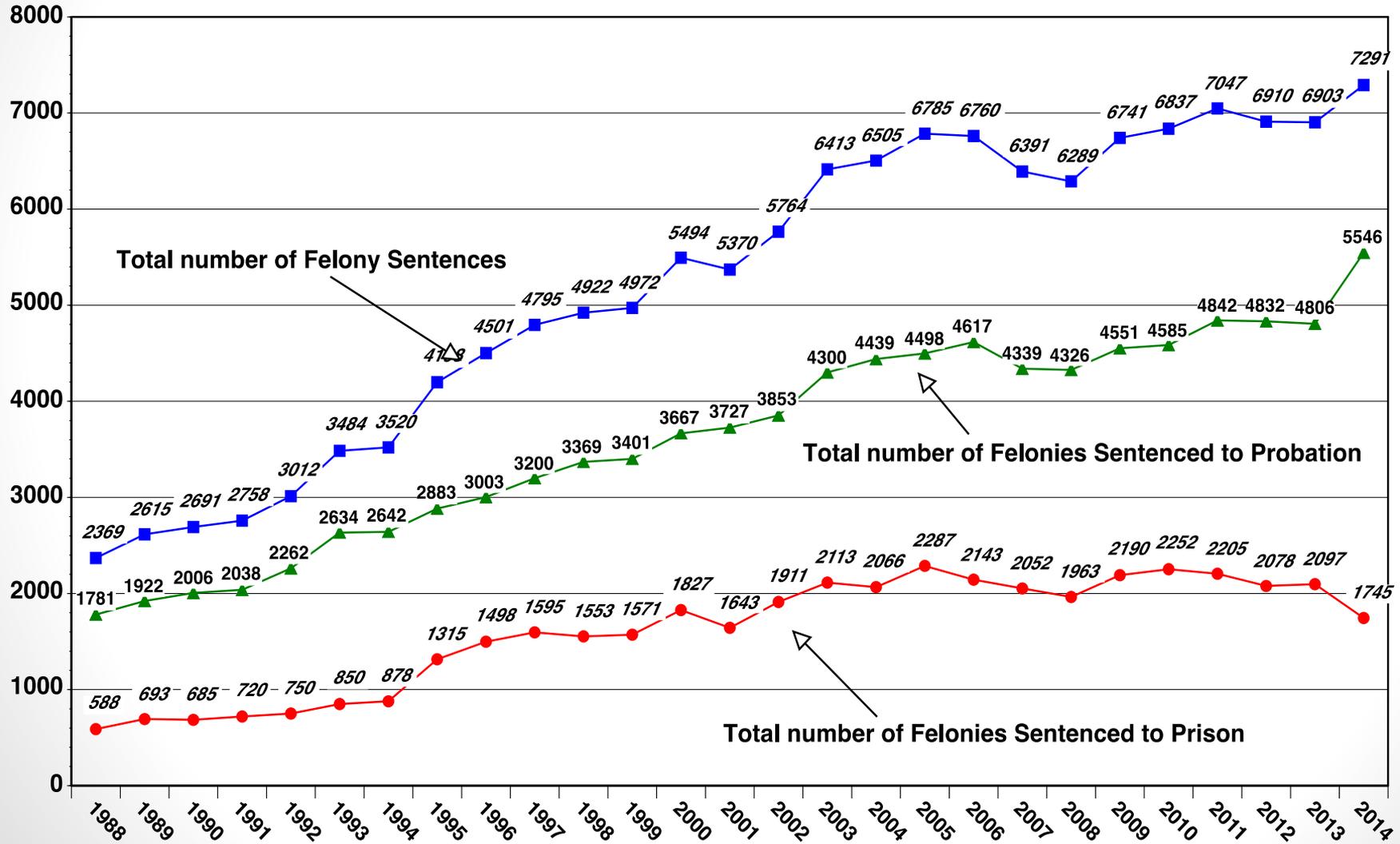
- * Decreased Crack Use, Legalized Abortion, Decreased Lead in Gasoline (likely no effect)
- * Use of Death Penalty, Enactment of Right-to-Carry Laws, Increased Police Numbers, Aging Population, Unemployment (no evidence of an effect)



*Brennan Center for Justice, NYU Law School
'What Caused the Crime Decline?' February 2015*

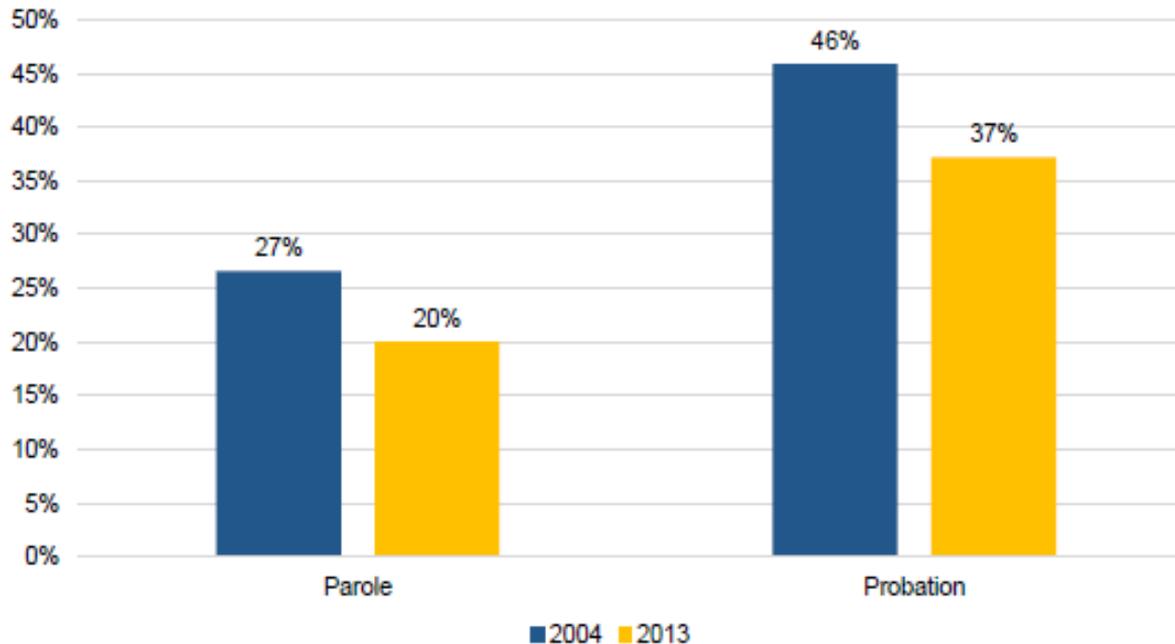
Felony Sentencing 1988 - 2014

(76% Sentenced to Probation;
95% Sentenced to Prison Eventually Released)

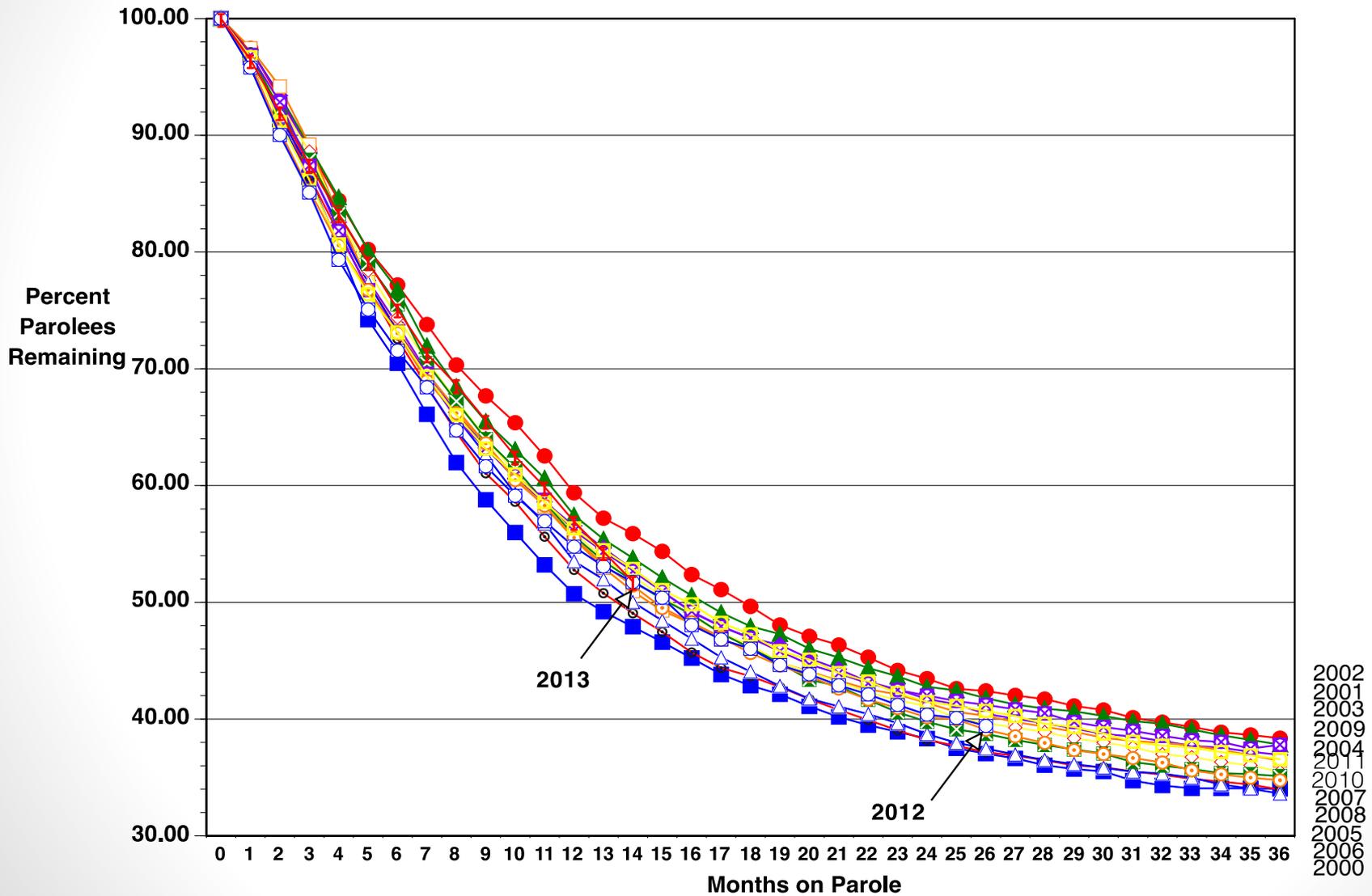


Declining Rates of Success for Probation & Parole

Parole and Probation Successful Discharge Rates, 2004 vs. 2013

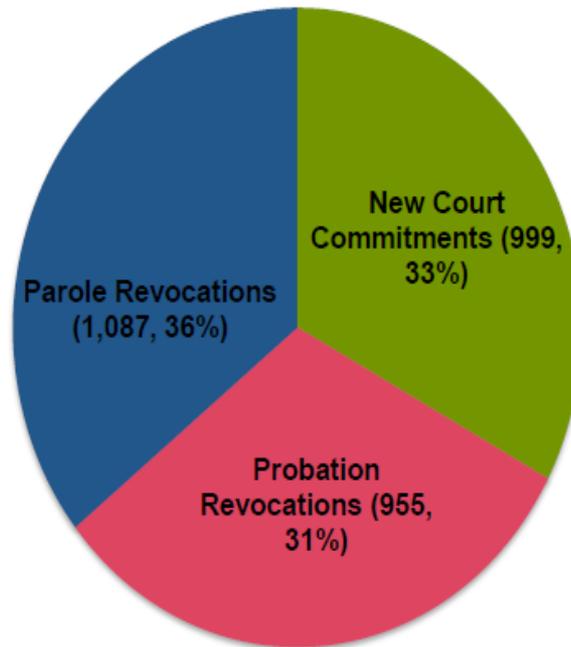


Parole Recidivism 2000 through 2013

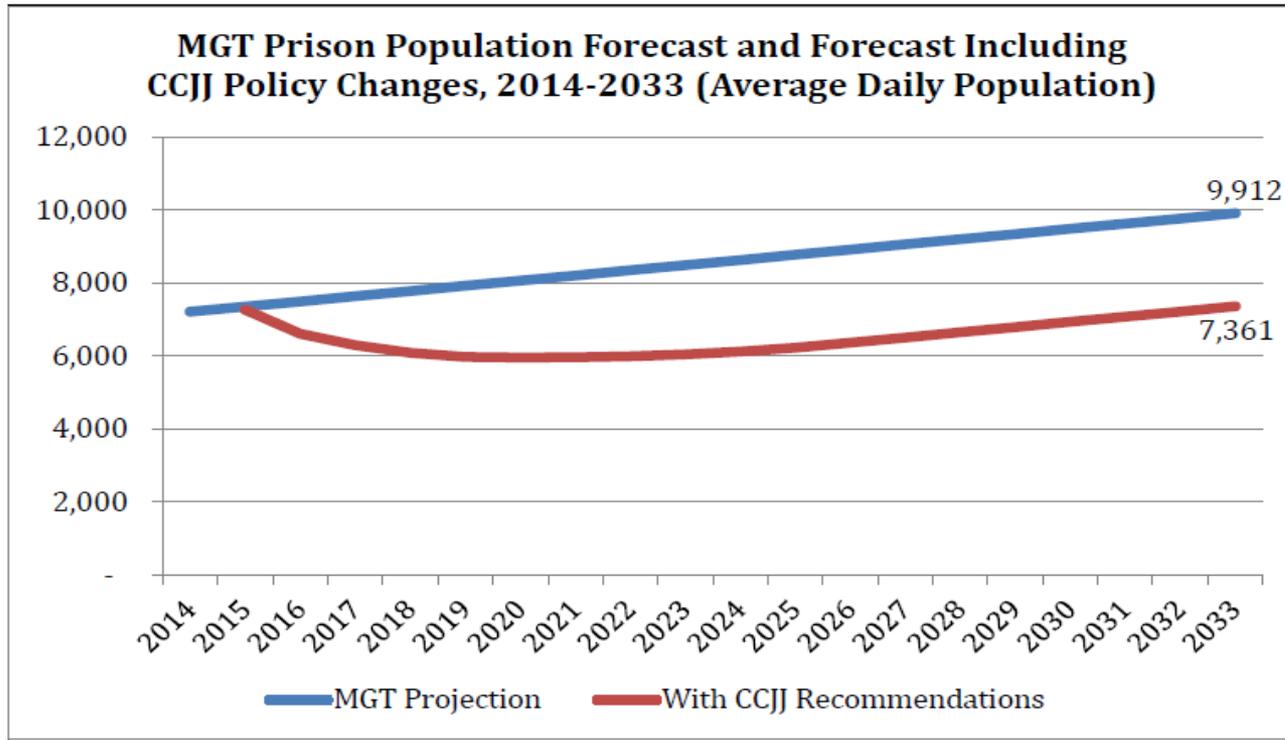


Two-Thirds of All Admissions to Prison are Probation/Parole Revocations

Prison Admissions by Type (2013)



Cost of Doing Nothing = \$542 Million

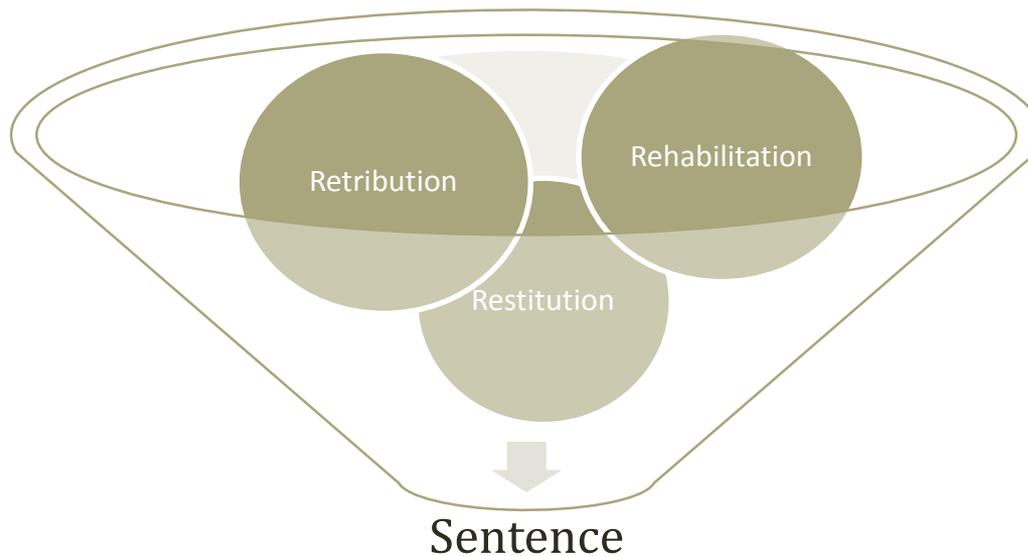


CCJJ recommends that a portion of the savings from averted prison costs be reinvested into expanding treatment options, strengthening community supervision, improving reentry services, and reducing burdens on local jurisdictions.

Current Framework

Pre-Sentence Reports:

Motivation	Amount of Support	Posture	Current emotional disposition
Employment history	Degree of Deference	Past supervision	
Scars/tattoos	Age	Race/ethnicity	Gender
Parental Influence	Military Record	Substance Abuse	
Physical attractiveness	Educational achievement	Verbal Intelligence	
Previous Abuse History	IQ	Neighborhood	
Height/Weight	Previous Treatments	Poor Self Control	Mental Health
Siblings	Instigator/Follower	Finances	
Attitudes/Beliefs	Family Name	Level of Violence	Prior Failures
Peers	Nationality	Self Esteem	



2014 Criminal History Scoring

FORM 1 - GENERAL MATRIX CRIMINAL HISTORY ASSESSMENT

These are guidelines only. They do not create any right or expectation on behalf of the offender.
Matrix time frames refer to imprisonment only. Refer to the categorization of offenses.
Capital offenses are not considered within the context of the sentencing guidelines.

PRIOR FELONY CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)

- 0 NONE
- 2 ONE
- 4 TWO
- 6 THREE
- 8 MORE THAN THREE

VIOLENCE HISTORY
(PRIOR JUVENILE OR ADULT CONVICTION
FOR AN OFFENSE WHICH INCLUDES USE
OF A WEAPON, PHYSICAL FORCE,
THREAT OF FORCE, OR SEXUAL ABUSE)

- 0 NONE
- 1 MISDEMEANOR
- 2 3rd DEGREE FELONY
- 3 2nd DEGREE FELONY
- 4 1ST DEGREE FELONY

PRIOR MISDEMEANOR CONVICTIONS
(SEPARATE CRIMINAL CONVICTIONS)
(INCLUDES DUI & RECKLESS)
(EXCLUDES OTHER TRAFFIC)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 FIVE TO SEVEN
- 4 MORE THAN SEVEN

WEAPONS USE IN CURRENT OFFENSE
(ONLY WHEN CURRENT CONVICTION
DOES NOT REFLECT WEAPON USE OR
WHEN STATUTORY ENHANCEMENT IS
NOT INVOLVED)

- 0 NONE
- 1 CONSTRUCTIVE POSSESSION
- 2 ACTUAL POSSESSION
- 3 DISPLAYED OR BRANDISHED
- 4 ACTUAL USE
- 6 INJURY CAUSED

PRIOR JUVENILE ADJUDICATIONS
(ADJUDICATIONS FOR OFFENSES THAT
WOULD HAVE BEEN FELONIES IF
COMMITTED BY AN ADULT)(THREE
MISDEMEANOR ADJUDICATIONS EQUAL
ONE FELONY ADJUDICATION)

- 0 NONE
- 1 ONE
- 2 TWO TO FOUR
- 3 MORE THAN FOUR
- 4 SECURE PLACEMENT

TOTAL SCORE: _____

SUPERVISION HISTORY
(ADULT OR JUVENILE)

- 0 NO PRIOR SUPERVISION
- 1 PRIOR SUPERVISION
- 2 PRIOR RESIDENTIAL PLACEMENT
- 3 PRIOR REVOCATION
- 4 ACT OCCURED WHILE UNDER CURRENT
SUPERVISION OR PRE-TRIAL RELEASE

SUPERVISION RISK
(ADULT OR JUVENILE)

- 0 NO ESCAPES OR ABSCONDINGS
- 1 FAILURE TO REPORT (ACTIVE OFFENSE) OR
OUTSTANDING WARRANT
- 2 ABSCONDED FROM SUPERVISION
- 3 ABSCONDED FROM RESIDENTIAL PROGRAM
- 4 ESCAPED FROM CONFINMENT

CRIMINAL HISTORY ROW	
V	16+
IV	12 - 15
III	8 - 11
II	4 - 7
I	0 - 3

2014 Form 1 Matrix:

Intersection of Severity of Offense and Culpability of the Offender

		CRIME CATEGORY											
		A	B	C	D	E	F	G	H	I	J	K	L
		1st Degree Murder	1st Degree Death	2nd Degree Death	1st Degree Person	3rd Degree Death	1st Degree Other	2nd Degree Person	3rd Degree Person	2nd Degree Other	2nd Dgree Possession	3rd Degree Other	3rd Degree Possession
CRIMINAL HISTORY	V	24 YRS	10 YRS	*	10 YRS	48 MOS	84 MOS	60 MOS	36 MOS	30 MOS	20 MOS	20 MOS	18 MOS
	IV	22 YRS	9 YRS	*	9 YRS	42 MOS	78 MOS	48 MOS	30 MOS	24 MOS	18 MOS	18 MOS	16 MOS
	III	20 YRS	8 YRS	*	8 YRS	36 MOS	72 MOS	36 MOS	24 MOS	20 MOS	16 MOS	12 MOS	12 MOS
	II	20 YRS	7 YRS	*	7 YRS	24 MOS	66 MOS	30 MOS	20 MOS	18 MOS	14 MOS	10 MOS	10 MOS
	I	20 YRS	6 YRS	*	6 YRS	20 MOS	60 MOS	24 MOS	18 MOS	16 MOS	12 MOS	9 MOS	8 MOS

Annotations: A red box highlights the 'Mandatory Imprisonment' column (A) and the 'IMPRISONMENT' row (III). A red box highlights the 'INTERMEDIATE SANCTION' column (J) and the 'REGULAR PROBATION' row (II). A red arrow points to the intersection of row III and column J (16 MOS). The text 'MISDEMEANORS' is written vertically on the right side of the matrix.

Form 2

AGGRAVATING AND MITIGATING CIRCUMSTANCES

(Use Form 4 also for Sex Offenses with Three Alternative Minimum Lengths of Stay)

Note any aggravating or mitigating circumstances that may justify departure from the guidelines by entering the page number of the presentence report where the court can find supporting information.

**This list of aggravating and mitigating factors is non-exhaustive and illustrative only.
The weight given to each factor by the sentencing authority will vary in each case. Any one factor
could outweigh some or all other factors.**

Aggravating Circumstances

Only use aggravating circumstances if they are not an element of the offense.

PSI Page #

- ____ 1. Established instances of repetitive criminal conduct.
- ____ 2. Multiple documented incidents of violence not resulting in conviction. (Requires court approved stipulation.)
- ____ 3. Offender presents a serious threat of violent behavior.
- ____ 4. Victim was particularly vulnerable.
- ____ 5. Injury to person or property loss was unusually extensive.
- ____ 6. Offense was characterized by extreme cruelty or depravity.
- ____ 7. There were multiple charges or victims.
- ____ 8. Offender's attitude is not conducive to supervision in a less restrictive setting.
- ____ 9. Offender continued criminal activity subsequent to arrest.
- ____ 10. Sex Offenses: Correction's formal assessment procedures classify as a high risk offender.
- ____ 11. Offender was in position of authority over victim(s).
- ____ 12. Financial crime or theft crime involved numerous victims, an exploitation of a position of trust, a substantial amount of money, or receipt of money from sources including, but not limited to, equity in a person's home or a person's retirement fund.
- ____ 13. Offender occupied "position of trust" in relation to murder/homicide victim(s) (U.C.A. 76-3-406.5(2))
- ____ 14. Offense constitutes a "hate crime" in that it is likely to incite community unrest; cause community to reasonably fear for physical safety or freely exercise constitutionally secured rights (U.C.A. 76-3-203.4)
- ____ 15. Violence committed in the presence of a child.
- ____ 16. Other (Specify) _____

Mitigating Circumstances

- ____ 1. Offender's criminal conduct neither caused nor threatened serious harm.
- ____ 2. Offender acted under strong provocation.
- ____ 3. There were substantial grounds to excuse or justify criminal behavior, though failing to establish a defense.
- ____ 4. Offender is young.
- ____ 5. Offender assisted law enforcement in the resolution of other crimes.
- ____ 6. Restitution would be severely compromised by incarceration.
- ____ 7. Offender's attitude suggests amenability to supervision.
- ____ 8. Offender has exceptionally good employment and/or family relationships.
- ____ 9. Imprisonment would entail excessive hardship on offender or dependents.
- ____ 10. Offender has extended period of arrest-free street time.
- ____ 11. Offender was less active participant in the crime.
- ____ 12. All offenses were from a single criminal episode.
- ____ 13. Offense(s) was "possession only" drug offense.(see "possession only" offenses, Addendum B)
- ____ 14. Offender has completed or has nearly completed payment of restitution.
- ____ 15. Other (Specify) _____

State v. LeBeau,

2014 UT 39

- Utah's Sentencing Guidelines are "a good starting point."
- §76-1-106 Utah's criminal code "shall be construed according to the fair import of [its] terms to promote justice and to effect the objects of the law and general purposes of [s]ection 76-1-104."
- §76-1-104 Four general goals of Utah's criminal code:
 - (1) Forbid and prevent the commission of offenses.
 - (2) Define adequately the conduct and mental state which constitutes each offense and safeguard conduct that is without fault from condemnation as criminal.
 - (3) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
 - (4) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.
- "If we are to embrace reform, we should do so comprehensively and carefully. And any such effort should start in the legislature, not in this court." Justice Lee, dissenting. p. 34.

Research, Data, & Input :

Past 2 Years

- Office of the Legislative Auditor General, State of Utah, "A Performance Audit of the Division of Adult Probation and Parole." 2013. http://le.utah.gov/audit/13_08rpt.pdf
- Durrant, Matthew B. "State of the Judiciary Address." Chief Justice, Utah Supreme Court. 2014. <http://www.utcourts.gov/resources/reports/statejudiciary/2014-StateOfTheJudiciary.pdf>
- Governor Gary R. Herbert's 2014 State of the State Address
- *State v. LeBeau*, 2014 UT 39, 227 P.3rd 254
- *Utah Summit on Justice Reform*, April 2014. Marlowe, Douglas B. "Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs." Policy and Law, National Association of Drug Court Professionals 1, no. 1: 173-175. 2009.
- Hickert, Audrey O., Kort C. Prince, Erin B. Worwood, and Robert P. Buttars. Development of Utah's Incentive and Response Matrix. Salt Lake City: Utah Criminal Justice Center, University of Utah. 2014. http://ucjc.utah.edu/wp-content/uploads/ViolMatrix_Yr1Report_Final1.pdf
- *Utah Smarter Sentencing Workshop*, September 2014. National Center for State Courts.
- Utah Commission on Criminal and Juvenile Justice. (2014) "Justice Reinvestment Report." http://justice.utah.gov/Documents/CCJJ/Reports/Justice_Reinvestment_Report_2014.pdf
- House Bill 348, Criminal Justice Programs & Amendments, Senator Adams & Representative Hutchings. 2015 General Legislative Session

2015 Guidelines

Evidence-Based Sentencing Framework

- GOALS:
 - Risk Management (Accountability, Incapacitation, Punishment)
 - Risk Reduction (Recidivism)
 - Restitution
- PROCESS:
 - Swift, certain, consistent & proportionate
 - Fundamentally fair
- TOOLS:
 - Policies, grids & guidelines
 - Graduated continuum of rewards, incentives, services, sanctions

Theory Meets Practice....

- 2015 Utah Adult Sentencing & Release Guidelines, effective October 1, 2015
- Incorporated specific directives from HB348 in forms 1-5
- Developed guidelines for supervision in forms 6-10 that are entirely new
- Provides a more comprehensive approach to criminal sentencing, both felony and misdemeanor, to incorporate
 - Data & Research
 - Criminal Justice Field
 - Behavioral Modification Field
 - Transparency & Procedural Fairness

What is an “Evidence-Based” Intervention/Program?

- Evidence/research exists that the program or intervention is effective in reducing recidivism.
- Effectiveness is demonstrated through empirical research – not stories, anecdotes, common sense, or personal beliefs about effectiveness.
- Evidence strongly indicates that treatment is more effective in reducing recidivism than punishment. *But not all treatment programs are equally effective.*
- Absent rigorous outcome research on a given program we can evaluate a program using the principles of effective interventions.

What is NOT Evidence-Based?

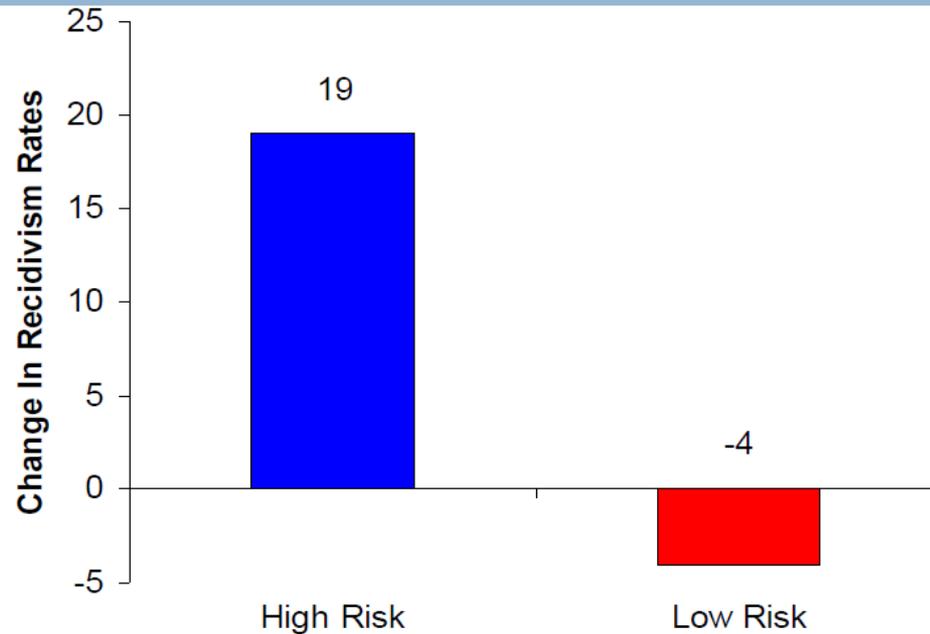
- Psychoeducation
- Shaming offenders
- Non-directive, client centered approaches
- Gestalt
- Bibliotherapy
- Freudian approaches
- Self-Help programs
- Vague unstructured rehabilitation programs
- Medical model
- Fostering self-regard (self-esteem)

Characteristics of Evidence-Based Programs

- **Validated Tools:**
 - Different tools for screening and assessments are available at various stages in the system for different purposes.
- **Risk Principle (WHO):**
 - Likelihood to reoffend (not risk of danger or threat). Target those most likely to reoffend.
- **Need Principle (WHAT):**
 - Dynamic factors which, if addressed, will reduce the likelihood of continued criminal activity. Target the “central eight.”
- **Responsivity Principle (HOW):**
 - General: Use behavioral approaches
 - Specific: Match programs to the individual offender
- **Fidelity (HOW WELL):**
 - Program Integrity: Ensure quality in both use of tools and delivery of services.
 - Outcomes: Measure progress and make improvements as needed. Create a regular feedback loop.

Risk Principle: Target Higher Risk / Eliminate Low

The Risk Principle & Correctional Intervention Results from Meta Analysis

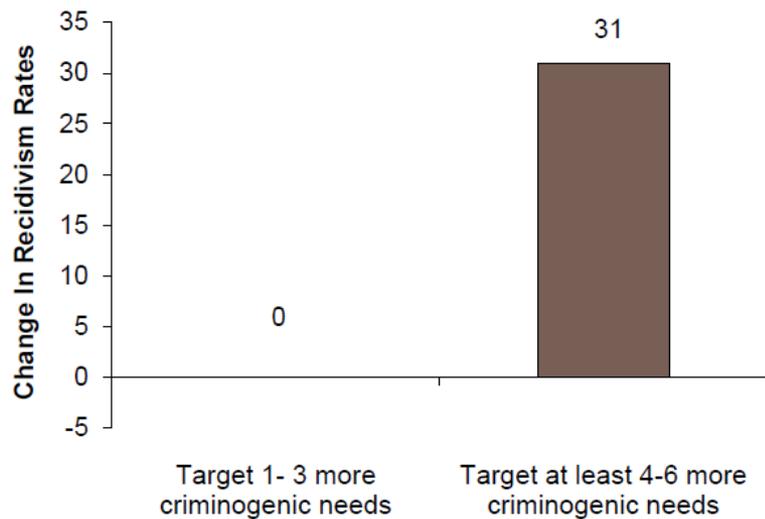


Dowden & Andrews, 1999

Criminogenic Needs Principle: Target 4+ Needs

Need Principle and Correctional Intervention

Lowenkamp, C.T., Pealer, J., Smith, P., & Latessa, E.J. (2006). Adhering to the risk and need principles: Does it matter for supervision-based programs? *Federal Probation*, 70 (3), 3-8.



*Evidence-Based Treatment may be “clinical” or “criminogenic.”

“Clinical” may only focus on symptom reduction of one need, which may or may not be a criminogenic factor: i.e., anger management, substance abuse, mental illness, domestic violence.

“Criminogenic” focuses on the identified central eight criminogenic needs.

Central Eight Dynamic Factors

Criminogenic Need	Treatment Targets
Antisocial Behavior Exploitive, aggressive, or harmful behavior toward others	Increase pro-social behaviors, reinforce prosocial beliefs, support crime-free lifestyle. Develop clear, consistent, and proximate reward and consequences for behavior. Teach, model, and reinforce pro-social skills in high-risk situations.
Antisocial Personality Pattern Impulsive, sensation seeking, risk-taking, aggressive, manipulative and exploitive.	Treatment target: increase self-control and delayed gratification skills, anger and conflict management, problem solving. Reinforce prosocial interpersonal interactions.
Antisocial Cognition Values, beliefs, feelings, and cognitions (thinking) that contribute to personal identity that favors and reinforces criminal behavior.	Address cognitive distortions and rationalizations that maintain a criminal identity. Build, practice, and reinforce new cognitions and attributions through cognitive restructuring and cognitive-behaviors therapies.
Antisocial Peers Preferring to associate with pro-criminal peers and isolation from anti-criminal peers and social contexts.	Reduce and eliminate association with delinquent peers and increase opportunities for regular association with anti-criminal peers and institutions (school, church, clubs, sports teams, and other structured and supervised activities).
Family Chaotic and poor-quality family relationships that have minimal or no pro-social expectations regarding crime and substance abuse.	Increase pro-social communication, nurturance, structure, supervision, and monitoring in the family. Address dysfunctional boundaries and role confusion. Provides for consistent rewards for pro-social family interactions.
School/Work Poor performance and limited engagement with school or work resulting in dissatisfaction and avoidance of them.	Increase school and/ or work performance through education, vocational training, or alternative placement. Provide rewards and consequences to increase consistent attendance and progress at school and/or work.
Leisure & Recreation Limited involvement in anti-criminal leisure activities.	Expose to a variety of pro-social leisure and recreational activities. Increase opportunities for regular involvement in preferred activities and reward progress.
Substance Abuse Use and abuse of alcohol and/or drugs.	Reduce substance use through targeted treatment, supervision and access. Reduce exposure to substance abusing peers. Increase capacity to cope with stressors through lifestyle changes in exercise, sleep, and nutrition.

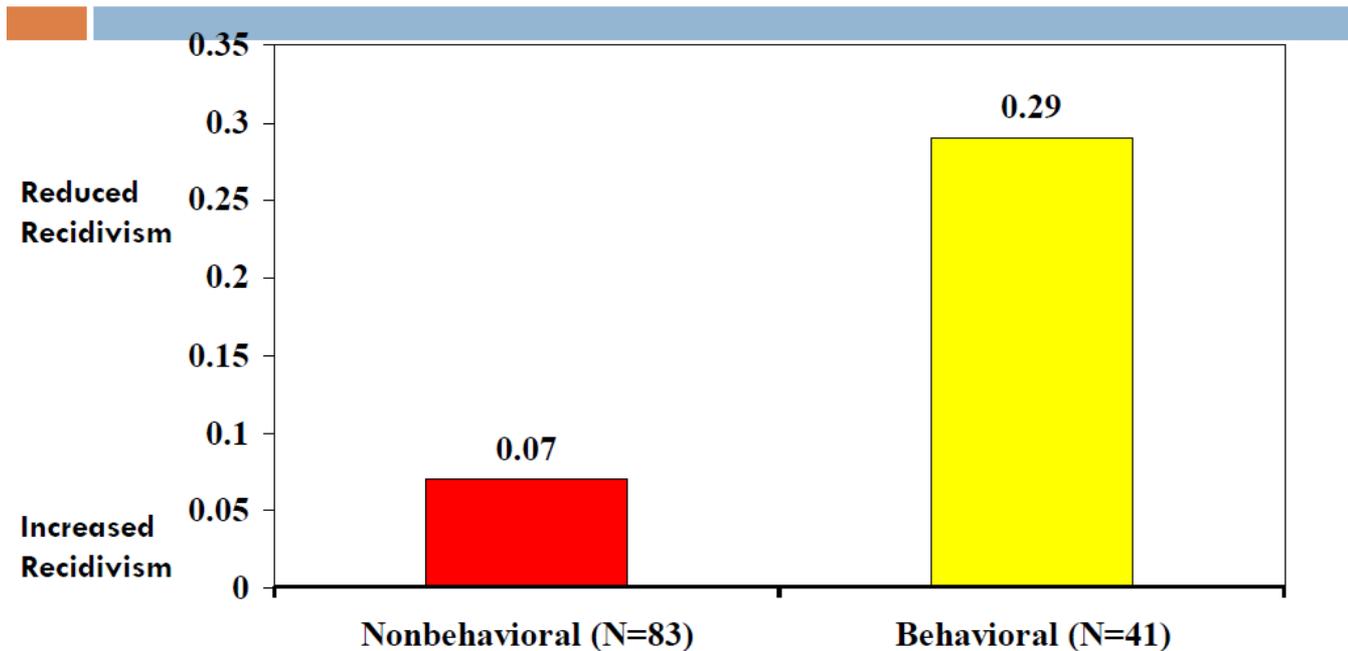
“Big Four”

“Mod Four”

Responsivity Principle: General

Use Cognitive Behavioral Approaches
Prosocial Modeling; Appropriate Use of Reinforcement & Disapproval;
Problem Solving; Thinking For Change

Behavioral vs. NonBehavioral



Andrews, D.A. 1994. An Overview of Treatment Effectiveness. Research and Clinical Principles, Department of Psychology, Carleton University. The N refers to the number of studies.

Example of CBT

- Facilitator provides brief background on targeted behaviors
- Identifies the underlying thoughts, feelings, cognitions that are associated with the dysfunctional behavior
- Identifies thoughts that are dysfunctional, cognitive distortions, or misattributions
- Explores alternative thoughts/attributions and associated feelings
- Identifies healthy thinking and behavioral alternatives
- Facilitator models prosocial thinking and resulting behaviors for group
- Participants role play real scenario while being directly observed by facilitator
- Facilitator provides positive reinforcement for successes and feedback to improve
- Participants are provided “homework” (manualized) to practice skill at home and report back to group on successes and challenges
- Participants continue to practice skill, in increasingly challenging scenarios, until skill is mastered

Responsivity Principle: Specific

Take into account the strengths, learning style, personality, motivation & biosocial characteristics of the individual

- Functional Ability
- Language
- Motivation Level
- Mental Health
- Gender
- Housing
- Physical Health
- Transportation
- Minimization

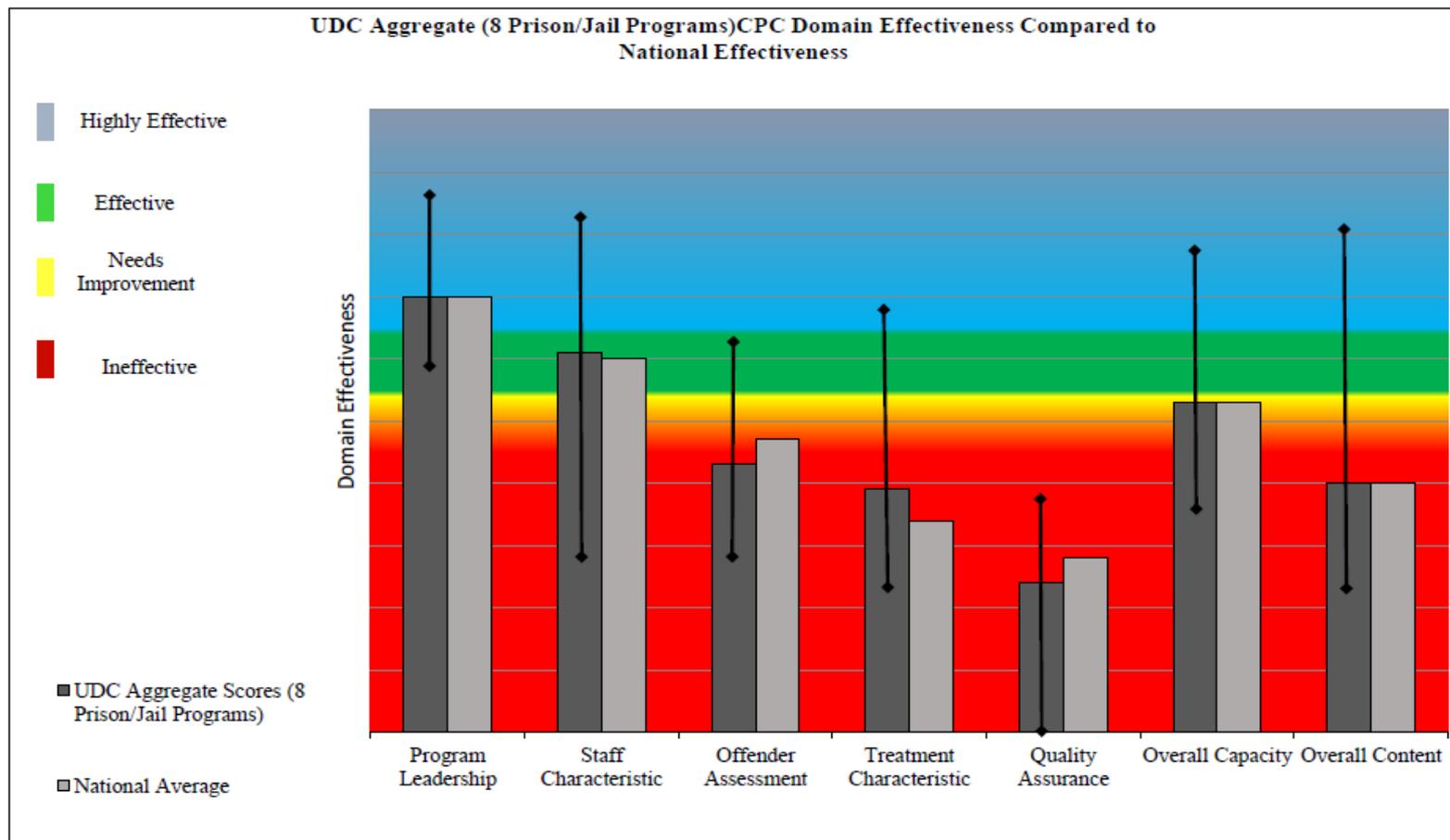
**Critically Constitutionally important that these factors are not used punitively*

Correctional Program Checklist

University of Utah Assessment of UDC Programs

<http://ucjc.utah.edu/adult-offenders/utah-commission-on-criminal-and-juvenile-justice-and-utah-department-of-corrections-evidence-based-practice-adherence-summary-report>

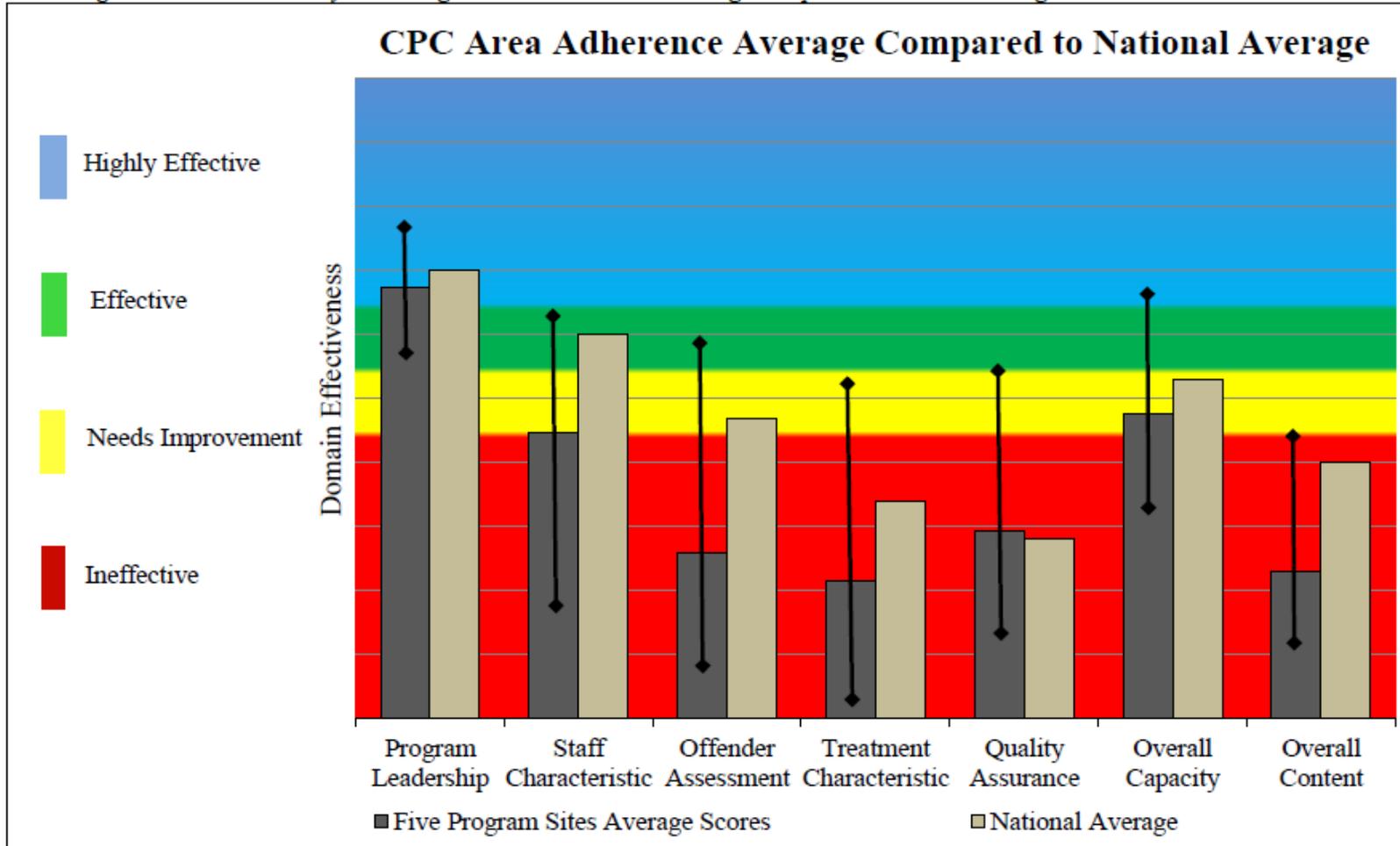
Figure 3. UDC 2014 Programs' Area Adherence Average Compared to National Average



University of Utah Assessment of Salt Lake County Programs

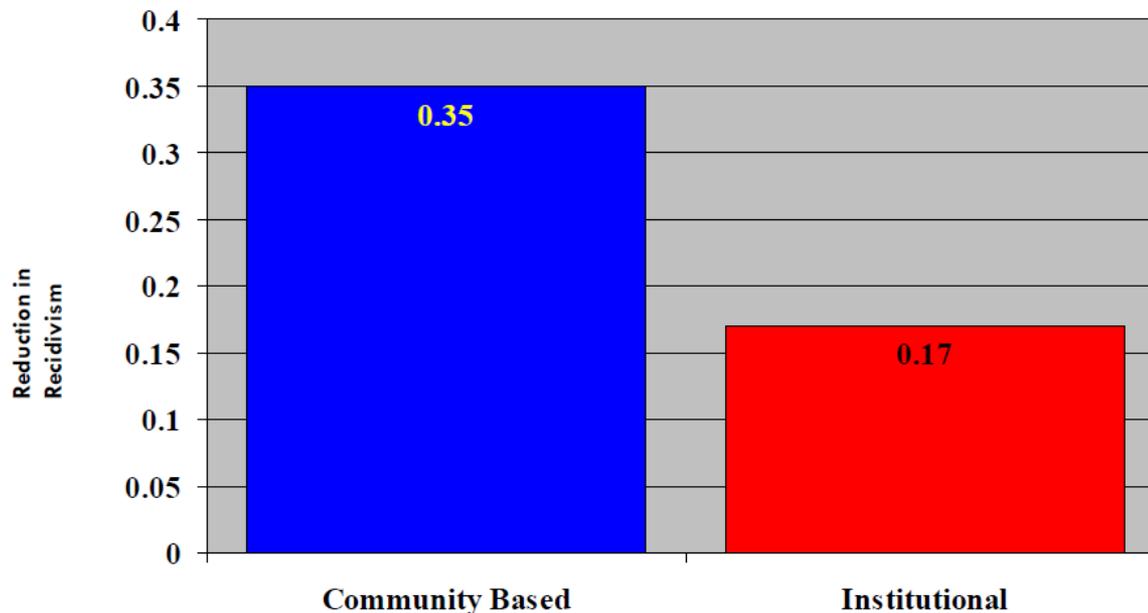
http://ucjcutah.edu/wp-content/uploads/12_30_2013_Salt-Lake-County_CPC-Pilot_Report_Final-for-Distribution.pdf

Figure 2. Salt Lake County 2013 Programs' Area Adherence Average Compared to National Average



Criminogenic EBP While Incarcerated Not as Effective as in the Community

**Community Based versus Institutional Programs: Results from
Meta-Analyses of Programs Based on Principles of Effective
Treatment**



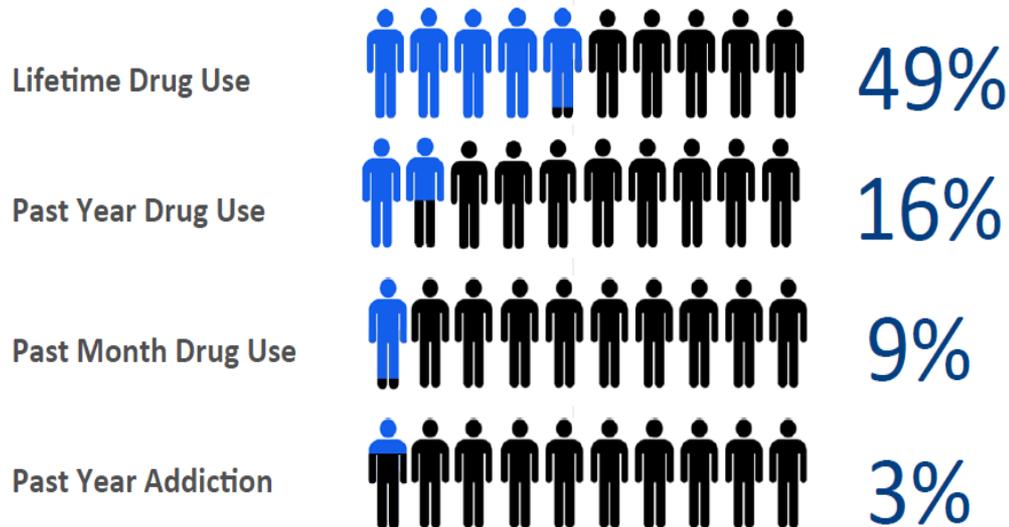
Source: Gendreau, P., French, S.A., and A. Taylor (2002). What Works (What Doesn't Work) Revised 2002. Invited Submission to the International Community Corrections Association Monograph Series Project.

Why Does Substance Abuse Seem Like the Main Factor?

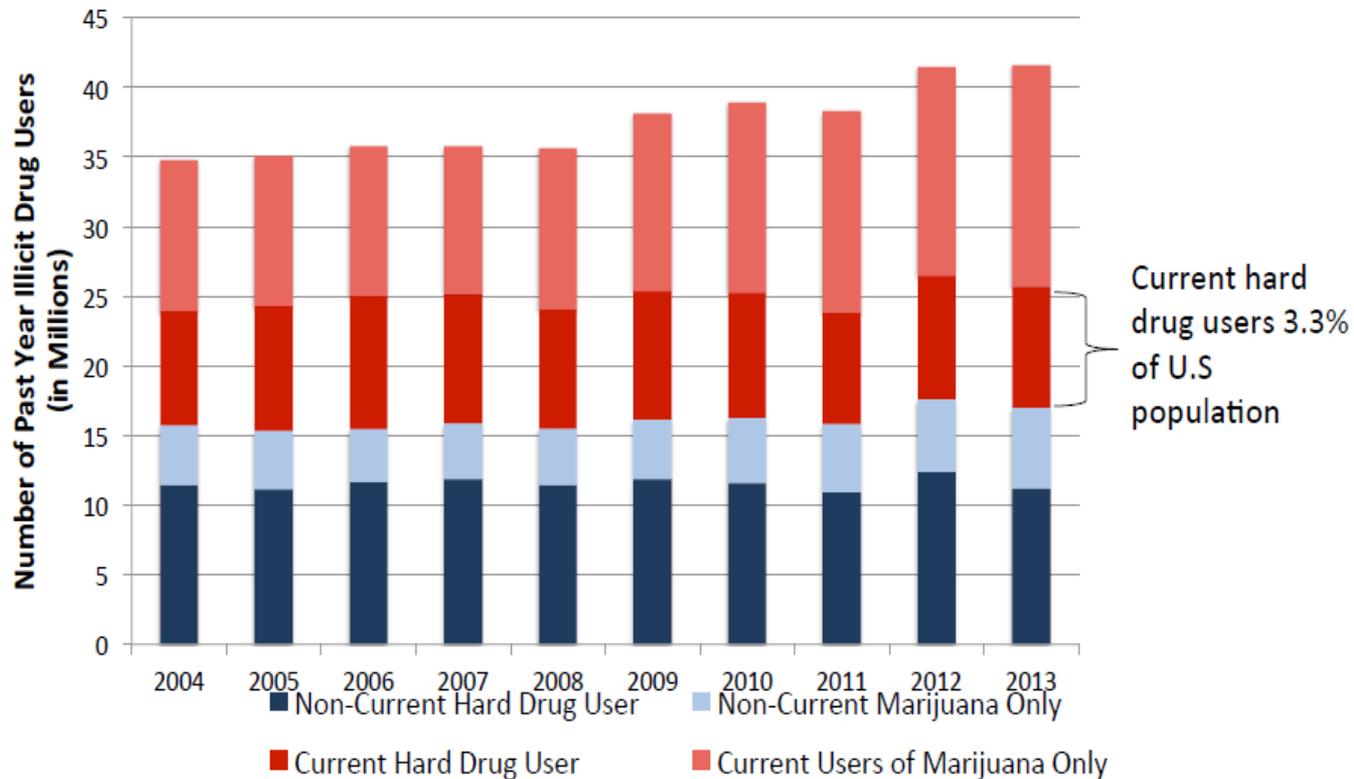
Criminal Justice System

- **14% of people arrested** and booked in past year are current hard drug users
- More than **50% of state prison inmates** have SUD
- Approximately **15% of probationers and parolees** have SUD

General Population



Hard Drug Use Has Not Diminished Over Time



Total Treatment Admissions in Utah Remains Constant

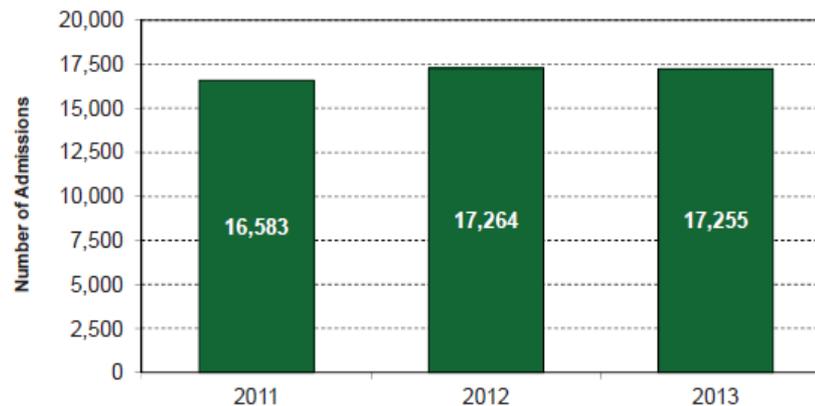
Number of Treatment Admissions

In 2013, total treatment admissions remained virtually constant, with 17,264 admissions in 2012 and 17,255 in 2013.

The second chart shows the number of admissions by each local authority and the University of Utah

Clinic in fiscal year 2013. It should be noted that six local authorities each have less than 2% of treatment admissions for the state, and Salt Lake County provides services to 61% of the state's admissions.

Substance Use Disorder Initial and Transfer Admissions into Modalities
Fiscal Years 2011 to 2013

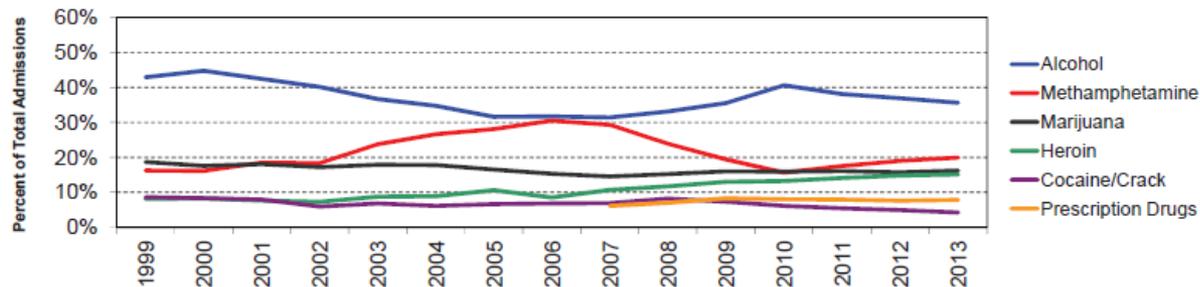


Crack Cocaine Use at All-Time Low, Heroin & Meth Use Increasing

Opioids are the second most abused drug at admission, accounting for just under 22% of all admissions. Methamphetamines and marijuana are the third and fourth most common drugs at admissions

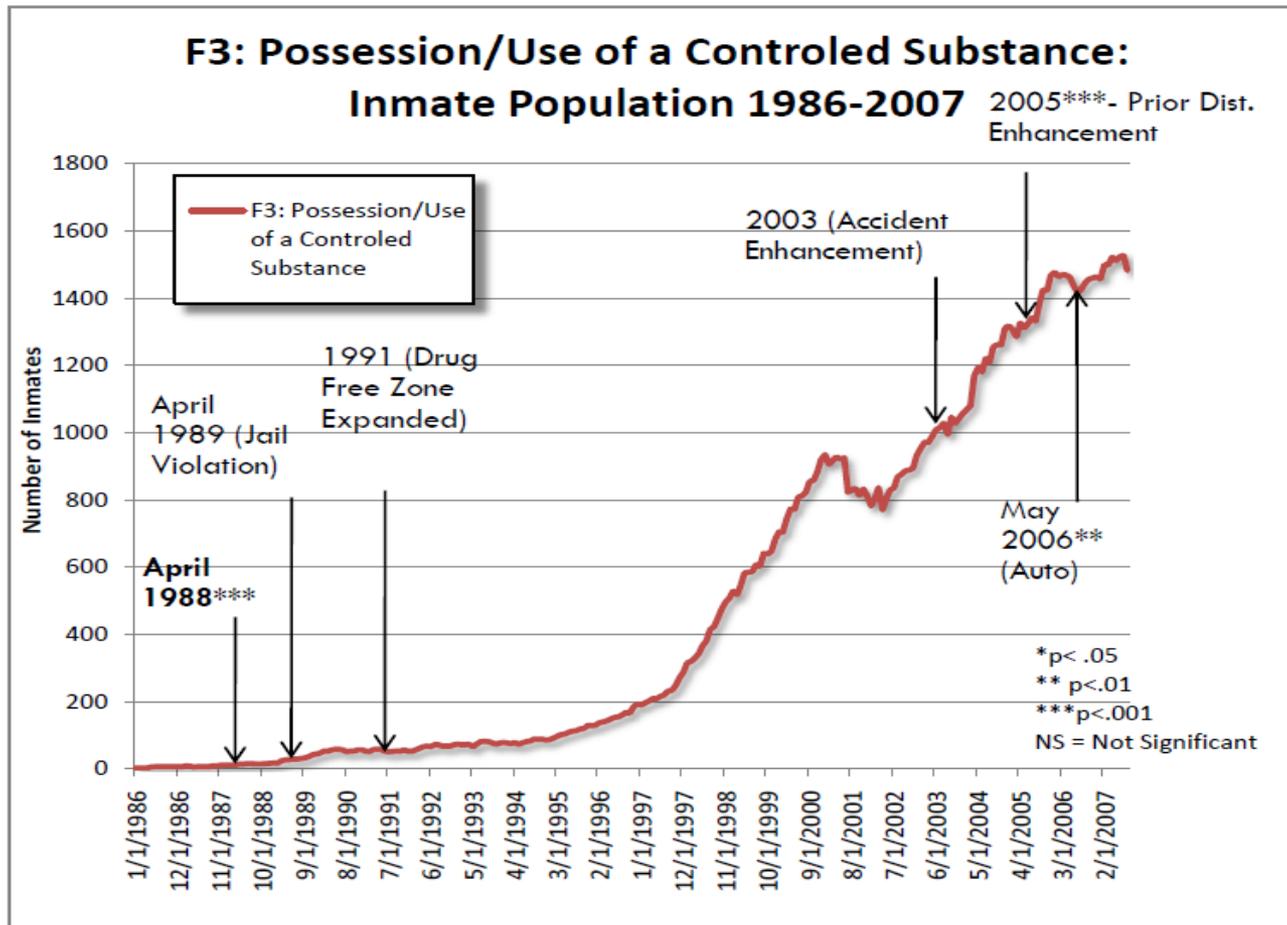
with 19.9% and 16.2% of admissions respectively. For the fifth straight year, Cocaine/crack dropped again in 2013 to 4.2%, the lowest on record.

Top Drugs of Choice by Year
Fiscal Year 1999 to Fiscal Year 2013



Felony Drug Poss. Enhancements Added

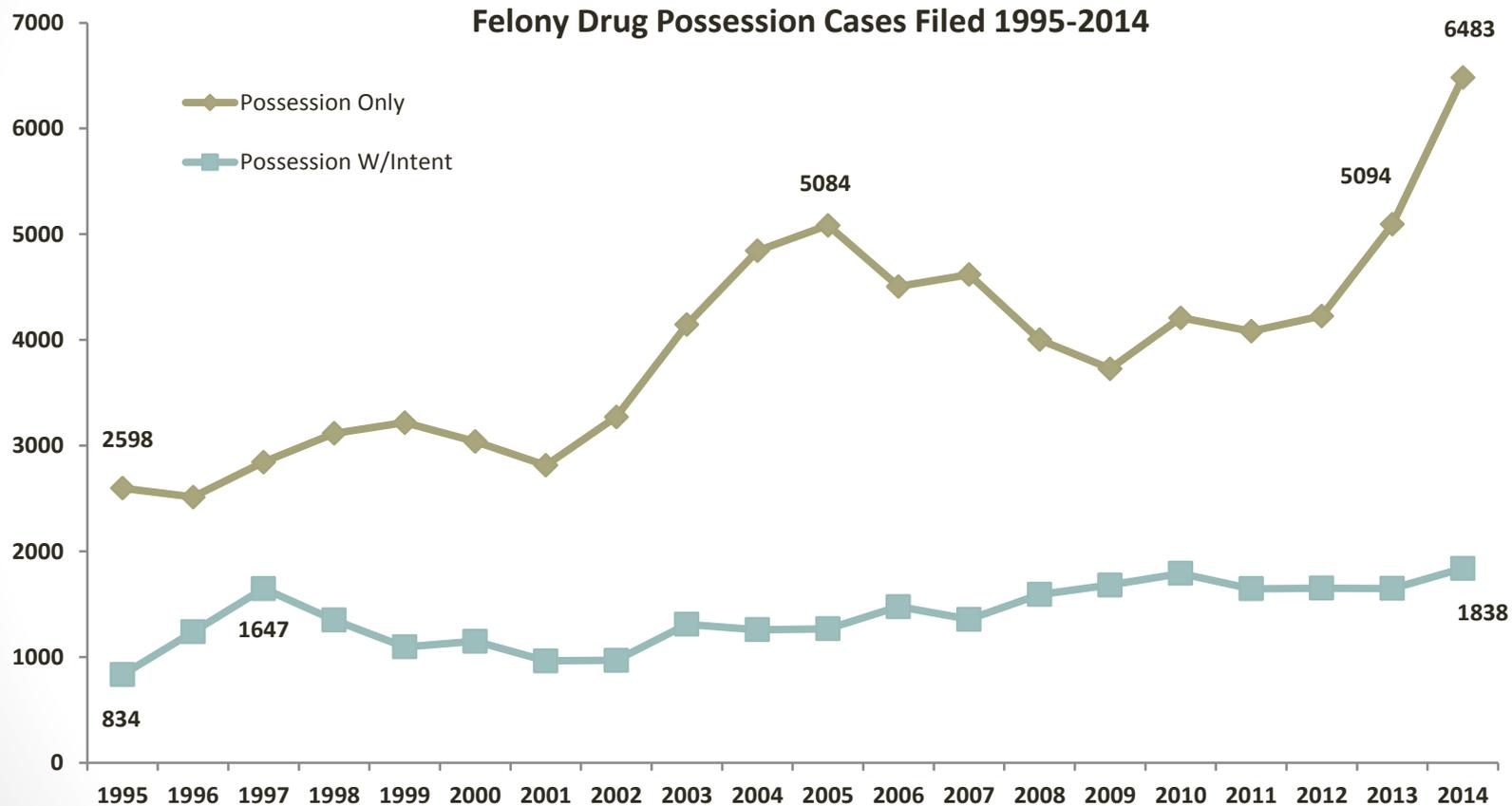
(With No Statistically Significant Impact)



University of Utah Criminal Justice Center
Utah Sentence Inflation, July 2008, p. 17

<http://ucjc.utah.edu/wp-content/uploads/961.pdf>

Felony Drug Possession Filings Up 150% Over Past 20 Years



*Utah Administrative Office of the Courts
November 2014*

Does Evidence-Based Sentencing “Institutionalize” Discrimination?

- Question is not whether discrimination exists but whether validated tools legitimize discrimination?
- Malenchik v. Indiana - distinguishes between appropriate and inappropriate use of validated tools:
 - RNA tools should not drive incarceration decision
 - Tools were not designed to assist in determining an appropriate penalty, but to structure appropriate level of supervision and treatment to reduce risk

“We can’t solve our social problems until we understand how they come about, persist. Social science research offers a way to examine and understand the operation of human social affairs. It provides points of view and technical procedures that uncover things that would otherwise escape our awareness.”

Earl Babbie & Lucia Benaquisto, 2009

Starr, Sonja B. "Evidence-Based Sentencing and Scientific Rationalization of Discrimination." Law and Economics Working Papers: Paper 90, 2014.

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A Judge's View of Procedural Fairness

by David Roth

I became a trial judge in 1974 and retired in 1992. From 1992 until 2010, I worked as a Senior Judge, an arbitrator, and a mediator. In thirty-six years of working in dispute resolution, I never once heard or read the words "Procedural Fairness."

Judicial education was aimed at teaching judges how to make correct rulings. We were taught how to find the facts, apply the law, and make the right decision. We took courses and attended seminars on evidence, civil procedure, criminal procedure, search and seizure, contracts, constitutional law, family law, and more. I don't recall a single seminar entitled "Procedural Fairness."

I think most of us to some degree knew what Procedural Fairness was. We just didn't have a name for it and didn't talk about it. Most of us knew that we were hired to make correct decisions, but we also knew that the system worked best if people felt they were treated fairly in the process. Most of us learned that it was not enough to be neutral; we also had to demonstrate neutrality. It was not enough to listen. We had to convince people that they had a voice and that we were hearing them. It was not enough to have respect for people; we had to show respect for people. We knew that if we did these things, litigants were far more likely to accept and abide by the orders and judgments of the court even if they disagreed with them.

Let me illustrate with a case study. Assume a simple lawsuit where the plaintiff is suing the defendant for a money judgment for the sale of goods. The defendant claims that delivery of the goods was late and the quality was substandard.

Assume the trial is before Judge X. Judge X is intelligent and conscientious and usually makes correct decisions. The trial begins, and although Judge X listens to the evidence, to those in the courtroom, it doesn't show. He doesn't make eye contact. He doesn't ask any questions. He appears impatient. He sorts through a stack of files on the bench during testimony. At one point during the trial, he refers to the plaintiff's lawyer by his first name and asks him a personal question. He rushes the attorneys through closing arguments.

"People who perceive they have been treated in procedurally fair ways demonstrate significantly higher levels of compliance with court orders."

At the conclusion of the case, he rules from the bench in a short statement filled with legal terminology. He finds against the defendant and orders him to pay a money judgment. The entire trial takes two hours. Before the

parties have a chance to get up from counsel table, Judge X calls the next case.

The defendant is shocked and angry. He wonders if the judge had his mind made up before the trial even started. He is not convinced that the judge heard anything he or his attorney said. He feels embarrassed and disrespected. He tells his attorney he wants to appeal and that he will never pay the judgment.

DAVID ROTH is a retired Second District Court Judge and currently serves as a Commissioner on the Judicial Performance Evaluation Commission.

