

# Reducing Recidivism: Best Practices

**Authors: Richard Aborn & Sacha Boegem**

## Introduction

The phenomenon of recidivism – the tendency of former prisoners to relapse into a pattern of criminal behavior upon release from prison, is confined neither to sensationally violent crimes or even just violent criminals. It reaches all types of criminal behavior, from drug-related crimes to property crimes to violent crimes. A study done in 2002 by the United States Department of Justice (DOJ) examining recidivism of prisoners released in 1994 found that 67.5% of them were rearrested within 3 years for a new offense (almost exclusively a felony or a serious misdemeanor).<sup>1</sup> Other highlights from the report included that:<sup>2</sup>

- Within 3 years from their release in 1994:
  - 46.9% were reconvicted for a new crime
  - 25.4% were resentenced to prison
  - 51.8% were back in prison, serving time for a new prison sentence or for a technical violation of their release, like failing a drug test, missing an appointment with their parole officer, or being arrested for a new crime.
- Released prisoners with the highest rearrest rates were motor vehicle thieves (78.8%), those in prison for possessing or selling stolen property (77.4%), larcenists (74.6%), burglars (74.0%), robbers (70.2%), and those in prison for possessing, using, or selling illegal weapons (70.2%).
- Released prisoners with the lowest rearrest rates were those in prison for driving under the influence (51.5%), rape (46.0%), other sexual assault (41.4%), and homicide (40.7%).

One of the most significant and recent studies done on recidivism was conducted by the U.S.-based Pew Center on the States and released in April 2011.<sup>3</sup> This study analyzed returns to prison for 33 U.S. states for those released in 1999 and 41 states for those released in 2004 making the study one of the most comprehensive analyses of returns to prison ever done. The

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<sup>1</sup> See Langan, P. and Levin, D. June 2002 (NJC 193427). *Recidivism of Prisoners Released in 1994*. Washington, DC: U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics, at 1.

<sup>2</sup> *Id.*

<sup>3</sup> See Pew Center on the States, Pew Safety Performance Project. April 2011. *State of Recidivism: The Revolving Door of America's Prisons*. Washington, DC: The Pew Charitable Trusts.

report also compared earlier studies on recidivism conducted by the DOJ for 15 U.S. states for releases conducted in 1983 and 1994 and concluded that recidivism rates (defined in the Pew report as a return to prison within three years of release) “between 1994 and 2007 have consistently remained around 40 percent.”<sup>4</sup>

Outside the U.S., the Swedish National Council for Crime Prevention has reported that between 1996 and 2005 the proportion of persons reoffending within three years of release ranged from 35% to 39%.<sup>5</sup> Statistics released by the United Kingdom Ministry of Justice revealed that fourteen prisons in England and Wales, most of which hold short-term inmates, have reconviction rates of more than 70%.<sup>6</sup> In Australia, nearly 40% of prisoners released after serving their sentence return to prison within two years.<sup>7</sup> Meanwhile, the recidivism rate in Japan reached an all-time high of nearly 40% in 2006.<sup>8</sup>

While the precise measurement of what constitutes recidivism can vary, regardless of the definition being used it is clear that recidivism is a serious problem across the globe.

With such high recidivism rates, the cost to society caused by recidivism is tremendous. First, and most importantly, there are numerous victims of crime who are harmed by recidivists. Second, there are other costs: from money spent on law enforcement, private security, criminal prosecutions, incarceration, and post-release supervision, to money spent on less direct costs such as medical and counseling expenses stemming from crimes of violence and sex crimes, and costs associated with property crimes. Third, society is deprived of the benefits of a reformed prisoner leading a law-abiding life. Thus, the critical question becomes: can criminal justice systems engage in practices that impact the rates of recidivism, and does civil society have a role in helping to stop the revolving door of prisoners who commit a new crime shortly after their release?

Reducing the recidivism rate – generally defined as the percentage of prisoners who commit a new crime within three years of their release – has been the subject of intense study in a number of countries over the past thirty years. This has led to the concept of “evidence-based practice,” *i.e.*, those policies and practices that have been proven by the most rigorous research to

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<sup>4</sup> See *id.* at 2.

<sup>5</sup> See “brå - The Swedish *National Council for Crime Prevention, Recidivism*, available at [http://www.bra.se/extra/pod/?action=pod\\_show&id=19&module\\_instance=11](http://www.bra.se/extra/pod/?action=pod_show&id=19&module_instance=11).

<sup>6</sup> See “Reoffending rates top 70% in some *prisons*, figures reveal,” *guardian.co.uk*, Nov. 4, 2010, available at <http://www.guardian.co.uk/uk/2010/nov/04/jail-less-effective-community-service>; see also Ministry of Justice Statistics bulletin. May 2011. *2011 Compendium of re-offending statistics and analysis*, available at <http://www.justice.gov.uk/downloads/publications/statistics-and-data/mojstats/2011-compendium-reoffending-stats-analysis.pdf>.

<sup>7</sup> See “40 per cent of released prisoners back in jail within two years,” *The Australian*, Jan. 30, 2009, available at <http://www.theaustralian.com.au/news/nation/pc-of-ex-prisoners-back-to-jail-fast/story-e6frg6nf-111118710404>; see also Payne, J. 2007. *Recidivism in Australia: findings and future research* at xi (finding that between 35 and 41 percent of prisoners are reimprisoned within two years of being released).

<sup>8</sup> See “Recidivism rate *reached* an all-time high in 2006,” *The Japan Times Online*, Nov. 7, 2007, available at <http://search.japantimes.co.jp/cgi-bin/nn20071107a2.html/>.

significantly reduce offender recidivism.<sup>9</sup> These best practices can be distilled into six key evidence-based principles for effective intervention to reduce recidivism:<sup>10</sup>

1. Assessment of actuarial risk and criminogenic needs (*i.e.*, those needs associated with the risk of criminal behavior)
2. Enhancement of intrinsic motivation
3. Targeted intervention
4. Skill training with directed practice (role-playing)
5. Increased positive reinforcement
6. Ensuring ongoing support in the community

Each of these principles will be explored more fully below. Most importantly, by following these evidence-based practices, recidivism rates can be reduced significantly, thereby saving taxpayers significant money while at the same time reducing overall crime levels.

## **Evidence-Based Principles To Reduce Recidivism**

### **1. Assessment of Actuarial Risk/Criminogenic Needs<sup>11</sup>**

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<sup>9</sup> See Warren, R., and Crime and Justice Institute. 2007. *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries*. Washington, DC: U.S. Department of Justice, National Institute of Corrections (hereinafter, “Warren 2007”) at 2.

<sup>10</sup> See *id.* at 26; see also Crime and Justice Institute at Community Resources for Justice. 2009. *Implementing Evidence-Based Policy and Practice in Community Corrections*, 2<sup>nd</sup> ed. Washington, D.C.: U.S. Department of Justice, National Institute of Corrections (hereinafter, “CJI 2009”) at 11 (listing two additional evidence-based principles for effective intervention: “Measure Relevant Processes/Practices” and “Provide Measurement Feedback”).

<sup>11</sup> See Warren 2007 at 29-33; CJI 2009 at 12; The Urban Institute Justice Policy Center. 2008. *Putting Public Safety First: 13 Parole Supervision Strategies to Enhance Reentry Outcomes* (hereinafter “UI 2008”) at 23-26; see also Lowenkamp, C. and Latessa, J. 2004. *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders* (hereinafter “Lowenkamp & Latessa 2004”); Nieto, M., California Research Bureau. 1996. *Community Correction Punishments: An Alternative To Incarceration for Nonviolent Offenders*; Gendreau, P. and Goggin, C. 1996. *Principles of Effective Programming with Offenders*; Palmer, T. 1995. *Programmatic and Nonprogrammatic Aspects of Successful Intervention: New Directions for Research* (hereinafter “Palmer 1995”); Carey, M. and Warren, R. 2006. *Practitioner’s Guide to Evidence Based Practices*; Andrews, D. et al. 1990. *Classification for Effective Rehabilitation: Rediscovering Psychology*; Taxman, F. et al. 2004. *Tools of the Trade: A Guide to Incorporating Science Into Practice* (hereinafter “Taxman et al. 2004”); Mumola, C. and Karberg, J. 2006 (NJC 213530). *Drug Use and Dependence, State and Federal Prisoners, 2004*. Washington, DC: U.S. Department of Justice, Office of Justice Programs Bureau of Justice Statistics; Office of National Drug Control Policy. 2000. *Drug Related Crime*; Andrews, D. and Bonta, J. 2006. *The Psychology of Criminal Conduct* (4th ed.) (hereinafter “Andrews & Bonta 2006”); Bonta, J. 1996. *Risk-Needs Assessment and Treatment*; Gendreau, P. et al. 1996. *A Meta-Analysis of the Predictors of Adult Offender Recidivism: What Works*; Hollin, C. 2002. *Risk-Needs Assessment and Allocation to Offender Programs*; Hubbard D. et al. 2001. *Case Classification in Community Corrections: A National Survey of the State of the Art*. Washington, DC: U.S. Department of Justice, National Institute of Corrections; Aos, S. et al. 2006. *Evidence-Based Adult Corrections Programs: What Works and What Does Not* (hereinafter “Aos et al. 2006”); Andrews, D. 2006. *Enhancing Adherence to Risk-Need-Responsivity: Making Quality a Matter of Policy*; Andrews, D. 2008. *Assessment of Offenders and Programs: A Fifteen-Year Update*; Bogue, B. et al. 2004. *Implementing Evidence-Based Practice in Community Corrections*

The first task is to determine which defendants are suitable candidates for rehabilitation or treatment programs and to divide them into one of four categories reflecting the likelihood of the commission of new offenses: a) highest risk; b) high risk; c) moderate risk and d) low risk. “Actuarial risk” refers to the probability that an offender will commit another crime. Note that it does *not* refer to the seriousness of the crime or to the likelihood that the offender will commit technical violations. To be most effective, programs designed to reduce recidivism should target only moderate and high-risk offenders.

Low-risk offenders should not be placed in recidivism-reduction programs. Correctional resources are wasted on low-risk offenders because, by definition, these offenders are already unlikely to commit another crime. Moreover, research has shown that exposing low-risk offenders to higher-risk offenders actually *increases* the risk that the low-risk offenders will reoffend. This is because the higher-risk offenders tend to challenge the pro-social attitudes and behaviors of low-risk offenders and to introduce them to anti-social peers. Further, forcing low-risk offenders into recidivism-reduction programs may disrupt pro-social influences such as an offender’s employment and positive relationships that contribute to the offender being low-risk in the first place.

The highest-risk offenders should also not be placed in recidivism-reduction programs. These are hardened career criminals deeply enmeshed in a criminal subculture and thus unlikely to respond to correctional intervention. Placing such chronic offenders in recidivism-reduction programs is usually a waste of resources, and can harm those in need of such programs by either depriving those offenders of the ability to receive necessary services, or exposing those offenders to anti-social attitudes and peers. For the highest-risk offenders, time and age tend to be the factors most effective in reducing recidivism, and thus some indications are that these career criminals should be incarcerated or otherwise closely monitored and controlled until they, hopefully, eventually “time out” or “age out” of the criminal lifestyle.

There are four primary methods of determining risk:

1. Professional judgment of corrections/treatment professionals
2. Actuarial tools/risk-assessment instruments that measure static risk factors (*i.e.*, factors that cannot be changed such as offense characteristics, criminal history, age at first conviction, history of child abuse/neglect)
3. Actuarial tools/risk-assessment instruments that measure both static and dynamic risk/criminogenic need factors (such as impulsivity, substance abuse, antisocial personality/values)

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(hereinafter “Bogue et al. 2004”); Cullen, F. and Gendreau, P. 2000. *Assessing Correctional Rehabilitation: Policy, Practice, and Prospects* (hereinafter “Cullen & Gendreau 2000”); Petersilia, J. 1998. *A Decade of Experimenting with Intermediate Sanctions: What Have We Learned?*; Andrews, D. et al. 1990. *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*; Guerra, S. 1995. *The Myth of Dual Sovereignty: Multijurisdictional Law Enforcement and Double Jeopardy*; Miller, W. and Rollnick, S. 2002. *Motivational Interviewing: Preparing People for Change* (hereinafter “Miller & Rollnick 2002”); Williams, B. et al. 1995. *Anti-Racist Probation Practice*; Andrews, D. et al. 2006. *The Recent Past and Near Future of Risk and/or Need Assessment*.

4. A combination of professional judgment and risk-assessment instruments that measure both static and dynamic risk/criminogenic need factors

Actuarial tools are significantly better at determining an offender's risk level than professional judgment, particularly so with the most sophisticated risk-assessment instruments. There are a number of validated and respected risk-assessment tools available commercially, as well as some that have been developed by public agencies and are in the public domain. It should be noted that to be most effective and accurate, assessment tools must be responsive to cultural and gender-specific needs as well as individual learning styles and temperament. Moreover, the dynamic nature of the most sophisticated risk-assessment instruments requires that offenders be reassessed at regular intervals to determine if changes are needed to the offender's rehabilitation/treatment program.

Once it has been determined that an offender is a suitable candidate for a recidivism-reduction program, the next task is to identify the offender's needs or characteristics that should be targeted for treatment so as to reduce the likelihood of recidivism. By addressing these criminogenic needs, *i.e.*, those values, attitudes, and behaviors most closely associated with the likelihood of committing crime, criminal behavior can be reduced. According to meta-analytic research, the criminogenic needs most predictive of the likelihood of criminal behavior are:

1. Low self-control/impulsive behavior
2. Antisocial personality (*e.g.*, callousness, lack of empathy)
3. Antisocial values/criminal thinking
4. Criminal associates
5. Dysfunctional family
6. Substance abuse

Recidivism can be reduced by identifying and targeting for treatment an offender's specific criminogenic needs. Thus, the primary task of an effective recidivism-reduction program is to identify the moderate and high-risk offenders who are most likely to benefit from such a program, and to identify the specific criminogenic needs of those offenders in order to determine the best type of treatment and rehabilitation program for them.

## **2. Enhancement of Intrinsic Motivation<sup>12</sup>**

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<sup>12</sup> See Warren 2007 at 47-50; CJI 2009 at 12-13; UI 2008 at 28-29; *see also* Christensen, J. 2006. *Our System of Corrections: Do Jails Play a Role in Improving Offender Outcomes?*; Winick, B. and Wexler, D. 2003. *Judging in a Therapeutic Key*; King, M. 2006. *The Therapeutic Dimension of Judging: The Example of Sentencing* (hereinafter "King 2006"); Cant, R. et al. 2004. *Report on the Evaluation of the Geraldton Alternative Sentencing Regime*; Petrucci, C. 2002. *Respect as a Component in the Judge-Defendant Interaction in a Specialized Domestic Violence Court that Utilizes Therapeutic Jurisprudence*; Taxman et al. 2004; Miller & Rollnick 2002; Bogue et al. 2004; Miller, W. and Rollnick, S. 1995. *What is Motivational Interviewing?*; Burke, B. et al. 2003. *The Efficacy of Motivational Interviewing: A Meta-Analysis of Controlled Clinical Trials*; Clarke, M. et al. 2006. *Motivational Interviewing for Probation Officers: Tipping the Balance Towards Change*; Petersilia, J. and Turner, S. 1993. *Intensive Probation and Parole*; Taxman, F. 2002. *Supervision: Exploring the Dimensions of Effectiveness* (hereinafter "Taxman 2002"); Taxman, F. 2006. *What Should We Expect from Parole (and Probation) Under a*

To achieve positive behavioral change and reduce the likelihood of recidivism, it is important to enhance intrinsic motivation in offenders. In other words, offenders need to be “self-motivated” to change if lasting behavioral change is to be achieved.

Research indicates that the primary obstacle to triggering positive change among offenders is ambivalence or lack of resolve. Often, offenders are uncertain about the type of behaviors they wish to engage in, and thus are open to being positively influenced by treatment professionals, probation officers, judges, and other authority figures they come in contact with in the criminal justice system. Through the use of “motivational interviewing,” *i.e.*, a communications technique that helps people overcome their ambivalence toward behavioral change, these authority figures can and must encourage offenders to “buy into” the need to change their behavior if the likelihood of recidivism is to be reduced.

The key principles of motivational interviewing are as follows:

1. Express empathy (*e.g.*, through reflective listening and a problem-solving approach)
2. Develop discrepancy (*i.e.*, emphasize the discrepancy between the offender’s current behavior and the offender’s goals, and encourage the offender to present arguments for change)
3. Avoid argument (as it is counterproductive)
4. Roll with resistance (by offering new information and alternate ways of looking at problems or situations to try to shift the offender’s perceptions)
5. Support self-efficacy (*i.e.*, offenders’ belief in their ability to change)

The more these techniques are used to engage offenders in the process of behavioral change, and to give them a sense of ownership over that process, the more likely recidivism-reduction programs are to be effective. This means judges and other authority figures should, to the extent reasonable, allow offenders to choose from a range of alternative strategies, and to become active participants in developing a supervision and treatment plan. Moreover, progress should be assessed regularly and adjustments made when needed in consultation with the offender, and positive reinforcement should be used as much as possible throughout the process. By applying these motivational interviewing techniques in day-to-day interactions with offenders, the process of change is more likely to take hold, and to last beyond the period of supervision and treatment.

In addition to the evidence-based practice of using motivational interviewing techniques to enhance intrinsic motivation, there is some evidence that faith-based programming can also “self-motivate” offenders to make positive behavioral changes and lower the likelihood of recidivism.<sup>13</sup> A study done in 2007 by The Urban Institute of two “Faith- and Character-Based Correctional Institutions (FCBIs)” housing inmates that volunteered to reside in an FCBI found

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*Behavioral Management Approach?*; Taxman, F. 2007. *Reentry and Supervision: One Is Impossible Without the Other*; Burke, P. 2004. *Parole Violations Revisited: A Handbook on Strengthening Parole Practices for Public Safety and Successful Offender Transition* (hereinafter “Burke 2004”); Burrell, W. 2008. *Cognitive Behavioral Tactics: The Next Phase for Evidence-Based Practices*.

<sup>13</sup> See The Urban Institute Justice Policy Center. 2007. *Evaluation of Florida’s Faith- and Character-Based Institutions* at 46-47.

that “although most of the outcomes analyses were not statistically significant, the direction of the differences between treatment and control groups favors the FCBI model, with FCBI inmates reincarcerated at lower rates and after longer time periods than their counterparts in the general population.”<sup>14</sup> That said, this study, in addition to having a small sample size, suffered from the fact that there is no way to be certain “that any differences in recidivism rates between FCBI and general population inmates are a result of the FCBI Experience”:

Unmeasured explanatory variables, such as inmates’ levels of motivation, openness to change, and religiosity, could well contribute to more favorable outcomes for the group of inmates who self-select to reside in an FCBI, regardless of the FCBI experience itself.<sup>15</sup>

Still, other studies have found similarly encouraging results with respect to using faith-based programming to reduce recidivism. For example, an exploratory study published in 2002 compared the recidivism rates for two Brazilian prisons considered to be models in a country facing many criminal justice issues.<sup>16</sup> One of the prisons, Humaita, is a faith-based facility sponsored by Prison Fellowship and run by local church volunteers who use religious programs to reform the offenders.<sup>17</sup> The second prison, Braganca, is primarily based on vocational training and the use of the prison industry to better prepare inmates for release and reduce operating costs.<sup>18</sup> The study compared recidivism rates for prisoners released from these two facilities during a three-year post-release window from 1996-1999, and found that:<sup>19</sup>

1. The three-year recidivism rate of prisoners from both facilities is extremely low by any standard (16% for Humaita and 36% for Braganca)
2. The recidivism rate for former Humaita prisoners (faith-based program) was significantly lower than found for Braganca prisoners (vocation-based program)
3. Humaita’s lower recidivism rate holds among high and low-risk prisoners
4. Inmates from the faith-based prison were charged with significantly fewer re-arrests during the three-year follow-up period
5. Where disposition data were available, former Braganca prisoners were significantly more likely to be re-incarcerated than former prisoners from Humaita

Studies such as these, as well as a sense of history and common sense, confirm that religious belief can be a powerful motivator.

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<sup>14</sup> *Id.* at 47.

<sup>15</sup> *Id.*

<sup>16</sup> See Johnson, B. April 2002 (NCJ 196918). *Religious Programs and Prison: An Exploratory Study*. Washington, DC: U.S. Department of Justice, Office of Justice Programs.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

### 3. Targeted Intervention<sup>20</sup>

Interventions to reduce recidivism must be properly targeted to be effective. Indeed, research has confirmed that targeting the wrong offenders for recidivism-reduction programs, or inappropriately targeting the correct offenders for such programs, can actually do more harm than good.

Therefore, it is important that, first, only moderate and high-risk offenders are placed into programs designed to reduce recidivism. Second, it is critical that interventions are targeted to address the specific criminogenic needs of the offender. Thus, the type of program must match the needs of the offender. There is little benefit to putting a drug addict in an anger management program, or vice-versa. Third, the choice of program, and ideally the program itself, should be responsive to the culture, gender, temperament, motivational stage, developmental stage, and learning style of the offender. Fourth, the appropriate quantity of services, pro-social structure, and supervision must be provided. Higher-risk offenders require significantly more structure and

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<sup>20</sup> See Warren 2007 at 40-47; CJI 2009 at 13-15; UI 2008 at 10-12; see also Bogue et al. 2004; Andrews & Bonta 2006; Currie, E. 1998. *Crime and Punishment in America* (hereinafter “Currie 1998”); Palmer 1995; Taxman et al. 2004; Antonowicz, D. and Ross, R. 1994. *Essential Components of Successful Rehabilitation Programs for Offenders* (hereinafter “Antonowicz & Ross 1994”); Gendreau, P. 1996. *Offender Rehabilitation: What We Know and What Needs to be Done* (hereinafter “Gendreau 1996”); Bonta, J. and Public Works and Government Services of Canada (Pub. No. JS4-1/1997-1). 1997. *Offender Rehabilitation: From Research To Practice 1997-01* (hereinafter “Bonta & PWGSC 1997”); Cullen, F. 2002. *Rehabilitation and Treatment Programs* (hereinafter “Cullen 2002”); McLellan, A. 2006. *Principles of Effective Treatment* (hereinafter “McLellan 2006”); Cissner, A. et al. 2005. *The State of Drug Court Research* (hereinafter, “Cissner et al. 2005”); Scott, W. 2007. *Evidence-Based Practices in Correctional Treatment* (hereinafter “Scott 2007”); Miller & Rollnick 2002; Taxman, F. 2006. *Proactive Supervision: Supervision as Crime Prevention* (hereinafter “Taxman 2006”); Wexler, D. 2001. *Robes and Rehabilitation: How Judges Can Help Offenders “Make Good”* (hereinafter “Wexler 2001”); King 2006; Winick, B. 1991. *Competency to Consent to Treatment: The Distinction Between Assent and Objection* (hereinafter “Winick 1991”); Andrews, D. and Dowden, C. 2006. *Risk Principle of Case Classification in Correctional Treatment: A Meta-Analytic Investigation*; Lowenkamp, C. et al. 2006. *The Risk Principle in Action: What We Have Learned from 13,676 Offenders and 97 Correctional Programs*; McGuire, J. 2001. *What Works in Correctional Intervention? Evidence and Practical Implications*; Harland, A. 1996. *Choosing Correctional Options that Work: Defining the Demand and Evaluating the Supply*; Ward, T. and Stewart, C. 2003. *Criminogenic Needs and Human Needs: A Theoretical Model*; Andrews, D. and Kiessling, J. 1980. *Program Structure and Effective Correctional Practices: A Summary of the CaVIC Research*; Birgden, A. 2004. *Therapeutic Jurisprudence and Responsivity: Finding the Will and the Way in Offender Rehabilitation*; Prochaska, J. and DiClemente, C. 1984. *The Transtheoretical Approach: Crossing Traditional Boundaries of Therapy*; Bourgon, G. and Armstrong, B. 2005. *Transferring the Principles of Effective Treatment into a “Real World” Prison Setting*; Gendreau, P. and Andrews, D. 2001. *Correctional Program Assessment Inventory-2000* (hereinafter “Gendreau & Andrews 2001”); Lipsey, M. et al. 2001. *Cognitive-Behavioral Programs for Offenders* (hereinafter “Lipsey et al. 2001”); MacKenzie, D. 2006. *What Works in Corrections*; Milkman, H. and Wanberg, K. 2007. *Cognitive Behaviour Treatment: A Review and Discussion for Corrections Professionals* (hereinafter “Milkman & Wanberg 2007”); Taxman, F. and Byrne, J. 2001. *Fixing Broken Windows Probation Together*; Aos et al. 2006; Cullen & Gendreau 2000; Lowenkamp & Latessa 2004; Petersilia, J. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry*; Wicklund, C. 2005. *Evaluation of Re-entry Initiatives: What is Missing?* (hereinafter “Wicklund 2005”); Kleiman, M. 2005. *When Brute Force Fails: Strategic Thinking for Crime Control*; Ginsburg, J. et al. 2002. *Motivational Interviewing with Criminal Justice Populations*; Harper, R. and Hardy, S. 2000. *An Evaluation of Motivational Interviewing as a Method of Intervention with Clients in a Probation Setting*; Miller, W. and Mount, K. 2001. *A Small Study of Training in Motivational Interviewing: Does One Workshop Change Clinician and Client Behavior?*; Ryan, R. and Deci, E. 2000. *Self-Determination Theory and the Facilitation of Intrinsic Motivation; Social Development, and Well-Being*.



services, at least initially, than lower-risk offenders. For example, research suggests that during the initial three to nine months of post-release supervision, 40%-70% of high-risk offenders' free time should be occupied with delineated routine and appropriate services. Finally, it is important that treatment be applied as an integral part of the sentence and sanction process, not as a mere tangential service.

Another way of conceptualizing the above is to say that in order to reduce recidivism, conditions of release should reflect what Carl Wicklund, Executive Director of the American Probation and Parole Association, refers to as the "three Rs" of supervision conditions: They should be *realistic* – few in number and attainable; *relevant* – tailored to individual risks and needs; and *research-based* – supported by evidence that they will change behavior and result in improved public safety and reintegration outcomes.<sup>21</sup> In sum, a one-size-fits-all approach is not sufficient, but by targeting the right offenders in the right way, the likelihood of recidivism can be reduced.

#### **4. Skill Training with Directed Practice<sup>22</sup>**

An overwhelming body of research finds that cognitive-behavioral programs rooted in social learning theory are the most effective at reducing recidivism. Social learning theory essentially posits that criminal behavior, like all human behavior, is learned, and that behavioral consequences shape future behavior. In other words, behaviors that result in positive consequences are reinforced, while behaviors that result in negative consequences are discouraged.

Cognitive-behavioral treatment programs that provide a clear set of consequences, both positive and negative, help offenders develop self-control and assume responsibility for their behaviors. These programs aim to rewire the criminal mind, attacking thought patterns that support criminal conduct, and training offenders in pro-social thinking and behavioral skills. By rewarding offenders for pro-social behaviors and punishing them for anti-social behaviors, offenders will gradually learn the pro-social skills and behaviors necessary to become law-abiding members of society.

To be most effective, the treatment program must focus on the offender's risk and needs factors, thereby addressing the underlying causes and drivers of the criminal conduct. Moreover, pro-social skills cannot merely be taught, they must be practiced and role-played, repeatedly. Only through such active involvement and repetition will the pro-social skills and behaviors be internalized and adopted.

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<sup>21</sup> See Wicklund 2005.

<sup>22</sup> See Warren 2007 at 40-47; CJI 2009 at 15; see also Bogue et al. 2004; Andrews & Bonta 2006; Currie 1998; Palmer 1995; Taxman et al. 2004; Antonowicz & Ross 1994; Gendreau 1996; Bonta & PWGSC 1997; Cullen 2002; McLellan 2006; Cissner et al. 2005; Scott 2007; Miller & Rollnick 2002; Taxman 2006; Wexler 2001; Winick 1991; Allen, L. et al. 2001. *The Effectiveness of Cognitive Behavioral Treatment for Adult Offenders: A Methodological, Quality-Based Review*; Landenberger, N. and Lipsey, M. 2005. *The Positive Effects of Cognitive-Behavioral Programs for Offenders: A Meta-Analysis of Factors Associated with Effective Treatment*; Lipsey et al. 2001; Milkman & Wanberg 2007; Sundel, M. and Sundel, S. 2005. *Behavior Change in the Human Services* (hereinafter "Sundel & Sundel 2005").

In addition to the need for the recidivism-reduction program to utilize these strategies, it is also important that pro-social skills and behaviors are encouraged (and anti-social behaviors discouraged) throughout the criminal justice process and with every contact between the offender and an authority figure. Thus, judges, probation officers, and others with whom offenders come into contact should also model and encourage pro-social thinking and behaviors, in addition to utilizing the motivational interviewing techniques discussed previously. The point is that the offender should receive a consistent and continuous pro-social message from as many sources as possible, including ideally from sources in the offender's community, as will be discussed.

To achieve the level of skill training necessary to bring about positive behavioral change, the people that come into contact with offenders, whether in a recidivism-reduction program or through other aspects of the criminal justice process, must be trained to understand anti-social thinking, social learning theory, and appropriate communication techniques, and must be able to identify and redirect anti-social thinking. Absent appropriate training, it will be all but impossible to deliver the consistent and continuous cognitive-behavioral techniques necessary to bring about lasting change.

## **5. Increased Positive Reinforcement<sup>23</sup>**

When learning new skills and making behavioral changes, human beings respond far better and maintain learned behavior for longer periods of time when approached with positive reinforcements rather than negative sanctions. Indeed, research indicates that positive feedback should be used four times as often as negative feedback to enhance individual motivation to make positive behavioral change and reduce recidivism.

In addition to utilizing a 4-1 ratio of positive to negative reinforcement, it is important to note that positive feedback need not be applied consistently. Rather, positive reinforcement can be sporadic or random, so long as it is plentiful compared to negative feedback. In contrast, negative reinforcement must be applied swiftly and consistently to be effective. While some offenders may resist initially, with abundant positive feedback and continued exposure to clear rules, consistently and immediately enforced with negative sanctions, offenders will tend to behave so as to garner the most rewards and the least punishments.

Providing four times as much positive as negative feedback may seem difficult, but it must be noted that such feedback need not be elaborate. A few words of encouragement can be sufficient to help reinforce positive behavior. And positive incentives and rewards can range from awarding a certificate of achievement to reducing or eliminating probation requirements. The key to lasting positive behavioral change is that positive reinforcement be applied far more often than negative sanctions, and that negative sanctions be applied quickly and consistently for rules violations.

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<sup>23</sup> See Warren 2007 at 40-47; CJI 2009 at 15-16; UI 2008 at 31-32; see also Bogue et al. 2004; Andrews & Bonta 2006; Currie 1998; Palmer 1995; Taxman et al. 2004; Antonowicz & Ross 1994; Gendreau 1996; Bonta & PWGSC 1997; Cullen 2002; McLellan 2006; Cissner et al. 2005; Scott 2007; Miller & Rollnick 2002; Taxman 2006; Wexler 2001; Winick 1991; Gendreau & Andrews 2001; Higgins, S. and Silverman, K. 1999. *Motivating Behavior Change Among Illicit-Drug Abusers: Research on Contingency Management Interventions* (hereinafter "Higgins & Silverman 1999"); Sundel & Sundel 2005; Petersilia, J. 2007. *Employ Behavioral Contracting for "Earned Discharge" Parole*; Burke 2004; Taxman 2002.

## 6. Ensuring Ongoing Support in the Community<sup>24</sup>

The period immediately following treatment often poses the time of greatest risk of relapse, particularly for offenders who are attempting to maintain positive behavioral changes while returning to a dysfunctional family, or to a social network of criminal peers. It is during this transitional time period when much of the progress made in treatment can be lost or undermined by an offender's post-treatment circumstances.

It is not surprising then that perhaps the most important factor in sustaining positive behavioral change is whether offenders receive ongoing support from the people closest to them, including family members, friends, employers, clergy, and others in their community. Once released from prison, the vast majority of an offender's contacts are likely to be with people not directly related to the criminal justice system, and thus it is these people who will exert the most influence. Actively recruiting and engaging an offender's community network to provide positive reinforcement and pro-social support can be the difference between short-lived behavioral change and the kind of long-lasting transformative behavioral change that reduces recidivism. This "community reinforcement approach" has been found to be effective in combating certain behaviors that can be associated with criminal conduct, including unemployment, alcoholism, and substance abuse.

It is also important to recognize the role that civil society can and does play in providing support for offenders in their communities, including not only treatment and rehabilitation programs, but also in helping offenders reintegrate into society. In many places, civil society provides services to prisoners designed to reduce recidivism.

## **Drug Courts: A Successful Experiment With Evidence-Based Practice**<sup>25</sup>

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<sup>24</sup> See Warren 2007 at 40-47; CJI 2009 at 16; UI 2008 at 20-22; see also Bogue et al. 2004; Andrews & Bonta 2006; Currie 1998; Palmer 1995; Taxman et al. 2004; Antonowicz & Ross 1994; Gendreau 1996; Bonta & PWGSC 1997; Cullen 2002; McLellan 2006; Cissner et al. 2005; Scott 2007; Miller & Rollnick 2002; Taxman 2006; Wexler 2001; Winick 1991; Azrin, N. et al. 1982. *Alcoholism Treatment by Disulfiram and Community Reinforcement Therapy*; Braithwaite, J. 1989. *Crime, Shame, and Reintegration*; Higgins & Silverman 1999; Latimer, J. et al. 2005. *The Effectiveness of Restorative Justice Practices: A Meta-Analysis*; Meyers, R. et al. 2002. *A Randomized Trial of Two Methods for Engaging Treatment-Refusing Drug Users Through Concerned Significant Others*; Meyers, R. et al. 2005. *The Community Reinforcement Approach: History and New Directions*; O'Connor, T. and Perryclear, M. 2002. *Prison Religion in Action and its Influence on Offender Rehabilitation*; Smith, J. and Meyers, R. 2004. *Motivating Substance Abusers to Enter Treatment: Working with Family Members*; Cadore, E. 2002. *Criminal Justice Health and Human Services: An Exploration of Overlapping Needs, Resources, and Interests in Brooklyn Neighborhoods*; Fisher, C. et al. 2007. *FUSE Outputs and Outcomes*; Carter, M. et al. 2007. *Increasing Public Safety through Successful Offender Reentry: Evidence-Based and Emerging Practices in Corrections*; Burke, P. et al. 2007. *When Offenders Break the Rules: Smart Responses to Parole and Probation Violations*.

<sup>25</sup> See Warren 2007 at 19-24; see also Huddelston, C. et al. 2005. *Painting the Current Picture: A National Report Card on Drug Courts and Other Problem Solving Court Programs in the United States*; Wilson, D. et al. 2006. *Systematic Review of Drug Court Effects on Recidivism*; Aos, S. et al. 2001. *The Comparative Costs and Benefits of Programs to Reduce Crime Version 4.0*; Belenko, S., National Center on Addiction and Substance Abuse. 2001. *Research on Drug Courts: A Critical Review 2001 Update*; United States Government Accountability Office. 2005. *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*; Roman, J. 2004. *Drug Court Effects and the Quality of Existing Evidence in Juvenile Drug Courts and Teen Substance Abuse*; Gottfredson, D. et al. 2005. *The Baltimore City Drug Treatment Court: 3-Year Self-Report Outcome Study*;

The concept of a drug court generally consists of a court-supervised treatment program that provides intensive judicial supervision and monitoring of offenders, and uses positive and negative reinforcements to encourage offender compliance and to hold offenders accountable for their actions.

Since the creation of the first drug court in 1989, there are now over 1,600 drug courts operating throughout the United States. . Research has found that drug courts significantly reduce recidivism from anywhere from 10% to 70%. A comprehensive review of over 40 drug court studies found an average recidivism reduction of 13%, and the U.S. General Accounting Office concluded in 2005 that drug courts reduce offender recidivism. Moreover, many prominent researchers have concluded that drug courts outperform virtually all other strategies for addressing drug-involved offenders.

Drug court programs are successful at reducing recidivism because they implement many of the evidence-based practices that have been proven to work. These practices include a focus on high-risk (but not the highest-risk) offenders rather than low-risk offenders, an imminent threat of incarceration, an abundant use of positive reinforcement (particularly from drug court judges), the use of fair and consistent intermediate sanctions for noncompliance, early entry of the offender into treatment and continuous treatment for at least a year, and a use of tangible rewards administered frequently and in graduated amounts. Thus, effective drug court programs provide a “real world” on-the-ground example of how implementing evidence-based practices can reduce the likelihood of recidivism.

## **Remaining Challenges**

The research done over the past thirty years has done much to identify how to reduce recidivism rates, but the implementation of recidivism-reduction policies and practices remains uneven. While some countries and selected U.S. states are making progress, many obstacles remain to being able to effectively and efficiently implement the best practices for reducing recidivism. These challenges include, among others: 1) an absence of community-based intermediate sanctions appropriate to the nature of committed offenses and offender risks; 2) difficulty in providing judges and advocates with access to accurate and relevant sentencing data and information; 3) difficulty in providing judges and advocates with access to accurate information about available treatment and rehabilitation programs, and their success at reducing recidivism for certain types of offenders; 4) a lack of training programs for judges, parole and probation officers, and other actors in the criminal justice system that teach the best practices for reducing recidivism, including such things as motivational interviewing; 5) a failure to include recidivism

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Rempel, M. et al. 2003. *The New York State Adult Drug Court Evaluation: Policies, Participants, and Impact*; Bavon, A. 2001. *The Effects of the Tarrant County Drug Court Project on Recidivism*; Fielding, J. 2002. *Los Angeles County Drug Court Programs: Initial Results*; Marlowe, D. et al. 2003. *A Sober Assessment of Drug Courts*; Cissner, A. and Rempel, M., Center for Court Innovation. 2005. *The State of Drug Court Research*; Marlowe, D. et al. 2004. *The Judge Is a Key Component of Drug Court*; Rempel, M. and DeStefano, C. 2001. *Predictors of Engagement in Court-Mandated Treatment: Findings at the Brooklyn Treatment Court, 1996-2000*; Marlowe, D. 2004. *Cutting Edge Drug Court Research*; Harrell, A. et al. 2000. *Evaluation of the D.C. Superior Court Drug Intervention Program*; Young, D. and Belenko, S. 2002. *Program Retention and Perceived Coercion in Three Models of Mandatory Drug Treatment*; Farole, D. et al. 2005. *Applying Problem-Solving Principles In Mainstream Courts: Lessons for State Courts*.

reduction as an explicit key objective in sentencing policies; 6) a lack of flexibility in legislatively-imposed statutory sentencing schemes that prevents judges from directing offenders to the programs that would be most likely to reduce the likelihood of recidivism; 7) a lack of sophisticated risk-assessment instruments; and 8) a lack of reliable data about the effectiveness of recidivism-reduction programs.<sup>26</sup>

With respect to the last point, it remains very difficult to reliably measure which specific recidivism-reduction programs are most effective, why, and to what extent they actually reduce recidivism. There are so many variables at play, and no offender is exactly the same. Studies done on various recidivism-reduction programs over the years have shown such programs to reduce recidivism anywhere from 10% to 50% – a wide range – and because of the many variables involved, pinpointing exactly why certain programs work better than others is a difficult task. Only through continued research and the accumulation of more data can we hope to develop better and more accurate metrics to guide our progress.

New York, New York

June 15, 2011

Richard M. Aborn

Sacha Boegem

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<sup>26</sup> See Warren 2007 at 59-69.