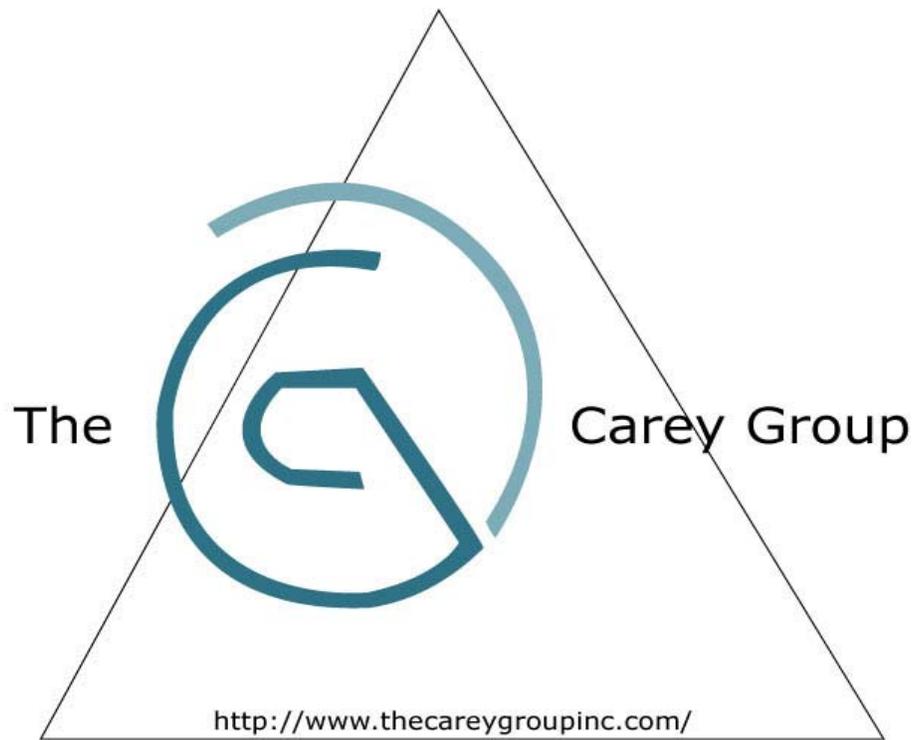


Practitioner's Guide to Evidence Based Practices



August 2, 2006

PRACTITIONER'S GUIDE TO EVIDENCE BASED PRACTICES*

FREQUENTLY ASKED QUESTIONS BY CRIMINAL JUSTICE PRACTITIONERS

August 2, 2006

1. How do I stop the revolving door of re-offense? It seems as though I keep seeing some offenders come back over and over again and that nothing works.

Some offenders are truly chronic in their anti-social behavior. Fortunately, they represent a small percent of the total offenders handled by the justice system. The research is clear that the justice system should not attempt to intervene with low risk offenders as these efforts only increase the likelihood of recidivism. For the moderate to high risk offenders, there is reason to be optimistic. The “revolving door” can be slowed down considerably by strategically addressing the offenders’ criminogenic needs. Criminogenic needs mean that each offender has certain characteristics or life circumstances that, when present, influence the tendency to commit crimes. When these needs are addressed, the risk of re-offense drops considerably. On average, the research indicates that a correctional intervention that changes these criminogenic need areas will reduce recidivism by an average of thirty percent. While “average” means that some programs will get less than a thirty percent reduction and others will get more, even a modest reduction has significant policy implications. An unexceptional ten percent reduction in recidivism, for example, means that there are many fewer victims and lower costs to the public in terms of law enforcement and criminal justice resources alone. These recidivism reduction rates progressively improve as more of the criminogenic factors are targeted and addressed.

The extremely high risk offenders, those that are deeply enmeshed in a criminal subculture, tend not to be responsive to correctional programming. They should receive sanctions that provide high levels of structure, supervision, and/or incapacitation so that at least during the time they are under correctional supervision their risk is being managed. For this extremely high risk group of offenders, the one feature that seems to consistently work is the “aging out” process. That is, extremely high risk chronic offenders who are not responsive to interventions eventually age out of a criminal lifestyle by the time they reach their forties and fifties. Although their values and attitudes likely will not have changed, they grow tired of the hassle from the criminal justice system. Getting these offenders to an older age without consuming too many resources or putting the public at risk is a reasonable goal.

To stop the revolving door requires a good assessment, a comprehensive set of programming and supervision alternatives, proper matching of the right offender to the right sanction/program, and an understanding of how and why people change. No one agency in the criminal justice system can do this alone. The entire system needs to be pulling in the

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same direction, using the same theories and practices in order for recidivism to be reduced. Without a collaborative effort, activities by one agency can cancel out the work of another. For example, if the courts sentence an offender to the right program but probation is not monitoring whether the program is fulfilling what should be done as determined by research, the outcome will fall short. If probation is providing excellent programming and supervision, but the prosecutor's office files a revocation every time the offender makes a small slip and disrupts the programming progress then the intervention can't finish what it started. If the plea negotiations do not take into account the offender's risk factor and criminogenic needs, then the offender will not get what is needed to turn his/her behavior around.

A final word about the perception of a revolving door: it is human nature to remember negative events more than positive. Often, our interpretation of what is happening does not fit with the data. Our memory and observation can be selective. Good data will help practitioners and policy makers know for a fact what is or is not working. An effective criminal justice system must have good data. Boot camps, for example, were once touted as effective models for reducing recidivism but research has indicated that they fall far short of their promise and, in most cases, have no positive effect on recidivism whatsoever.

2. Why should I care about the offender's risk level? What exactly do you mean when you use the word risk? How do I know what the offender's risk level is?

When researchers and practitioners talk about an offender's risk level they are referring to the likelihood an offender will commit another offense. It generally does not distinguish between type of offense (e.g., personal, property, felony, and misdemeanor) but just whether the offender might be rearrested for criminal conduct. It also does not mean risk of having a court order or supervision revoked. An offender might be at low risk of reoffense but still be at high risk of technical violations.

There are generally three methods used to determine risk:

1. an actuarial tool that uses risk factors that can be measured and weighted to give an overall risk score (much like insurance agencies use);
2. professionals using professional judgment based on their experiences; and
3. a combination of actuarial tool and professional judgment.

Actuarial tools are better predictors than professional judgment. However, when professional judgment is used along with actuarial tools one is most likely to get the best prediction of reoffense. There are a number of validated risk tools on the market and many jurisdictions have done their own research and validation to determine which risk factors are most important in determining reoffense in their jurisdiction. The better risk tools have high levels of predictability and use risk factors that are dynamic in nature. Static risk factors cannot change (e.g., age at first conviction or whether there is a history of child abuse/neglect) and therefore cannot be targeted for intervention. Certain other criminogenic risk/need areas are just as valid in terms of prediction of reoffense but can change. They therefore can be used to develop a sentencing or supervision/treatment strategy, and are considered dynamic in nature.

It is critical that criminal justice practitioners know and understand what the risk factors are before making decisions around arrest, diversion, bail, sentencing, supervision, placement, or revocation. The failure to take risk into account can result in a variety of negative consequences creating a set of conditions that increase the likelihood of:

- re-offending;
- missed opportunities to protect the public;
- putting predatory offenders on the street without adequate structure/programming; and
- wasted public resources.

As an example, diversion decisions in many jurisdictions are based on the offense itself. However, risk is largely based on offender characteristics, not on the severity of the offense. The failure to take into account these offender characteristics can result in offenders being placed on diversion when they should get a more intense intervention, or in offenders being passed up for a low-cost diversion alternative and being over-supervised/sanctioned.

3. What should I do with the low risk offender?

The research is clear that low risk offenders likely will not reoffend (the definition of low risk) and this risk only increases when the justice system applies correctional interventions. To invest correctional resources to avoid reoffense for a low risk offender is a waste of money. These offenders are not likely to come back on another criminal matter no matter what the justice system does. The reasons why they are more likely to reoffend when given a correctional sanction might be due to:

- labeling (when they are treated like a criminal there is a kind of self fulfilling prophecy that emerges);
- mixing them with higher risk offenders who introduce ideas and pressures they would not normally encounter; or
- taking them away from their pro-social networks that contribute to their low risk status.

Whatever the reason, the criminal justice response should be one of caution and restraint. The least amount of intervention possible to deliver the message to the general public that such criminal behavior will not be tolerated is sufficient. Low cost examples are fines, community work service, or attending a one-time class.

4. How can I use my position in the criminal justice system to create incentives for an offender to change his/her behavior?

According to social learning theory, some of the most effective means of changing behavior are through the use of modeling and positive reinforcement. Incentives and disincentives are almost always more effective than punishment. Examples of incentives might be early discharge from the sentencing order, suspension of jail/fines, reduced supervision levels,

fewer conditions, permission to travel out of state, conversion of fines to work service or vice versa, etc. Modeling is a critical feature in how we learn. Many offenders have not had positive role models who have demonstrated pro-social attitudes and behaviors. In fact, offenders often come from criminogenic neighborhoods where authority is despised and breaking the law is expected, even a rite of passage. Pro-social modeling that involves the visible observation of behavior that reinforces values such as empathy, compassion, respect, delayed gratification, honesty, and appropriate boundaries provides a major contribution to individuals and communities where all share a sense of interdependence and mutual respect.

The most effective incentives are not externally imposed (i.e., coerced from a position of authority) but rather are relationship based. Compliments, recognition, and words of encouragement/appreciation can be powerful motivators. We can learn from our experience with drug courts here. Even though the courts are in positions of authority, the use of that position can have a significant effect on an offender when there is a unique relationship established between the court and the individual offender. Examples of techniques include use of commencement (graduation) ceremonies, applause when an offender passes to another phase, providing funds for pro-social activities (recreation, theatre, sports, museum) after a period of chemical/alcohol abstinence, provision of gift certificates and 12 Step AA books, and praise from the bench.

5. How do I know that I'm sending the right offenders to the right programs? How do I know that these programs are effective?

We know that we can dramatically improve outcomes when we match the offender to the most appropriate program for him/her. In order to do this, we must know:

- what the criminogenic risk/need areas are;
- what the unique offender learning styles are (such as age, gender, culture, motivation level, mental condition, etc.);
- what the program staff and features are;
- what the proper intervention dosage and intensity should be; and
- the degree to which the program is operated with fidelity to research based principles.

Probation staff should be trained how to motivate an offender to want to change, how to match the characteristics of the offender and program staff/features, and how to prioritize the order in which certain conditions should be met. Communication between the system players is critical to help inform all throughout the entire process and especially at critical decision points (i.e., arrest, prosecution, bail, plea negotiations, sentencing, revocation, parole, and discharge).

Finally, programs are rarely implemented in perfect alignment with the treatment theory or program model. Furthermore, the best-laid plans are often wrought with unforeseen obstacles that require adaptation. Finally, changes in leadership and direct service staff, funding pressures, atrophy/neglect, and other factors can lead to a deterioration of the model as it is practiced. Despite these challenges and shortcomings, evidence based programs still get

better results than sanctions alone. If a program is not delivering the kind of results expected, it may not be a problem with the program itself but rather how it is being administered. Ongoing data collection on long term and intermediate outcomes is helpful to redirect the program if necessary, and to inform justice system players about the relative effectiveness of the program for particular individuals and where program changes might be needed. Quality assurance mechanisms can help agencies provide mid-course correction. The bottom line is that the justice system needs to make sure programs are being administered as intended and knowing that requires an auditing and data collection effort.

6. How can plea negotiations be used as a means of reducing recidivism?

While the practice of plea negotiations is a critical component of case processing, this procedure can be either supportive or detrimental to the objective of reducing recidivism. Ideally, the set of conditions included in a plea agreement should reflect an informed decision. If not, the result can be:

- Poor matching. Placing an extremely high risk offender in a skill building class such as conflict resolution, for example, without first addressing the offender's criminal thinking (through a cognitive restructuring process), can result in making the offender a more effective con. It is at the very least a waste of resources because the program will not have the desired effect.
- Lost opportunity. Once sentenced, if the conditions of the offender's supervision are pre-determined, there is no easy way to add an effective intervention without going back to court.
- Costly distraction. If probation/parole staff is required to monitor court conditions that are not effective in addressing the criminogenic needs, precious face-to-face and collateral time is wasted in managing things that don't matter in the long run. This is not to say that there aren't conditions that are important for other justice system goals such as victim restoration. Conditions are often imposed, however, in a routine way without regard to what those conditions are intended to accomplish.

The question whether a plea negotiation is effective depends on what the purpose of the plea is. Is it merely to clear cases efficiently and preserve resources? Is it to ensure that a particular punishment or accountability is exacted? Or, is it to reduce the likelihood of recidivism? If part of the goal of the plea is to protect the public through giving the offender the tools and motivation to stop reoffending, then the plea negotiation process needs to include a means to identify criminogenic needs and program matching.

7. Why should I be concerned with an offenders risk level when I send them to programs or incarceration? I look mainly at their offense and how serious it was.

Many offenders and almost all chronic offenders come to the court system with a host of issues such as chemical/alcohol abuse, poor family relations, financial troubles, criminal thinking, poor problem solving skills, etc. It takes an intense and structured program within a

controlled environment to set in place the conditions for behavior change to occur. Placing medium and high risk offenders in an unstructured program will not work. Low risk offenders with more stable and positive attitudes and support systems are not likely to influence the high risk offender. If anything, it tends to work the other way; the higher risk offender will influence the lower risk offender by challenging the person's world view, introducing negative thinking, and/or using manipulation and/or strong arm techniques to involve the person in inappropriate conduct. How many times have we heard of law abiding individuals who "got into the wrong crowd" only to get caught up in behavior that lands them in the criminal justice system? While this is not an excuse for poor behavior, there is no question that peers do influence each other.

The offense alone is not enough to determine risk level. Some of the lowest risk offenders have committed serious crimes and some of the highest risk individuals have managed to conduct themselves poorly yet only commit minor crimes. Looking at offense characteristics is important to determine appropriate sentencing response, but if the goal is to reduce future crimes then offender characteristics are at least as important and almost always more predictive of whether that offender is likely to commit a future crime.

8. Why doesn't punishment work? Shouldn't we be teaching these offenders a lesson?

Punishment can work. According to the research, under the right conditions, punishment can be an effective tool in shaping behavior. However, a number of conditions must be present:

- the subject cannot escape detection or consequence;
- there is intense administration of response to unwanted behavior;
- all behavior is caught;
- punishment is immediate; and
- pro-social response is taught following punishment.

These conditions do not exist in almost any setting other than perhaps where a toddler is closely supervised by an adult. Even in a prison setting these conditions do not exist to the level necessary. Furthermore, if learning a new skill, thought, or behavior doesn't occur then all punishment teaches an individual is what not to do. Social learning theory points out that most of our thoughts, emotional reactions, and behaviors are learned in a social environment that includes these concepts:

- we develop a cognitive structure and value system through social interactions that shape our attitudes and beliefs; this structure is a powerful determinant in how we behave;
- we learn best through observation;
- we are most likely to model observed behavior of another when we identify with the other person;
- rewards and consequences play a significant role in how we choose to act; and
- use of reinforcement and approval/disapproval leads to learning.

Negative consequences are part of the learning process. Applying these consequences naturally (such as not being able to get a job at a liquor store if one has an illegal consumption offense) is helpful for learning to occur. However, it is rare that punishment alone has a positive, long-term effect. New skills and thinking must accompany those consequences.

This is not to say that punishment doesn't have a role in the dispensing of justice as it clearly has been adopted worldwide and in most cultures. Punishment and risk reduction can usually be accomplished together. Sanctions can be ordered along with programming aimed at improving the offender's skills, or correctional programming can serve as both punishment and risk reduction. From an offender's point of view, for example, being ordered to in-patient treatment is punitive. Being held accountable for his/her behavior and having to confront the implications of his/her decisions can be even more painful than serving time in jail. In fact, many offenders decline programming and request execution of a jail or prison sentence because the alternative of having to deal with his/her crime and criminogenic needs is too difficult. It is a false dichotomy to pit punishment against programming as two incompatible concepts.

Policy makers sometimes assume that what worked in their own personal upbringing will work with offenders, as evidenced by statements such as "the best thing that ever happened to me was when my father laid down the law." Or, "boot camp straightened me out and it was the best thing that ever happened to me." Many corrections techniques are successfully applied to largely responsible people who possess decent problem solving skills but have veered slightly off the "straight and narrow road." Chronic offenders often interpret such experiences differently, however, are more likely to rebel against or resent such actions, are less likely to learn from them, and possess a very limited (usually flight or fight) set of response options. What works for a largely law abiding population will not necessarily work with an offender population that has a long history of rationalizing behavior and poor role modeling.

9. How do I respond to probation/parole violations in a meaningful way? What information should I have to make a good decision?

Although there is no evidence that punishment works in reducing future crime, there is evidence that short periods of sanctioning can help motivate the offender to engage or re-engage in a programming effort. The positive effect of these sanctions wears off in a fairly short period of time (such as up to thirty days and in many cases as little as three days). The courts play an important role in using their authority and power to help the offender return to interventions designed to help him/her adopt a pro-social lifestyle over the long term.

In addition, research has been conducted on how to best address technical violations of court supervision. The following have been determined to be important principles to ensure that the revocation response produces the desired effect:

- increased certainty of response increases future compliance;
- future violations are prevented when the courts/probation reduce the time between behavior and response;

- consistent decisions increase compliance (i.e., fairness);
- when continued violations receive an increased sanction response, future violations are reduced; and
- compliance increases when court responses are viewed by the offender as fair, impartial, and logical.

10. Why should I “collaborate” with other justice system professionals when I was hired/appointed/elected to do a specific job in a system of justice? That is the way the adversarial system works: each player advocates for his/her own perspective and it all balances out.

If all justice system representative simply “play their role” without regard to the ultimate outcome, then specific policy goals, like public safety, may not be reached. Working in the criminal justice system is in many ways like working on a waterbed. You can push down in one area and the water rises in another. Every action has an effect elsewhere. If you clog the court system with more cases than can be properly managed, the system does not work the way it is intended. If you change a policy in the prosecutor’s office, it can directly affect the way the office communicates with victims. If you increase probation fees, it can affect the amount of restitution collected.

It is not in the offender’s best interest to receive a sanction that is a poor match. For example, it:

- is a waste of a low risk offender’s time and resources to receive a high intensity/dosage sentencing condition designed for the high risk offender. The court condition will not have the desired effect. It increases the likelihood that the offender will recidivate.
- is a poor use of a high risk offender’s time and resources to complete a low intensity intervention designed for the low risk offender. It will not have the desired effect either. Given that this intervention will not meet the offender’s criminogenic needs, the chances of returning to court on either a new offense or revocation of probation is high, which is in no one’s best interests whether it be the offender, a future crime victim, the court system, or the general public.
- gives an offender false hope (assuming he/she wants help), increases the likelihood of reinforcing a self fulfilling prophecy (“what’s the use, nothing works anyway”), and sets up the offender for failure when the intervention does not match the offender’s unique characteristics.

If the goal is to ensure that the offender’s court/corrections contact is his/her last, then the best way to make that happen is to match the right program with the right offender based on the offender’s profile. Anything short of this significantly increases the likelihood of wasting resources, recidivism, revocation, further sanctions and costs, and reinforcing failure and hopelessness.

One caveat is worth noting. Most people are capable of handling only a limited number of demands and changes at a given time. Trying to deal with too many issues simultaneously often results in being overwhelmed, and in poor compliance. A large number of sentencing conditions, especially onerous ones, can be counterproductive. It is better to set a limited number of conditions and schedule a court review at a later point. It is more common for individual progress to come in spurts: two steps forward, one step back; one forward, a half-step back. It is rare that a chronic offender will stop his/her anti-social acts “cold turkey.” Change is difficult for all of us, particularly if negative habits and lifestyles have been formed over a number of years. Progress for an offender might include the commission of a lower level offense than those historically committed (e.g., from a felony to a misdemeanor) or a longer period of time between offenses or loss of sobriety. The criminal justice system will need to decide the extent to which the public is willing to wait before complete transition to law-abiding behavior is accomplished.

11. Why isn't the community safer if I use my position to lock up offenders? They are off the streets.

The community will be safer if offenders are incarcerated—but only for the short term. Approximately 95 percent of incarcerated offenders will eventually be released. The question is whether incarceration will improve public safety in the long run? At what cost? Can these resources be devoted to other interventions that have greater impact? For example, the Rand Corporation conducted a study of the effects of the Three Strikes Law in California. It discovered that despite difficulties with the law, the law did suppress crime by preventing sixteen felonies for every one million dollars invested in incarceration costs. However, Rand also found that if that same one million dollars had been invested in family functional therapy, 1,056 felonies would have been averted. Or 1,287 felonies if that million had been invested in multi-systemic therapy, or 2,160 felonies if invested in foster care treatment programs.

Some individuals clearly need to be incarcerated either until death/physical incapacitation or until they age out of crime. Fortunately, these individuals make up a small percentage of the total convicted population. For the others, interventions that reduce the long-term risk of reoffense can protect the public in both the short and long term. The way to do this is careful targeting of offenders and proper placement in the right programs. For many of the higher risk offenders who remain in the community, programming aimed at reducing recidivism should be combined with close supervision (such as use of intensive probation, electronic monitoring, day reporting centers, curfew, and structured activities).

12. As a criminal justice practitioner, why should I care who is in jail? It is not my responsibility to manage the jail population. If people need jail, then the policy makers should make sure there is enough space. After all, if they did the crime they should do the time.

The simple reality is that we have limited resources. If we over sanction or over supervise offenders (i.e., provide more services and structure than necessary to protect the public and change behavior) then we are not going to have the resources to devote to the more serious

offenders. Many states have passed sentencing laws that result in prison and jail overcrowding only to release hundreds of offenders before their scheduled release dates. The answer to this dilemma requires a diverse set of strategies. One of the most economical strategies is to devise a system of assessing and targeting those offenders who are most in need of separation from the public, and developing less costly, community-based alternative sanctions for the others.

Managing offender sanctions is similar to managing a checkbook. You can only buy a limited number of things. You have to decide how to spend your money in such a way as to get the “most for your buck.” If you can save a dollar in one place it can be invested in an area where you have a greater need. The jail is usually the system’s most expensive resource and has the greatest incapacitation effect. It should be used with foresight, ensuring that offenders with the greatest risk of reoffending who can’t be safely handled in other programs are given priority over lower risk offenders.

13. It seems like there are many offenders who are terminated from treatment for being “resistive to change.” How should I view this? Is the offender the only one to be held accountable? Should I question the program, probation department, or others for such “failure”?

It can be difficult to determine the reason for a program failure. It could be that the program was a poor match with the offender’s profile (e.g., placing an anxiety disordered offender in a highly confrontational group). It could be that the timing/order of program activities was off (e.g., placing an offender into a skill building group before getting chemical dependency treatment). It could be that the program used techniques that don’t work in engaging the offender, or there might have been severe personality clashes between a staff member and the offender. Or, it could have been that the offender was simply not motivated and sabotaged the program. It is critical to sort through these questions, especially when a person’s freedom is at stake.

Certainly, if the offender has a history of anti-social conduct, disruptive behavior, a conduct disorder psychological profile, or a long line of program failures it is reasonable to conclude that the offender should simply be held accountable for his/her uncooperative behavior. However, it also needs to be recognized that offenders seldom go to programming willingly. If it were not for the arrest and conviction, most would not enter into these interventions. Even if they entered treatment willingly, they may be doing so only to avoid harsher sentencing. Correctional programs need to anticipate this attitude and not be judgmental of it. By using motivational techniques we can help offenders grow in cooperation and eventually intrinsically desire the help offered. Research has indicated that voluntary admission is not a strong predictor of programming success for correctional clients. The court system can get the offender to treatment/programming but it is up to the program to hook the offender so he/she internalizes the learning.

The best way to avoid having to sort out these circumstances around unsuccessful treatment is to ensure that a quality assessment is conducted and that good matching occurs. Preparation for a case plan might include a number of assessments that get at general risk of re-offending

as well as trailer tools to cover unique areas such as mental health, domestic violence, sexual misconduct, etc. Because the administration of these tests can be expensive, decisions will have to be made about the offenders in whom this investment should be made. Nonetheless, the best way to ensure that the limited dollars are being invested wisely is to know your offenders and know your programs.

14. How do I deal with offenders who are not appropriate for programming due to their high risk profile and past chronic history?

As indicated earlier, a small percentage of the offender population will not respond to treatment or programming interventions. This point needs punctuation. Thousands of cases are processed every year through a court system in a modest size jurisdiction. Only the smallest proportion of those offenders will fall into this category of “recalcitrant,” meaning that no amount of programming will likely have a positive impact. This group might make up five percent of a prison population and a much smaller proportion of the thousands of offenders who are court-ordered to something short of prison. They show up as extremely high-risk individuals on risk tools. Over-stating or under-stating a group’s risk level is problematic as it will either waste resources or put the public at unnecessary risk. That is why assessing true risk level is so important. Use of limited programming funds on recalcitrant individuals is a poor investment particularly if it means that another group of offenders cannot get access to the program. These kinds of chronic offenders might still be safely dealt with in the community, but through the use of intense structure and accountability.

The goal with this group of offenders is not to change their criminal thinking or value system but rather to “wrap a community cell around them” so they lack the time, opportunity, and energy to commit crimes at least during the time that they are under such intense supervision. For this group, 40-70% of the crime prone hours of the day should be structured through requirements such as showing up for a day reporting center, employment, work service crews, and other supervised activities.

15. What is probation’s role in reducing recidivism? How can I support their work in doing this?

Probation has a very distinct role in the criminal justice system. Part of that role includes the provision of accurate and timely information to other decision makers, especially the courts, but also for prosecutors and parole boards. In an evidence based practice system, probation takes on a specialized role after sentencing, i.e., that of a change agent. A change agent is a case manager who orchestrates a set of processes and interventions to ensure that the offender is given what is needed at the right time to accomplish a behavior change. The probation officer is in the center of this activity in many ways: as an information gatherer, an assessor, a referral agent, a role model, a counselor, an enforcer, an organizer, a dispatcher of information, and a case manager. As such, the probation officer is constantly assessing what it will take for the offender to reduce his/her risk and to become more pro-socially oriented. Using social learning techniques, this change agent must use his/her skills to help motivate the

offender, refer the offender to the right program, reinforce the learning that takes place, and provide structure and accountability to the process.

To be effective, the probation officer needs the full support and understanding of the other justice system players. The use of court reviews and revocations, for example, are important tools to help motivate offenders and keep them invested in the programming. Justice system stakeholders can assist probation by being aware of the research, the goals and techniques used by probation, and supporting these efforts. For example, risk is dynamic by its very nature. Circumstances change and risk can rise or fall sharply in a given month due to offender situations concerning abstinence, relationships, finances, employment, and so on. The probation officer should be able to modify the level of supervision and programming in order to meet the changing risk needs of an offender. Being locked in to a particular supervision level through a court order prevents the probation officer from having the flexibility to adapt services based on changing offender circumstances.

Furthermore, the process of setting up and monitoring the risk reduction conditions an offender must complete is time consuming and requires reasonable workloads. Requiring probation officers to supervise low-risk cases, wait long periods of time in court for a hearing, and write reports that do not substantively add to the value of justice system processing, pulls officers away from duties central to these risk reduction objectives. The best way for the justice system to support probation is to join in a collaborative effort toward reducing risk so it is a shared mission, and to ensure that the decisions made throughout case processing are aligned with evidence based practices.

16. My main concern is public safety. If I am going to allow the offender to stay in the community, how can I ensure that I am imposing the most effective sentence with the least amount of risk to the public?

The safest approach for the public in the short term is to lock up everyone who commits a crime. It also tends to be the safest approach from a public opinion perspective as a judge is less likely to receive criticism for harsh sentencing than for leniency, particularly if the offender later commits a new offense. This approach is impractical, however, given limited resources, and can actually increase future crime in light of the empirical evidence that an offender's risk level often increases when the offender receives punishment alone. The most effective public safety policy in the long term is to apply a combination of treatment and accountability measures in a community setting based on the offender's risk and criminogenic needs.

While there is no such thing as risk free community based sentencing, there is effective risk management. This term, risk management, simply means that the justice system can manage risk by knowing the offender's criminogenic traits (through an actuarial assessment and other information) and level of risk to reoffend (extremely high, high/medium, low) and applying an intervention that matches that risk level. Low risk offenders can be managed in the

community with little or no court intervention, as the definition of low risk suggests that they are likely self correcting. If the extremely high risk offender remains in the community the court should impose intensive external controls that provide high structure and accountability. Medium and high risk offenders should receive a combination of sentencing conditions that provide some measure of public protection and treatment programming to reduce the likelihood of re-offense in the longer term.

The court should work closely with probation, prosecution, law enforcement and community based agencies to respond quickly to offender pre-cursor behaviors (such as substance abuse, gang activity, and family stressors) that, if not addressed, will likely lead to new offenses. The system should avoid over-responding to low risk offenders and under-responding to the higher risk.

17. If punishment doesn't work by itself, then when would incarceration be appropriate?

There are many ways to control an offender, incarceration being just one and the response that is the most costly and intrusive. In the short term it is also one of the surest ways to ensure that an offender does not harm the general public. However, it has limited long-term benefits and some negative side affects. On the positive side, it can disrupt anti-social patterns and relations. And it protects the public during the time that the offender is incapacitated. The negative effects include an increase in face-to-face contact with anti-social peers and a removal from protective factors such as employment, positive mentoring, etc. thereby increasing the offender's risk profile.

The question of when to use incarceration and how much is one of the most important decisions a sentencing judge makes. In many ways, the answer depends on the court's sentencing objective. As a general rule, incarceration is most effective as follows:

- When the objective is to control the offender through incapacitation, a longer incarceration term will protect the public for the period of time the offender is locked up. And, if the incarceration is years in length, it advances the age of the offender which tends to slow down the more chronic offender.
- When the objective is to motivate the offender, a short jail term can be effective. However, this decision has to be weighed against three potentially negative effects: increased interaction with other anti-social peers, removal from potentially positive influences (employment, family, etc.), and the "desensitization factor," referring to the tendency of an offender to quickly settle into a jail routine and experience less anxiety and discomfort from incarceration over time. The desensitization factor limits the effect and deterrent value of jail time. For this motivation objective to be reached, the jail stay usually needs to be short (such as 3-7 days) and the timing of release needs to coincide with motivation to cooperate.
- When the objective is risk reduction, but the offender is too out of control or in need of a period of sobriety, a jail sentence can provide a "time out" and an opportunity for the offender to stabilize and transition to a more socially

appropriate routine, and can disrupt some of the offender's usual anti-social patterns, allowing the offender to then re-enter treatment.

Incarceration can also serve as a means of punishing the offender and/or delivering a message to the public. It is important to remember, however, that the perception of punishment by a law abiding individual is not necessarily the same as an offender's perception. Often, that which appears to the public as punishment may be viewed by the offender's community or peers as a badge of honor or an acceptable cost of doing a criminal business, and can actually reinforce anti-social attitudes. Punishment can nonetheless deliver a message to the larger public about acceptable and unacceptable behavior. And, for some offenders, it will truly feel like punishment and help them recognize that the justice system will not tolerate such behavior. Given the potentially negative consequences of incarceration, use of jail for these reasons must be carefully weighed.

18. What do I do with the chronic property offender who doesn't inflict the same kind of harm as the personal offender but who is still victimizing the community?

Depending on the circumstances, property offenders can inflict as much emotional trauma on victims as personal offenders. Property offenders, especially those who commit certain types of crime such as car theft and burglary, tend to be more chronic in the pervasiveness of their illegal activity and need to be disrupted immediately. Chronic property offenders can be the most stubborn and resistive to change as crime has become a lifestyle for them, and, for many, fits a temperament conducive to risk taking and narcissism.

The chronic property offender needs a significant amount of external control that might include a combination of day reporting, electronic monitoring, curfew, urinalysis, and intensive supervision along with a "short leash" whereby even minor violations of supervision conditions are responded to promptly. As a general rule, up to seventy percent of this offender's unstructured time should be filled in with pro-social and structured activities that limit the exposure to potential victims. This structured time might include activities such as substance abuse aftercare groups, supervised recreational activities, supervised community service work, day reporting, educational classes, etc.

The external controls should be retained until the offender responds favorably towards treatment and begins to adopt thoughts and behaviors that signify that the offender has begun to internalize pro-social attitudes and self regulation skills.