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# **Evidence-Based Practices: A Framework for Sentencing Policy**

## **Sentencing Practices Subcommittee**

Submitted to the State of Maine  
Corrections Alternative Advisory Committee

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## EXECUTIVE SUMMARY

This report summarizes the findings and recommendations of the Sentencing Practices Subcommittee, a study group of the Corrections Alternative Advisory Group. The Subcommittee examined whether split sentencing was being used effectively to reduce recidivism and recommended system changes to create better outcomes for defendants, victims and the community.

An underpinning philosophy of the Sentencing Practices Subcommittee is the use of evidence-based practices to reduce recidivism. Evidence-based practices (EBP) refer to approaches and interventions that have been scientifically tested in controlled studies and proven effective. *EBP makes a long-term contribution to public safety. When offender risk is reduced, it means there are less victims of crime and the whole community feels safer. Research should be applied to practice with the goals of preventing further victimization and creating safer communities.* Based on this core philosophy, the work of the Sentencing Practices Subcommittee was guided by the following principles.

1. The most effective strategy for reducing recidivism is through a comprehensive, system wide approach to the application of evidence-based practices. Sentencing policy changes alone will not reduce recidivism.
2. Reducing recidivism through evidence-based practices is the key to enhancing public safety and reducing harm to the victims and the community. All relevant stakeholders, including the victims and members of the community, must be knowledgeable about evidence-based practices and understand how it relates to overall public safety goals.
3. Correctional alternatives should be viewed as part of a permanent, continuum services system and used to reduce recidivism, rather than as a stop gap measures to deal with overcrowding or lack of funding.
4. The corrections research is constantly evolving. A responsive system keeps abreast of the research, evaluates its system, and makes systemic changes based on data and the most up-to-date available research.
5. An organization/system that is most successful in initiating and maintaining offender interventions and supervision practices, consistent with the principles of effective intervention, will achieve the greatest recidivism reductions.



**The Major Findings of the study group are presented:**

- Maine sentencing data indicated that twice as many split sentenced offenders entered probation in 2004 and 2005 as those with a straight probation sentence.
- The likelihood of receiving a split sentence correlated with the individual's risk level as measured by the Level of Service Inventory (LSI-R).
- Low risk (administrative) individuals received a split sentence 55.1% of the time.
- Split sentences were found to be the majority of sentences whether the crime was a felony or misdemeanor.
- 48.2% of low risk offenders who commit misdemeanor crimes are receiving split sentences.
- 93.4% of the administrative (low risk) cases received less than 45 days in jail.
- Split sentencing appears to have more of a profound impact on the recidivism rates of low risk offenders.
- Split sentence probationers appear to have a higher recidivism rate than straight probationers even after accounting for specific characteristics.
- Currently, risk assessment is completed after sentencing if an individual is placed on probation. Risk assessment is not incorporated at other junctures in criminal justice processing system in Maine.
- In Maine, data analysis shows that split sentenced probationers have higher revocation rates; individuals with straight probation have a revocation rate of 27.3% whereas, individuals with split sentences have a revocation rate of 39.7%.
- Technical violations are the most common type of revocation violation regardless of sentence type. Half of the revocations are for technical violations.
- About 42% of the average daily sentenced population (266 inmates) is serving sentences for a violation of probation. In addition, 30% of the jails' average daily pretrial population is being held for an alleged violation of probation or an alleged probation violation in conjunction with a new criminal offense.

**Recommendations for implementing evidence-based practices into sentencing policy are highlighted:**

1. Consider conducting a pilot project in a region or two or three counties to implement a triage risk assessment level system. Develop a work group to develop the pilot project criteria, location, procedures, evaluation, and available resources. Determine the pilot area based on data such as number of overall cases, highest rate of jury trials, recidivism rates, available resources, and amenability of the criminal justice stakeholders. Recommend a start date of

- July 1, 2007, completion date of January 1, 2008, and report date of April 1, 2008.
2. Recommend a resolve which would recommend that Courts imposing split sentences give weight to the length of the sentence the Court might otherwise impose if issuing a sentence of straight incarceration.
  3. Conduct an evidence based study of correctional alternatives for individuals sentenced to incarceration for six to twelve months. Examine whether they should be housed at the County Jail or the DOC. Consider whether four regional centers should be created out of the county facilities which have excess capacity to house these individuals. Consider using risk assessment levels of inmates when making classification/housing and programmatic decisions.
  4. Establish clear, flexible and informed processes which serve to align risk assessment results with probation conditions at sentencing, as well as modifications of conditions of probation.
  5. Charge the MDOC Community Corrections Division to create a working group to study and develop sanction/treatment alternative guidelines for probation violators. The guidelines should be based on level of risk and severity of offense.
  6. Develop a continuum of correctional alternatives to respond to probation revocations. Such a continuum might include day/evening reporting centers and halfway houses.
  7. Recommend the creation of a Statewide Community Corrections Board. The board should include representatives from multiple stakeholder groups. The purpose of the board would be to assist the counties in pooling resources to develop regionalized correctional programs and provide training/support to stakeholders and community members on evidence-based practices.
  8. Recommend a measure that makes the MDOC LSI-R risk assessment summary and other assessment results available at the revocation hearing and use the information to determine an appropriate response to probation revocations.
  9. Increase the use of adult drug court as a sentencing alternative to jail/prison. Implement the use of LSI-R assessment tool into the screening/assessment process of adult drug courts. Recommend to the Adult Drug Court Steering Committee limiting the availability of drug court as an option for moderate and high risk offenders, as measured by the LSI-R. The level (duration, intensity) of supervision and treatment services should vary based on the risk level of the offender.
  10. Establish clear policies and incentives which ensure that public dollars invested in correctional programs be evidence-based. Support language in the Community Corrections Act Funding which gives additional incentives to counties which develop programs adhering to evidence-based practices.

11. Encourage referral to and utilization of services and/or agencies that use evidence based practices and treatment models. Encourage jurisdictions to collaboratively restructure and reallocate existing resources to develop quality programs for the general population, as well as specialized populations (sex offender, domestic violence, substance abuse).
12. Use local coordinating councils to educate, update, and create awareness among criminal justice stakeholders, including the victim community and the community at-large, about evidence-based practices and how it relates to reducing harm to the victims and community.
13. Develop a standing “Sentencing and Corrections Alternative Commission”. This Commission would work closely with research/universities to review ongoing data collection on recidivism, sentencing practices, programming, etc. which informs system changes. The Commission would report annually to the Legislature so that commission studies can be used to make data-based decisions about corrections funding and programs.  
A priority of this Commission should be to conduct an evidence based study of correctional alternatives for individuals sentenced to incarceration for six to twelve months (Recommendation #3).
14. Create a web-based directory of resources and diversion alternatives.
15. Advocate for using the next Sentencing Institute 2007 to promote the dissemination of information and training on evidence-based practices as it relates to sentencing alternatives.

## BACKGROUND

### Mission & Goals

The Sentencing Practices Subcommittee was formed to evaluate the use of split sentencing to determine its effectiveness in managing the risk and needs of offenders. Implied in this recommendation was the requirement to collect and analyze data within the State, conduct research regarding policies and practices across the Country, and engage members and stakeholders in learning about and discussing the existing practice of split sentencing as well as other, alternative sentencing options. The Sentencing Practices Subcommittee is a study group of the Corrections Alternative Advisory Committee (CAAC) which was created by the Maine Legislature in the spring of 2005 to improve the efficiency and effectiveness of the State's corrections system and to better manage costs.

To accomplish its mission, the Subcommittee set the following goals:

- To understand the rationale, extent and outcomes of current split sentencing policies and practices in Maine and across the country
- To determine how offenders, society, and resources are affected by current practices
- To evaluate the use of split sentencing to determine the effectiveness in managing the risk and needs of offenders and existing resources
- To gain a shared understanding of Evidence-based Practice and how it relates to the use of sanctions (probation, incarceration) and treatment
- To recommend system changes which would reduce recidivism and create better outcomes for offenders, victims and community, and existing resources

### Guiding Principles

Research should be applied to practice with the goals of preventing further victimization and creating safer communities. An underpinning philosophy of the Sentencing Practices Subcommittee is the use of evidence-based practices to reduce recidivism. Evidence-based practices (EBP) refer to approaches and interventions that have been scientifically tested in controlled studies and proven effective. Interventions within corrections are considered effective when they reduce offender risk and subsequent recidivism. Simply put, reducing risk means an offender is less likely to commit another crime. *EBP makes a long-term contribution to public safety. When offender risk is reduced, it means there are less victims of crime and the whole community feels safer.* Based on this core philosophy, the work of the Sentencing Practices Subcommittee was guided by the following principles.

1. The most effective strategy for reducing recidivism is through a comprehensive, system wide approach to the application of evidence-based

- practices. Sentencing policy changes alone will not reduce recidivism.
2. Reducing recidivism through evidence-based practices is the key to enhancing public safety and reducing harm to the victims and the community. All relevant stakeholders, including the victims and members of the community, must be knowledgeable about evidence-based practices and understand how it relates to overall public safety goals.
  3. Correctional alternatives should be viewed as part of a permanent, continuum services system and used to reduce recidivism, rather than as a stop gap measures to deal with overcrowding or lack of funding.
  4. The corrections research is constantly evolving. A responsive system keeps abreast of the research, evaluates its system, and makes systemic changes based on data and the most up-to-date available research.
  5. An organization/system that is most successful in initiating and maintaining offender interventions and supervision practices, consistent with the principles of effective intervention, will achieve the greatest recidivism reductions.

### **Process & Methods**

To structure its work and time, the team developed a charter and work plan. The team met seven times to complete its work. The initial meetings were used to clarify the goals and objectives of the Subcommittee. First, the Subcommittee identified the need to examine whether split sentencing was being used effectively to reduce recidivism and manage existing resources. The Subcommittee worked closely with the Muskie Institute for Public Sector Innovation to analyze the existing data on sentencing practices and recidivism. Secondly, the Subcommittee wanted to identify what system changes were needed to create better outcomes for defendants, victims and the community.

In the following meetings, the team was presented information through handouts, presentations, guest speakers, and round-table discussions. To inform decision making, the Subcommittee reviewed research in the areas of public opinion polls, evidence-based practices, sentencing policy and trends, and Maine sentencing and revocation data.

The final meetings were devoted to prioritizing and formulating draft recommendations. The Subcommittee developed recommendations which addressed sentencing policy at several different criminal justice junctures with the understanding that reducing recidivism requires looking at the system as a whole and making improvement along the full continuum.

## Stakeholder Involvement

The Sentencing Practices Subcommittee included an action step for gathering input from stakeholder groups to assist the CAAC in the formulation of its final recommendations. The Crime and Justice Institute developed and conducted a survey to engage multiple and diverse stakeholders outside the subcommittee process. The goals of the study were:

- To gain an understanding regarding their perceptions about the goals of sentencing
- To evaluate the opinions of criminal justice stakeholders to determine whether they perceive the use of split sentencing to be effective in managing the risk and needs of offenders
- To determine whether criminal justice stakeholders support the use of alternative sentencing practices
- To determine which alternative sentencing practices criminal justice stakeholders support and for whom
- To determine their understanding of EBP practices and policies

A representative sample of criminal justice stakeholders including prosecutors, judges, defense attorneys, victim advocacy groups, law enforcement, probation officers, sheriffs and jail administrators, and legislators were surveyed. The results of the survey can be found at [www.maine.gov/corrections/caac/index.htm](http://www.maine.gov/corrections/caac/index.htm).

## Risk Reduction Philosophy

A recent National Center for State Courts (NCSC) sentencing reform project survey found wide support among court leaders both for reducing recidivism through evidence-based practices and for reducing reliance on long-term incarceration through utilization of community-based alternatives to incarceration for appropriate offenders (Warren, 2006). Research has brought advances that compel introducing a new exemplar of how to change the behavior of offenders. Imaginative sentencing judges and innovative community corrections professionals have the knowledge necessary to begin restructuring sentencing policy to incorporate a risk reduction philosophy. For judges to take proper account of risk reduction when imposing and restructuring the sentencing process requires revising the deployment of corrections resources to viable alternatives, which include a broad based community-based intermediate sanction and treatment continuum.

Risk reduction requires a judge to base a sentence on finding of fact about the specific risk an individual offender imposes and the relative plausibility of correctional measures available to reduce those risks. Prior record and gravity of offense, although

relevant at sentencing, are not sufficient to define a category of offenders who are alike in culpability or in the threat they pose to public safety. Evidence-based practices can inform the decision-making process while still holding true to the sentencing values of equality, proportionality, and accountability.

### **EVIDENCE-BASED PRACTICES (EBP)**

Research efforts based on meta-analysis has provided the field with scientifically proven indications of how to reduce offender recidivism. Meta-analyses have demonstrated that rehabilitation can work for offenders (Cullen & Gendreau, 2000). On average, the best program can reduce recidivism rates by 30% (Lipsey, 1999). The literature is clear that official punishment without treatment has not been shown to be a specific deterrent to future criminal behavior. Research on intensive supervision programs and other supervision enhancements based on custody, control, and/or deterrence has failed to show promise in reducing the recidivism of offenders under community supervision (Cullen, Wright, and Applegate, 1996; Petersilia and Turner, 1993). Appropriate correctional treatment can be effective in reducing recidivism among certain types of offenders.

The International Community Corrections Association through its monograph series project has provided a summary of the research on the effects of correctional practices and treatment services. ICCA concluded the following:

- Cognitive-behavioral treatment that addresses deviant thinking patterns has consistently been found to be an effective rehabilitative strategy for both juveniles and adults.
- Behavior modification programs that are designed to shape and maintain appropriate behaviors until they are incorporated into the habit pattern of the offender have been effective in reducing recidivism.
- Multi-modal programs that target a variety of offender criminogenic and other risk factors have shown that they are amongst the most effective at reducing recidivism.
- Punitive correctional practices do not appear to have much overall deterrent effect on either the offenders for whom they are applied or to potential offenders motivated to avoid risking them.
- The research evidence does not indicate that routine probation or parole supervision practices or intensive supervision has subsequent effects on recidivism rates.
- Self-discipline and challenge programs have not been found to reduce recidivism.
- Restorative justice programs such as community service, restitution, victim offender mediation, have had very little positive effects on recidivism.

- Educational, vocational, and employment programs have produced positive, but only modest reductions in recidivism.

Evidence-based practice starts with good assessment. Effective correctional programs use classification systems which conform to three principles: the risk, need and responsivity principle (Andrews, Bonta and Hoge, 1990). The risk principle embodies the assumption that criminal behavior can be predicted for individual offenders on the basis of certain factors. Some factors, such as criminal history, are static and unchangeable. Others, such as substance abuse, antisocial attitudes and antisocial associates, are dynamic and changeable. With proper assessment of these factors, researchers and practitioners have demonstrated that it is possible to classify offenders to their relative likelihood of committing new offenses. Application of the risk principle requires matching levels of intensity of treatment with the risk levels of offenders. High-risk offenders require intensive interventions to reduce recidivism, while low risk offenders benefit from low intensity or no intervention at all. The risk principle has been confirmed by research in corrections for more than a decade (Lowenkamp & Latessa, 2006).

Research has shown that placing offenders who are lower risk in structured programs, both treatment and supervision oriented, can actually increase recidivism (Lowenkamp & Latessa, 2005). Low risk means the individual is not likely to reoffend; therefore, investing resources to avoid reoffense is a waste of valuable resources. Appropriate responses include fines, community work services, and attending a one-time class. Simply put, if a system overly supervises and sanctions then there are not enough resources to devote to the more serious and violent offenders. The extremely high risk offenders 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.

Risk assessment instruments measure the probability that an offender will reoffend and specifically what factors (criminogenic needs) will contribute to the criminal behavior. Different risk assessments are designed to assess different types of risk. Research indicates an inability of prediction tools to generalize across offender populations (Wright, Clear, and Dickenson, 1984). Experience with universal classification systems shows that it is unlikely for a single instrument to have universal applicability.

Most risk offenders are not high risk for recidivism because they have one risk or need factor, but because they have multiple risk and need factors, therefore, programs that target only one such need will not produce the desired effects (Lowenkamp & Latessa, 2005). The Criminogenic Need Principle states that certain needs are directly



linked to crime. Extensive research on recidivism among the general criminal population has identified a set of factors that are consistently associated with subsequent criminal behavior. These factors include being young, having an unstable employment history, abusing alcohol and drugs, holding pro-criminal attitudes, and associating with other criminals. Criminogenic needs constitute dynamic risk factors or attributes of offenders that when targeted and changed, influence the probability of reduced recidivism.

Effective treatment should be targeted toward these needs; any treatment not targeting criminogenic needs is counterproductive to efficiency and effectiveness. Programs which focus on noncriminogenic needs such as fear of punishment, physical conditioning, understanding one's culture or history, and creative abilities will not be effective in reducing recidivism (Latessa & Lowenkamp, 2005). Studies have shown that programs that target four to six more criminogenic risk factors can have an effect on recidivism of up to 30% or more.

The responsivity principle refers to the delivery of treatment programs in a manner that is consistent with the ability and learning style of a client. The responsivity principle is normally broken down into two types: general responsivity and specific responsivity (Andrews and Hoge, 1995). The principle of general responsivity suggests that the most effective correctional programming is based on the cognitive-behavioral paradigm because this approach is well suited for addressing the factors that underlie criminal behavior. Treatment should be based on behavioral strategies, such as cognitive-behavioral, skill building, or social learning, and preferably located in the offender's natural environment. Treatment should target criminogenic needs and match the characteristics of the offender, the therapists and program in such a way as to motivate the offender to participate and provide optimal conditions for learning. The treatment should be designed to provide continuing assistance and aftercare to the offender once the formal phase of treatment ends.

Evidence-based research reviews have shown that some programs work and others do not (Washington State Institute for Public Policy, 2006). After completing a meta-analysis of 291 rigorous evaluations conducted during the last 35 years, the researchers concluded, "A corrections policy that reduces recidivism will be one that focuses resources on effective evidence-based programming and avoids ineffective approaches."

Specific responsivity relates to the need for programs to be delivered in ways that match the personal characteristics of individual. Characteristics associated with specific responsivity include: race, gender, age, cognitive ability, mental health, motivation for treatment, learning style, ability to function in groups, ability to handle

confrontation, etc. According to Dana (1993) consideration of gender issues, ethnicity, age, learning style, social background, and life experiences all contribute to the engagement of clients in treatment. Failure to address these factors may contribute to inaccurate assessment of the motivation or readiness of individuals referred to treatment, not to mention inaccurate assessment of risk and need. Programs that assess responsivity with standardized reliable and valid assessment tools can better match clients to therapist and setting characteristics, thereby improving treatment outcomes.

## **NATIONAL SENTENCING TRENDS**

State sentencing policies have changed dramatically over the past 30 years while incarceration rates increased roughly 324 percent between 1975 and 2000 (Vera Institute of Justice, 2005). There was wide variation in the rates of growth across the states. In Maine, the incarceration rate increased 115 percent between 1975 and 2000 (Vera Institute of Justice, 2005). The growth in incarceration rates have been credited to the set of “get tough” sentencing and corrections policies enacted since the late 1970s (Vera Institute of Justice, 2005).

The sentencing reform movement, which began in the 1970’s led to the Sentencing Reform Act (SRA) of 1984 and later to the enactment of the federal sentencing guidelines in 1987. Through the 1970s, all the states had indeterminate sentencing policies, a practice which gave judges broad discretion in sentencing (Vera Institute of Justice, 2005). Parole boards maintained authority over the duration of sentences served through discretionary release (Vera Institute of Justice, 2005). In the mid 1970s the indeterminate system came under attack as reformers fought to eliminate the discretion in sentencing. Determinate sentencing, the abolition of parole, mandatory sentencing laws, truth in sentencing, and sentencing guidelines soon replaced or reshaped indeterminate systems (Vera Institute of Justice, 2005). Maine established a determinate sentencing structure and abolished parole in 1976.

By 1999, at least eighteen states developed sentencing guidelines. Their goals included reducing judicial disparity, promoting uniform and consistent sentencing, prioritizing and allocating correctional resources, increasing and decreasing punishments for certain categories of offenders, reducing prison overcrowding, and encouraging the use of non-incarceration sanctions (intermediate and community based).

Few researchers studied the effects of the sentencing reforms on prison populations. In 2002, the Vera Institute of Justice received funding from the National Institute of Justice to conduct a comprehensive survey of state-level sentencing and corrections policies. Vera studied policies implemented between 1975 and 2002 and assessed the impacts of those policies on state incarceration rates during the period. Their study

considered six sentencing and corrections policies on state incarceration rates: determinate sentencing, sentencing guidelines, time served requirements, sentences for drug offenses, habitual offender laws, and mandatory sentencing laws.

In their executive summary they highlighted these primary findings (Stemen, Rengifo, & Wilson, 2006):

- States with the combination of determinate sentencing (i.e., the abolition of discretionary parole release) and presumptive sentencing guidelines had lower incarceration rates and smaller growth in incarceration rates than other states. Either policy alone was not related to the size or growth of incarceration rates.
- States with the combination of determinate sentencing and voluntary sentencing guidelines had larger growth in incarceration rates than other states; however, the combination of policies was not related to the size of incarceration rates. Again, either policy alone was not related to the size or growth on incarceration rates.
- States with separate time served requirements for violent offenders had higher incarceration rates than other states. However, higher time served requirements for all offenders was not related to incarceration rates.
- States with higher statutory minimum sentences for cocaine possession had higher incarceration rates than other states. However, states with higher statutory maximum sentences for cocaine possession had lower incarceration rates.
- States with more mandatory sentencing laws had higher incarceration rates than other states. However, habitual offender laws for second or third time offenders were not related to incarceration rates.
- States with more provisions enhancing sentences for drug offenses such as sale near a school, sale to a minor, or possession of a weapon during a drug offense-had higher incarceration rates than other states.

Since the 1960s, research has not supported the expectation that the length of time someone is incarcerated in prison is related to repeat offending, particularly when relevant offender characteristics are taken into account. The length of time an offender remains behind bars has a negligible effect on whether he or she will be rearrested (The Sentencing Project, 2002). The research study found that two-thirds of those serving six months or less was rearrested and these figures did not vary significantly up through five years in prison.

The National Institute of Justice sponsored research that examined the crime control effects of sentences, over a 20-year period, from 1976 in Essex County, New Jersey (Gottfredson, 1999). Overall, the results offered little support for policy trends that

supported increased confinement as a sentencing choice, longer terms, or accepted specific deterrence to reduce offenders' recidivism. The author concluded the available sentencing options had little effect on recidivism as measured by new arrests or charges. He reported, "Aside from general deterrence (not studied) and incapacitation, little justification for differences in sentences was found from a crime control perspective." The study recommended abandoning split sentences and recommended the use of more empirically derived methods such as incorporating risk as a consideration to enhance sentencing.

The Sentencing Practice Subcommittee queried other sentencing commissions to gain a perspective about whether split sentencing was a sentencing policy in other states. Of the states that responded, the majority had split sentencing as an option. None of the states indicated that they had conducted specific research on the efficacy of the policy.

<b>Table 1: National Perspective</b>	
<b>State</b>	<b>Split Sentencing Option</b>
<b>Alabama</b>	Yes, their statute reads “the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years in cases where the imposed sentence is not more than 15 years, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for such period and upon such terms as the court deems best.”
<b>Arizona</b>	Yes, but the probation period is the underlying sentence. Presentence evaluations make recommendations as to whether the individual should get probation and if so if there is any jail time imposed.
<b>Arkansas</b>	Yes, but the sentence is not split with probation (which is supervised), but with a prison sentence and a suspended imposition of sentence (which is not supervised).
<b>District of Columbia</b>	Yes, through use of a sentencing grid. There are 45 boxes on the Master Grid and 15 boxes on the Drug Grid. In some boxes, a prison sentence is the only option. In some boxes, either a prison sentence or a short split sentence is an option. In the remaining boxes, a prison sentence, a short split sentence, or probation is an option.
<b>Idaho</b>	Yes. Pre-sentence investigations are conducted by investigators to gather relevant information about offenders to assist the judicial system in selecting among sentencing alternatives. Each offender is assigned a supervision level based on their assessment of their individual risk and/or needs.
<b>Minnesota</b>	No. Something similar is sometimes achieved when judges have more than one conviction to sentence and order one served in prison and one following to be served on probation. Their routine prison sentences provide offenders with one-third off for “good time,” which just about everybody gets; that third is served on supervised release, which is handled by the local corrections agencies that supervise probationers. If the offender violates conditions of release, he/she can be – and frequently is – returned to prison to serve some or all of the time remaining on his/her sentence.
<b>North Carolina</b>	Yes. Offenders who commit low to moderately serious offenses (primarily property and society offenses) and who have no prior record to moderate prior record. It is also available as a sentence modification for an offender who initially received a community punishment but violated these conditions.
<b>Massachusetts</b>	Yes. Chapter 432 eliminated the split sentence to the state prison in 1994. The Sentencing Commission found support for the split sentences at focus group meetings and public hearings and from the Supreme Judicial Court Substance Abuse Task Force to maintain split sentences to Houses of Corrections.
<b>Pennsylvania</b>	Yes. Pennsylvania has an indeterminate sentencing system, under which most sentences of incarceration result in a period of confinement followed by a period of parole supervision. There are some circumstances where the court may explicitly impose a split sentence... a flat sentence of incarceration up to 90 days followed by a consecutive sentence of intermediate punishments, or a sentence of Incarceration or state intermediate punishment followed by a consecutive period of probation.
<b>Virginia</b>	Yes. A judge can add time on supervised or unsupervised probation to any incarceration sanction ~ even including instances where the incarceration sentence is the statutory maximum prison term. The law provides an opportunity for any incarceration sanction to be accompanied by some period of transition back to the community (judge specified) supervised by the probation office. It is rare to encounter an incarceration sanction for a convicted felon that is NOT followed with some supervised probation period (i.e., split sentence).

Several states through structured sentencing commissions have taken the challenge and are restructuring sentencing policies. Several states are using sentencing schemes and programmatic intervention to reduce incarceration rates and criminal activity that warrant such sanctions.

## **MAINE DATA**

In 2005, Maine had the distinction of having the lowest rate of incarceration in the nation, however, MDOC facilities average daily population grew by 74% (1180 to 2045), and County Jail populations grew by 193% (568 to 1586) over the last 20 years (MDOC, 2006).

Admissions to MDOC facilities have increased by more than 75% from 1990 to 2004. Increased admissions to MDOC facilities are the primary factor contributing to the Department's 76% growth in its facilities' average daily population and need for additional bed space. Between 1990 and 2006 the annual admissions to MDOC facilities rose from 580 to 1020 admissions, of which 60% were for probation revocations, 36% for new court commitments and 4% for other reasons.

Probation revocations represent the majority of all new admissions to MDOC facilities and a significant portion in county jails. Another important trend affecting county jail and state prison populations was the number of offenders serving sentences or being held for probation violations. In reviewing data on probation violations in state and county facilities, the CAAC found 60% (610) of all new admissions to MDOC facilities were the result of a violation of probation. About 45% of these admissions were for technical violations and 55% were for a probation violation in conjunction with a new criminal offense.

In county jails, about 42% of the average daily sentenced population or 266 inmates are serving sentences for a violation of probation. In addition, 30% of the jails' average daily pretrial population is being held for an alleged violation of probation or an alleged probation violation in conjunction with a new criminal offense.

The CAAC also found that the average length of stay for probationers being held in a county jail pending an initial court appearance was twelve (12) days, and more than half were released from jail after their initial court appearance. According to the CAAC findings, "A large portion of the correctional population in Maine is serving jail/prison sentences as a result of split sentencing practices" (Maine Department of Corrections, 2006). While the concept of a split sentence seeks to place offenders in the community on probation for a portion of their sentence, many offenders often return to jail or prison to complete their full sentence frequently as a result of technical rather than new criminal violations.

## **MAINE SENTENCING LAW**

In Maine, sentences of imprisonment can be ordered to be fully served in incarceration, can be wholly suspended with probation, or can be split, with an unsuspended portion of the sentence to be served in incarceration, followed by a period of probation. 17-A M.R.S.A. section 1152(2). The process for sentencing defendants on Class A, B and C crimes involves a three part analysis. The first stage focuses on the "particular nature and seriousness of the offense as committed by the offender." 17-A M.R.S.A. section 1252-C(1), *State v. Hewey*, 622 A.2d 1151, 1154 (Me. 1993). After ranking the offense along the range of punishment for that class of crime, compared to all the ways the offense could be committed, the next stage involves considerations of all aggravating and mitigating factors, including those factors peculiar to the offender. The purpose of the second stage is to determine whether the sentence arrived at in the first stage of analysis should be increased or decreased (17-A M.R.S.A. section 1252-C(2), *Hewey* at 1154). In the final stage of analysis, the court analyzes what, if any, portion of the sentence arrived at in the first two stages should be suspended with probation (17-A M.R.S.A. section 1252-C(3), *Hewey* at 1154). At this stage, the court considers those factors specific to the offender. *Hewey* at 1154. Having risk assessment information available at stage two and three would be conducive to an informed sentencing decision.

A sentence with probation can take either of two forms. It can be fully suspended with probation, or a portion of the sentence can be ordered to be served in imprisonment and the remainder suspended with probation (17-A M.R.S.A. sections 1152(2)(D), (2)(B), 1203-C and 1203). The latter form is referred to as a "split sentence." Throughout the entire period of probation, the offender is subject to having the whole suspended portion of the sentence, or any portion thereof, ordered served in incarceration for a violation of probation (17-A M.R.S.A. section 1206(7-A)).

## **SPLIT SENTENCING DATA AND RECIDIVISM**

The Sentencing Practices Subcommittee examined 2004 and 2005 populations of individuals entering probation through split sentences (spend some time in jail or prison just before entering probation) and straight probation (received a sentence of probation with a jail or prison time). Risk level, crime type, region and the jail/prison split were variables included in the study. The data indicated that twice as many split sentenced offenders entered probation in 2004 (66.41%) and 2005 (33.59%) as those with a straight probation sentence (Rubin, 2006). The Subcommittee estimated that nearly 80% of convicted offenders receive a split sentence, considering the data did not include those offenders who are still serving time in jail/prison.

The likelihood of receiving a split sentence correlated with the individual's risk level as measured by the Level of Service Inventory (LSI-R). The LSI-R is a validated risk

assessment tool used by the Maine Department of Corrections (Andrews & Bonta, 1995). As can be seen in Table 2, low risk (administrative) individuals received a split sentence 55.1%.

Table 2. LSI rating and Split Sentence

LSI Rating	Straight Probation	Split Sentence
Administrative	44.9%	55.1%
Moderate	35.8%	64.2%
High/Maximum	20.6%	79.4%

Table 3. Split Sentences by Felony and Misdemeanors

Risk Level	Split Sentence	Straight Probation
<b>Felony</b>		
Administrative	71.7%	28.3%
Moderate	84.5%	15.5%
High/Maximum	92.2%	7.8%
Total	83.7%	16.3%
<b>Misdemeanor</b>		
Administrative	48.2%	51.8%
Moderate	52.9%	47.1%
High/Maximum	55.3%	44.7%
Total	52.0%	48.0%

As shown in Table 3, split sentences were found to be the majority of sentences whether the crime was a felony or misdemeanor (Rubin, 2006). Surprisingly, 48.2% of low risk offenders who commit misdemeanor crimes are receiving split sentences. If the risk levels of these individuals were known prior to sentencing, they would likely be appropriate for diversion from incarceration and probation. Ninety-three percent of the administrative cases received less than 45 days in jail. Prison/jail beds should be reserved for extremely high risk offenders, such as more serious/violent offenders, or those who cannot function safely and effectively in less restrictive alternatives. Since secure placement is the most expensive and often the least effective response to criminal behavior, this makes both fiscal and programmatic sense. Low risk offenders benefit from low intensity or no correctional intervention at all.

As shown in Table 4, the subcommittee was presented with data that suggested that there is a higher recidivism rate for those that receive split sentences versus those on straight probation (Rubin, 2006).



Sentence Type	Recidivism Rate
Split Sentence	30.4%
Straight Probation	20.5%
Total	26.9%
Correlation Coefficient=.106** Correlation is significant at the 0.01 level (2-tailed).	

Table 5. shows that the increase in recidivism rates was significant for administrative (low) and moderate risk offenders when controlling for risk level. Split sentence probationers appear to have a higher recidivism rate than straight probationers even after accounting for specific characteristics. Split sentencing appears to have more of a profound impact on low risk offenders as to whether they recidivate (Rubin, 2006).

Table 5. Correlating Recidivism to Sentencing while controlling for Risk Level

LSI Rating (includes overrides)	Straight Probation Recidivism Rate	Split Sentence Recidivism Rate
Administrative*	10.5%	15.3%
Moderate*	21.6%	31.0%
High	33.3%	43.3%
Maximum	100.0%	53.8%
*=Statistically significant difference between recidivism rates		

## GENERAL THEMES

As mentioned earlier, the focus of the Sentencing Practices Subcommittee was to develop recommendations regarding the continued use of split sentencing in Maine and the availability of other sentencing policies and practices that support the CAAC's objectives, particularly the objective of better managing offender risk and need.

After engaging in a series of open discussions and learning opportunities and gaining a shared understanding of evidence-based policy and practice, the Subcommittee developed several thoughtful recommendations which support improving and changing practices, which ultimately will reduce recidivism if they are systemically, wholly, and consistently applied. Understanding how to apply evidence-based practices across several junctures in the criminal justice process reduces the propensity towards reactive policy and statute changes in response to fiscal and systemic changes and constraints. The Subcommittee did not make a final statement about the continued use of split sentencing, but instead chose to recommend a number of recommendations aimed "to change the way Maine is doing business". Several themes emerged which guide system reform.

A system based on evidence-based practices:

- Includes reduction/risk management as key objectives in state sentencing policy
- Promotes the use of actuarial risk assessment instruments in assessing the suitability of sentencing options and correctional alternatives
- Guides the development of community based programs that address criminogenic needs of offenders
- Provides sentencing judges access to information about the offender, availability of corrections programs and potential sentencing dispositions
- Teaches criminal justice stakeholders and community members about EBP and how it relates to public safety and the prevention of further victims
- Promotes collaboration
- Promotes shared planning, decision-making and shared funding

The final recommendations are premised on the application of EBP at several junctures and levels. These areas include presentencing, sentencing, probation conditions, probation violations and revocations, program services, collaboration, and education/training.

## **PRESENTENCING/SENTENCING**

Policy options that may improve decision making include timely preparation of pre-sentence investigations, use of risk assessment tools to decide levels of supervision, and criteria or policies for using alternative sanctions. If an offender has been found guilty, the court has several options. It may order a pre-sentence investigation, impose a sanction immediately, or defer sentencing pending completion of specified conditions. Having a continuum of sentencing options available at this stage provides the court the flexibility to impose conditions that may be more effective in changing the offender's behavior. At this stage, protecting the community, holding the offender accountable, and preventing recidivism are the goals of the system.

In Maine, pre-sentencing evaluations are not used in the bulk of sentencing situations. Associate Commissioner Harold Doughty indicated that fifty-eight PSIs were completed last year. They also can be time-consuming and increase the time delay between findings of guilt and sentencing. Pre-sentencing evaluation reports typically include investigation of the offender's criminal history, previous terms of community supervision or incarceration, the offender's family of origin, his or her current residence and family relations, the educational and employment histories, physical and mental health as well as drug and alcohol addiction histories, any previous treatment history, military history, history of violence and use of weapons and his or her financial situation.

Aligning presentencing evaluations with EBP can bring improvements in the usefulness of the reports. This can be easily accomplished by using validated risk assessment tools, referencing criminogenic needs, indicating stages of motivational change, and outlining available community resources to address the needs. PSIs should include a summary of the data that has been collected, specific recommendations as to the potential for rehabilitation, risk to the community, and sentencing options available to the courts. In developing a range of sentencing options it is important to draw upon the research of what works.

A number of jurisdictions have implemented the use of actuarial risk assessment instruments in assessing the suitability of sentencing options.

- In Travis County, Texas the jurisdiction is using risk assessment information in the pre-sentence investigation.
- The State of Virginia uses risk assessment post conviction, presentence. Risk assessment is built into its guideline system. The target groups include: 1) offenders convicted of nonviolent felony offenses who are recommended for incarceration sentences (The goal is to divert low risk property and drug offenders) and 2) all sex offenders.
- Washington, County Minnesota uses risk assessment information in the presentence investigation.

To tie sentencing and related decisions to risk level, sentencing judges and post sentencing agencies need to use a validated risk assessment method that meaningfully differentiates between offenders who are high, moderate and low risk. Length of supervision and services provided should be clearly tied to an offender's risk level. Sentencing judges need to have at their disposal options that are appropriate for the risk level of the offenders being processed.

## **PROBATION SERVICES/CONDITIONS**

Probation is a court ordered term of community supervision with specified conditions for a determinate period of time that cannot exceed the maximum sentence for the offense. It is imposed on an adjudicated offender who is placed under supervision in lieu of or subsequent to incarceration, with a requirement to comply with certain standards of conduct. The probationer is required to abide by all conditions ordered by the court. Violation of these conditions may result in revocation by the court and imposition of an underlying sentence which was imposed at the time the offender was sentenced to probation.

Nationally, more than 2,000 probation agencies supervise an estimated 3.2 million offenders. The average number of adult offenders under supervision in the State of Maine is 7,300.

More often than not, jurisdictions set the same probation conditions for individual offenders, despite their varying risk levels and criminogenic factors that contribute to their risk of recidivism. Conditions may also be ordered without knowledge of the existence or availability of community-based options. Probation conditions must match the term of probation supervision, and probation conditions to the levels of offender risk, and require treatment interventions congruent with criminogenic needs.

Effective case management can help reduce re-offending, strengthen the motivation of offenders to engage in treatment, and increase public safety. A comprehensive strategy must include an adequate number of properly trained probation officers with reasonable caseloads so that they may provide effective supervision and case management of the high offenders. An effective supervision plan outlines conditions that are matched to those contributing factors. Further, the levels of supervision, programs based upon an assessment of risk and needs, and probation conditions should all be aligned.

### **PROBATION VIOLATIONS/REVOCATIONS**

When a probation violation is alleged, the offender is often placed in jail pending a hearing on the matter. When limited options are available to respond to such violations, revocation often results in additional jail time for offenders. A number of policy and program options may be considered to manage the use of detention such as use of graduated sanction continuum, time sensitive policies regarding revocations, use of good time, and use of incentives including early release/discharge for good behavior. The average violation process in most jurisdictions takes several months to resolve from filing to disposition. Obviously, violators can consume a significant portion of a court's time, energy, and resources.

National statistics pertaining to probation and parole populations indicate that a substantial number of offenders continue to exhibit criminal conduct while under community supervision. About 470,500 parolees were discharged from supervision during 2003. Forty-seven percent had successfully met the conditions of their supervision, 38 percent were returned to incarceration with a new sentence or because of a rule violation and about 9 percent had absconded (National Institute of Corrections, 2001). The manner in which jurisdictions respond to probation violations should be deliberate, taking into account individual circumstances. Such policies should be designed with consideration of risk of the offender, case processing

requirement, available resources, and the outcomes desired for certain violations (National Institute of Corrections, 2001).

A number of jurisdictions use a graduated sanction continuum. Washington State Institute for Public Policy (2006) conducted research on intermediate sanctioning alternatives. The Institute found that intensive supervision programs which focused on offender monitoring and surveillance had not, on average, produced significant reductions in reducing recidivism. In contrast, intensive supervision programs that provide treatment services have shown significant reductions. Adult boot camps, intensive regimens of training and some treatment have not been found to produce a statistically significant reduction in recidivism (Washington State Institute for Public Policy, 2006). Electronic monitoring or community supervision that is aided with monitoring devices does not reduce recidivism. The research continues to support that programs based on custody, control, and/or deterrence has failed to reduce recidivism.

A number of states are rethinking how to handle violations of probation and parole (Vera Institute of Justice, 2004). For example,

- Arkansas (HB 1006A, HB1024A), committed over the next biennium \$6.6 million to build and \$12 million to operate a technical violator center.
- Colorado legislators provided a community corrections alternative to returning parolees to prison for technical violations. Colorado also limits the time a nonviolent parolee can be revoked to prison or to an alternative to 180 days (SB 252).
- Nebraska gave probation officers the authority to impose administrative sanctions in lieu of revocations for technical probation violations.
- Kansas' sentencing commission enacted sanctioning probation and parole violators within the state's community corrections system rather than sending them to prison. Kansas also expanded its continuum of sanctions to include such interventions as day reporting.
- Washington (SB 5990) ended active supervision for many low-level felony post-releases.

In Maine, data analysis shows that split sentenced probationers have higher revocation rates; individuals with straight probation have a revocation rate of 27.3% whereas, individuals with split sentences have a revocation rate of 39.7%. Technical violations

are the most common type of revocation violation regardless of sentence type. Half of the revocations are for technical violations.

It is important to know who among those problem probationers needs to be removed quickly from the community and who can be managed safely through some other response. The reality is that not every individual on probation or parole should be removed from the community at the first sign of a problem. For some very high risk offenders, who cannot function safely and effectively in least restrictive alternatives, incapacitation is appropriate. Knowing the risk level and contributing factors is particularly important in knowing how to respond to violations, particularly technical violations which do not involve new criminal conduct.

It is important for sentencing judges to know the full range of options available to respond to violation behavior. Creating a continuum that does not rely solely on surveillance techniques (electronic monitoring, curfews, increased reporting) is needed to reduce recidivism. A balanced continuum of intermediate steps must include options which increase the likelihood of compliance in the future.

## **DRUG RELATED OFFENSES**

A higher percentage of jail inmates in 2002 than in 1996 reported regular drug use (used drugs at least once a week for at least a month) (Bureau of Justice Statistics, 2005). In 2002, drug offenders comprised a third of all persons convicted of a felony in State courts. Drug traffickers accounted for 20% of all convicted felons; drug possessors also accounted for 12% of all convicted felons (BJS, 2004). In 2002 of persons convicted of drug possession, 34% were sentenced to prison, 28% to jail, and 38% to probation. The average prison sentence was 2 years and 11 months, of which the estimated time to be served was 14 months (BJS, 2004).

According to the Maine Department of Public Safety, crime in Maine increased slightly during 2005. The overall crime number went up by +0.4% and was the first time in four years the crime number increased. Public Safety Commissioner, Michael P. Cantara said Maine's crime numbers have gone down a total of - 4.1% over the three previous years. Violent crime during 2005 went up +9.6% and property crime increased by +.03%.

Commissioner Cantara reported much of the increases in crime last year can be directly attributed to drugs. "2005 was the deadliest year in Maine for drug overdoses and a rash of bank, pharmacy and convenience store robberies were fueled by the demand for money to feed growing drug habits," Cantara said.

More people died in 2005 from drug overdoses in Maine than car crashes (190 overdoses vs. 169 motor vehicle deaths). The Maine Drug Enforcement Agency saw a substantial increase in cocaine and methamphetamine arrests. There were 266 MDEA arrests for cocaine in 2005 vs. 237 in 2004 and drug agents made 31 methamphetamine arrests in 2005 vs. 16 in 2004.

Several states have passed legislation ensuring that eligible non-violent drug offenders are diverted from prison into treatment (The Sentencing Project, 2002).

- Current Arkansas law grants judges discretion to sentence offenders convicted of nonviolent and nonsexual offenses into treatment as opposed to a prison term. Arkansas House Bill 2644 added an additional incentive for program compliance. If the individual remains drug free through the completion of their probation term, the offense is expunged from their record.
- Hawaii also mandates treatment instead of incarceration for nonviolent offenders convicted for drug possession.
- In California, the creation of Proposition 36 overhauled the sentencing guidelines for low-level, non-violent drug offenses. Those convicted of a felony or misdemeanor drug possession charge for the first or second time, are diverted to probation with a court mandated drug treatment component. It also requires parolees who, instead of facing revocation and re-institutionalization for a failed drug test or possession charge, to be placed on probation and enrolled in a treatment program.
- Oregon's Senate Bill 914 created drug treatment programs, financed by civil asset forfeitures of drug related properties, for individuals who commit nonviolent felony drug possession offenses.
- In 2001, Montana legislators enacted a measure that provides residential treatment as an alternative to prison for repeat drunk drivers. DUI offenders with four or more convictions are sentenced to residential treatment programs followed by probation, in lieu of prison.

A number of states are developing policies to deal with low level or nonviolent offenders, especially those convicted of drug offenses.

- Texas legislators replaced prison sentences with mandatory treatment in first-offender felony drug possession cases involving less than one gram of narcotics.
- Washington legislators amended sentencing guidelines to give judges more discretion to divert nonviolent drug offenders from prison to treatment. The cost savings will be diverted to increase funding for treatment.
- Michigan legislators repealed almost all of the state's mandatory minimum drug statutes in 2000 and replaced them with sentencing guidelines that gave

discretion back to Michigan judges.

As part of the sentencing practices survey, participants were asked if they would support correctional alternatives for individuals convicted of drug offenses. Over half of the respondents indicated they would support or strongly support a policy. Only 24% were opposed or strongly opposed.

One response is drug courts, special courts designed to handle cases involving substance abusing offenders through extensive program of supervision and treatment. There are currently adult diversion programs in 6 counties in Maine including Androscoggin, Cumberland, Hancock, Penobscot, Washington, and York.

A review of the effectiveness of drug courts has produced mixed results. In 2001, Columbia University's National Center on Addiction and Substance Abuse (CASA) concluded an updated study of its seminal 1998 review of drug court research and evaluations. It found that drug courts continue to provide the most comprehensive and effective control of the drug-using offenders' criminality and drug usage while under the court's jurisdiction. In 2001, a critical review of 37 drug courts (Belenko, 2001) showed that drug courts had been effective in gaining support from the community, offering treatment options for substance abusing offenders, and reducing drug use and criminal activity while offenders are in the program.

Claims have also been made that drug courts show little to no treatment effect when examining comparative evaluation research (Anderson, 2001). A meta-analytic review of drug courts (Lowenkamp, Holsinger, & Latessa, 2005) indicated, "Drug courts provide a very modest reduction in recidivism at present." Drug court programs were more effective with younger and higher risk offenders. Reductions of over 10% and up to 25% were seen when targeting these two groups.

Additionally, the 2003 National Institute of Justice (NIJ) recidivism report entitled, "Recidivism Rates For Drug Court Graduates: National Based Estimates," representative of over 17,000 annual drug court graduates nationwide, found that recidivism rates for drug court participants one year after graduation is a mere 16.5% and only 27.5% after two years (U.S. Dept. of Justice, 2003). The report also found that participants from 38 drug courts throughout the country have recidivism rates lower than 10% one year after graduation.

All drug courts are not equal in reducing recidivism. If evidence-based practices are applied, the likelihood of reducing recidivism is increased. Johnson, Hubbard, & Latessa (2000) provide a context for applying these principles to drug courts. The researchers suggest classifying offenders using actuarial risk assessment tools, using



treatment based in behavioral and cognitive techniques, matching program intensity to the offender's risk level, and providing aftercare services.

## **DOMESTIC VIOLENCE**

Aggravated assaults increased +12.1% (826 in 2005 vs. 737 in 2004) and homicides remained the same as the previous year - 19 murders with 10 of them (52.6%) stemming from domestic violence involving family or household members involved in a relationship. Domestic violence assaults increased by +5.2% in 2005 (5459 in 2005 vs. 5191 in 2004). In Maine, the crime of domestic assault, as reported to police, occurs every 1 hour, 37 minutes (Uniform Crime Report, Maine Department of Public Safety, 2003). The projects of the Maine Coalition to End Domestic Violence served 13,558 individuals in fiscal year 2003.

Maine has five domestic violence courts located in Portland, York, Skowhegan, Springvale, and Waterville. These problem-solving courts are designed to assist victims of domestic abuse by coordinating information about multiple court cases involving the same parties, increasing judicial monitoring of offender compliance, and training and improving practices among court officials, law enforcement, victim services, and probation officers.

The Sentencing Practices Subcommittee discussed the importance of reliable risk assessment instruments to predict future assaults and how to incorporate these instruments into the court process. The Subcommittee felt it was important to pilot an actuarial risk assessment tool, such as the ODARA, for domestic violence (See Recommendation #1). The ODARA was developed empirically and has been shown to predict with a large effect size repeated domestic assaults by men who have come into contact with the police for such assaults in the past (Hilton, Harris, & Rice, (2004).

## **SEX OFFENDER MANAGEMENT**

In 2005, 90% of victim/survivors who called Maine's sexual assault crisis and support line were women; almost 10% were men (MECASA Center Statistics, 2005). In 2005, Maine's sexual assault support centers served over 1,500 victims/survivors of sexual assault, having over 9,000 contacts with those clients. Given the undeniable harm that sex offenses cause victims and the grave concern they cause in the community, the prevention of sexual violence is exceptionally vital. Managing sex offenders should be a priority for any jurisdiction that aims to implement evidence-based practices.

Although not the primary purpose of this document, the Sentencing Practices Subcommittee felt it was important to highlight the need to prioritize effective

assessment, treatment, and supervision of sex offenders. Although a review of the relevant research is beyond the scope of this report, a brief summary of offender treatment and supervision is provided.

Meta-analysis studies have been helpful because they have shown that across several studies certain characteristics or risk factors are related to recidivism. In general, the factors that predict non-sexual recidivism among sexual offenders are very similar to the factors that predict recidivism among nonsexual offenders (Hanson, 2000). The strongest predictors of sexual offense recidivism are variables related to sexual deviancy, such as deviant sexual preferences, prior sexual offenses, early onset of sexual offending and the diversity of sex crimes. Static factors are important for predicting the likelihood of reoffending. The research on dynamic factors is less well developed, but according to Hanson & Harris (1998) dynamic factors that should be targeted in treatment includes: intimacy deficits, negative peer influences, attitudes tolerant of sexual offending, problems with emotional/self regulation, and general self regulation.

As noted earlier, a focus on dynamic factors or criminogenic needs is important because these factors point to the focus of intervention and possibility of lowering recidivism. The identification of risk factors that may be associated with recidivism of sex offenders can aid practitioners in devising management strategies that best protect the community and reduce the likelihood of further victimization.

According to Hanson (2000) the LSI-R has the advantage of including a substantial number of dynamic factors, but evaluations of sexual offenders should not rely exclusively on the instrument because it does not include items specifically related to sexual recidivism. The research has shown persistent sex offenders receive low risk scores on instruments designed to predict recidivism among the general offender population (Bonta and Hanson, 1995).

Sex offenders represent a large and increasing population of prison inmates, who are eventually released to the community; therefore, a balanced continuum of effective supervision and treatment, in the community is needed. Criminal justice professionals must continue to expand their understanding of how sex offenders, although classified in homogeneous groups, are different from each other and are different from the general criminal population. Interventions should be based on the growing body of knowledge about sex offender and general criminal recidivism. A jurisdiction wishing to implement evidence-based practices must first evaluate its treatment/supervision continuum. Evidence-based practices with regards to sex offender management must include the utilization of valid and reliable assessment techniques, differing levels of supervision and treatment, including incapacitation

based on risk, and interventions matched to the dynamic factors that are specific to the sex offender population. While providing services to victims of sex crimes is of great importance, of greater importance is the prevention of sex crimes and victimization from occurring in the first place.

Although a summary of the sex offender research is outside the scope of this report, the Sentencing Practices Subcommittee articulated the need to survey its existing programs to ensure the availability of program options and program effectiveness. The Association for the Treatment of Sexual Abusers (ATSA) has established a Collaborative Data Research Project with the goals of defining standards for research on treatment, summarizing existing research, and promoting high quality evaluations. The State of Maine may wish to review these standards to ensure its programs are aligned with the current research. The Sentencing Practices Subcommittee discussed the importance of reliable risk assessment instruments to sexual recidivism (See Recommendation #1).

## **PROGRAM SERVICES**

The literature is clear that official punishment without treatment has not been shown to be a specific deterrent to future criminal behavior and that appropriate correctional treatment can be effective in reducing recidivism among certain types of offenders. If a jurisdiction intends to accomplish the goals of preventing further victimization and creating safer communities, it must prioritize program quality.

First, it is essential to conduct a needs survey to assess program capacity and quality. Jurisdictions must develop programs in relationship to the capacity and needs of the correctional population. They must establish policies and protocols which support the development of evidence-based programs. To do this, human services organizations which provide services to the corrections population must collaborate as a whole, rather than discrete agencies, and pool together their knowledge and resources to develop a seamless continuum.

## **COLLABORATION & DISSEMINATION OF EBP INFORMATION**

The development of an effective system of local correctional alternatives is largely dependent upon the ability of the jurisdiction to bring key criminal justice stakeholders together as a “policy team” because no single agency has the authority or ability to bring about systemic change. In order for correctional alternatives to have long lasting system wide impact, the effort must be well organized, with thoughtful input from all stakeholders, consistent participation, and on-going support. Key criminal justice stakeholders must establish effective leadership, and work towards a common goal of risk reduction.

## RECOMMENDATIONS

The recommendations presented here were developed based on the work of the Sentencing Practices Subcommittee. The order of presentation matches the order of discussion of the key areas addressed in the report and in no way signifies an order of priority or importance.

### PRESENTENCING/SENTENCING

#### Recommendation Number One

Consider conducting a pilot project in a region or two or three counties to implement a triage risk assessment level system. Develop a work group to develop the pilot project criteria, location, procedures, evaluation, and available resources. Determine the pilot area based on data such as number of overall cases, highest rate of jury trials, recidivism rates, available resources, and amenability of the criminal justice stakeholders.

Use a triage assessment level system to determine defendants who will need a full “Pre-Sentence Assessment” (PSA). See Appendix A.

- Level 1: Proxy Screening (pre-plea)-Determine #convictions, age, age of first offense. Use this information to determine low risk offenders eligible for diversion.
- Level 2: General Risk Assessment -LSI-R-Assess risk level, criminogenic needs, and responsivity factors. For special populations, use specific validated risk assessment tools in addition to general risk assessment instrument. Mandate pre-sentence risk assessment for defendants convicted after trial (could be bench trial) in felony cases. Make the option available at the joint request of the parties after open plea or plea to a cap on felony cases.
- Level 3: Full Pre-Sentence Assessment (PSA). Align pre-sentence assessments with EBP. The PSA would include LSI-R results referencing criminogenic needs which need to be targeted, specialized sex offender assessment tools (if indicated), domestic violence assessment, and recommendations regarding whether incarceration is recommended, incarceration length, probation length, conditions of probation, programmatic/interventions, availability of programs, restitution or other forms of victim compensation, and whether further evaluation is needed in specialized areas such as mental health and substance abuse, etc.

PSAs should include a summary of the data that has been collected, specific recommendations as to the potential for rehabilitation, stage of motivational change, risk to the community, and sentencing options available to the courts.

As part of the pilot project, conduct an assessment for all sex offenses at Level 2. In addition to general risk assessment tool, use specific validated tools such as Sex Offender Risk Appraisal Guide (SORAG), Sexual Violence Risk-20 (SVR-20), Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), STATIC 2002, Minnesota Sex Offender Screening Tool, Revised, and/or Sex Offender Needs Assessment Rating (SONAR), or other validated actuarial risk assessment tools.

As part of the pilot project, conduct an assessment for domestic violent cases at Level 2. In addition to general risk assessment tool, use specific validated tools, such as the Ontario Domestic Assault Risk Assessment (ODARA) or other validated actuarial tools.

As part of the pilot project, make available the MDOC LSI-R risk assessment results at the revocation hearing and use the information to determine an appropriate response to probation revocations.

Align risk assessment results with probation conditions. Set specific conditions based on risk and special population considerations. When offenders sentenced to probation demonstrate positive behavior and compliance with conditions of community supervision consider using incentives such as early release/discharge for good behavior. Create policies which allow the term of probation and probation conditions to be adjusted as the offender's risk level changes. Encourage probation officers to file Motions to Modify to ensure the conditions match the risk assessment results.

Recommend a start date of July 1, 2007, completion date of January 1, 2008, and report date of April 1, 2008.

### **Recommendation Number Two**

Recommended a resolve which would recommend that Courts imposing split sentences give weight to the length of the sentence the Court might otherwise impose if issuing a sentence of straight incarceration.

### **Recommendation Number Three**

Conduct an evidence based study of correctional alternatives for individuals sentenced to incarceration for six to twelve months. Examine whether they should be housed at the County Jail or the DOC. Consider whether four regional centers should be created out of the county facilities which have excess capacity to house these individuals. Consider using risk assessment levels of inmates when making classification/housing and programmatic decisions.

## PROBATION CONDITIONS

### Recommendation Number Four

Establish clear, flexible and informed processes which serve to align risk assessment results with probation conditions at sentencing, as well as modifications of conditions of probation.

## PROBATION VIOLATIONS/REVOICATIONS

### Recommendation Number Five

Charge the MDOC Community Corrections Division to create a working group to study and develop sanction/treatment alternative guidelines for probation violators. The guidelines should be based on level of risk and severity of offense.

### Recommendation Number Six

Develop a continuum of correctional alternatives to respond to probation revocations. Such a continuum might include day/evening reporting centers and halfway houses.

### Recommendation Number Seven

Recommend the creation of a Statewide Community Corrections Board. The board should include representatives from multiple stakeholder groups. The purpose of the board would be to assist the counties in pooling resources to develop regionalized correctional programs and provide training/support to stakeholders and community members on evidence-based practices.

### Recommendation Number Eight

Recommend a measure that makes the MDOC LSI-R risk assessment summary and other assessment results available at the revocation hearing and use the information to determine an appropriate response to probation revocations.

## DRUG RELATED OFFENSES

### Recommendation Number Nine

Increase the use of adult drug court as a sentencing alternative to jail/prison. Implement the use of LSI-R assessment tool into the screening/assessment process of adult drug courts. Recommend to the Adult Drug Court Steering Committee limiting the availability of drug court as an option for moderate and high risk offenders, as measured by the LSI-R. The level (duration, intensity) of supervision and treatment services should vary based on the risk level of the offender.

## **DOMESTIC VIOLENCE**

The Sentencing Practices Subcommittee discussed the importance of reliable risk assessment instruments to predict future assaults and how to incorporate these instruments into the court process. The Subcommittee felt it was important to pilot an actuarial risk assessment tool, such as the ODARA, for domestic violence (See Recommendation #1).

## **SEX OFFENDER MANAGEMENT**

As part of Recommendation #1, the Sentencing Practices Subcommittee discussed the importance of reliable risk assessment instruments to sexual recidivism.

## **PROGRAM SERVICES**

### **Recommendation Number Ten**

Establish clear policies and incentives which ensure that public dollars invested in correctional programs be evidence-based. Support language in the Community Corrections Act Funding which gives additional incentives to counties which develop programs adhering to evidence-based practices.

### **Recommendation Number Eleven**

Encourage the utilization and referrals to services and/or agencies that utilize evidence based practices and treatment models. Encourage jurisdictions to collaborate to restructure and reallocate existing resources to develop quality programs for the general population, as well as specialized populations (sex offender, domestic violence, substance abuse).

## **COLLABORATION & DISSEMINATION OF EBP INFORMATION**

### **Recommendation Number Twelve**

Use local coordinating councils, to educate, update, and create awareness among criminal justice stakeholders, including the victim community and the community at-large, about evidence-based practices and how it relates to reducing harm to the victims and community.

### **Recommendation Number Thirteen**

Develop a standing “Sentencing and Corrections Alternative Commission”. This Commission would work closely with research/universities to review ongoing data collection on recidivism, sentencing practices, programming, etc. which informs system changes. The Commission would report annually to the Legislature so that commission studies can be used to make data-based decisions about corrections funding and programs.

A priority of this Commission should be to conduct an evidence based study of correctional alternatives for individuals sentenced to incarceration for six to twelve months (Recommendation #3).

#### **Recommendation Number Fourteen**

Create a web-based directory of resources and diversion alternatives.

#### **Recommendation Number Fifteen**

Advocate for using the next Sentencing Institute 2007 to promote the dissemination of information and training on evidence-based practices as it relates to sentencing alternatives.

### **RECOMMENDATIONS FOR FUTURE CONSIDERATION**

The Sentencing Practice Subcommittee agreed to several recommendations which aim to integrate risk assessment into criminal justice processing, ensure the availability of an evidence-based treatment/sanction continuum, and disseminate and use evidence-based policies and practice to inform decision making. These recommendations are merely the foundation for building a fully integrated evidence-based system. As Maine continues to make strides in its effort to reduce recidivism through the application of EBP, the following recommendations are offered for future consideration:

- Maine might consider statute changes which allow for a sentence of probation. The probation sentence might include a period of incarceration. In this scenario, the probation period would be the underlying sentence. Currently, the court may sentence a person to a term of imprisonment not to exceed the maximum term authorized for the crime, suspend the entire term of imprisonment and accompany the suspension with a period of probation not to exceed the maximum period authorized for the crime (§1203-C Wholly suspended sentence with probation). The period of incarceration is the underlying sentence.
- Maine should study the length of probation terms and consider shortening probation terms for all but sex and violent offenses.
- As part of the ongoing efforts to manage probation revocations, Maine might wish to consider limiting the time a nonviolent probationer can be revoked to prison or jail.
- Inserting the use of actuarial risk assessment instruments into Maine criminal justice processing is a first step. Assessment leads to intervention. Despite having a valid risk assessment and matching case plan, if correctional programming is not available to remediate the identified criminogenic needs, the goal of reducing offender risk is diminished. **Program quality matters.** The State of Maine should make aggressive efforts to ensure the quality of its



correctional programming. To this end, the following recommendations are offered for consideration:

1. Maine Department of Corrections and the local Sheriff Departments are urged to meet with other state agencies and community providers, such as the Department of Health & Human Services, to discuss strategies to improve programming for the offender population. Currently, Maine does not contract for community corrections' programs. Referrals are made to agencies that may or may not have expertise in working with the offender population. The programming should be specialized.
2. Maine may wish to consider legislation that mandates that programs serving correctional clients across the state be evidence-based.
3. Maine should consider continuing its effort to complete a needs assessment to identify what gaps currently exists in correctional programming.
4. Maine should continue to compile a list of programs serving offenders to ensure the availability of programs meets the needs of the offender population.
5. MDOC may wish to consider avenues which would allow for the operation of its own programs in coordination with other state agencies.
6. MDOC may wish to consider ways to contract with agency providers to deliver specialized services. This would require aligning RFPs, contracts, and program audits with EBP.
7. MDOC may wish to create an approved vendor list of agencies.
8. The state should continue to discuss strategies for leveraging Community Corrections Act Funding for EBP.
9. Create a statewide EBP curriculum and deliver the curriculum as part of basic training for all criminal justice professionals.
10. Work with the community college and university system to incorporate EBP for social work, criminal justice, psychology, and other helping professional degree and certificate programs.

## REFERENCES

- Anderson, J.F. (2001). What do about “much ado” about drug courts? *International Journal of Drug Policy*, 12 (5/6), 469-475.
- Andrews, D.A., & Bonta, J. (1995). LSI-R: The Level of Service Inventory-Revised. Toronto: Multi-Health Systems, Inc..
- Andrews, D.A, Bonta J., & Hoge R. (1990). Classification for Effective Rehabilitation: Rediscovering Psychology. *Criminal Justice and Behavior*, 17 (1), 19-52.
- Andrews, D., & Hoge R.D. (1995). The Psychology of Criminal Conduct and Principles of Effective Prevention and Rehabilitation. *Forum on Corrections Research*, 7(1):12-14.
- Belenko, S. (2001). Research on Drug Courts: A Critical Review 2001 Update. Alexandria, VA: National Drug Court Institute.
- Bonta, J. & Hanson, R.K. (1995). Violent recidivism of men released from prison. Paper presented at the 103<sup>rd</sup> Annual Convention of the American Psychological Association, New York.
- Cullen F., Fisher, & Applegate, B.K. (2000). Public Opinion about Punishment and Corrections. *Crime and Justice A Review of Research*, 27, 1-79.
- Cullen, F., & Gendreau, P. (2000). Assessing Correctional Rehabilitation: Policy, Practice, and Prospects. In J. Horney, ed. *Criminal Justice 2000*, Vol. 3: Policies, Processes, and Decisions of the Criminal Justice System, pp. 109-175. Washington, D.C.: U.S. Department of Justice, National Institute of Justice.
- Cullen, F.T., Wright, J.P., & Applegate, B.K., (1996). Control in the Community: The Limits of Reform? In A.T. Harland, ed. *Choosing Correctional Options that Work: Defining the Demand and Evaluating the Supply*, pp. 69-116. Thousand Oaks, California: Sage.
- Dana, R. (1993). Multicultural assessment perspectives for professional psychology. Boston, MA: Allyn & Bacon.
- Gottfredson, D. (1999). Effects of Judges’ Sentencing Decisions on Criminal Careers. National Institute of Justice, November 1999.

- Hanson, R.K. (2000). The effectiveness of treatment for sexual offenders: Report of the Association for the Treatment of Sexual Abusers Collaborative Data Research Committee. Presentation at the Association for the Treatment of Sexual Abusers 19<sup>th</sup> Annual Research and Treatment Conference, San Diego, CA.
- Hanson, R.K. (2000). Risk Assessment. In Association for the Treatment of Sexual Abusers Information Packages. Retrieved from <http://www.atsa.com>.
- Hanson, R.K. & Harris, A. (1998). Dynamic predictors of sexual recidivism. Ottawa: Solicitor General of Canada.
- Hilton, N.Z., Harris, G.T., Rice, M.E., Lang, C., Cormier, C.A., & Lines, K.J. (2004). A brief actuarial assessment for the prediction of wife assault recidivism: The Ontario Domestic Assault Risk Assessment. *Psychological Assessment*, 16, 267-275.
- Johnson, Hubbard, & Latessa (2000). Drug Courts and Treatment: Lessons to be Learned from the "What Works" Literature. *Corrections Management Quarterly*, 4(4), 70-77.
- Latessa, E.J. & Lowenkamp, C.T. (2005). What are Criminogenic Needs and Why are They Important. *For the Record 4th Quarter*, 2005: 15-16.
- Lipsey, M.W. (1999). Can intervention rehabilitate serious delinquents? *Annals of the American Academy of Political and Social Science*, 564, 142-166.
- Lowenkamp, C.T., Holsinger, A., & Latessa, E. (2005). Are Drug Courts Effective: A Meta-Analytic Review. *Journal of Community Corrections*, fall 2005, 5-10, 28
- Lowenkamp C.T, Latessa, E., & Holsinger, A. (2006). The Risk Principle in Action: What Have We Learned From 13,676 Offenders and 97 Correctional Programs? *Crime & Delinquency*, 51, 1, 1-17.
- Maine Department of Corrections (2006). Interim Report of the Corrections Alternative Advisory Committee. Retrieved from [mainegov-images.informe.org/corrections/caac/reports/InterimReport.pdf](http://mainegov-images.informe.org/corrections/caac/reports/InterimReport.pdf)
- MECASA Center Statistics (2005). Crime in Maine 2005 , Maine Department of Public Safety. Retrieved from <http://www.mecasa.org/statistics.html>.

- National Institute of Corrections (2001). *Responding to Parole and Probation Violations: A Handbook To Guide Local Policy Development*. (NCJ 196115). National Institute of Justice/NCJRS.
- Petersilia, J. & Turner, S. (1993). *Intensive Probation and Parole*. In M. Tonry, ed. *Crime and Justice: A Review of Research*. Chicago, Illinois: University of Chicago Press.
- Practitioner's Guide to Evidence Based Practices (2006). Presentation at the 2006 Joint Annual Meeting of the Conference of Chief Justices and Conference of State Court Administrators.
- Rubin, M. (2006, July 27). *Exploring the Relationship between Split Sentences and Probation Recidivism in Maine*. Retrieved from <http://www.maine.gov/corrections/caac/Sentencing/SupMat/index.htm>
- Rubin, M. (2006, August 3). *Who gets a Split Sentence in Maine?* Retrieved from <http://www.maine.gov/corrections/caac/Sentencing/SupMat/index.htm>
- Rubin, M. (2006, September 21). *Who is Getting Revoked on Probation?* <http://www.maine.gov/corrections/caac/Sentencing/SupMat/index.htm>
- Stemen, D., Rengifo, A., & Wilson, J. (2006). *Of Fragmentation and Ferment: The Impact of Sentencing Policies on Incarceration Rates, 1975-2002*. U.S. Department of Justice. Retrieved from [www.ncjrs.gov](http://www.ncjrs.gov).
- The Sentencing Project (2002). *Recidivism of State Prisoners: Implications for Sentencing & Corrections Policy*. Retrieved from <http://www.sentencingproject.org>.
- The Sentencing Project (2002). *State Sentencing and Corrections Policy in an Era of Fiscal Constraint*. Retrieved from <http://www.sentencingproject.org>.
- Uniform Crime Reporting Division (2003). *Crime in Maine*. Augusta, Maine: Maine Department of Public Safety. Maine State Police. Retrieved from <http://www.state.me.us/dps/cim/crimeinmaine/cim.htm>.
- U.S. Department of Justice (2003). *Recidivism Rates for Drug Court Graduates: Nationally Based Estimates, Final Report*. (Doc. # 201229). Washington, DC: U.S Government Printing Office.

- U.S. Department of Justice Bureau of Justice Statistics (2005). Substance Dependence, Abuse, and Treatment of Jail Inmates (NCJ 209588). Washington, DC: U.S Government Printing Office.
- U.S. Department of Justice Bureau of Justice Statistics (2004). Felony Sentences in State Courts (NCJ 206916) Washington, DC: U.S Government Printing Office.
- Vera Institute of Justice (2004). Changing Fortunes of Changing Attitudes? Sentencing and Corrections Reforms in 2003. Retrieved from <http://www.vera.org>
- Vera Institute of Justice (2005). The Impact of Sentencing Reforms on Prison Populations. Retrieved from <http://www.vera.org/project/>
- Warren, R.K., (2006). "Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce Recidivism", National Institute of Corrections.
- Washington State Institute for Public Policy (2006). Evidence-Based Adult Corrections Program: What Works and What Does Not. Retrieved from [www.wsipp.wa.gov/rptfiles/06-01-1201.pdf](http://www.wsipp.wa.gov/rptfiles/06-01-1201.pdf)
- Wright, K., Clear, T., & Dickson, P. (1984). Universal Application of Probation Risk Assessment Instruments: A Critique. *Criminology*, 22(1): 113-134.

## Appendix A. Triage Risk Assessment System

<b>LEVEL 1</b>	<b>PROXY RISK SCREENING PRE-PLEA</b>
	<ol style="list-style-type: none"> <li>1. Number of Convictions</li> <li>2. Age</li> <li>3. Age of first offense</li> </ol> <p>Possible Sources: Interview client &amp; SBI Scores range from 2-9: Determine cut off level: based on validation results</p>
	<p><b>If client scores low risk, no further risk assessment is needed and he/she is eligible for diversion alternative or unsupervised probation.</b></p> <p><b>If moderate or high risk and prison time is recommended no further evaluation is needed until intake at prison.</b></p> <p><b>If client scores moderate to high and client will be considered for probation, administer general risk assessment tool, LSI-R.</b></p>
<b>LEVEL 2</b>	<b>GENERAL RISK ASSESSMENT POST PLEA</b>
	<p>Administer LSI-R. Assess criminogenic domains: criminal history, education/employment, financial, family/marital, accommodation, leisure, companions, alcohol/drug, emotional/personality, attitude/orientation</p> <p>Determine cut off based on validation data.</p>
	<p><b>If client scores moderate risk, full PSA is not required, unless extraordinary circumstances such as severity of offense.</b></p> <p><b>If client scores high, the PSA will be automatically administered.</b></p> <p><b>Judge will use that information to determine whether or not jail will be part of sentence, the length of the jail sentence and conditions of supervision.</b></p>
<b>LEVEL 3</b>	<b>PRE-SENTENCE ASSESSMENT</b>
	<p>PSA includes LSI-R results, Victim Statement, Domestic Violence Assessment (if indicated), Recommendation regarding whether incarceration is recommended, length of incarceration, length of probation, probation conditions, programs/interventions and availability, restitution, whether further evaluation in high scoring criminogenic areas is needed.</p> <p><b>Judge will use that information to determine whether or not jail will be part of sentence, the length of the jail sentence and conditions of supervision.</b></p>
	<p><b>If special population characteristics exist refer to specialist for further evaluation.</b></p> <p>Further evaluation is recommended for sex offenses. Specialized tools might include validated tools such as Sex Offender Risk Appraisal Guide (SORAG), Sexual Violence Risk-20 (SVR-20), Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), STATIC 2002, Minnesota Sex Offender Screening Tool, Revised, and/or Sex Offender Needs Assessment Rating (SONAR).</p> <p>Further evaluation is recommended for other violent offenses against persons. Specialized tools might include Hare Psychopathy Checklist Revised, Historical Clinical Risk-20, ODARA (domestic violence).</p> <p>Further evaluation is recommended for high risk clients with mental illness and substance abuse disorders.</p>

## Appendix B. Sentencing Practices National Perspective

<i>State</i>	<i>Split Sentencing Option</i>	<i>Target Population</i>	<i>Research Studies</i>	<i>Alternatives</i>	<i>State Statistics</i>
<b>Alabama</b>	Yes. Their statute reads “the convicted defendant be confined in a prison, jail-type institution, or treatment institution for a period not exceeding three years in cases where the imposed sentence is not more than 15 years, and that the execution of the remainder of the sentence be suspended notwithstanding any provision of the law to the contrary and that the defendant be placed on probation for such period and upon such terms as the court deems best.”	Only those sentenced to 20 years or less and not sex offenders. Note that the restrictions on types of offenses (noted in bold above) only appears under the Boot Camp portion.	Currently working with Auburn University on a recidivism study, which should be available the first of the year.	Community Corrections, probation, drug court, pretrial diversion.	The crime rate for the state of Alabama is 11.65% higher than the national average. There are 74,200 adults under correctional supervision (prisons, jails, probation, and parole) in Alabama and the correctional supervision rate (number of offenders supervised per 100,000) is 20.87% lower than the national average.
<b>Arizona</b>	Presumptive sentencing guidelines. The probation period is the underlying sentence. Presentence evaluations make recommendations as to whether the individual should get probation and if so if there is any jail time imposed.	It happens regularly on sex offense cases. PSIs are done for all felonies, sex offenses and domestic violence. Probation agencies are under the state Superior Courts.	Recidivism studies available for 2004 and 2005.	Alcohol and DUI courts Alpha Program Residential Treatment Probation Violation Courts Standard, Intensive, Compliance Probation	The crime rate for the state of Arizona is 34.87% higher than the national average. There are 112,700 adults under correctional supervision (prisons, jails, probation, and parole) in Arizona and the correctional supervision rate (number of offenders supervised per 100,000) is 6.09% lower than the national average.
<b>Arkansas</b>	Yes, but the sentence is not split with probation (which is supervised), but with a prison sentence and a suspended imposition of sentence (which is not supervised).	More serious crimes are excluded.	No studies to date.	Community correction facilities for nonviolent, nonsexual offenders (up to 24 months incarceration) Probation plus (probation plus a short time in county jail or community correction facility) Day reporting facilities Technical violator facility (60 day incarceration)	The crime rate for the state of Arkansas is 13.19% higher than the national average. There are 59,600 adults under correctional supervision (prisons, jails, probation, and parole) in Arkansas and the correctional supervision rate (number of offenders supervised per 100,000) is 2.94% lower than the national average.
<b>District of Columbia</b>	Yes, through use of a sentencing grid. There are 45 boxes on the Master Grid and 15 boxes on the Drug Grid. In some boxes, a prison sentence is the only option. In some boxes, either a prison sentence or a short split sentence	There are no such limits  To impose a short split, the court must impose a prison sentence that falls within the prison range in the appropriate dark gray or	No studies to date.	For reasons unique to DC, all options run out of the probation dept, including electronic home incarceration, halfway house placement, and residential drug treatment.	

	is an option. In the remaining boxes, a prison sentence, a short split sentence, or probation is an option.	light gray box, suspend execution of all but six months or less -- but not all -- of that sentence, and impose up to 5 years probation. If the judge suspends all of the prison term, that would be considered to be probation and not a short split.			
<b>Idaho</b>	Yes. Pre-sentence investigations are conducted by investigators to gather relevant information about offenders to assist the judicial system in selecting among sentencing alternatives. Each offender is assigned a supervision level based on their assessment of their individual risk and/or needs.	In 2006 amended law relating to sexual offenders to provide for a split sentence for certain sexual offenders and to provide for electronic monitoring for violent sexual predators on probation or parole. In the event an offender is placed on probation or released from custody on parole, the remaining portion of the split sentence imposed by the court extends for the duration of the offender's natural life.	No studies to date.	Comprehensive Program Pyramid found at <a href="http://corrections.state.id.us/programs/programs.htm">http://corrections.state.id.us/programs/programs.htm</a>	The crime rate for the state of Idaho is 33.76% lower than the national average. There are 43,600 adults under correctional supervision (prisons, jails, probation, and parole) in Idaho and the correctional supervision rate (number of offenders supervised per 100,000) is the same number of crimes as the national average.
<b>Minnesota</b>	No. Something similar is sometimes achieved when judges have more than one conviction to sentence and order one served in prison and one following to be served on probation. Their routine prison sentences provide offenders with one-third off for "good time," which just about everybody gets; that third is served on supervised release, which is handled by the local corrections agencies that supervise probationers. If the offender violates conditions of release, he/she can be – and frequently is – returned to prison to serve some	NA	No studies to date. There is currently some discussion about how to use supervised release more effectively, so as to reduce negative collateral consequences of imprisonment, as well as recidivism.	Sentencing to Service (STS) Program STS is a sentencing alternative for courts that puts carefully selected, nonviolent offenders to work on community improvement projects.  Intensive Supervised Release (ISR) Program	The crime rate for the state of Minnesota is 22.18% lower than the national average. There are 127,900 adults under correctional supervision (prisons, jails, probation, and parole) in Minnesota and the correctional supervision rate (number of offenders supervised per 100,000) is 12.14% higher than the national average.



or all of the time remaining on his/her sentence.

Yes

**North Carolina**

Offenders who commit low to moderately serious offenses (primarily property and society offenses) and who have no prior record to moderate prior record. It is also available as a sentence modification for an offender who initially received a community punishment but violated these conditions.

No studies to date

Intermediate:  
Special probation  
Residential program  
House arrest with electronic monitoring  
Intensive probation  
Day reporting center  
Drug Treatment Court  
Community punishments:  
Supervised or unsupervised probation  
Community Services  
Fines Restitution  
4-level system for intermediate sanctions.  
Half way House, Inpatient Alcohol/Drug Facility, Intensive Probation, Electronic Monitoring, Standard Probation, and Financial Accountability.

The crime rate for the state of North Carolina is 15.03% higher than the national average. There are 165,500 adults under correctional supervision (prisons, jails, probation, and parole) in North Carolina and the correctional supervision rate (number of offenders supervised per 100,000) is 10.89% lower than the national average.

**Massachusetts**

Yes.

Chapter 432 eliminated the split sentence to the state prison in 1994. The Sentencing Commission found support for the split sentences at focus group meetings and public hearings and from the Supreme Judicial Court Substance Abuse Task Force to maintain split sentences to Houses of Corrections.

No studies to date.

Pennsylvania relies fairly heavily on resources developed and funded at the county level. Most counties have developed a wide array/continuum of options between probation and county incarceration (county intermediate punishments), including the typical programs (intensive supervision, house arrest, electronic monitoring, day reporting, inpatient/outpatient treatment, etc.). At the

The crime rate for the state of Massachusetts is 43.26% lower than the national average. There are 153,300 adults under correctional supervision (prisons, jails, probation, and parole) in Massachusetts and the correctional supervision rate (number of offenders supervised per 100,000) is 3.05% higher than the national average.

**Pennsylvania**

Yes. Pennsylvania has an indeterminate sentencing system, under which most sentences of incarceration result in a period of confinement followed by a period of parole supervision. There are some circumstances where the court may explicitly impose a split sentence... a flat sentence of incarceration up to 90 days followed by a consecutive sentence of intermediate punishments, or a sentence of Incarceration or state intermediate punishment followed by a consecutive period of probation.

No. Not to a specific population, but rather to or with specific sentencing options as noted above.

No studies to date.

Pennsylvania relies fairly heavily on resources developed and funded at the county level. Most counties have developed a wide array/continuum of options between probation and county incarceration (county intermediate punishments), including the typical programs (intensive supervision, house arrest, electronic monitoring, day reporting, inpatient/outpatient treatment, etc.). At the

The crime rate for the state of Pennsylvania is 47.89% lower than the national average. There are 315,000 adults under correctional supervision (prisons, jails, probation, and parole) in Pennsylvania and the correctional supervision rate (number of offenders supervised per 100,000) is 12.3% higher than the national average

<p><b>Virginia</b></p>	<p>Yes. A judge can add time on supervised or unsupervised probation to any incarceration sanction ~ even including instances where the incarceration sentence is the statutory maximum prison term. The law provides an opportunity for any incarceration sanction to be accompanied by some period of transition back to the community (judge specified) supervised by the probation office.</p> <p>It is rare to encounter an incarceration sanction for a convicted felon that is NOT followed with some supervised probation period (i.e., split sentence).</p>	<p>Focus on identifying low risk offenders who might pose no great danger to society if not given an incarceration sanction. They use empirically derived risk assessment tools adapted to the sentencing guidelines to assist judges in identifying incarceration bound felons as good candidates for community sanctions. Studies are available which have shown that this approach has slowed down the rate of incarceration and recidivism rate.</p>	<p>No studies to date on split sentencing but the risk assessment study is available at <a href="http://www.vcsc.state.va.us/reports">www.vcsc.state.va.us/reports</a></p>	<p>state level, there is also a continuum of option, including Boot Camp and state intermediate punishment (a two-year comprehensive drug treatment program beginning with state incarceration) as well as re-entry through community corrections centers.</p> <p>Fines &amp; Restitution Outpatient Drug/Alcohol Diversion Center Day Reporting ISP Bootcamp Drug Court Community Service</p>	<p>The crime rate for the state of Virginia is 38.5% lower than the national average. There are 102,500 adults under correctional supervision (prisons, jails, probation, and parole) in Virginia and the correctional supervision rate (number of offenders supervised per 100,000) is 45.39% lower than the national average.</p>
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**Appendix C: Summary of Recommendations**

<b>INTEGRATE RISK ASSESSMENT INTO CRIMINAL JUSTICE PROCESSING</b>						
Objective/Recommendation #	Legis-lation	Resources	Conti- gent	Model	Goal	Area(s) Addressed
1. Consider conducting a pilot project in a region or two or three counties to implement a triage risk assessment level system. Develop a work group to develop the pilot project criteria, location, procedures, evaluation, and available resources. See report and triage assessment grid. [Rec. 1]	No	Low/OT	No	VA, TX, MN	1,2,3	Presentence Domestic Violence Sex Offender Management Probation Violations/Revocations Probation Conditions
2. Recommended a resolve which would recommend that Courts imposing split sentences give weight to the length of the sentence the Court might otherwise impose if issuing a sentence of straight incarceration. [Rec. 2]	No	Minimal/OG	No	ME	1,2	Sentencing
3. Conduct evidence based study of correctional alternatives for individuals sentenced to incarceration for six to twelve months. Examine whether they should be housed at the County Jail or the DOC. Consider whether four regional centers should be created out of the county facilities which have excess capacity to house these individuals. Consider using risk assessment levels of inmates when making classification/housing and programmatic decisions. [Rec. 3]	No	Low /OT	No	None	1,2,3	Sentencing
4. Establish clear, flexible and informed processes which serve to align risk assessment results with probation conditions at sentencing, as well as modifications of conditions of probation. [Rec. 4]	No	Minimal/OG	Yes [Rec. 1] S	AZ	1,2	Probation Conditions

<p>5. Charge the MDOC Community Corrections Division to create a working group to study and develop sanction/treatment alternatives for probation violators. The guidelines should be based on level of risk and severity of offense. Recommend a measure that makes the MDOC LSI-R risk assessment results and other assessment results available at the revocation hearing and use the information to determine an appropriate response to probation revocations. [Rec. 5]</p>	<p>No</p>	<p>Low/OG</p>	<p>No</p>	<p>NIC MA Oregon SC</p>	<p>1,2</p>	<p>Probation Violations/Revocations</p>
<p>6. Recommend a measure that makes the MDOC LSI-R risk assessment summary and other assessment results available at the revocation hearing and use the information to determine an appropriate response to probation revocations. [Rec. 8]</p>	<p>No</p>	<p>Minimal/OG</p>	<p>No</p>	<p>None</p>	<p>1,2,3</p>	<p>Probation Revocations</p>
<p>7. Increase the use of adult drug court as a sentencing alternative to jail/prison. Implement the use of LSI-R assessment tool into the screening/assessment process of adult drug courts. Recommend to the Adult Drug Court Steering Committee limiting the availability of drug court as an option for moderate and high risk offenders, as measured by the LSI-R. The level (duration, intensity) of supervision and treatment services should be different for moderate and high risk offenders. [Rec. 9]</p>	<p>No</p>	<p>Minimal/OG</p>	<p>No</p>		<p>1,2,3</p>	<p>Drug Related Offenses</p>

ENSURE THE AVAILABILITY OF AN EVIDENCE-BASED TREATMENT/SANCTION CONTINUUM						
Objective/Recommendation #	Legis- lation	Resources	Conti- nent	Model	Goal	Area(s) Addressed
1. Develop a continuum of correctional alternatives to respond to probation revocations. Such a continuum might include day/evening reporting centers and halfway houses. [Rec. 6]	No	High/OG	No	Kansas, Ohio, NC, IL,WI	1, 2,3	Probation Revocations
2. Recommend the creation of a Statewide Community Corrections Board. The board should include representatives from multiple stakeholders. The purpose of the board would be to assist the counties to pool resources to develop regionalized correctional programs and provide training/support to stakeholders and community members on evidence-based practices. [Rec. 7]	No	Low to Mod/ OG	No		1,2,3	Program Services
3 Establish clear policies and incentives which ensure that public dollars invested in correctional programs are evidence-based. Support language in the Community Corrections Act Funding which gives additional incentives to counties which develop programs adhering to evidence-based practices. [Rec. 10]	Yes	Minimal	No	Oregon Ohio	1,2	Program Services
4. Encourage the referral and utilization of services and/or agencies that use evidence based practices and treatment models. Encourage jurisdictions to collaborate to restructure and reallocate existing resources to develop quality programs for the general population, as well as specialized populations (sex offender, domestic violence, substance abuse). [Rec. 11]	No	Minimal/OG	No	Oregon Ohio Idaho	1,2	Program Services

DISSEMINATE AND USE EBP INFORMATION IN DECISION MAKING						
Objective/Recommendation #	Legis-lation	Resources	Contin-gent	Model	Goal	Area(s) Addressed
1. Use local coordinating councils, to educate, update, and create awareness among criminal justice stakeholders, including the victim community and the community at-large, about evidence-based practices and how it relates to reducing harm to the victims and community. [Rec. 12]	No	Minimal / OG	No	NIC	1,2,3	Collaboration/Education
2. Create a web-based directory of resources and diversion alternatives. [Rec. 14]	No	Minimal to Moderate/ OG	No	ME	1,2,3	Program Services/Education
3. Advocate for using the next Sentencing Institute 2007 to promote the dissemination of information and training on evidence-based practices as it relates to sentencing alternatives. [Rec. 15]	No	Low to Mod/OT	No	ME	1,2,3	Collaboration/Education
4. Develop a standing "Sentencing and Corrections Alternative Commission". This Commission would work closely with research/universities to review ongoing data collection on recidivism, sentencing practices, programming, etc. which informs system changes. The Commission would report annually to the Legislature so that commission studies can be used to make data-based decisions about corrections funding and programs. [Rec. 13]	No	Mod to High/OG	No	Nat	1,2,3	Research/Education

## DEFINITIONS

### DEFINITIONS

Estimated Resources: (Minimal [0 – 25k], Low [26k - 250k], Moderate [251k – 750k], High [751k or higher]); OG = On-going, OT = One time

Contingent = listed objective is dependent upon the completion of another objective / S = simultaneously

Model = national, state, or county example program, reference, statute, or document for consideration

CAAC Goals: 1 = Effectively Manage Offender’s Risk & Needs; 2 = Increase System-wide Efficiencies; 3 = Enhance State & County Coordination