

# CRIMINAL JUSTICE REALIGNMENT

Update and Trends  
With  
Judges Cole, Manley and Pennypacker  
November 6, 2012



---

---

---

---

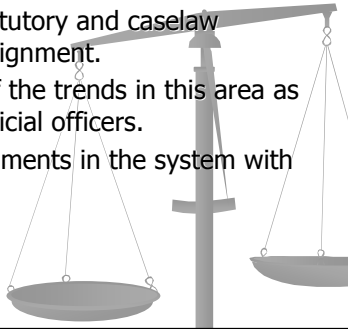
---

---

---

## PURPOSE OF PRESENTATION

- Update both statutory and caselaw interpreting realignment.
- Explore some of the trends in this area as observed by judicial officers.
- Discuss improvements in the system with partners.



---

---

---

---

---

---

---

## REALIGNMENT GOALS PC Sec. 17.5 & Sec. 3450

- Reduction in recidivism.
- Creation of real public safety.
- Placing low level offenders in community based programs.
- Establishing partnerships in criminal justice efforts.
- Using evidence based strategies.



---

---

---

---

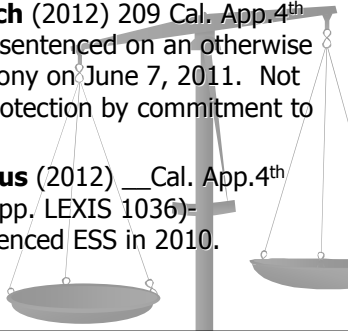
---

---

---

### CASELAW DEVELOPMENTS

- **People v. Lynch** (2012) 209 Cal. App.4<sup>th</sup> 353-Defendant sentenced on an otherwise eligible local felony on June 7, 2011. Not denied Equal Protection by commitment to prison.
- **People v. Clytus** (2012) \_\_\_ Cal. App.4<sup>th</sup> \_\_\_ (2012 Cal. App. LEXIS 1036)-Defendant sentenced ESS in 2010.



---

---

---

---

---

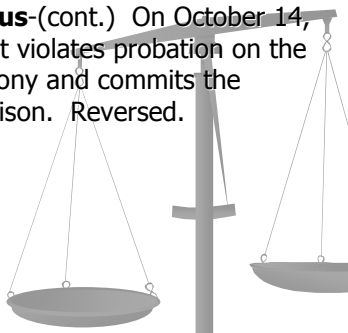
---

---

---

### CASELAW DEVELOPMENTS

- **People v. Clytus**-(cont.) On October 14, 2011, defendant violates probation on the local eligible felony and commits the defendant to prison. Reversed.



---

---

---

---

---

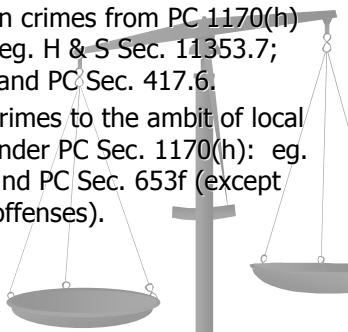
---

---

---

### STATUTORY CHANGES SENATE BILL 1023

- Removed certain crimes from PC 1170(h) consideration: eg. H & S Sec. 11353.7; PC Sec. 288.2; and PC Sec. 417.6.
- Added certain crimes to the ambit of local commitments under PC Sec. 1170(h): eg. PC Sec. 476a; and PC Sec. 653f (except for violent sex offenses).



---

---

---

---

---

---

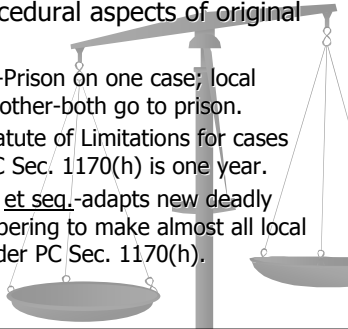
---

---

### SENATE BILL 1023

- Clean up of procedural aspects of original bill

- PC Sec. 669(d)-Prison on one case; local sentence on another-both go to prison.
- PC Sec. 802-Statute of Limitations for cases falling under PC Sec. 1170(h) is one year.
- PC Sec. 19100, et seq. adapts new deadly weapon renumbering to make almost all local dispositions under PC Sec. 1170(h).



---

---

---

---

---

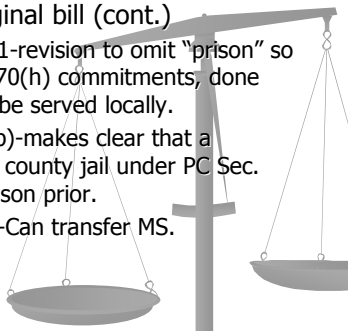
---

---

### SENATE BILL 1023

- Clean up of original bill (cont.)

- PC Sec. 12022.1-revision to omit "prison" so that two PC 1170(h) commitments, done separately can be served locally.
- PC Sec. 667.5(b)-makes clear that a commitment to county jail under PC Sec. 1170(h) is a prison prior.
- PC Sec. 1203.9-Can transfer MS.



---

---

---

---

---

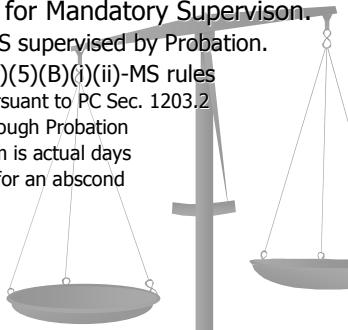
---

---

### SENATE BILL 1023

- Imposing Rules for Mandatory Supervision.

- PC Sec. 19.9-MS supervised by Probation.
- PC Sec. 1170(h)(5)(B)(i)(ii)-MS rules
  - Revocation pursuant to PC Sec. 1203.2
  - Supervision through Probation
  - Balance of term is actual days
  - Term is tolled for an abscond



---

---

---

---

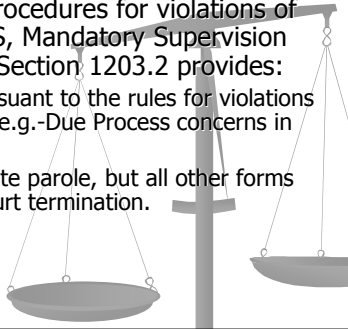
---

---

---

### SENATE BILL 1023

- Unification of procedures for violations of probation, PRCs, Mandatory Supervision and Parole. PC Section 1203.2 provides:
  - All handled pursuant to the rules for violations of probation. (e.g.-Due Process concerns in all respects)
  - Cannot terminate parole, but all other forms are open to court termination.



---

---

---

---

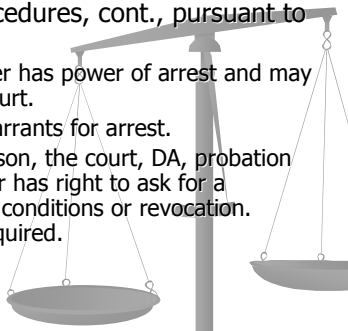
---

---

---

### SENATE BILL 1023

- Revocation Procedures, cont., pursuant to PC Sec. 1203.2.
  - Probation officer has power of arrest and may bring before court.
  - Courts issue warrants for arrest.
  - Supervised person, the court, DA, probation or parole officer has right to ask for a modification of conditions or revocation. Notice to all required.



---

---

---

---

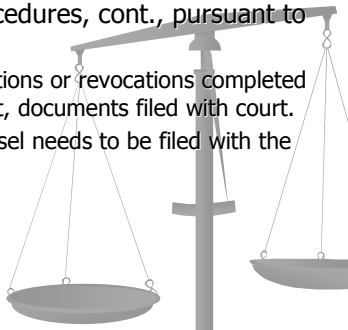
---

---

---

### SENATE BILL 1023

- Revocation Procedures, cont., pursuant to PC Sec. 1203.2
  - When modifications or revocations completed outside of court, documents filed with court.
  - Waiver of counsel needs to be filed with the court.



---

---

---

---

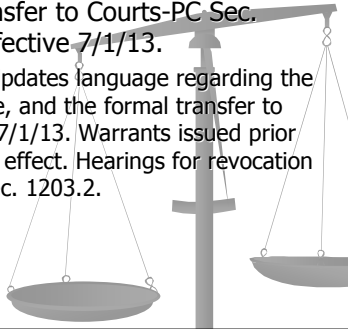
---

---

---

## SENATE BILL 1023

- The Parole Transfer to Courts-PC Sec. 3000 et seq. effective 7/1/13.
  - PC Sec. 3000-Updates language regarding the length of parole, and the formal transfer to court effective 7/1/13. Warrants issued prior to date, stay in effect. Hearings for revocation done per PC Sec. 1203.2.



---

---

---

---

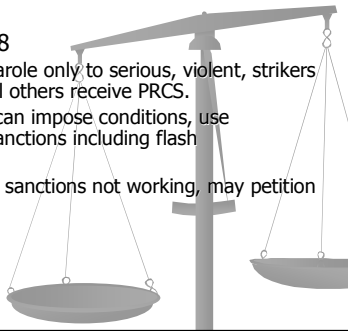
---

---

---

## SENATE BILL 1023

- Parole Shift
  - PC Sec. 3000.08
    - After 7/1/13-Parole only to serious, violent, strikers and MDO's. All others receive PRCS.
    - Parole agents can impose conditions, use intermediate sanctions including flash incarceration.
    - If intermediate sanctions not working, may petition for revocation.



---

---

---

---

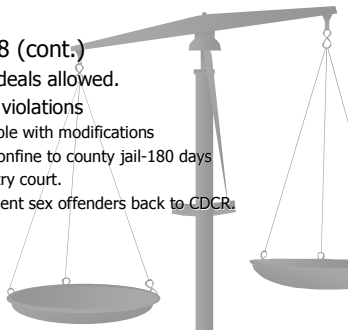
---

---

---

## SENATE BILL 1023

- Parole Shift
  - PC Sec. 3000.08 (cont.)
    - Short of court deals allowed.
    - Alternatives to violations
      - Return to parole with modifications
      - Revoke and confine to county jail-180 days
      - Refer to reentry court.
      - Lifers and violent sex offenders back to CDCR.



---

---

---

---

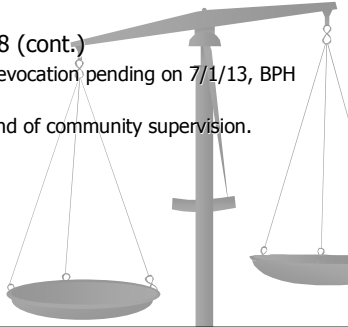
---

---

---

## SENATE BILL 1023

- Parole Shift
  - PC Sec. 3000.08 (cont.)
    - If hearing on revocation pending on 7/1/13, BPH keeps.
    - Discharge at end of community supervision.



---

---

---

---

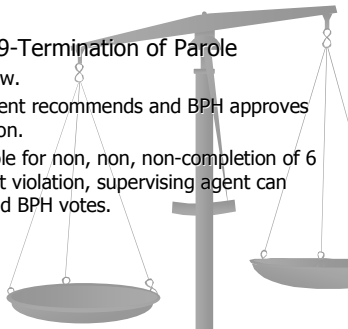
---

---

---

## SENATE BILL 1023

- Parole Shift
  - PC Sec. 3000.09-Termination of Parole
    - Operation of law.
    - Supervising agent recommends and BPH approves early termination.
    - On 3 year parole for non, non, non-completion of 6 months without violation, supervising agent can recommend and BPH votes.



---

---

---

---

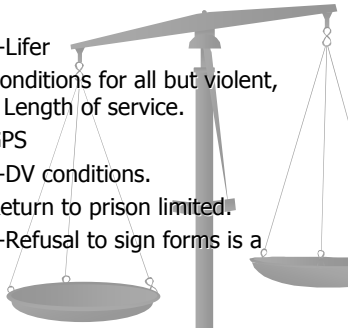
---

---

---

## SENATE BILL 1023

- Parole Shift
  - PC Sec. 3000.1-Lifer
  - PC Sec. 3001-Conditions for all but violent, serious, 290's. Length of service.
  - PC Sec. 3004-GPS
  - PC Sec. 3053.2-DV conditions.
  - PC Sec. 3056-Return to prison limited.
  - PC Sec. 3060.5-Refusal to sign forms is a violation.



---

---

---

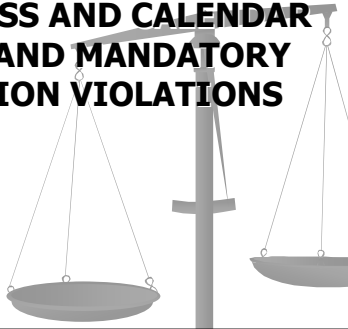
---

---

---

---

## **NEW PROCESS AND CALENDAR FOR PRCS AND MANDATORY SUPERVISION VIOLATIONS**



---

---

---

---

---

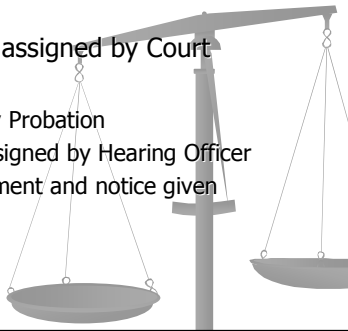
---

---

---

## **PRESENT VIOLATIONS OF PRCS AND MS**

- Hearing Officer assigned by Court
- Process
  - Petition filed by Probation
  - Reviewed and signed by Hearing Officer
  - Set for arraignment and notice given



---

---

---

---

---

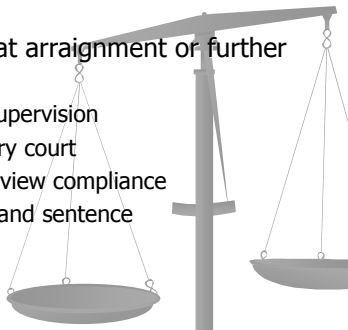
---

---

---

## **PRESENT VIOLATIONS OF PRCS AND MS**

- Actions taken at arraignment or further hearing:
  - Continue on supervision
  - Refer to reentry court
  - Continue to review compliance
  - Find violation and sentence



---

---

---

---

---

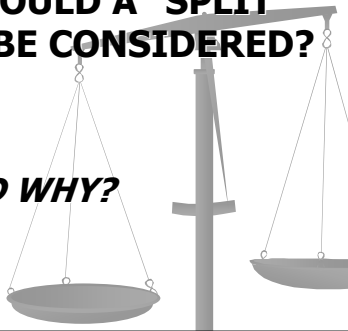
---

---

---

**WHEN SHOULD A "SPLIT"  
SENTENCE BE CONSIDERED?**

***AND WHY?***



---

---

---

---

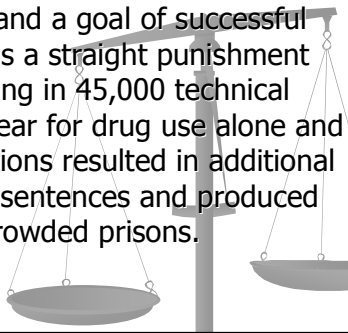
---

---

---

---

The Parole System was not based on rehabilitation and a goal of successful reentry. It was a straight punishment model resulting in 45,000 technical violations each year for drug use alone and 80% of all violations resulted in additional straight prison sentences and produced overcrowded prisons.



---

---

---

---

---

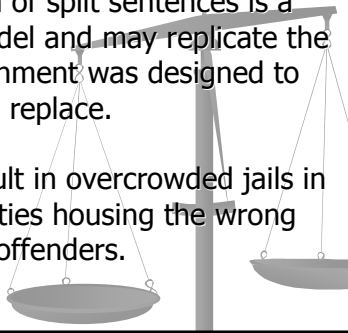
---

---

---

Straight jail sentences in all cases with no consideration of split sentences is a punishment model and may replicate the system realignment was designed to replace.

It may also result in overcrowded jails in our communities housing the wrong offenders.



---

---

---

---

---

---

---

---



County jails can provide beds for approximately 38% of the 15,400 low-level, non strike property and drug offenders now held in state prisons.

Center on Juvenile and Criminal Justice, March, 2011

**IF WE KNOW THAT A STRAIGHT JAIL PUNISHMENT ONLY MODEL MAY SHIFT OVERCROWDING FROM THE PRISONS TO THE JAILS, WILL A PUNISHMENT MODEL AT LEAST REDUCE REAARESTS AND NEW CONVICTIONS?**

**Research has demonstrated in over 150 national studies that punishment alone increases recidivism and does not reduce it.**

Edward J. Latessa, Ph.D., Center for Criminal Justice  
Research Division of Criminal Justice University of Cincinnati

**"USE EVIDENCE BASED  
PRACTICES JUDGES!!"**

***So, what does this mean?***



---

---

---

---

---

---

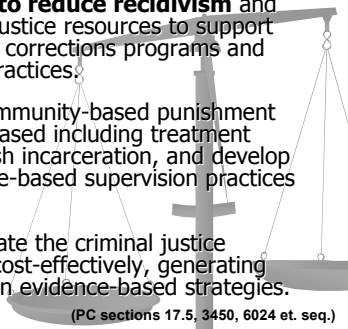
---

---

**REALIGNMENT LEGISLATIVE  
INTENT**

- **A Commitment to reduce recidivism** and reinvest criminal justice resources to support community-based corrections programs and evidence-based practices.
- Expand use of community-based punishment that is evidence-based including treatment programs and flash incarceration, and develop improved evidence-based supervision practices and strategies.
- Manage and allocate the criminal justice population more cost-effectively, generating savings to invest in evidence-based strategies.

(PC sections 17.5, 3450, 6024 et. seq.)



---

---

---

---

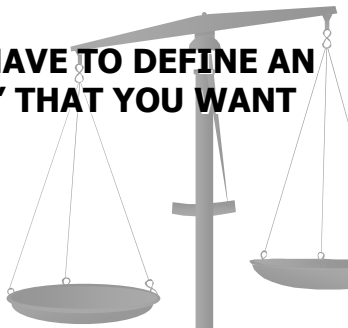
---

---

---

---

**FIRST YOU HAVE TO DEFINE AN  
"OUTCOME" THAT YOU WANT**



---

---

---

---

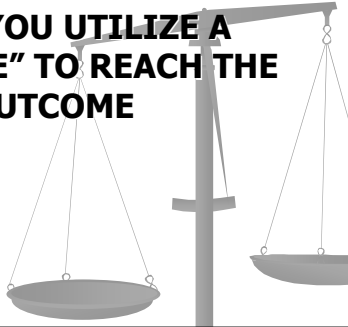
---

---

---

---

**THEN, YOU UTILIZE A  
"PRACTICE" TO REACH THE  
OUTCOME**



---

---

---

---

---

---

---

---

**THEN, YOU HAVE AN  
INDEPENDENT EVALUATION:  
DID THE PRACTICE PRODUCE THE  
OUTCOME YOU WANTED?**



---

---

---

---

---

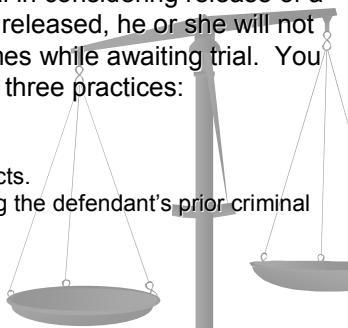
---

---

---

Example: Your goal in considering release of a defendant is that if released, he or she will not commit further crimes while awaiting trial. You could utilize one of three practices:

1. Flip a coin.
2. Rely on your instincts.
3. Rely on considering the defendant's prior criminal history.



---

---

---

---

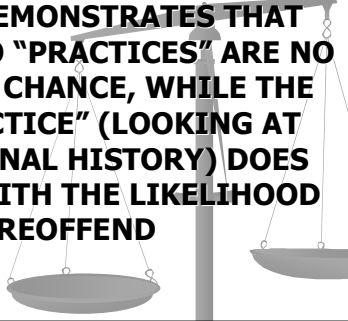
---

---

---

---

**RESEARCH DEMONSTRATES THAT THE FIRST TWO "PRACTICES" ARE NO BETTER THAN CHANCE, WHILE THE THIRD "PRACTICE" (LOOKING AT PRIOR CRIMINAL HISTORY) DOES CORRELATE WITH THE LIKELIHOOD TO REOFFEND**



---

---

---

---

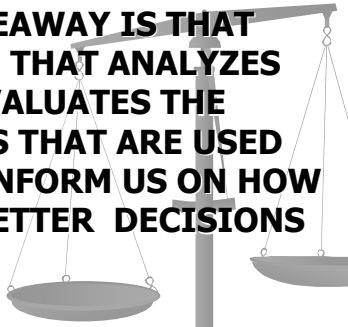
---

---

---

---

**THE TAKEAWAY IS THAT RESEARCH THAT ANALYZES AND EVALUATES THE PRACTICES THAT ARE USED WILL HELP INFORM US ON HOW TO MAKE BETTER DECISIONS**



---

---

---

---

---

---

---

---

**Assume that under realignment, a county and court wish to adopt criteria for pre-trial release that will result in the fewest re-arrests by defendants granted release.**

**They meet and select the following factors to be considered for every defendant:**

- 1. Prior adult convictions**
- 2. Length of permanent residency**
- 3. Prior failures to appear**
- 4. Injury to victim in present offense**
- 5. Possession of a weapon in the present offense**
- 6. Use of alcohol in the present offense**
- 7. Juvenile record**
- 8. Lack of employment**



---

---

---

---

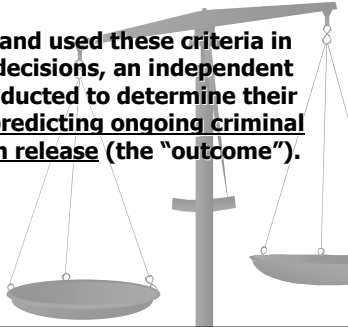
---

---

---

---

Having adopted and used these criteria in making release decisions, an independent evaluation is conducted to determine their effectiveness in predicting ongoing criminal behavior while on release (the "outcome").



---

---

---

---

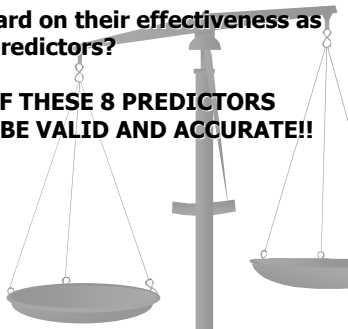
---

---

---

What is the scorecard on their effectiveness as predictors?

**ONLY THREE OF THESE 8 PREDICTORS WERE FOUND TO BE VALID AND ACCURATE!!**



---

---

---

---

---

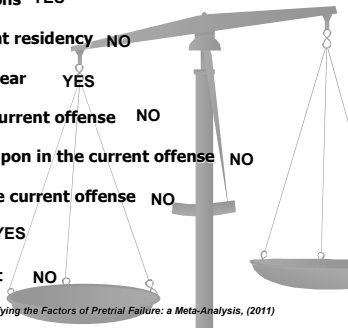
---

---

### WHICH ONES WERE GOOD PREDICTORS?

1. Prior adult convictions YES
2. Length of permanent residency NO
3. Prior failures to appear YES
4. Injury to victim in current offense NO
5. Possession of a weapon in the current offense NO
6. Use of Alcohol in the current offense NO
7. Juvenile record YES
8. Lack of employment NO

Bechtel, Lowenkamp, Hoslinger, Identifying the Factors of Pretrial Failure: a Meta-Analysis, (2011)



---

---

---

---

---

---

---

**THIS ANALYSIS DEMONSTRATES THE  
VALUE OF UTILIZING BEST PRACTICES IN  
MAKING DETERMINATIONS.**



---

---

---

---


---

---

---

---

**EXAMPLES OF PRACTICES USED BY  
CRIMINAL JUSTICE, INCLUDING  
PROBATION AND COURTS, THAT  
WERE NOT SUPPORTED BY ANY  
EVIDENCE AND DID NOT RESULT IN  
REDUCED RECIDIVISM...**



---

---

---

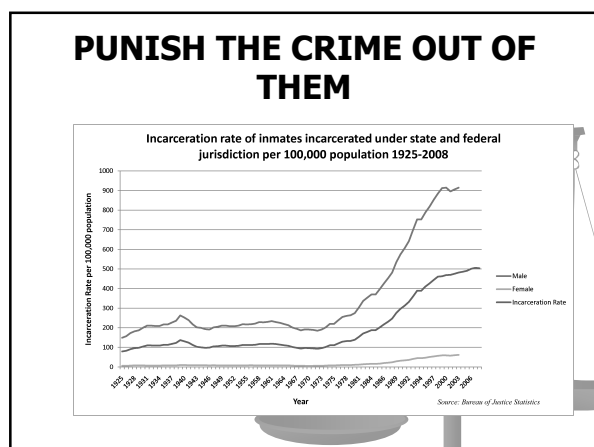
---

---

---

---

---



---

---

---

---

---

---

---

---

## SCARE THE CRIME OUT OF THEM




---

---

---

---

---

---

---

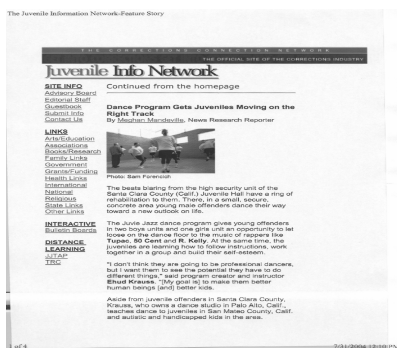
---

---

---

## DANCE THE CRIME OUT OF THEM

The Juvenile Information Network-Feature Story




---

---

---

---

---

---

---

---

---

---



## DRUM THE CRIME OUT OF THEM

---

---

---

---

---

---

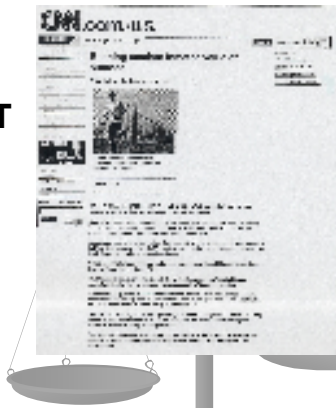
---

---

---

---

**RUN THE  
CRIME OUT  
OF THEM**



---

---

---

---

---

---

---

---

**MEDITATE  
THE CRIME  
OUT OF  
THEM**



---

---

---

---

---

---

---

---



---

---

---

---

---

---

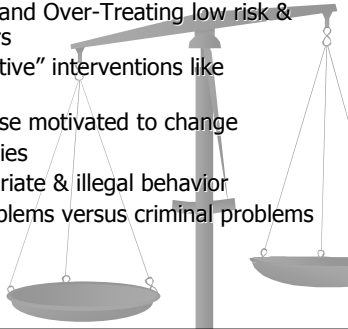
---

---



## OTHER FAILED INTERVENTIONS...

- Over-Supervising and Over-Treating low risk & first time offenders
- Providing "alternative" interventions like acupuncture
- Selecting only those motivated to change
- No tolerance policies
- Ignoring inappropriate & illegal behavior
- Solving social problems versus criminal problems



---

---

---

---

---

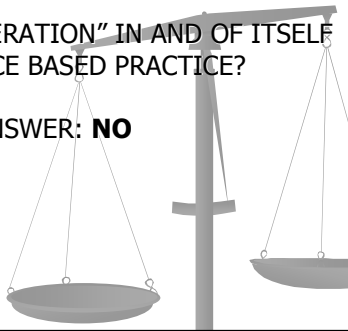
---

---

---

IS "FLASH INCARCERATION" IN AND OF ITSELF AN EVIDENCE BASED PRACTICE?

ANSWER: **NO**



---

---

---

---

---

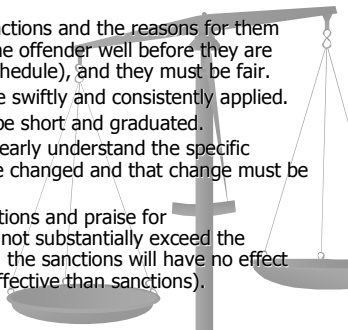
---

---

---

## TO BE EFFECTIVE "FLASH INCARCERATION" SANCTIONS MUST INCLUDE THE FOLLOWING:

- The possibility of sanctions and the reasons for them must be known by the offender well before they are applied (sanctions schedule), and they must be fair.
- The sanction must be swiftly and consistently applied.
- The sanctions must be short and graduated.
- The offender must clearly understand the specific conduct that must be changed and that change must be monitored.
- If incentives, affirmations and praise for accomplishments do not substantially exceed the number of sanctions, the sanctions will have no effect (rewards are more effective than sanctions).



---

---

---

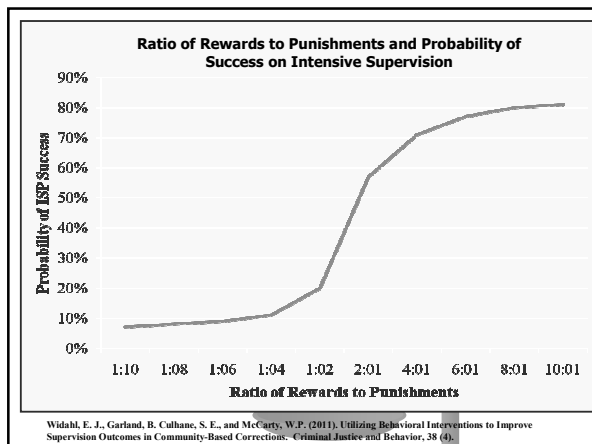
---

---

---

---

---




---

---

---

---

---

---

---

---

**SO IF THERE ARE "BEST PRACTICES" SUPPORTED BY RESEARCH WHAT ARE THEY?**

---

---

---

---

---

---

---

---

**What Evidence Based Practices are NOT:**

1. Determination of punishment proportionate to offense and culpability
2. Restitution/Restoration of the community
3. Telling a Judge how to sentence

---

---

---

---

---

---

---

---

### What Evidence Based Practices ARE:

1. More information about the offender
2. An added tool
3. Provide better management by Probation and Court (where appropriate)
4. A means to reduce recidivism



---

---

---

---

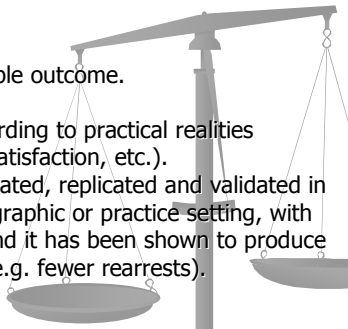
---

---

---

An **Evidence Based Practice** requires the following:

1. There is a definable outcome.
2. It is measurable.
3. It is defined according to practical realities (recidivism, victim satisfaction, etc.).
4. It has been evaluated, replicated and validated in more than one geographic or practice setting, with consistent results and it has been shown to produce specific outcomes (e.g. fewer rearrests).



---

---

---

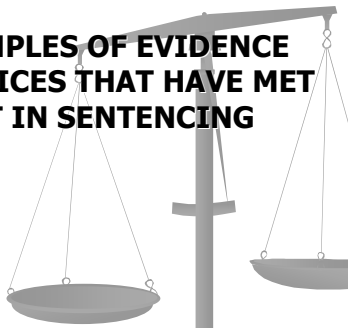
---

---

---

---

### THREE EXAMPLES OF EVIDENCE BASED PRACTICES THAT HAVE MET THIS TEST IN SENTENCING



---

---

---

---

---

---

---

## 1. THE ASSESSMENT PRINCIPLE

- If our "goal" is reducing recidivism and having effective supervision, a part of sentencing should include a formal "assessment" with a validated instrument to determine the following:
  - What is the "Risk" or likelihood that the defendant will commit a new offense in the future (defined as any offense)
  - What are the "Needs" that the defendant has for treatment and supervision in the community to be successful
  - What are the individual barriers to success for each defendant = "Responsivity"

58

---

---

---

---

---

---

---

---

## THE VALUE OF RISK/NEEDS ASSESSMENTS

- Have the information to identify and recommend intense supervision, treatment and services for those who are at the highest risk and need level.
- Have the information to recommend appropriate and specific levels of supervision as well as treatment and services needed for all other offenders.
- Have the information to avoid providing supervision, treatment and services for offenders who do not need them or will not benefit from them.

59

---

---

---

---

---

---

---

---

## 2. THE TREATMENT PRINCIPLE

- **Treatment should be applied as an integral part of the sentencing process.**
- **Targeted and timely treatment interventions will provide the greatest long-term benefit to the community, the victim, and the offender.**

60

---

---

---

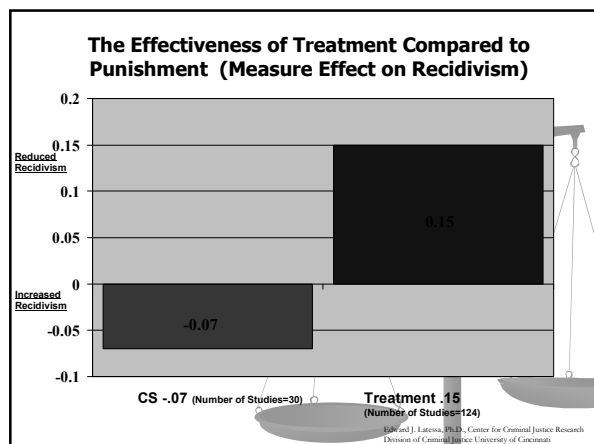
---

---

---

---

---




---

---

---

---

---

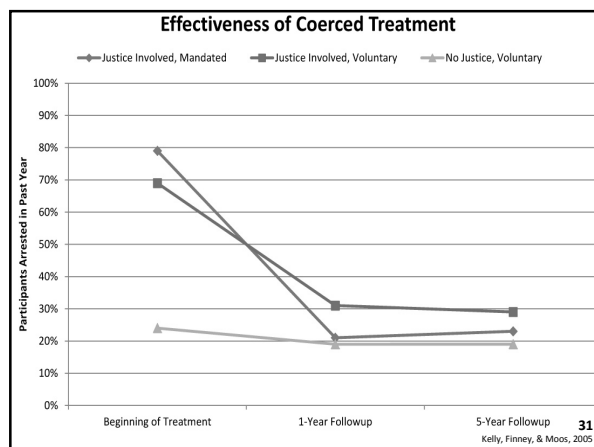
---

---

---

---

---




---

---

---

---

---

---

---

---

---

---

### 3. THE COGNITIVE BEHAVIORAL PRINCIPLE

- Changing thinking is the first step towards changing behavior. Offenders behave like criminals because they think like criminals.
- Effective cognitive programs attempt to alter an offender's cognitions, values, attitudes and expectations that maintain anti-social behavior.
- Treatment Model: Emphasis on problem solving, decision making, reasoning, self-control and behavior modification, through role playing, graduated practice and behavioral rehearsal.

63

---

---

---

---

---

---

---

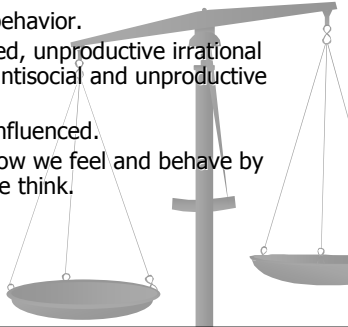
---

---

---

## THE FOUR PRINCIPLES OF COGNITIVE INTERVENTION

1. Thinking affects behavior.
2. Antisocial, distorted, unproductive irrational thinking causes antisocial and unproductive behavior.
3. Thinking can be influenced.
4. We can change how we feel and behave by changing what we think.



---

---

---

---

---

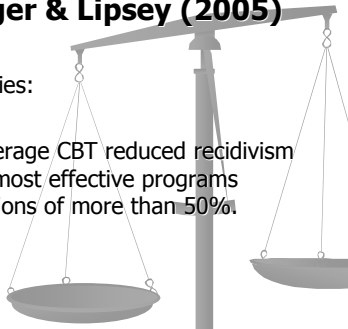
---

---

---

## Evaluation of Cognitive Behavioral Treatment for Offenders by Landenberger & Lipsey (2005)

- Reviewed 58 studies:
- Found that on average CBT reduced recidivism by 25%, but the most effective programs resulted in reductions of more than 50%.



---

---

---

---

---

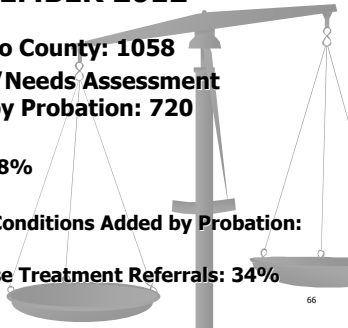
---

---

---

## UPDATE ON PRCS OFFENDERS IN SANTA CLARA COUNTY AS OF SEPTEMBER 2012

- Total Returns to County: 1058
- Validated Risk/Needs Assessment Administered by Probation: 720
  - High Risk: 53%
  - Medium Risk: 38%
  - Low Risk: 9%
- Mental Health Conditions Added by Probation: 18%
- Substance Abuse Treatment Referrals: 34%



---

---

---

---

---

---

---

---



---

---

---

---

---

---

---