PROGRESS REPORT

# Doing Justice:

## *The Executive Summit On Criminal Justice Reform*

October 2015

***Prepared for the:***
*Office of National Drug Control Policy,*
*Executive Office of the President*

NADCP
National Association of
Drug Court Professionals

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Printed in the United States of America.

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This project was supported by Grant No. G1299ONDCP02A awarded by the Office of National Drug Control Policy, Executive Office of the President. Points of view or opinions in this document are those of the authors and do not represent the official position or policies of the Executive Office of the President.

# INTRODUCTION

The United States' criminal justice system is at a critical point of transition. State and federal inmate populations have grown exponentially in recent decades, partly in response to determinate sentencing policies and mandatory minimum sentencing ranges. Correctional expenditures have increased accordingly and are now the second highest line item in many state budgets, totaling nearly $52 billion per year nationally (Vera Institute of Justice, 2013). Prison overcrowding in some states has been so severe that the conditions were found to violate the Constitution's Eighth Amendment prohibition against cruel and unusual punishment. The California state prison system was placed under federal receivership to alleviate unconstitutionally crowded conditions and deficient medical services (Couzens, 2013).

Apart from the inordinate costs, the correctional system's reliance on imprisonment has produced questionable gains (Cullen, Jonson, & Nagin, 2011; Durlauf & Nagin, 2011; Kovandzic & Vieraitis, 2006). More than two-thirds of inmates released from jails or prisons commit a new crime within three years, and approximately one-half are returned to custody for a new offense or technical violation (Durose, Cooper, & Snyder, 2014). Approximately 40% of parolees and one-third of probationers fail on community supervision and are placed in custody or sentenced to longer periods of correctional supervision (Johnson, 2014; Maruschak & Bonczar, 2015). Moreover, a record of a criminal conviction can result in a range of harmful collateral consequences, including the loss of voting rights and difficulty obtaining gainful employment (e.g., Jensen, Gerber, & Mosher, 2004).

> *"Without funds sufficient to ensure people are receiving appropriate and individualized supervision, communities may see high failure rates, increased victimization, and delayed rather than avoided costs as understaffed agencies return probationers and parolees to costly jail and prison beds on technical violations."*
>
> *Vera Institute of Justice (2013), p. 9.*

Criminal justice professionals and policy makers have recognized for some time that the status quo is unsustainable and have been experimenting steadily with a wide swath of reforms aimed at reducing reliance on incarceration, lowering crime rates, improving outcomes for justice-involved individuals, and containing spiraling costs. Federal grant programs such as the Justice Reinvestment Initiative (JRI) (Council of State Governments, n.d.) and the Second Chance Act (2008) are providing resources, training, and technical assistance to help states alleviate prison overcrowding, rehabilitate justice-involved individuals, develop effective community alternatives to incarceration, and divert some persons from incurring a criminal record. Funded by the Bureau of Justice Assistance, JRI assists states in identifying the factors driving excessive correctional expenditures and creating alternatives to incarceration that contribute to public health and public safety. Initiatives in 17 participating states are projected to reduce correctional costs by roughly $7.7 million over 5 years and $875 million over 11 years (Urban Institute, 2014). Pursuant to the Second Chance Act, the Justice Department awarded more than $62 million in grants during fiscal year 2013 to strengthen local efforts to help individuals effectively transition from prison back to their communities and become produc-

tive, law-abiding citizens. Additional grants for the Second Chance Act are estimated to exceed $68 million for fiscal year 2014 and $115 million for fiscal year 2015 (Catalog of Federal Domestic Assistance, n.d.).

Comparable efforts are being undertaken at the state level. Originating in California, the concept of justice realignment is shifting responsibility for managing individuals charged with all but the most serious crimes from state to county governments (Pennypacker & Thompson, 2013; Rappaport, 2013). When local communities bear the cost and burden of managing inmates, an impetus is created to shorten incarceration periods and find cost-effective alternatives for managing those individuals in the community. At the same time, the era of determinate sentencing is coming to a close (Chanenson, 2005; Wolffe, 2008). Terms such as *smart sentencing, smarter sentencing, smart on crime,* and *right on crime* refer to legislative amendments lowering or removing mandatory minimum sentences, authorizing intermediate sentences such as home confinement or electronic monitoring in lieu of incarceration, and providing progressive sentence reductions as credit for time served in custody or on probation (National Conference of State Legislatures [NCSL], 2011). Since 2000, at least 29 states have taken steps to roll back mandatory sentences (Subramanian & Delaney, 2014) and several reform bills are pending at the federal level (Smarter Sentencing Act of 2014, Justice Safety Valve Act of 2013, Recidivism Reduction and Public Safety Act of 2014).

The result of these and similar developments has been the steady transfer of responsibility for supervising large numbers of individuals from correctional institutions to community-based programs managed by local communities. For the first time, states such as Texas and New York have closed prisons and transferred the savings to community corrections. These are positive developments, but many practitioners and policy makers are concerned about whether the right people are being diverted to community programs and whether they are being supervised and treated effectively in their communities. Without high-quality community corrections programs, recidivism could be expected to rise again. Such a development could lead to a return to overreliance on incarceration, an approach demonstrated to have numerous negative repercussions.

## The Doing Justice Executive Summit

Funded by the Office of National Drug Control Policy of the Executive Office of the President, and hosted by the National Association of Drug Court Professionals (NADCP), the Doing Justice Executive Summit brought together executive directors and subject-matter experts from 41 national practitioner organizations to address hands-on strategies for implementing criminal justice reforms. Summit attendees included leading representatives of the police, sheriffs, judges, prosecutors, defense lawyers, pretrial services officers, probation and parole officers, substance abuse and mental health treatment providers, jail and prison officials, crime victims, and the faith community (see the Appendix for participating organizations). The goals of the summit were to gauge the perspectives of these front-line experts, reach agreement on foundational principles for criminal justice reform, and build a lasting coalition to collect information on evidence-based practices and disseminate it to professionals in the field in an immediately interpretable and actionable format.

The success of the executive summit exceeded the highest expectations. All the organizations substantially agreed on the need for science-based reforms and the foundational principles for achieving those reforms. Attendees learned that novel measures are under way at every stage of the criminal justice system and are being championed by every professional discipline represented at the summit. Innovative practices have been instituted by the police to resolve street encounters without an official arrest, by the courts and pretrial services agencies to divert individuals from incurring a criminal record, by probation and community corrections agencies to supervise convicted individuals in the community without recourse to incarceration, and by parole and

community corrections agencies to facilitate successful reentry into the community after incarceration. All these programs share a philosophical commitment to doing "what works" and matching individuals to the most appropriate services based on their risk for criminal recidivism and need for treatment and rehabilitative services. Participants pledged support to continue working together as an expert coalition to share knowledge and bring science and facts to bear on national policies for criminal justice reforms.

## Summit Procedures

The executive summit was held on two consecutive days in October 2013 in Washington, D.C. Nearly 50 leading criminal justice organizations were invited to attend, and representatives from 41 organizations participated in the event. Each organization was asked to designate at least two officials to attend: an administrator at the level of executive director or equivalent who could speak on behalf of the organization's mission and objectives, and a subject-matter expert with contemporary knowledge about evidence-based practices and promising practices within the organization's scope of expertise. (Definitions of *evidence-based practices* and *promising practices* are discussed later.) These professionals were asked to come to the summit prepared to discuss evidence-based programs and practices they were aware of in their fields and to provide documents describing those programs, scientific studies (if any) examining the programs' effects, and any information that might be available on the optimal target populations for the programs.

A plenary session on the morning of the first day of the summit introduced audience members to the goals of this historic event and identified broad principles for criminal justice reform that all attendees could agree upon. As will be discussed, consensus was reached on a number of basic principles for reform, including the importance of applying evidence-based practices and matching services to participants' risk for recidivism and need for treatment and social services.

In the afternoon of the first day, participants divided into workgroups to begin a process of identifying evidence-based programs and promising programs at the prearrest, pretrial, sentencing, and community corrections stages. Workgroups also addressed due process, equal protection, and other constitutional issues related to the application of evidence-based practices and barriers to applying these practices faced by defense attorneys, prosecutors, judges, and treatment providers. The workgroups were moderated by senior faculty from NADCP with extensive experience eliciting actionable information from professionals, recording comments faithfully, summarizing findings, and outlining concrete action steps. Careful notes were taken of the workgroup discussions, and content analyses identified prominent themes, points of consensus, and agreed-upon action steps.

This report summarizes the main points of agreement reached by participants during the workgroups and plenary sessions. In addition, over the two years since the executive summit was held, NADCP staff have continued to work closely with subject-matter experts from partner organizations to identify evidence-based practices and promising practices emerging in the criminal justice field. This report includes information about recent programs and studies identified by the partner organizations.

## Consensus Statement

In a plenary session on the second day of the executive summit, a nonbinding straw poll was taken on the degree to which attendees agreed with the following general propositions:

- Dispositions in the criminal justice system (other than the determination of guilt or innocence) should be based on the characteristics of the person charged with an offense in addition to the characteristics of the offense.
- Criminal justice professionals should be required to consider persons' rehabilitation needs and likelihood of recidivism when imposing criminal sentences, ordering conditions of treatment and supervision, and responding to infractions and technical violations.
- Criminal justice professionals should be required to consider whether a proposed sentence or disposition is likely to reduce crime, improve the psychosocial functioning of the person charged with a crime, and make optimum use of taxpayer dollars.
- Valid and reliable scientific evidence should guide the above considerations.

Unanimous agreement was reached by those in attendance on these propositions. Based on feedback from the group, efforts are under way to affirm these principles publicly in a joint consensus statement from the participating organizations represented at the summit. Although many of the individual organizations have already voiced their support publicly for these principles, never before has a coalition representing a wide range of professional disciplines involved in the administration of justice declared in one voice their commitment to what works. Participating organizations are in the process of suggesting revisions to the above language and submitting the consensus statement to their respective boards of directors for approval. To date, the consensus statement has been endorsed, subject to minor amendments, by 11 participating organizations. No organization has declined thus far to endorse these principles.

To some, these propositions might seem self-evident and unobjectionable; however, they challenge some of the basic tenets of the criminal justice system and propose monumental change for the administration of justice. For decades, sentencing laws in the United States have vacillated between the extremes of *indeterminate* and *determinate* sentencing. When judges were given wide discretion to fashion criminal sentences, the results were often high recidivism rates and unintended, but nevertheless substantial, racial and ethnic disparities (Chanenson, 2005). Removing judicial discretion did little to correct these problems. Mandatory sentencing guidelines failed to improve outcomes, exacerbated racial and ethnic disparities in some instances, and led to unprecedented prison overcrowding and budget deficits (Cullen et al., 2011; Durlauf & Nagin, 2011; Jensen et al., 2004).

Under the current offense-based system of determinate sentencing, the severity of the crime and the defendant's prior criminal record primarily dictate the sentence to be imposed. Person-based characteristics, where relevant, are relied upon essentially to select from within the prescribed sentencing range or, in rare instances, to depart slightly upward or downward from the permissible range. The Doing Justice consensus statement takes issue with this state of affairs and seeks to return person-based considerations to the forefront of criminal sentencing and other

correctional dispositions. The purpose is not to use standardized assessments as a basis for sentencing individuals to incarceration, but rather to identify effective community-based alternatives in appropriate cases that are likely to achieve better results for public health, public safety, and taxpayer expenditures.

At the same time, the consensus statement does not seek a return to indeterminate sentencing. Rather, the intent is to require *guided discretion* in sentencing and other criminal justice dispositions (Chanenson, 2005; Vitiello, 2013; Wolff, 2008). Some measure of discretion should be returned to criminal justice professionals, but that discretion must not be unbridled. Criminal justice professionals should be permitted or required to consider scientifically validated evidence on effectiveness and cost-effectiveness when making dispositional decisions. As will be discussed, research indicates that practices cannot be effective or cost-effective unless they are matched appropriately to the risk and need profiles of the participants. Here, *risk* refers to the likelihood of failure on supervision or recidivism, and *need* refers to clinical disorders or functional impairments that require treatment or rehabilitation to reduce crime. The consensus statement calls upon criminal justice professionals to take the risk and need profiles of justice-involved individuals into account when making dispositional decisions.

An open question for many state legislatures is whether criminal justice professionals should be *permitted* or *required* to consider evidence on effectiveness and cost-effectiveness. Some states require judges to consider risk and need assessment information as part of a presentence investigation before imposing felony sentences in certain cases, whereas other states allow judges to consider such information (NCSL, 2011). A few states have gone so far as to create a rebuttable presumption that judges will impose an evidence-based sentence in certain cases. Virginia, for example, creates essentially a rebuttable presumption that a nonincarcerative sentence will be imposed for persons charged with certain nonviolent drug and property offenses who score at the lowest quartile (lowest 25th percentile) on a standardized risk assessment tool (Kern & Farrar-Owens, 2004). Judges are permitted to sentence beyond the presumptive guideline but are typically requested to articulate the rationale for doing so.

The Doing Justice consensus statement chooses the middle of these three options, calling upon criminal justice professionals to consider information on effectiveness and cost-effectiveness when making important decisions concerning dispositions. It is recognized that criminal justice professionals must also consider factors other than effectiveness or cost—such as victims' rights and general deterrence—when making such decisions, and their discretion to consider these factors should not be constrained by arbitrary presumptions. Nevertheless, failing to consider effectiveness may be seen as a violation of the public trust (Marcus, 2003; Stuart & Sykora, 2011). Outcomes should be a mandatory factor to be included in criminal justice professionals' calculus when making important decisions concerning criminal dispositions.

## Where and When to Intervene

Options are available at nearly every stage in the criminal justice system to deliver evidence-based services in the community instead of incarcerating individuals or drawing them deeper into the criminal justice system. Individuals may be diverted to community-based programs instead of being arrested, charged with a crime, convicted of a crime, or sentenced to incarceration (see Figure 1). An important question is at what stage in the proceedings is it most advisable to intervene.

**Figure 1. Impacts of Case Dispositions at Succeeding Stages in the Criminal Justice System**

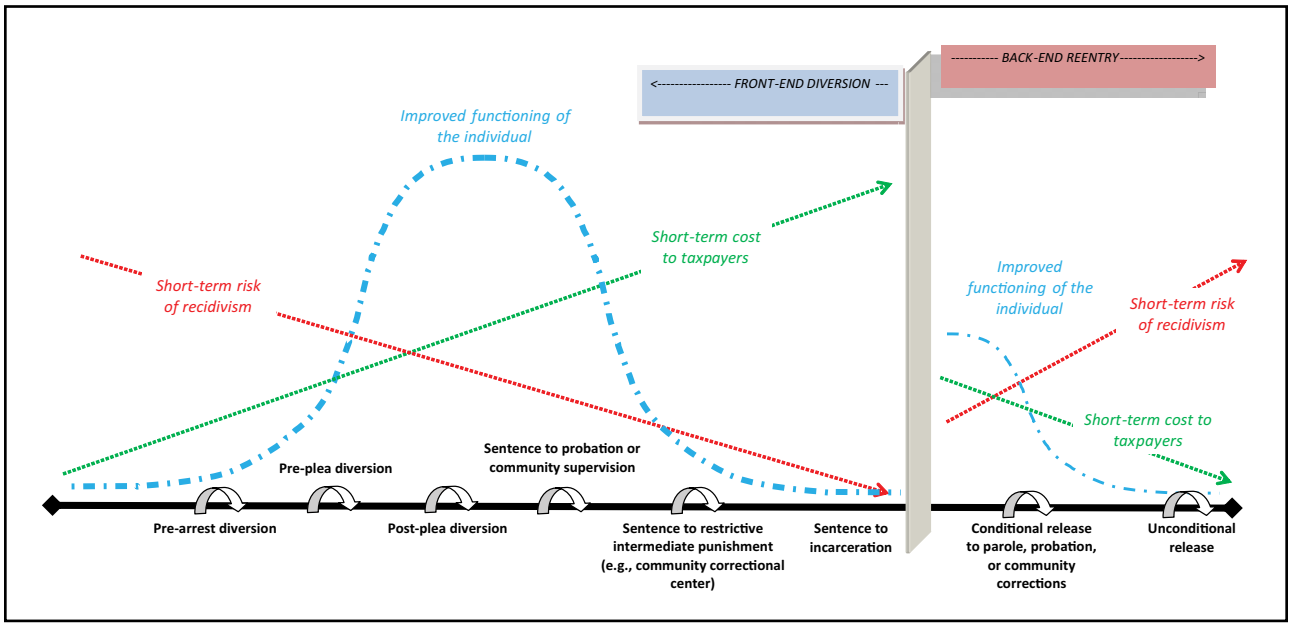



*Figure adapted with permission from Marlowe, D.B. (2011). Evidence-based policies and practices for drug-involved offenders. The Prison Journal, 91 (Suppl.), 27S–47S.*

Evidence suggests no one stage is optimal for offering a diversionary opportunity. Interventions at every stage in the criminal justice system are associated with benefits and liabilities that are often in tension with one another. For example, as individuals move from left to right on the continuum in Figure 1, the costs of the interventions increase precipitously, with the greatest costs being associated with incarceration (Aos, Miller, & Drake, 2006; Zarkin et al., 2015). On the other hand, risks to public safety decrease significantly, at least in the short term, while individuals are under the supervision of the community programs (Easton 2002; Spelman, 2000). To make matters more complicated, the best effects on the psychosocial functioning of justice-involved individuals tend to be achieved by programs in the middle of the continuum, and the worst outcomes by those at either extreme (Marlowe, 2011).

Evidence suggests that intervening too early or too late in the criminal justice process may increase the likelihood of recidivism and other negative outcomes. Intervening too early may be unsuccessful if there is insufficient leverage stemming from an arrest charge, guilty plea, conviction, or sentence

to keep the individual law abiding and engaged in treatment (Olver, Stockdale, & Wormith, 2011). Conversely, intervening too late is often unsuccessful because individuals become separated from their loved ones and other social supports; may be prevented from engaging in productive activities such as work, school, and parenting; and the collateral consequences of having a criminal record may make it difficult to obtain employment, housing, or other benefits. The greatest psychosocial improvements are often produced by programs in the center of the continuum, which rely on the leverage of a guilty plea or conviction to keep individuals engaged in treatment, provide needed services in the community as soon as practicable after arrest, and offer these individuals a chance to avoid a criminal record or more severe sentence if they complete treatment and meet other service obligations.

The difficult task facing practitioners and policy makers is to select from among this continuum of options the most effective and cost-efficient dispositions for the large number of individuals coming before the courts and into the criminal justice system each year. Unfortunately, this has often meant the overapplication of a single disposition for a large segment of the criminal justice population. For example, while determinate sentencing and mandatory minimum sentences may have contributed to a plateau or reduction in then-rising crime and violence rates from the 1980s (Easton, 2002; Spelman, 2000), these policies paid insufficient attention to the countervailing considerations of cost and the psychosocial impact of incarceration on individuals, their families, and their communities. The results were skyrocketing correctional budgets; population caps imposed on state prisons due to unconstitutionally crowded living conditions; and devastation for overburdened racial, ethnic-minority, and lower-income communities (Cullen et al., 2011; Durlauf & Nagin, 2011; Jensen et al., 2004).

The danger now is that one-dimensional policies aimed at reducing costs and prison populations may similarly serve one policy objective at the expense of the other two. Taxpayer savings will be small consolation if crime rates increase, community safety is threatened, and individuals fail to be rehabilitated. What is needed is a balanced criminal justice policy that avoids the overapplication of any one disposition for all or most individuals charged with a crime. Emphasis should be placed on selecting dispositions that can optimally balance all three considerations of public safety, cost, and psychosocial benefits. The goal should be to choose the disposition in each case that presents the least risk of recidivism and the greatest likelihood of improving the welfare of the individual, and can do so at the least required expense to taxpayers.

Summit attendees recognized clearly that considerations other than effectiveness and cost must and do influence criminal justice decisions. Criminal justice professionals are also responsible for vindicating victims' interests, expressing the community's outrage at egregious conduct, and deterring other persons from committing similar offenses in the future (general deterrence). Although these are unquestionably important factors to consider, they are generally not included under the rubric of evidence-based practices because they do not lend themselves readily to empirical validation. There is no practical way, for example, to measure the influence of a sentence on community values, and efforts to gauge general deterrence have been largely inconclusive (Chanenson, 2005; Tonry, 1996). Nevertheless, these factors are taken into account in the decision-making framework proposed herein under the category of exigent risk and need, which is

discussed below. If it is determined that exigent factors outweigh empirical considerations of effectiveness, safety, and cost, it is proposed that this decision be acknowledged explicitly. A rationale should be articulated for imposing a more severe or less severe disposition than empirical evidence suggests should be necessary to improve outcomes.

## Evidence-Based Practices and Promising Practices

Attendees at the executive summit broadly endorsed the application of evidence-based practices as a critical method for balancing the interests of public safety, effectiveness, and cost-effectiveness. Various criteria have been proposed to define what constitutes an evidence-based practice, but most definitions share at least the following elements. Summit attendees did not agree on any one standardized definition of an evidence-based practice; however, there was common agreement on these elements:

1. **The practice or program** must have been demonstrated to improve outcomes in at least two high-quality research studies. (Criteria for evaluating the quality of research studies are described below.) The measured outcomes must have included statistically significant reductions in criminal recidivism, crime victimization, or criminal justice costs; or improvements on other variables that are associated consistently with reductions in crime, such as reductions in substance abuse or family conflict. Examples of rating systems cited by summit attendees for determining whether practices are evidence-based included the Office of Justice Programs CrimeSolutions.gov, which evaluates crime-reduction programs; the Substance Abuse and Mental Health Services Administration National Registry of Evidence-Based Programs and Practices (nrepp.samhsa.gov/ReviewQOR.aspx), which evaluates treatments for substance abuse, addiction, and co-occurring mental health disorders; and the Washington State Institute of Public Policy (WSIPP) Inventory of Evidence-Based Practices (Drake, 2013), which evaluates rehabilitation programs in the criminal justice system.
2. **The research studies** must have been conducted with sufficient scientific rigor to provide confidence in the validity and reliability of the results. Scoring systems mentioned by summit attendees for evaluating the scientific quality of research studies included the CONSORT (Moher et al., 2010; Schulz, Altman, & Moher, 2010), WSIPP (Walker, Lyon, Aos, & Trupin, 2015), and Mesa Grande (Miller & Wilbourne, 2002) scoring systems. These scoring systems require studies to employ, among other factors, unbiased comparison groups; perform intent-to-treat analyses on all participants, not just successful completers; recruit sufficiently large samples to provide adequate statistical power for the analyses; recruit representative samples that allow for generalizations to the larger population of justice-involved persons; and conduct appropriate statistical analyses that control for potential confounds in the research design.

Summit attendees did not settle on any particular rating systems for evaluating the quality of rehabilitation programs or the research studies examining those programs. Rather, it was agreed that the evidence supporting various programs should be described clearly and succinctly in evaluation reports so as to enable practitioners and policy makers to make their own informed judgments about the sufficiency of the evidence.

Summit attendees further recognized that many programs show promise in practice but have not yet been evaluated rigorously in scientific studies. Most studies of community-based criminal justice programs have focused on problem-solving courts (particularly Drug Courts), community correctional centers, and specific types of probation programs. Research is in its infancy for many newer programs being implemented by law enforcement, pretrial services agencies, and prisoner-reentry programs, and for judicial sentencing practices. It was agreed that a second tier of recognition should be reserved for *promising practices* for which there is not yet sufficient evidence to demonstrate their effectiveness, but which nevertheless appear potentially effective in practice and merit further study.

## Risk, Needs, Responsivity

Without exception, summit attendees recognized that programs or practices cannot be "evidence-based" unless they are matched appropriately to the risk-and-need profiles of the participants. Studies consistently find that delivering too little or too much service in light of participants' risk or need levels not only fails to improve outcomes but often makes outcomes worse by wasting resources, causing participants to adopt antisocial values or attitudes from higher-risk peers, and interfering with participants' involvement in productive activities, such as work, school, or parenting (Lloyd, Hanby, & Serin, 2014; Lowenkamp & Latessa, 2004; McCord, 2003; Welsh & Rocque, 2014; Wexler, Melnick, & Cao, 2004). This finding is the basis for what is referred to as Risk-Needs-Responsivity (RNR) theory (Andrews & Bonta, 2010). RNR is derived from a large body of research revealing that practices are most effective and cost-effective when they are matched to four empirically validated characteristics of the participants: (1) prognostic risk, (2) criminogenic need, (3) responsivity need, and (4) exigent risk or need. Armed with knowledge about where an individual falls on these dimensions, it is possible to select interventions that are most likely to be effective, cost-efficient, and safe for each individual. The principles of RNR were endorsed unanimously by attendees at the executive summit and serve as the philosophical foundation for most of the initiatives currently being implemented by the professions represented at the meeting.

1. **Prognostic risk.** One of the most common and serious mistakes made in the criminal justice system is confusing a risk of dangerousness with a risk for recidivism or failure on community supervision. Most risk assessment tools used in day-to-day criminal justice practice have not been validated against the likelihood of violence or dangerousness but rather against the likelihood that an individual will fail on community supervision or commit another offense, typically a drug, traffic, or property offense. In short, they have been validated against the likelihood that an individual's behavior will not improve, which is analogous to the medical concept of a serious or guarded prognosis. For this reason, it is sometimes referred to as *prognostic risk*.

   The distinction between prognostic risk and risk of dangerousness is critical. Many practitioners screen high-risk individuals out of intensive service-oriented programs because they perceive them (wrongly) as necessarily a threat to others or somehow less worthy of the services. On the contrary, research indicates the higher the prognostic risk the more intensive the services should be. By definition, persons with high prognostic risk are unlikely to be rehabilitated unless they receive intensive supervision or treatment. It makes little sense to deny services to individ-

uals who need those services most and target the services to low-risk individuals who do not require the services and are apt to desist from crime on their own volition. Failure to understand this important distinction between risk of dangerousness and prognostic risk is at the root of many failed criminal justice efforts.

2. **Criminogenic needs.** *Criminogenic needs* refers to clinical disorders or functional impairments that, if ameliorated, significantly reduce the likelihood that a person will return to crime. The most common criminogenic need is an untreated substance use disorder. Although justice-involved individuals often present with a range of needs, it is important to recognize that not all of those needs are criminogenic. Many need deficits, such as low self-esteem or poor job skills, may be the result of living a nonproductive or antisocial lifestyle rather than the cause of that lifestyle. Addressing noncriminogenic needs (those that do not cause crime) before addressing criminogenic needs is associated with *increased* criminal recidivism, treatment failure, and other undesirable outcomes (Andrews & Bonta, 2010). It is essential to focus first on resolving the factors that cause crime before moving on to treating other problems in justice-involved individuals' lives. For this reason, many programs such as Drug Courts focus first on treating criminogenic needs such as substance use disorders during the early phases of treatment, and turn their attention to other needs such as joblessness or illiteracy months later.

3. **Responsivity needs.** A subset of noncriminogenic needs, referred to as *responsivity needs*, do not cause crime but can make it difficult for individuals to benefit from treatment or rehabilitation. Common examples include homelessness and severe mental illness, such as psychosis, posttraumatic stress disorder (PTSD), and major depression. Although mental illness usually does not cause crime, it can interfere with rehabilitation efforts (Peters, Wexler, & Lurigio, 2015; Prins, Skeem, Mauro, & Link, 2015; Rezansoff, Moniruzzaman, Gress, & Somers, 2013). Responsivity needs are an exception to the general rule and should be addressed early in treatment to allow other interventions to succeed (Hubbard & Pealer, 2009).

4. **Exigent risk or need.** A critical obligation of the criminal justice system is to protect the public from violent and predatory individuals. A restrictive disposition may be required for serious crimes or if the risk or need level of the individual is too severe to merit resolution at an early stage in the proceedings. It may be necessary, for example, to resolve an exigent case at the post-plea or post-conviction stage rather than at the prearrest or pre-plea stage. A period of incarceration may also be required for individuals who commit violent crimes or who habitually commit new crimes despite exposure to criminal justice interventions. It is essential to bear in mind, however, that most inmates, including violent inmates, are eventually released back into the community. If these individuals "max out" on their sentences in jail or prison, they will be released precipitously into the community with minimal supervision or intervention. This situation is likely to pose a serious threat to public health and public safety (Pew Charitable Trusts, 2014). Therefore, it is important to tailor the post-release "tail" of a high-risk inmate's sentence to ensure provisions are made for continuing supervision and treatment in the community. Evidence reveals that the intensity of post-release services should be stepped down gradually over time. For example, a period of incarceration may need to be followed by transfer to a community halfway house and subsequently to office-based parole supervision (e.g., Martin, Butzin, Saum, & Inciardi, 1999). This is often the most effective way to protect the community from serious offenders.

## Risk and Need Quadrant Model

Exigent risk and need are relevant primarily to the questions of which stage in the proceedings is most appropriate for intervention and whether the individual can be managed safely in the community. If the decision is reached in an exigent case to incarcerate an individual for a period of time, it remains essential to tailor the back end of the sentence to allow for continued supervision and treatment upon release. Therefore, the following considerations apply with equal relevance to post-release conditions.

Prognostic risk, criminogenic need, and responsivity need indicate what level of supervision and treatment are likely to be required to manage a case successfully and efficiently. At the executive summit, attendees were introduced to the Quadrant Model of RNR, which crosses these factors in a two-by-two matrix, yielding four profiles, or quadrants, that have direct implications for selecting correctional dispositions and behavioral care plans (see Figure 2). Criminogenic needs and responsivity needs are combined in the model because both should be the focus of early clinical intervention. The important point to recognize is that programs that are well-suited for individuals in one quadrant will often be a waste of resources or contraindicated for those in another quadrant. Moreover, mixing individuals with different risk and need profiles together in treatment groups or correctional programs often makes outcomes worse for the low-risk and low-need individuals, because they are exposed to antisocial influences (Lloyd et al., 2014; Welsh & Rocque, 2014). This explains, in part, why one-size-fits-all criminal justice programming has tended to be so costly, ineffective, or harmful.

**Figure 2. Risk and Need Quadrant Model**

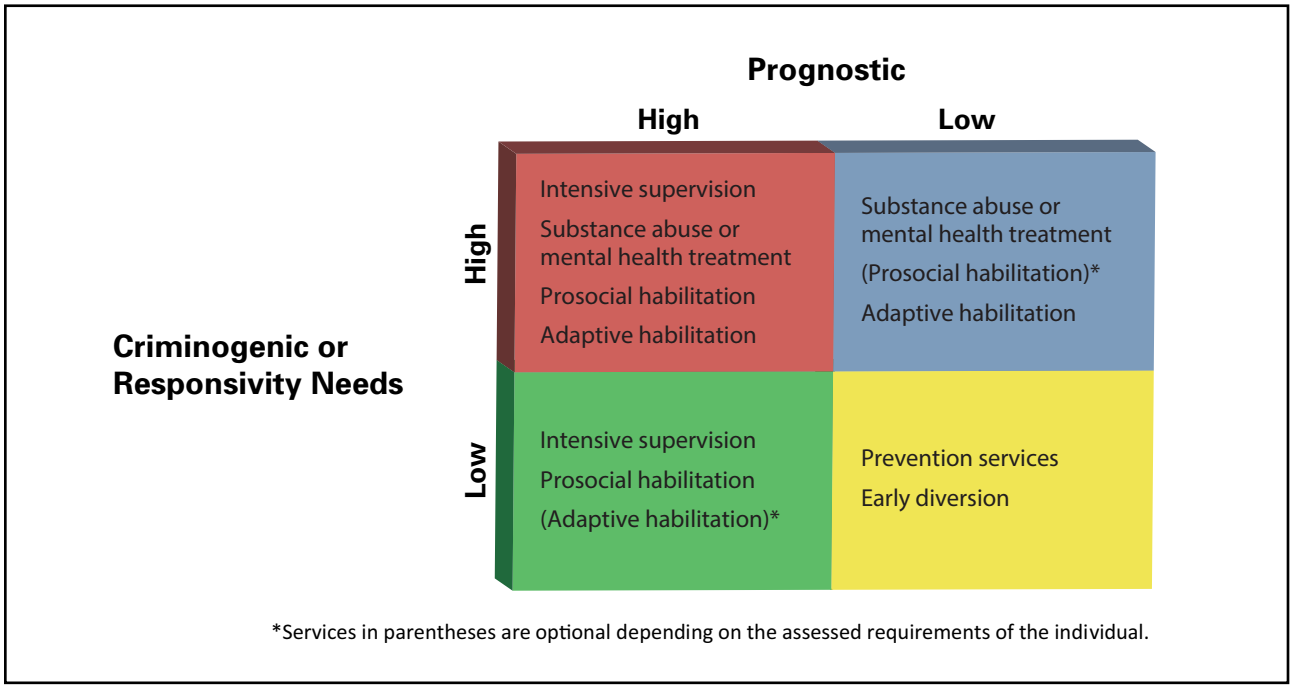



*Figure adapted with permission from: Marlowe, D.B. (2009). Evidence-based sentencing for drug offenders: An analysis of prognostic risks and criminogenic needs. Chapman Journal of Criminal Justice, 1, 167–201.*

Publications are available that describe practice recommendations for intervening with participants in the various quadrants (DeMatteo, Marlowe, & Festinger, 2006; Marlowe, 2009, 2012a), and studies have reported improved outcomes when programs tailored their regimens accordingly (Barnes et al., 2010; Carey, Allen, Einspruch, Mackin, & Marlowe, 2015; Dugosh, Festinger, Clements, & Marlowe, 2014; Lovins, Lowenkamp, Latessa, & Smith, 2007; Lowenkamp & Latessa, 2005; Marlowe, Festinger, Dugosh, Lee, & Benasutti, 2007; Marlowe et al., 2012; Wexler et al., 2004). Broadly speaking, practice recommendations differ for the four quadrants in terms of whether four basic elements are indicated:

1. **Intensive supervision** may include frequent probation sessions, field visits, or court appearances; periodic drug and alcohol testing; and swift and certain rewards for achievements and sanctions for infractions.
2. **Treatment** typically includes substance abuse or mental health treatment delivered by licensed or certified clinical professionals.
3. **Prosocial rehabilitation** refers to interventions aimed at altering participants' criminal-thinking patterns and teaching them productive strategies for resolving interpersonal conflicts and other problems without recourse to illegal activity or substance abuse. Evidence-based examples include Moral Reconation Therapy, Thinking for a Change, and Reasoning & Rehabilitation.

4. **Adaptive rehabilitation** refers to services that remediate vocational, educational, and other functional deficits commonly found in criminal justice populations. Examples include vocational rehabilitation, literacy education, life-skills training, and parenting classes.

Participants who fall into the upper-left quadrant, who are assessed as being high in both prognostic risk and criminogenic or responsivity needs (high-risk, high-need), typically require a combination of all four elements. Emphasis should be placed first on stabilizing the case through the provision of intensive supervision and treatment, followed by prosocial rehabilitation and finally by adaptive rehabilitation. Participants in the upper-right quadrant, who are low in prognostic risk but high in criminogenic or responsivity needs (low-risk, high-need), typically require an emphasis on treatment and adaptive rehabilitation. These individuals may or may not require prosocial rehabilitation services (indicated by parentheses in the figure). Participants in the lower-left quadrant, who are high in prognostic risk but low in need (high-risk, low-need), typically require intensive supervision and prosocial rehabilitation services, but are not likely to require substance abuse or mental health treatment, and may or may not require adaptive rehabilitation services. Finally, low-risk, low-need participants, in the lower-right quadrant, typically do not require any of these services. These individuals will often be best suited for low-intensity prevention services such as brief psycho-educational groups, and should ideally be diverted out of the criminal justice system at the earliest suitable stage in the proceedings.

## Annals of Research & Knowledge on Successful Offender Management

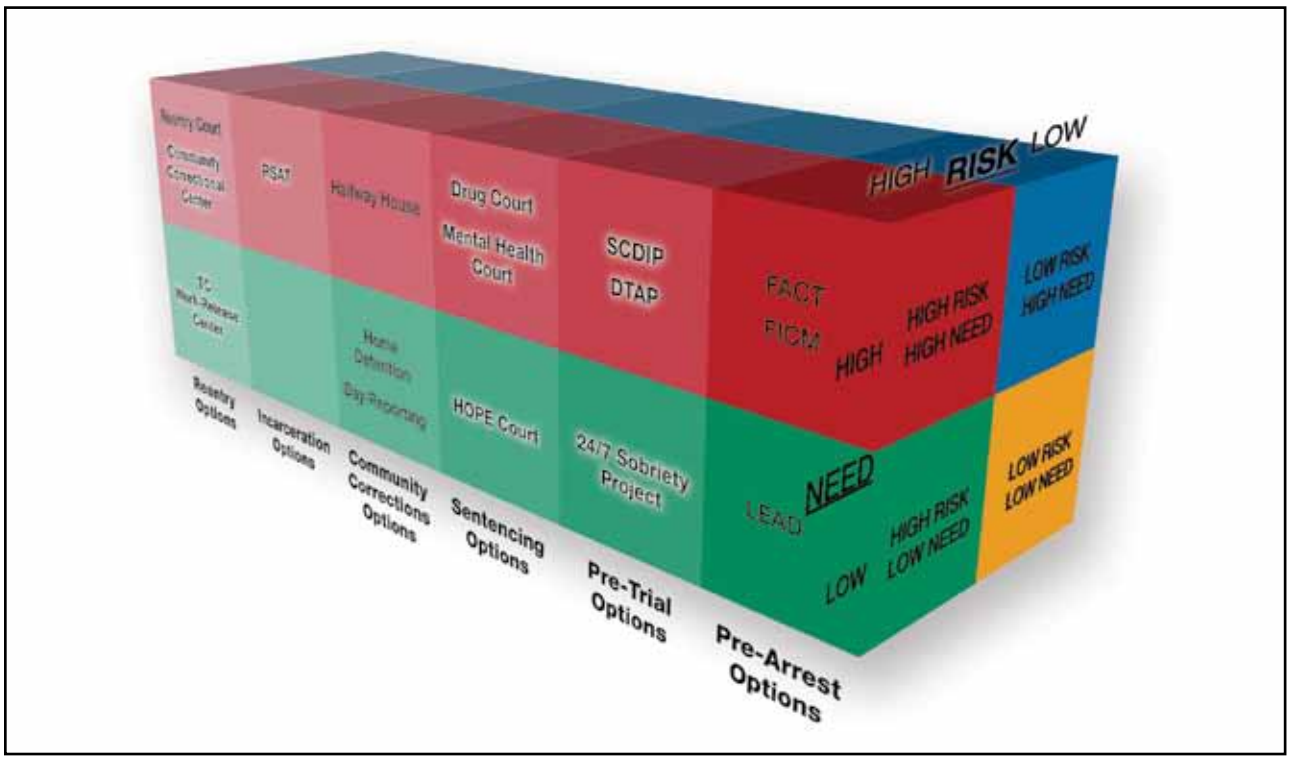
The stage of criminal justice processing is often a "rate-limiting factor" that determines what obligations can legally be imposed on participants and what services are likely to be available for them. Pretrial supervision programs, for example, are typically much shorter in duration and narrower in scope than probation or parole programs. Pretrial defendants are presumed to be innocent; therefore, the reach of pretrial supervision may extend only so far as is necessary to ensure that the individual returns to court for adjudication and does not commit an offense while on release. In contrast, the permissible goals of probation and parole may extend considerably further to include punishment and rehabilitation of the convicted individual. Therefore, selecting evidence-based programs and practices requires attention not only to the risk and need profiles of the individuals, but also to the applicable stage in the criminal justice proceedings.

The Annals of Research & Knowledge (ARK™) Model shown in Figure 3 crosses the risk and need quadrants with the stages of the criminal justice system. Each cell in the graphic represents a particular type of individual at a particular stage in the proceedings; for example, a low-risk and low-need individual at the pretrial stage, or a high-risk and high-need individual at the post-sentencing stage. Crossing a participant's risk-and-need profile with the applicable stage in the proceedings allows practitioners to select suitable options to consider for each case.

The ARK graphic shown here provides examples of evidence-based programs and promising programs that were familiar to many summit attendees and have received substantial recognition nationally. Some of the programs satisfy the criteria described earlier for being considered

evidence-based (signified by the "glowing" font in the figure), whereas others are promising but require additional study (regular type). These examples are by no means exhaustive and are merely intended to indicate how programs and practices may be positioned within the ARK Model.

## Figure 3. ARK Model with Examples of Evidence-Based and Promising Programs




*Source: NADCP*

*Notes: The figure provides examples of evidence-based and promising programs, but it is not intended to be exhaustive. Evidence-based programs are signified by the "glowing" font; promising programs are shown in regular type. Cells on the far side of the figure are not visible. FACT = Forensic Assertive Community Treatment. FICM = Forensic Intensive Case Management. HOPE = Hawaii Opportunity Probation with Enforcement. RSAT = Residential Substance Abuse Treatment Program. DTAP = Drug Treatment as an Alternative to Prison. SCDIP = Superior Court Drug Intervention Program. TC = Therapeutic Community.*

NADCP is in the process of developing the ARK Model into a searchable repository of information. When it is completed, users will be able to virtually enter the cells and learn about evidence-based programs and promising programs that have been developed for use with individuals having specific risk-and-need profiles at specific stages in the criminal justice system. Along with performing other functions, users will be able to download PDFs of scientific studies examining the programs; learn about risk and need assessment tools developed for use at various stages in criminal justice proceedings; and connect to relevant websites or libraries of governmental, scientific, and consumer organizations. The ARK repository will be maintained and updated by NADCP and its partner organizations from the executive summit.

## Mapping Programs onto the ARK Framework

As described earlier, attendees divided into workgroups to begin the arduous process of filling in the cells of the ARK framework with detailed information on evidence-based programs and promising programs at the prearrest, pretrial, sentencing, and community corrections stages. The workgroups began by developing conceptual frameworks for sorting programs along a continuum from the least to most restrictive and intensive levels of services. According to RNR principles, programs that provide intensive clinical services are best suited for high-need individuals, and programs that provide intensive supervision are best suited for high-risk individuals. Conversely, programs that do not provide clinical services or provide low-intensity clinical services are best suited for low-need individuals, and programs that provide low-intensity supervision are best suited for low-risk participants. Subsequently, the workgroups began to map existing programs and practices onto the frameworks. For example, attendees began to identify programs that were developed or validated for use with high-risk and high-need individuals at the point of arrest, or for low-risk and high-need individuals sentenced to probation.

A consistent theme emerged from several of the workgroups: the criminal justice system should place greater emphasis on programs at the center of the continuums and lesser emphasis on programs at the extremes. Although a spectrum of responses may be available, in theory, to practitioners, many of those options are unavailable or underutilized in practice. Whether a given community has a particular program is often a function of chance, the predilections of local officials, or the availability of funding to support the initiatives. As a result, criminal justice professionals must often choose between programs or practices that deliver too much or too little service in proportion to the risk and need levels of the individuals they encounter. Police must often choose between releasing or arresting an individual, prosecutors must choose between filing or dropping criminal charges, and judges must choose between sentencing convicted defendants to insufficient community supervision or to incarceration. Given such all-or-nothing options, it is not surprising that these professionals often gravitate toward the safest course of action, which may involve arrest, conviction, incarceration, and the ensuing negative collateral consequences of a criminal record.

Faced with shrinking resources and a reduced public appetite for overly punitive correctional responses, criminal justice professionals may now find themselves gravitating toward the least restrictive options, which may provide insufficient supervision and treatment to address the needs of justice-involved individuals and reduce their risk for recidivism. It is essential to fill in the gaps in available programming at the center of the continuums to satisfy all three policy objectives of reducing crime, improving the psychosocial functioning of justice-involved individuals, and reducing taxpayer expenditures. This proposed change in emphasis is represented in the figures that follow by contrasting inverted and normal bell-shaped curves. U-shaped graphs in the approximate shape of an inverted bell curve reflect current practices that emphasize responses at the extremes of the continuums. In contrast, dotted-line graphs in the approximate shape of a normal bell curve indicate the proposed emphasis on applying practices at the center of the continuums with a reduced emphasis on those at the extremes.

## Prearrest Options

The Prearrest Workgroup was composed of representatives from several national law enforcement organizations, including the National Sheriffs' Association, International Association of Chiefs of Police, National Organization of Black Law Enforcement, and the Police Executive Research Forum. These experts shared their extensive knowledge about law enforcement initiatives designed to divert individuals from an arrest to indicated treatment, supervision, or social services.

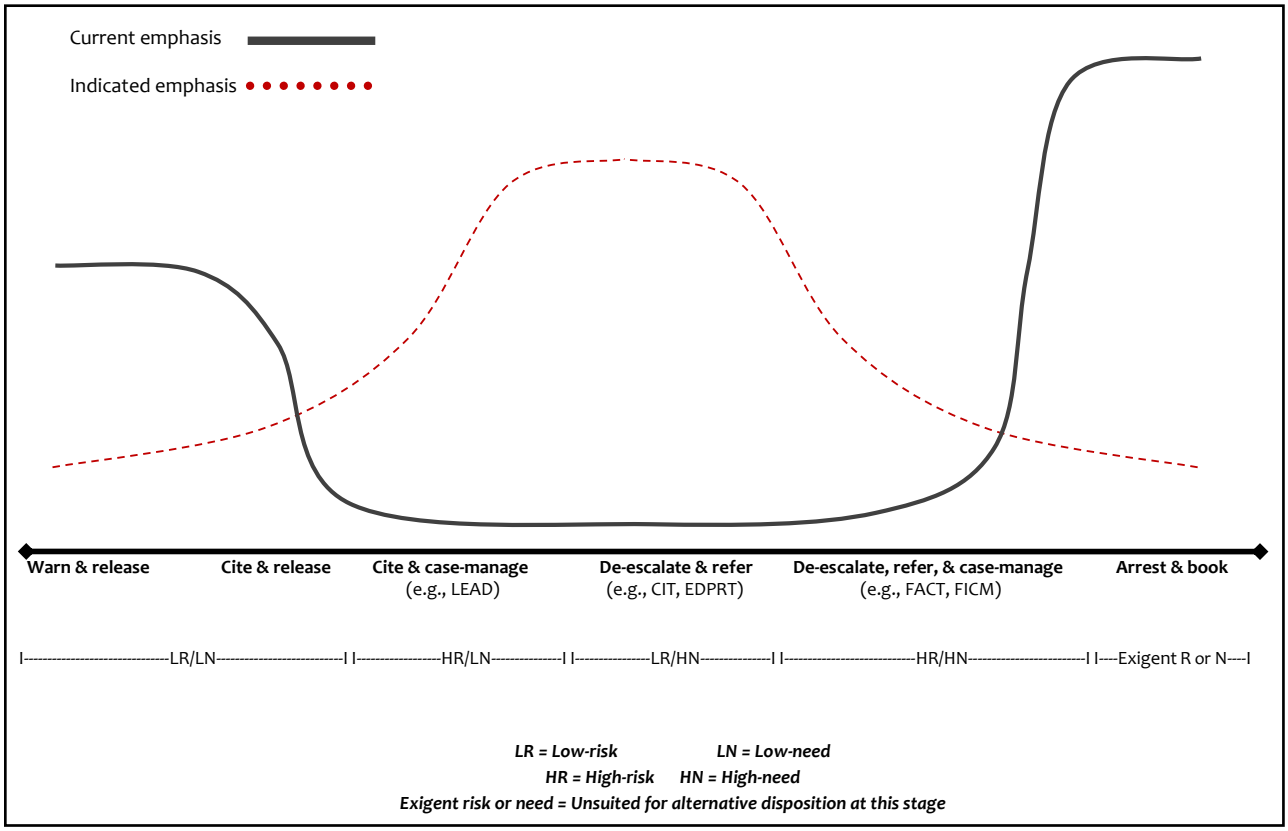
*"An arrest is a failure. We used to believe more arrests were an indicator of better police performance. Now we know we should be counting productive contacts with citizens, not arrests."*

*Chief John Dixon*
*President, National Organization of Black Law Enforcement*

The workgroup concluded that police officers have, at least in theory, a range of responses at their disposal to resolve street encounters with or without making a formal arrest (see Figure 4). These responses range from issuing a warning without further action to taking the individual into custody. In the center of the continuum, the officer may issue a citation or release the individual with conditions to return to court at a later date, receive treatment, make restitution to victims, perform community service, or satisfy other obligations to avoid further action. Moving from left to right on the continuum, the conditions for treatment or supervision increase progressively in intensity and should ideally be matched to increasing levels of risk and need. Having the full range of options at their disposal would permit police officers to titrate the intensity of supervision and treatment based on the circumstances presented in each case.

- **Warn and release.** An officer may issue a verbal or written warning and permit the individual to leave without an official record of the encounter. Such a response might be indicated if the offense was not serious, the likelihood of recidivism was low, and the individual was not in immediate need of treatment or social services (i.e., for low-risk, low-need individuals in nonexigent circumstances).
- **Cite and release.** The officer may issue a citation requiring the individual to pay a fine or appear in court at a later date. This response may be indicated if the offense was serious enough to merit a degree of official action but the likelihood of recidivism is low and the individual is not in immediate need of treatment or social services.

## Figure 4. Prearrest Options




- **Cite and case-manage**. Police frequently encounter persons engaged in relatively low-level offenses such as drug possession, panhandling, or prostitution. These individuals rarely pose an immediate risk to public safety and are often reasonably stable and capable of desisting immediately from crime. Frequently, however, they are at high risk for recidivism due to unmet treatment or social service needs such as substance use disorders, poor job skills, or unstable housing. Programs such as Law Enforcement Assisted Diversion (LEAD) were created to divert such individuals into community-based services at the prebooking stage (Satterberg, Pugel, Taylor, & Daugaard, 2013). A volunteer panel of patient advocates, treatment providers, and representatives from law enforcement typically supervise the case and ensure the individual complies with the conditions of the program. Cases are resolved informally if the individual completes treatment and perhaps satisfies other restorative-justice obligations, such as performing community service or making restitution to victims. Although this has been clearly identified as a promising practice (Collins, Lonczak, & Clifasefi, 2015), the few studies that have been conducted on LEAD have employed small samples or nonequivalent comparison groups, thus precluding scientifically reliable conclusions about its effectiveness or cost-effectiveness. The Laura and John Arnold Foundation recently awarded a grant to the University of Washington to evaluate Seattle's LEAD program, and further evidence of efficacy is anticipated within the next few years.

- **De-escalate and divert to treatment.** Police may encounter individuals who are acutely agitated or suffering from a serious and persistent mental illness. Crisis intervention teams (CITs)—also referred to as *emotionally disturbed persons response teams*—were developed more than 25 years ago to help the police respond to such encounters (CIT International, n.d.). Participating officers complete approximately 40 hours of specialized training on how to calm agitated mentally ill citizens, de-escalate the situation, and divert these individuals to acute mental health treatment services. The Co-Responder model of CIT pairs police officers with clinical outreach workers to co-manage crisis encounters, and the police collaborate as a team with local treatment agencies. Cases are resolved without making an official arrest, or by dropping the arrest charges if the individual completes the treatment episode. Although research on CIT programs is relatively new, emerging evidence suggests they can have positive effects on officers' skills and attitudes and may reduce rearrest rates and associated criminal justice costs (Compton, Bahora, Watson, & Oliva, 2008; Compton, Broussard, Reed, Crisafio, & Watson, 2015). It appears these programs may be most beneficial for seriously disordered individuals who would otherwise have a low risk for criminal reoffending if they received indicated services (i.e., low-risk, high-need individuals). If a single psychiatric treatment episode is insufficient to stabilize the case, a more assertive outreach approach, as described below, may be indicated.
- **De-escalate, divert to treatment, and case-manage**. For some individuals, diversion to treatment is unlikely to be sufficient to prevent reoffending. Programs such as Forensic Assertive Community Treatment and Forensic Intensive Case Management add a continuing outreach component to the CIT model for individuals who are seriously mentally ill and at high risk for criminal recidivism (high-risk, high-need individuals). Specially trained mental health professionals or case workers are available to participants around the clock and deliver services where they are most needed, such as in the participant's home or at school. Although the case may not be resolved immediately upon completion of the index treatment episode, the arrest charges may be dropped or withdrawn subsequently if the individual satisfies continuing treatment and case management obligations. Evidence suggests these programs can be effective in improving the mental health of participants; however, their effects on criminal recidivism are as yet unproven (Jennings, 2009; Lamberti, Weisman, & Faden, 2004).
- **Arrest and book**. Not all cases can or should be resolved prior to an arrest. The offense may be too serious or the risk or need level of the individual may be too high to merit diversion at the prearrest stage. Under such exigent circumstances, it may be necessary to take the individual into custody and file an official record of the encounter (i.e., book the individual).

## Pretrial Options

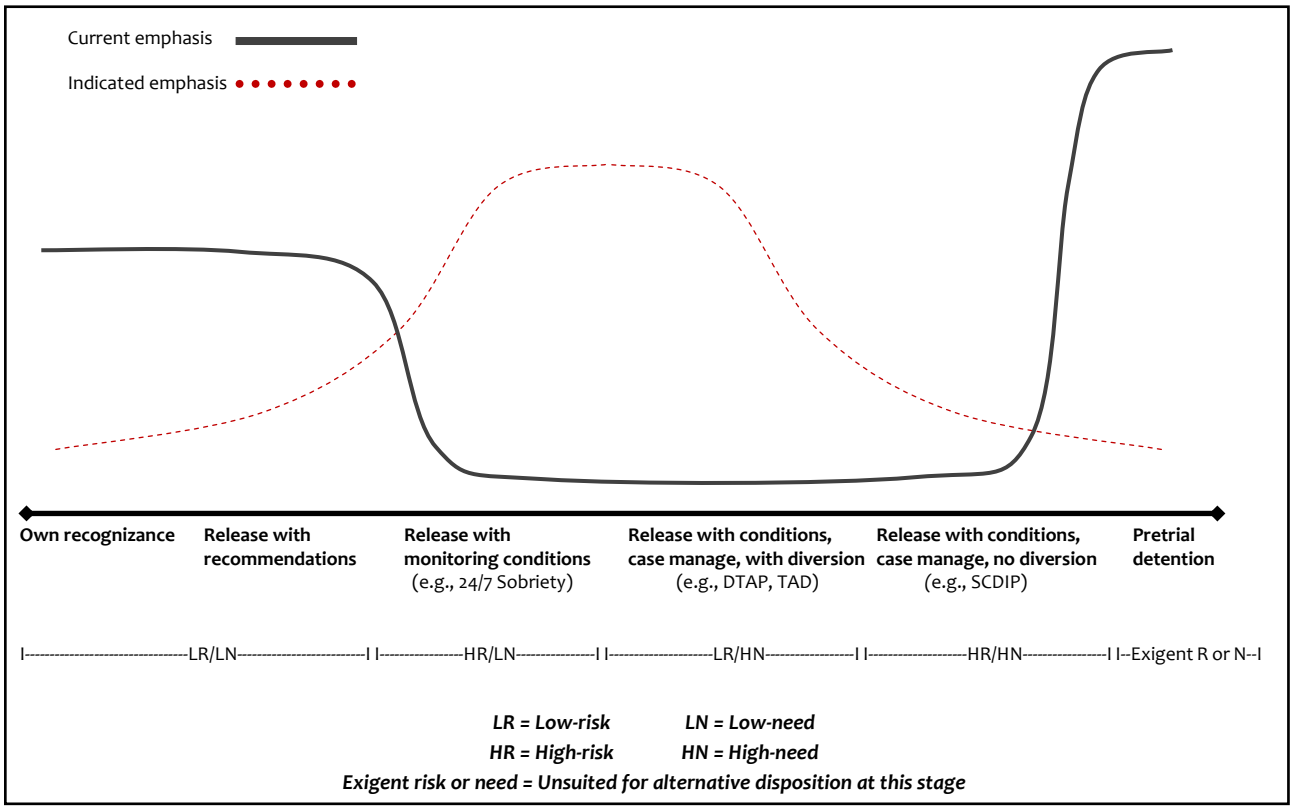
The Pretrial Workgroup was composed of representatives from several leading pretrial services organizations, including the National Association of Pretrial Services Agencies, Pretrial Justice Institute, Center for Health and Justice at Treatment Alternatives for Safe Communities (TASC), and the American Probation and Parole Association. These experts identified numerous options at the pretrial stage to divert arrestees from incurring a criminal record (see Figure 5). A recent national survey conducted by the Center for Health and Justice at TASC (2013) identified more than 3,000 programs offering the opportunity for diversion prior to the formal entry of a plea.

Potential options range from releasing the individual without conditions or with a monetary fine to detaining the individual pending trial. In the middle of the continuum, arrestees may be released with advisory recommendations or mandatory conditions to receive treatment or social services or to undergo monitoring procedures such as drug and alcohol testing. Moving from left to right on the continuum in Figure 5, the conditions for supervision or treatment increase in intensity. Satisfactory compliance with the conditions may lead to the charges being dropped, or that may be taken into consideration as a mitigating factor in the event of sentencing.

As mentioned earlier, pretrial defendants are presumed innocent; therefore, the conditions for pretrial supervision must be necessary to ensure the defendant will return to court for adjudication and refrain from criminal activity. For this reason, conditions that are strictly rehabilitative are often advisory as opposed to mandatory. Failure to abide by such conditions would typically not trigger a return to custody, but may be taken into account by the sentencing court or prosecution at the time of disposition in the event of a guilty plea or verdict. Making a good faith effort to address one's problems may be taken as evidence that a community disposition or conviction on a lesser included charge would be appropriate. For example, drug possession is a lesser included charge of drug dealing, and conviction on this lesser charge might be appropriate in light of successful rehabilitation efforts. Rehabilitative conditions may be mandatory only if they are found necessary to protect public safety or to ensure the defendant returns to court for adjudication.

- **Own recognizance.** Arrestees may be released on their own recognizance (OR) with or without a requirement to post financial bond. Release on OR would appear to be appropriate for individuals who present with a low risk for recidivism and do not have serious treatment or social service needs that would be likely to interfere with their ability to refrain from crime and return to court for adjudication (low-risk, low-need individuals). No research was identified that examined suitable candidates for release on OR; however, it was noted by the workgroup that the Arnold Foundation is currently engaged in a program of research aimed at identifying candidates appropriate for release without financial conditions or other unnecessary requirements.
- **Release with recommendations**. Courts or pretrial services agencies often make recommendations that arrestees receive treatment or social services while on pretrial release. As noted earlier, if the services are strictly rehabilitative, failure to abide by the recommendations usually does not trigger a revocation of bond or return to custody but may be taken into account at the time of disposition. This option would seem to be appropriate for individuals who have pressing treatment or rehabilitation needs, but those needs are unlikely to interfere with their ability to refrain from crime or return to court for adjudication. No studies were identified that have investigated suitable candidates for release with advisory recommendations alone.

## Figure 5. Pretrial Options




- **Release with monitoring conditions**. In some cases, monitoring and supervision may be ordered as a mandatory condition of pretrial release. Failure to abide by the conditions would be grounds for revoking pretrial release and returning the individual to custody. Such an arrangement may be advisable for persons who are high-risk for failing on supervision but who do not have serious treatment or social service needs (high-risk, low-need individuals). The 24/7 Sobriety Project, originating in South Dakota, is an evidence-based example of such a program. Individuals arrested for driving while impaired or other substance related offenses are required to undergo twice-daily breathalyzer testing, random urine drug testing, or wear an ankle device capable of detecting alcohol consumption. A positive test result or failure to provide a valid specimen triggers an immediate, but temporary, return to custody. Recent findings suggest the 24/7 program can reduce recidivism on pretrial release by as much as 45% (Kilmer, Nicosia, Heaton, & Midgette, 2013). The critical issue is to impose conditions that are matched appropriately to the risk-and-need profile of the individual. Outcomes are liable to be poor if courts impose requirements that are too onerous for participants to accomplish, expose participants to higher-risk antisocial peers, or interfere with their ability to engage in prosocial activities such as work or school.

- **Release with conditions, case-manage, and offer diversion**. Some arrestees have serious treatment or social service needs that are likely to interfere with their ability to refrain from crime or return to court. It may be possible in some cases to reduce that risk substantially by providing assertive case management services in the community (Rapp, van Den Noortgate, Broekaert, & Vanderplasschen, 2014). If completion of treatment can provide adequate assurances that the individual is unlikely to return to crime, it may be appropriate to divert the individual from incurring a criminal record once the treatment conditions have been satisfied.

  A range of options is available to manage these types of cases. The programs vary in terms of the types of offenses they target, which criminal justice agency oversees the program, and the service requirements imposed on participants. The Drug Treatment as an Alternative to Prison (DTAP) program, originating in Brooklyn, New York, is managed by the prosecutor's office and requires participants to complete a residential substance abuse treatment program as a condition of dropping felony drug charges, typically drug-dealing charges (Crime Solutions, n.d.). Studies conducted by the Center on Substance Abuse and Addiction (CASA) at Columbia University found that individuals who completed the DTAP program were 33% less likely to be rearrested, 45% less likely to be reconvicted, and 87% less likely to return to prison than matched individuals sent to prison (CASA, 2003). The Treatment Alternatives and Diversion grant program in Wisconsin utilizes a Drug Court model managed by the courts in some counties, a jail day-reporting model managed by the sheriff's office in other counties, and a case-management model managed by probation or pretrial services in still other counties. These programs share a common focus on providing substance use disorder or mental health treatment as a condition of dropping or withdrawing criminal charges, and early evidence suggests they can be effective at reducing recidivism and incarceration costs (Center for Health & Justice at TASC, 2013).

- **Release with conditions and case-manage, but do not offer diversion**. Not all pretrial supervision programs offer participants an opportunity to avoid a criminal record. The nature of the offense or the individual's criminal record may be too severe to warrant a diversionary opportunity. Nevertheless, satisfactory completion of treatment and supervision may be taken into account at the time of sentencing, potentially leading to a community disposition or conviction on a lesser included criminal offense. The Superior Court Drug Intervention Program (SCDIP) in the District of Columbia is a national model of a pretrial program for arrestees presenting with serious substance use disorders. Applying a Drug Court model (described below), participants undergo weekly drug and alcohol testing, appear in court for regular status hearings, and complete a prescribed regimen of substance use disorder treatment and other indicated services. A randomized experimental study conducted by The Urban Institute found that the SCDIP program significantly increased treatment completion and reduced failure rates on pretrial supervision (Harrell, Cavanagh, & Roman, 1999).

- **Pretrial detention**. Not all arrestees are suitable for release or diversion at the pretrial stage. Some may pose an immediate flight risk or an unacceptable risk to community safety. Under such exigent circumstances, the individual may need to be detained pending adjudication if adequate services are not available in the community to negate the risks they present to public safety or the administration of justice.

## Sentencing Options

National experts in sentencing policies and practices included representatives from the National Association of Sentencing Commissions, American Bar Association, American Judges Association, Association of Prosecuting Attorneys, National District Attorneys Association, American Council of Chief Defenders, and the National Legal Aid and Defender Association. These experts identified a continuum of sentencing options that is available for many crimes in virtually all U.S. jurisdictions (see Figure 6). Sentences at one end of the continuum emphasize public health or rehabilitation objectives employing less restrictive means, whereas those at the other end emphasize public safety objectives applying restrictive conditions. Sentences in the middle of the continuum strive to integrate elements of both public health and public safety approaches by combining criminal justice supervision with mandatory community treatment and social services.

- **Disposition before judgment.** Many jurisdictions offer individuals charged with relatively low-level offenses, typically drug possession, an opportunity for disposition before judgment, also referred to as *probation without verdict* or *probation before judgment.* The defendant is required to plead guilty or no contest (nolo contendere) to the charge(s) or to stipulate to (acknowledge the truth of) the facts in the arrest report. The plea or stipulation is then held in abeyance while the defendant completes a term of probation with mandatory conditions for treatment and/or supervision. Satisfaction of the conditions leads to the plea being vacated or withdrawn retroactively and possibly to the opportunity for record expungement. Although the arrest may not be erased literally from criminal justice records, record expungement ordinarily entitles the individual to respond truthfully on an employment application or similar document, for legal purposes, that the arrest or conviction did not occur. Record expungement reduces or removes many of the negative collateral consequences associated with having a criminal record (Festinger, DeMatteo, Marlowe, & Lee, 2005). Because the defendant must plead guilty to the charge(s) or acknowledge the facts surrounding the offense, failure to satisfy the conditions of supervision can lead to immediate sentencing. This arrangement offers a degree of coercive leverage to keep participants engaged in treatment and compliant with their obligations under supervision.

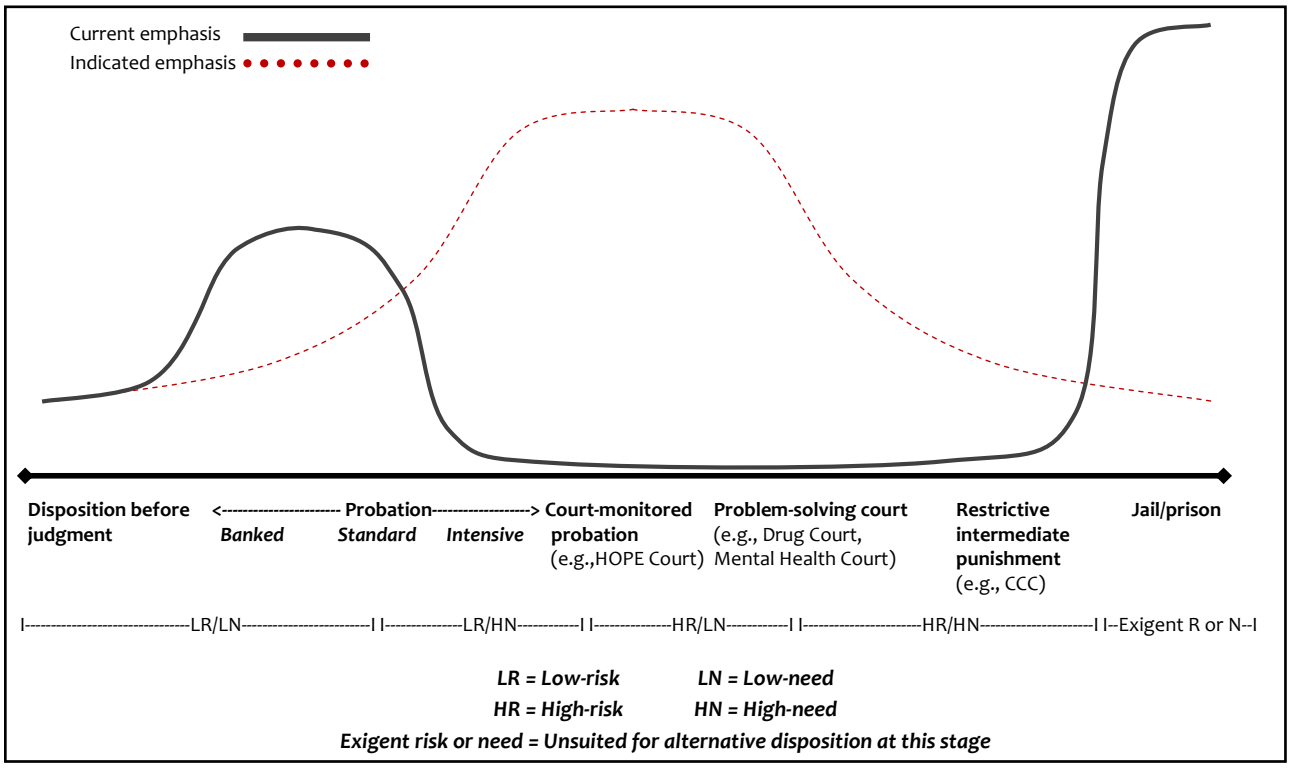
  Few studies have examined the appropriate target population for disposition before judgment. A voter initiative in California known as Proposition 36 (Substance Abuse and Crime Prevention Act, 2000) applies this model statewide for many nonviolent drug possession offenses. Participants are diverted to probation-supervised treatment in lieu of incarceration, and the courts are prevented from responding to three instances of noncompliance with appreciably more than an extension of probation and requirements for more treatment. Studies at the University of California, Los Angeles (2007) found that about one-quarter of participants completed treatment and demonstrated improved outcomes. Typically, these were low-risk individuals without prior criminal records or treatment histories. Participants who had failed previously in treatment or had prior convictions were less likely to benefit. Importantly, Proposition 36 may have weakened the effects of this sentencing arrangement by providing participants with three opportunities for a disposition before judgment. It is unknown whether the model would be more effective if greater leverage was available to keep high-need participants engaged in treatment.

- **Probation.** Many defendants are not eligible by statute or sentencing guidelines for a disposition before judgment. The severity of the offense or the defendant's criminal record may require that a conviction and sentence be imposed in the event of a guilty plea or verdict. *Probation* is a generic term referring to most community sentences imposed in lieu of incarceration. The conditions of probation can vary widely, from minimal reporting obligations (banked or administrative probation) to periodic office-based appointments (standard probation) to specialized caseloads involving frequent office and field visits (intensive supervised probation, or ISP). These programs are described in greater detail below under community corrections options. Evidence suggests banked probation is advisable for low-risk and low-need probationers who are unlikely to recidivate and do not have serious treatment or social service needs (Barnes, Hyatt, Ahlman, & Kent, 2012). ISP, in contrast, was intended originally for individuals with serious treatment or social service needs; however, in practice, the programs have tended to emphasize surveillance over treatment (Lowenkamp, Flores, Holsinger, Makarios, & Latessa, 2010; Turner, Petersilia, & Deschenes, 1992). As a result, they have tended to produce the best results for high-risk, but low-need probationers who can benefit from intensive field supervision alone. Finally, standard probation fills a wide and heterogeneous gap between banked and intensive probation, and studies have not linked its effectiveness to a particular target population.

  In some jurisdictions, probation is an agency of the courts and sentencing judges have considerable influence over the conditions of supervision and treatment. In other jurisdictions, probation may be an independent executive agency or housed within the department of corrections, thus giving judges less influence over the conditions of supervision. If judges are capable of influencing the conditions of probation, for example by directing high-risk defendants to ISP programs, they may be more inclined to impose probationary sentences as opposed to incarceration.

- **Court-monitored probation.** In many jurisdictions, probation officers must petition the court for a violation of probation hearing if a probationer commits a serious technical violation or fails to comply with the conditions of supervision. This may cause an untoward delay in the ability to respond swiftly to infractions, and there is no guarantee the judge will follow the probation officer's recommendations. Recently, some courts have developed special dockets or calendars to hear probation violation matters more quickly and provide better coordination between the court and probation department. Hawaii's Project HOPE (Hawaii Opportunity Probation with Enforcement) is an evidence-based example of a court-monitored probation docket. Participants in HOPE undergo weekly drug testing and receive swift and certain jail sanctions for positive results or missed probation appointments. The jail sanctions escalate progressively in length in response to successive violations. Results of a randomized controlled study revealed that HOPE participants were 55% less likely than matched non-HOPE probationers to be arrested for a new crime, 72% less likely to test positive for drugs, 61% less likely to miss probation appointments, and 53% less likely to have their probation revoked (Hawken & Kleiman, 2009). It appears the HOPE model is most successful for probationers who are high-risk for recidivism or failure on probation but who have relatively lesser needs for substance use disorder or mental health treatment. In Hawaii, participants who cannot succeed on HOPE because of a serious substance use disorder or co-occurring mental illness are transferred to Drug Court to have their clinical needs addressed more directly (Alm, 2013; Hawken, 2010).

## Figure 6. Sentencing Options




Recently, a few states, including Georgia, Washington, and Wyoming, have given administrative authority to probation officers to impose brief jail sanctions (flash incarceration) and administer other incentives and sanctions of limited duration and magnitude (National Center for State Courts, 2013). Preliminary evidence suggests this approach may reduce the use of jail time and court hearings and achieve corresponding cost savings (Speir et al., 2007). Further research is needed to determine whether such practices can elicit improvements comparable to those of the HOPE model and thus reduce the need for continuous court involvement.

- **Problem-solving courts.** Problem-solving courts such as Drug Courts and Mental Health Courts are special criminal-court dockets in which a judge actively supervises the provision of services. Participants appear frequently in court for status hearings, during which the judge reviews their progress in treatment and administers gradually escalating sanctions for infractions and rewards for achievements. Preadjudication Drug Courts include a diversion component similar to disposition before judgment, in which graduates may have their charge(s) withdrawn and their record expunged. Postadjudication Drug Courts enable graduates to avoid incarceration or reduce their probationary obligations. Substantial evidence indicates that Drug Courts are most effective for individuals assessed as being both high in prognostic risk and in high need of substance use disorder treatment. Drug Courts serving high-risk, high-need participants are approximately twice as effective at reducing crime and 50% more cost-effective than those serving low-risk or low-need individuals (Marlowe, 2012b).

- **Restrictive intermediate punishment.** Restrictive intermediate punishment (RIP), also known as restrictive intermediate sanctions, refers to sentences that are served in a community residential facility as opposed to a jail or prison. The term *intermediate* indicates that the programs fall in the middle range of intensity between probation and incarceration. Many of the policy initiatives discussed earlier, such as Justice Realignment, authorize greater use of RIP in lieu of incarceration (NCSL, 2011). Examples of RIP programs include correctional halfway houses, day-reporting centers, community correctional centers, and home detention. These programs are described below under options for community corrections. RIP programs rely on residential programming to protect public safety and deliver intensive services to justice-involved individuals, while also reducing correctional costs and avoiding the debilitating effects of institutional incarceration. Due to the restrictive nature of these programs, they would seem to be best suited for individuals who are high-risk and/or high-need and lack sufficient structure or social supports to function autonomously in the community. However, few studies have examined the most effective target populations for various types of RIP programs.
- **Incarceration**. Not all convicted defendants are eligible or suitable for a community disposition. The seriousness of the offense, the defendant's prior criminal record, or the interests of victims may dictate that a period of incarceration be imposed. As noted previously, however, most inmates, including those convicted of violent crimes, are eventually released back into the community. If these individuals serve their full sentence in jail or prison, they may be released with minimal or no supervision. Such an arrangement is liable to pose a serious threat to public health and public safety. Many of the options described below for community corrections may be utilized not only as front-end diversion strategies but also as reentry strategies to meet the needs and risk levels of parolees and other individuals released conditionally from jail or prison.

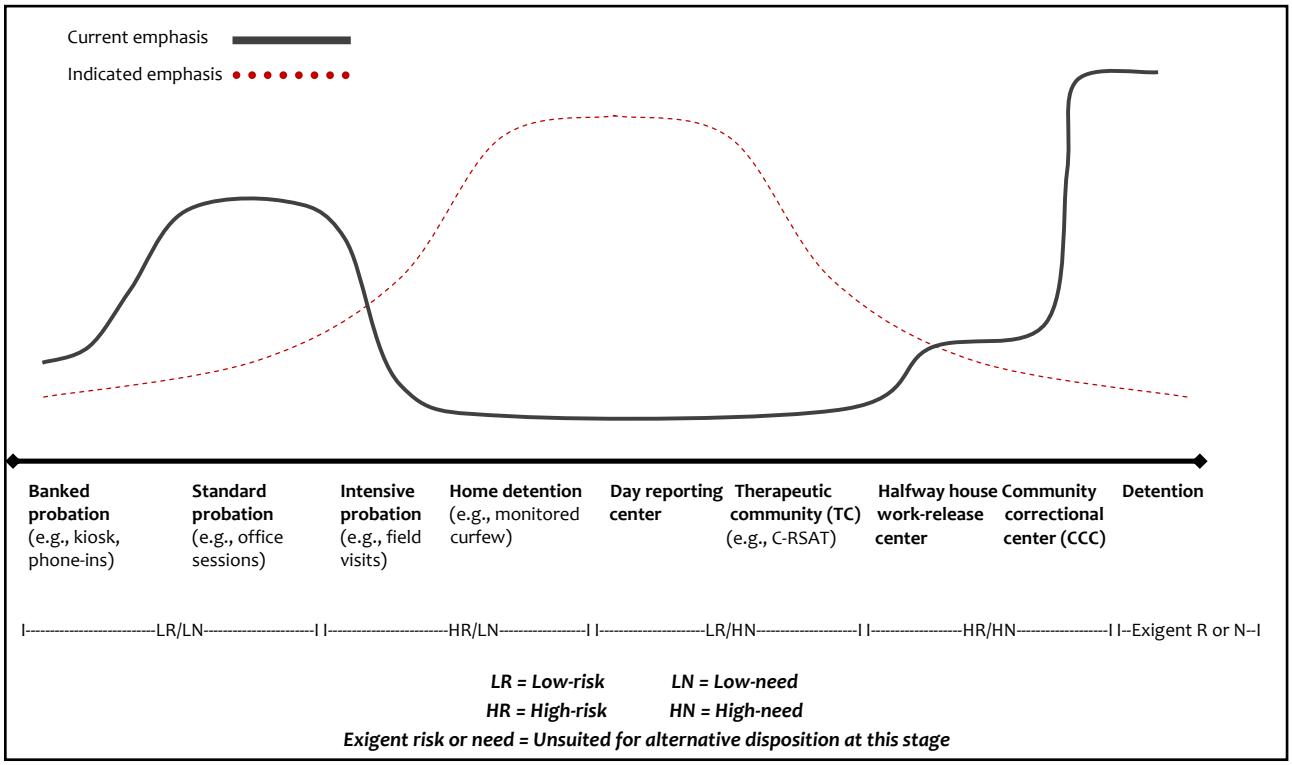
## Community Corrections Options

National experts in community corrections included representatives from the American Probation and Parole Association, NIC Urban Chiefs Network, International Community Corrections Association, National Association of Pretrial Services Agencies, Center for Health and Justice at TASC, National Institute of Corrections, Community Oriented Correctional Health Services, National Criminal Justice Association, National Association of Drug Court Professionals, Center for Court Innovation, and the Vera Institute of Justice. These experts identified a wide range of options that can be used to monitor and deliver indicated services to individuals released on pretrial supervision, sentenced to probation or restrictive intermediate punishment, or released conditionally from incarceration (see Figure 7). Although terminology may differ among states and localities, the programs share many common features along a familiar continuum of restrictiveness and intensity of the services being delivered. The more restrictive programs on the right side of the continuum may be particularly well-suited for reentry populations, who on average tend to have higher levels of risk and need and fewer social supports than probationers and pretrial supervisees.

- **Banked probation.** As mentioned earlier, banked probation, also referred to as *administrative probation,* places minimal reporting obligations on probationers. Participants may be required to attend probation appointments only when a serious infraction comes to the attention of the probation officer, or may report in periodically by phone or kiosk. Banked probation is indicated for low-risk, low-need individuals who do not pose a serious risk of recidivism and have minimal treatment or social service needs (Barnes et al., 2012).
- **Standard probation.** Standard probation typically involves weekly or monthly office appointments at the probation agency, which generally decrease in frequency for individuals who are compliant with their supervisory conditions. Although standard probation is, by far, the most commonly imposed community sentence, the model is not well-defined, and little research has determined for whom it is most effective. Studies have, however, consistently identified a set of core correctional practices (CCPs) that, when applied correctly by probation officers, produce significantly better outcomes (Dowden & Andrews, 2004; Lowenkamp et al., 2006, 2010). Examples of CCPs include the use of motivational interviewing techniques and positive reinforcement to increase probationers' engagement in desirable prosocial behaviors. A new approach referred to as *dosage probation* also attempts to match the intensity and length of probation to the risk and need levels of the probationers; however, this model has not yet been studied or validated (Center for Effective Public Policy, 2014).
- **Intensive supervised probation.** *Intensive supervised probation* (ISP) refers to specialized probation caseloads for high-risk individuals who pose a substantial likelihood of recidivism or failure on supervision. Specially trained probation officers provide increased surveillance in the community, including field visits to probationers' homes or places of employment. As already mentioned, although the original ISP model was intended for individuals with serious treatment or social service needs, in practice these programs have emphasized surveillance over the provision of treatment (Lowenkamp et al., 2010; Turner et al., 1992). For this reason, they have tended to produce the best outcomes for high-risk, but low-need probationers who can benefit from intensive field supervision alone.

- **Home detention.** Some high-risk probationers require geographic or association restrictions to prevent them from interacting with delinquent peers or reengaging in criminal activity. Home detention may be well-suited for such probationers if they come from reasonably stable and supportive home environments. Curfews may be imposed to ensure the individual leaves home only for approved purposes and returns by early evening. Compliance with curfews may be monitored through such means as unannounced home visits, telephonic or video-monitored check-ins, or GPS surveillance. Little research has examined the effects of home detention, and no study was identified that has investigated the best target population for this intervention.

## Figure 7. Community Corrections Options




- **Day reporting center.** Some probationers require substantial structure, positive socialization experiences, and treatment services to avoid returning to criminal activity. Day-reporting centers can offer these high-need individuals several hours per day of structured activities, recreation, vocational training, and outpatient treatment. Because participants return to their homes in the evenings, this option, like home detention, may be most advisable for individuals who come from reasonably stable and supportive home environments and are not at high risk for recidivism. Studies are just beginning to examine best practices for day-reporting centers that can optimize outcomes, and no study has investigated the target population for this intervention.
- **Therapeutic communities.** Therapeutic communities (TCs), also referred to as community correctional residential substance abuse treatment programs (C-RSATs), are specialized residential facilities providing milieu-based treatment for persons with severe substance use

disorders or dual diagnoses. Because TC programs are predominantly clinical and may not be housed in a secure facility, they may not be well-suited for seriously antisocial individuals. They tend to be most beneficial for high-need individuals who lack stable home environments and family relationships. The TC model is a highly structured clinical intervention that treats the "whole person" by addressing maladaptive personality traits commonly associated with chronic substance use disorders, such as pathological narcissism or sociopathy. Staff members and fellow residents exert considerable influence over the individual by confronting maladaptive attitudes, sanctioning inappropriate behaviors, rewarding desirable behaviors, and providing camaraderie and mentorship. Interventions may include confrontational encounter groups, therapeutic groups, community meetings, and productive volunteer activities. Studies reveal that community-based TC programs can reduce illicit drug use, reconviction rates, and reincarceration rates by an average of approximately 15% to 20% (Sacks, 2009).

- **Halfway house or work-release center.** Halfway houses or work-release centers typically offer greater structure and security than TCs or other residential treatment programs, and may therefore be better suited for individuals who are both high-risk and high-need. Participants may be employed, go to school, or attend outpatient treatment during the day, but they must return to the facility in the evenings. Some of the facilities are locked or have security staff on premises, although they are usually less secure than community correctional centers (described below). The programs typically provide on-site treatment and social services or transport participants to nearby programs in the community for those services. Most studies of these programs have focused on the use of TC programming (described earlier) to improve outcomes. Results reveal the programs are significantly more effective when they apply TC interventions (Sacks, 2009).
- **Community correctional center.** A community correctional center (CCC) is a secure residential facility that is often managed by the state or local Department of Corrections and may be located adjacent to or near a prison or jail facility. Continuous surveillance by security staff is provided 24 hours per day, and participants must typically remain at the facility full time for at least the first several months of their sentence. CCCs offer a secure option for managing justice-involved individuals with exigent levels of risk or need in the community at a lower cost than traditional correctional institutions such as jails or prisons. A substantial body of research by investigators at the University of Cincinnati has shown that CCCs are most effective when they apply core correctional practices consistent with RNR principles (e.g., Lowenkamp & Latessa, 2005; Lowenkamp, Latessa, & Smith, 2006).
- **Detention.** Without question, jails and prisons will continue to fill a critical role for public safety. Many individuals with serious, violent, or chronic offense histories may need to be incarcerated for at least some period of time. However, many inmates are nonviolent and can be managed safely in a community setting. It is necessary to redefine the role of county jails to include a major emphasis on supporting and coordinating functions with community corrections. Studies of programs such as Drug Courts, HOPE, and the 24/7 Sobriety Project (discussed earlier) prove beyond dispute that the ability to apply swift and certain jail sanctions is critical to their success. A primary emphasis of local jails should, therefore, be on the quick and efficient processing of cases to allow for brief periods of flash incarceration. Sheriffs

must be prepared to serve bench warrants and probation warrants swiftly, process violators into custody quickly, and ensure a confident release within days. Serving warrants and housing probationers briefly for violations should be viewed not as a collateral burden borne by jails but rather as one central focus of their important work.

Importantly, it is not necessary for a community to have separate buildings and staffs to manage all the programs just described. For rural counties or those with a small correctional census, the programs could be colocated in the same facility with separate entrances or floor plans to avoid mixing participants with different levels of risk or need. Sections of local jails might also be separated from the general population and serve at least temporarily as day-reporting programs, work-release centers, and the like. The important issue is to deliver the right services to the right persons, and there is no need to duplicate effort or expenditures.

## Legal and Constitutional Issues

Representatives from several national organizations participated in a workgroup focusing on due process, equal protection and other legal and constitutional issues. These organizations included the American Judges Association, Legal Action Center, National Legal Aid and Defender Association, American Council of Chief Defenders, Association of Prosecuting Attorneys, American Bar Association, National Association of Drug Court Professionals, and the National District Attorneys Association. Participants recognized clearly that applying evidence-based practices in no way implies abandonment of fundamental principles of due process or equal protection. Safeguards must be in place at every stage in the criminal justice system to ensure that risk and need information is used for the benefit of the individual and society and does not infringe on defendants' constitutional rights or disproportionately burden women, racial, or ethnic minority individuals or members of other disadvantaged groups. Workgroup members gave considerable thought to identifying and resolving legal and constitutional issues that are likely to be encountered by defendants, defense attorneys, prosecutors, judges, and other criminal justice professionals in the course of applying evidence-based practices and promising practices.

### Defense Counsel Concerns

Transitioning to an evidence-based criminal justice system was widely recognized as placing newfound responsibilities on defense attorneys. As noted earlier, sentencing laws in the past vacillated between giving judges broad discretion and binding their actions within mandatory sentencing ranges. A defense attorney's role was often limited largely to advocating for a reduced plea or a sentence at the lower end of the permissible range. If, instead, judges' discretion is to be guided in part by "what works," this will require defense attorneys to learn about evidence-based practices and frame their legal arguments accordingly.

The ARK Model calls for risk and need assessments to be performed as soon as practicable after arrest. However, at the pretrial stage, defendants are presumed innocent and cannot be required to provide self-incriminating information. Workgroup members agreed that defense attorneys must demand enforceable assurances that any assessment information collected prior

to adjudication cannot be used to influence the determination of guilt or innocence or to trigger a sentencing enhancement. Pretrial defendants also have the right to assistance of counsel. Unless defense attorneys are permitted to be present when risk and need assessments are conducted, they must have immediate and unfettered access to the findings and ample opportunity to challenge the conclusions.

*Use Immunity.* Workgroup members noted that providing use immunity for information obtained during the course of a presentence risk and need assessment would dispel many of these constitutional concerns. Use immunity prevents a witness's testimony from being admitted against that witness in a criminal prosecution. A person with use immunity may still be prosecuted, but only based on evidence gathered independently of the protected testimony. Any information flowing directly or indirectly from the protected testimony is "fruit of the poisonous tree" and inadmissible. Use immunity differs from transactional immunity, which protects the witness from being prosecuted altogether for the underlying offense.

Use immunity could attach to presentence investigations (PSIs) as a matter of law by statute or sentencing guideline, making all PSIs *per se* immune from admissibility. Alternatively, the prosecution and defense could agree to use immunity on a case-by-case basis with the court's permission whenever a PSI is believed to be in the interests of the defendant and society at large. Either way, use immunity is a timeworn and well-established mechanism for balancing the need of the criminal justice system to obtain relevant information with the rights of defendants to due process and freedom from self-incrimination.

*Defense Navigators.* Defense attorneys at the summit were concerned that risk and need assessments can be a double-edged sword. The information could potentially be used against their clients' interests to increase the conditions of supervision or the likelihood of incarceration. It was noted, however, that skilled defense advocates can also use such information to identify a range of alternative paths clients can take to avoid incarceration and gain access to needed treatment and social services. If defense attorneys can be confident in their ability to leverage risk and need information for their clients' benefit, they are more likely to allow such assessments to proceed—indeed, they might insist upon them.

One recommendation stemming from the workgroup was to employ defense navigators to assist with these efforts. Defense navigators are specially trained professionals employed by defense attorneys to help them understand assessment results, identify alternatives to incarceration for their clients, and frame plea offers and legal arguments accordingly (Wallace & Houldin, 2013). The navigators may be attorneys with specialized training in treatment and assessment, but more often they are social workers or clinical case managers. Armed with a navigator's knowledge of how to develop an effective case plan, a defense attorney will be in a better position to advocate for an evidence-based disposition that serves the client's best interests and desired goals. Although little research to date has examined the impact of defense navigators, early findings suggest they may increase the likelihood that defendants will receive an alternative sentence to incarceration (Walker, Cole, & Miller, 2013).

Some defense attorneys may believe, erroneously, that it is their role to object to PSIs across the board. This view is inconsistent with the ethical responsibilities and practice standards of defense attorneys (Weibrecht, 2008). Performance guidelines promulgated by the National Legal Aid and

Defender Association (2006) provide that defense attorneys should familiarize themselves with PSI procedures and be prepared to advocate for their clients on the basis of the assessment results. If defense attorneys prevent risk and need assessments from being performed, the practical result could be that judges have insufficient information to justify softening criminal sentences. The unintended consequence could be that criminal sentences continue to be offense-based, leading to poor outcomes, high recidivism rates, and needless reliance on costly imprisonment.

## Judicial Independence

Judges in the workgroup asserted strongly that evidence-based practices should not usurp judicial independence. Judges must always exercise autonomous discretion when making findings of fact, imposing sentences, or ordering conditions of supervision and treatment for pretrial defendants, convicted defendants, and probationers. Judges are, however, required to consider relevant scientific evidence when making decisions that call for expert knowledge. It was generally agreed that information about a defendant's risk for recidivism and treatment needs is relevant to sentencing and often calls for expert knowledge.

In practice, many sentencing decisions are the product of plea negotiations between the defense and prosecution. The plea agreements may or may not be based on what is likely to be effective or cost-efficient, and are often influenced by nonempirical considerations such as the strength of the prosecution's case or local law enforcement priorities. Evidence-based sentencing does not side step the plea bargaining process, but it does make outcomes one factor for the judge to consider when deciding whether to accept the terms of a plea deal. Defense attorneys and prosecutors should be expected to include effectiveness as one factor in the plea bargaining process and should be prepared to explain to the court the rationale for the proposed plea agreement. This process would provide judges with a logical rationale and empirical basis for accepting a plea agreement, rather than acquiescing to a bargain of convenience between opposing parties.

## Prosecutorial Discretion

Prosecutors at the summit recognized clearly that their responsibilities extend beyond seeking retribution and enforcing the written law. Prosecutors have constitutionally protected discretion to act on behalf of public interests, and this discretion includes acting in a manner that protects public safety in fact, not merely in appearance. Recent studies confirm that some prosecutors do understand the relevance of risk and need assessments and the importance of evidence-based practices for sentencing decisions (Brown & Gassman, 2013).

It was agreed, however, that prosecutors must remain cautious about unproven claims of treatment effectiveness that may result in a backlash if the practices fail to deliver the promised changes. In the past, social scientists overpromised results while crime rates increased. The Rehabilitation Era of the 1960s and 1970s fell short of its stated objectives, and that failure, in part, helped to usher in the subsequent era of determinate sentencing (Chanenson, 2005). It was noted that the pendulum can swing too far in either direction, and prosecutors must work to ensure that the current era of evidence-based practices and guided discretion adheres faithfully to scientific evidence and does not overpromise results.

At one time, scientific evidence was admissible in court if it was generally accepted by the scientific community. Because much "junk science" could pass that low-threshold test, many jurisdictions now require scientific experts to establish the validity and reliability of their conclusions. This is commonly referred to as the Daubert Test, after a U.S. Supreme Court case that adopted this analysis for federal cases (*Daubert v. Merrill Dow Pharmaceuticals*, 1993). By analogy, it was recommended that prosecutors demand a comparable level of accountability from experts in the context of evidence-based sentencing and evidence-based practices. The party seeking a particular disposition, such as a defendant seeking diversion to Drug Court, should bear some responsibility for establishing that the program is safe and effective and the individual is matched suitably by risk and need to the services offered in the program. It was also noted that prosecutors must have confidence in the neutrality, objectivity, and competence of the professionals performing the risk and need assessments. It is a constitutionally protected function of prosecutors to hold proponents of evidence-based dispositions accountable for proving the accuracy of their assertions.

Finally, it was agreed that prosecutors must not lose sight of the fact that considerations other than effectiveness—such as victims' rights and general deterrence—are also critically important factors in sentencing. Sometimes the evidence-based sentence is not the just sentence, and efficacy must give way to considerations of ethics and morality. That said, in the majority of cases prosecutors can be persuaded by convincing and well-stated arguments supported by scientific evidence of safety and efficacy.

## Fairness to Historically Disadvantaged Groups

The term *historically disadvantaged groups* refers to members of sociodemographic groups that have historically experienced sustained discrimination or reduced social opportunities due to their race, ethnicity, gender, sexual orientation, sexual identity, physical or mental disability, religion, or socioeconomic status. Fairness to disadvantaged groups was a consistent concern expressed in all the workgroups. It was widely recognized that professional discretion can be seriously misapplied, whether intentionally or unwittingly. For reasons that are not always well understood, racial and ethnic minorities, women, the poor, indigenous populations such as Native Americans, and politically disenfranchised groups are often harmed disproportionately by even the most well-intentioned policies and practices (Sentencing Project, 2008). Attendees at the executive summit came back frequently to the notion that adherence to evidence-based practices is one of the best-tested methods for reducing or eliminating unfair disparities. Evidence and proof provide fitting guideposts against which to test implicit biases and evaluate the correctness of a contemplated course of action (Casey, Warren, Cheesman, & Elek, 2012). This is one important reason the draft consensus statement from the summit (presented earlier) insists that scientific evidence on outcomes be included as one facet of criminal justice decision making.

It was also agreed generally that criminal justice professionals must commit themselves to examining and reexamining their programs continuously for evidence of unintended disparities. For example, some evidence suggests unduly restrictive eligibility criteria might be responsible, in part, for the underrepresentation of racial minority persons in some service-oriented correctional programs (Belenko, Fabrikant, & Wolff, 2011). It is possible, for instance, that racial or ethnic

minority persons may be more likely than nonminorities to have prior entries in their criminal records or other characteristics that disqualify them from participation in these programs. Although there is no definitive evidence at present to prove this assertion, criminal justice professionals must remain alert to the possibility that their eligibility criteria could be excluding certain groups unnecessarily or that their services may be producing poorer outcomes for those groups. If a practice has the unintended effect of differentially restricting access for disadvantaged groups or negatively influencing their outcomes, then extra assurances should be required that the practice is necessary to achieve effective results or protect public safety (Marlowe, 2013). Unless a risk of jeopardizing public safety or efficacy can be demonstrated, it should be incumbent upon the program administrator or policy maker to make indicated adjustments to the program's eligibility and exclusion criteria or service requirements to improve access and outcomes for disadvantaged persons. Although an unintended discriminatory impact may not always be constitutionally objectionable (*Washington v. Davis*, 1976), it is nevertheless inconsistent with evidence-based practices and principles of fundamental fairness to all persons.

Women, too, may be burdened disproportionately by traditional criminal justice programming. Substantial evidence suggests that women often present with different risk and need profiles than men (Salisbury & Van Voorhis, 2009; Van Voorhis, Wright, Salisbury, & Bauman, 2010). Specialized programs that treat women separately from men and focus on their unique risk and need factors, particularly trauma, produce significantly better results than programs providing traditional or mixed-gender services (Carey, Mackin, & Finigan, 2012; Lynch, DeHart, Belknap, & Green, 2013; Messina, Calhoun, & Warda, 2012; Powell, Stevens, Dolce, Sinclair, & Swenson-Smith, 2012). Therefore, it was concluded that gender-specific programming should be a required element for many, if not all, criminal justice programs.

## Supervision and Treatment Resources

Summit attendees frequently stressed the critical role of probation officers, community corrections officers, and treatment providers in accomplishing successful criminal justice reform. These are the professionals who are responsible primarily for supervising and intervening with justice-involved individuals at all stages in the criminal justice system, from prearrest through post-prison reentry. Historically, these professionals were also the ones most starved for resources, training, and compensation. Unless adequate investments are made to improve the skills of supervision officers and clinicians, and to increase their capacity to deliver services on a large scale, it is unlikely the criminal justice system can achieve the goals of reducing crime, protecting public safety, and rehabilitating justice-involved persons. A commonly expressed fear at the summit was that transferring huge caseloads to overburdened and underprepared professionals could be nothing short of a recipe for disaster, potentially leading to a return to institutional corrections as the primary emphasis of the penal system.

## Probation and Pretrial Services Considerations

When the United States moved to determinate sentencing, the use of presentence investigations fell into decline. If sentences were to be based primarily on the severity of the crime and the defendant's prior criminal record, there was little need for a psychosocial evaluation. A simple criminal-record check was sufficient in most cases to yield the requisite information for a sentencing decision. Now, with guided discretion being returned to sentencing, it is necessary to develop a significantly different PSI to inform decision making. Workgroup members concluded that it is not necessary or desirable to return to past practices of collecting lengthy psychosocial histories that served no obvious purpose and drew few apparent conclusions. Instead, validated risk and need assessments should be performed using standardized tools proven to produce unbiased results for members of disadvantaged subgroups represented in the relevant program population. It should be possible for a probation or pretrial services officer to complete a valid risk and need assessment within about 90 minutes for a typical case, and this should be feasible for most jurisdictions.

Probation and pretrial services officers must also learn to present risk and need findings in a readily digestible and actionable manner. The recommendations cannot be pro forma. When judges see the same language and phrases time and again, they come to ignore them. Judges must be confident that sufficient thought went into analyzing each case and matching the defendant's risks and needs to appropriate recommendations for treatment and supervision.

Probation and pretrial services officers also need greater authority and discretion to modify the conditions of treatment and supervision based on risk and need assessment results and the individual's response to interventions. As mentioned earlier, some jurisdictions are giving limited sanctioning authority, including that for flash incarceration, to probation officers. Other jurisdictions are providing better coordination between probation and the courts through programs such as HOPE or Drug Courts. However it is accomplished, probation and pretrial service officers need the tools and freedom of action necessary to apply their professional skills effectively and in accordance with evidence-based practices.

## Treatment Considerations

A consistent theme emerged from several of the workgroups: the treatment community is largely unprepared for the coming influx of criminal justice clients. The average clinician is unfamiliar with criminal risk assessments, how to interpret the results, and the relevance of the findings for treatment planning. It is the rare treatment program that separates patients by risk and need, offers gender-specific groups, or understands why these issues are so critically important. Few programs, in particular, have experience treating high-risk, low-need individuals who may be antisocial in character or background, and may misuse drugs or alcohol, but may not need formal treatment for a substance use disorder. New skills will be required to intervene with this new group of individuals, who are likely to be referred by the criminal justice system to community treatment programs.

Several attendees at the summit questioned whether traditional models of clinical practice and professional training continue to be viable for a large segment of substance use disorder and mental health treatment providers. Specialized training and subspecialties focusing on the clinical management of high-risk and high-need populations involved with the criminal justice system will be necessary. Navigators may be required for clinicians, as they are for defense lawyers and prosecutors, to help them make sense of risk assessment data, manage public safety threats, and interact effectively with criminal justice professionals. Failing to adjust treatment practices to new realities could spell disaster for criminal justice reform efforts.

Treatment agencies must also be held to greater accountability for the services they provide and the outcomes they achieve. In the past, accountability was often lacking because reimbursement was provided primarily through block-grant funding for services to the indigent. Rarely were payments linked to the quality of the services provided or the results achieved. It was noted that now, with the advent of the Affordable Care Act, many treatment services for criminal justice populations may be covered by Medicaid or private insurance, which typically require greater accountability from providers than do block-grant programs. For states opting to expand Medicaid coverage, eligibility will now be based on income levels, and not only on categorical criteria such as having a disability or being a child, parent, or pregnant woman. Although Medicaid is usually not available to individuals serving a jail or prison sentence, it is often available to those detained pending trial or who are on probation, parole, in Drug Courts, or in other community corrections programs. Large numbers of persons in the criminal justice system may also obtain private health insurance due to the availability of financial subsidies and the legal requirements to purchase insurance through healthcare exchanges. It is essential that the covered services for those contracts be conditioned on the delivery of effective and evidence-based treatments.

It was suggested that one way to hold treatment agencies more accountable might be to link reimbursement rates to measurable performance benchmarks. For example, organizational assessment tools are available that measure the degree to which programs are adhering to evidence-based correctional practices (e.g., Gendreau & Andrews, 1994). Contractual awards to treatment programs could be contingent upon achieving and maintaining an acceptable criterion score on such tools. Falling below a predetermined cutoff score could be grounds for requiring a remedial action plan, rescinding the program's contract, or reducing or suspending payments.

It was widely suggested that treatment programs should also be held accountable for the outcomes they produce. For example, studies of *performance contracting* have reported significant improvements in outcomes when programs earned bonus payments for boosting retention in counseling (Commons, McGuire, & Riordan, 1997; McLellan, Kemp, Brooks, & Carise, 2008). When programs' bottom line depended on their ability to retain clients in treatment, the programs elected voluntarily to adopt evidence-based practices they had resisted previously. They also found innovative ways to make their services more attractive to clients, such as offering sessions during evening hours and cleaning and painting their facilities.

Finally, treatment programs will require substantial assistance to negotiate effectively with managed care companies and the insurance industry. In the past, managed care companies sought to define medical necessity narrowly and were likely to approve higher levels of care,

such as residential treatment, only after less intensive services, such as outpatient treatment, proved unsuccessful. This *stepped care* approach may run counter to the demands and philosophies of criminal justice professionals, who may prefer starting with a more restrictive level of care and reducing the intensity of services as individuals demonstrate symptom resolution and desistence from crime. It is also unclear what services will be covered under the essential benefits packages for substance abuse and mental health treatment. Managed care companies might not agree to pay for court-ordered treatment if they determine the treatment was not medically necessary or if the treatment plan was too intensive given the client's assessed clinical needs. How these tensions will be resolved is unknown, and treatment programs are likely to find themselves negotiating between competing philosophies and points of view. Treatment programs will require substantial expertise and technical assistance to manage these market forces efficiently and avoid being driven out of business by new fiscal and political pressures.

## Conclusion

The Doing Justice Executive Summit marked the first time that nearly all the professional disciplines involved in the administration of justice came together to compare notes and agree on foundational principles for evidence-based criminal justice reforms. The unqualified success of the summit demonstrates what can be accomplished when seasoned professionals, research scholars, and citizens come together to share information, find common ground, and solve real problems. What became clear from the executive summit was that these professional and advocacy organizations already agree on much more than was realized previously. Disagreements about substantive principles or empirical findings were the exception rather than the rule.

Thanks to the continued support of the Office of National Drug Control Policy, the collaboration and productivity of the summit will continue. Efforts are ongoing to fill in the ARK repository with detailed and practical information about evidence-based practices and promising practices, and to roll out the ARK framework in states or localities in an effort to identify gaps in available services, fill the gaps, and enhance outcomes. To date, executive summits have been held at the state level in Utah and Vermont and at the county level in Hattiesburg, Mississippi. Reactions to the ARK and quadrant models were highly favorable at the local level, as they were at the national level, and all three jurisdictions have committed to working collaboratively with NADCP and its partners to bring evidence-based practices and promising practices to bear on their criminal justice systems. Vermont and Hattiesburg are using the ARK and quadrant models to restructure their pretrial services, and Utah is focusing on restructuring its community treatment programming for justice-involved persons. Other jurisdictions, including the State of Kentucky; Miami, Florida; and San Diego, California, have expressed strong interest in becoming "ARK states" and working with NADCP and its partner organizations to improve their criminal justice systems. Participants in the executive summit look forward to continuing this important line of work and improving outcomes for justice-involved persons, protecting public safety, and conserving public dollars.

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# Appendix

*Annals of Research and Knowledge on Successful Offender Management*

## Participating Summit Organizations

American Bar Association

American Correctional Association

American Council of Chief Defenders

American Jail Association *(Invited)*

American Judges Association

American Probation and Parole Association

American Society of Addiction Medicine

Association of Prosecuting Attorneys

Center for Court Innovation

Center for Health and Justice at TASC

Community Oriented Correctional Health Services *(Invited)*

Conference of Chief Justices

Conference of State Court Administrators *(Invited)*

Council of State Governments

GAINS Center

Institute for Behavior and Health

International Association of Chiefs of Police

International Community Corrections Association

Legal Action Center

Major Cities Chiefs Association

National Association for the Advancement of Colored People

National Association of Attorneys General

National Association of Counties *(Invited)*

National Association of Pretrial Services Agencies

National Association of Probation Executives *(Invited)*

National Association of Sentencing Commissions

National Association of State Alcohol and Drug Abuse Directors

National Association of Women Judges *(Invited)*

National Bar Association *(Invited)*

National Center for State Courts

National Conference of State Legislators

National Council for Behavioral Health

National Criminal Justice Association

National District Attorneys Association

National Governors Association

National Institute of Corrections

National Legal Aid and Defender Association

National Organization of Black Law Enforcement

National Sheriffs' Association

NIC Urban Chiefs Network

Pew Charitable Trusts

Police Executive Research Forum

Pretrial Justice Institute

Prison Fellowship / Justice Fellowship

Right on Crime

Urban Institute

VERA Institute of Justice

Women's Prison Association

## Advisors

**Hon. Steven S. Alm, J.D.**
*Hawaii Circuit Court Judge, 2nd Division*
*Creator, HOPE Probation*
*Former United States Attorney, District Hawaii*

**Hon. Robert L. DuPont, M.D.**
*Former Director, White House Drug Office*
*First Director, National Institute of Drug Abuse*

## Dignitaries

**Hon. R. Gil Kerlikowske**
*Director of National Drug Control Policy*

**Hon. Denise O'Donnell, J.D.**
*Director, Bureau of Justice Assistance*

**Gen. Barry R. McCaffrey, USA (Ret.)**
*Former Director, Office of National Drug Control Policy*

**Harry Lennix,**
*Actor & Advocate*

**Hon. Jim Ramstad, J.D.**
*Former Congressman (R-MN)*

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