

Fighting Fiction with Fact to Attain Lower Sentences¹

1. Probation officers and prisons can have the most effect on crime reduction by investing in treatment for high risk offenders.

- “Research has . . . indicated that if a correctional intervention or program targets . . . dynamic risk factors, the reductions in recidivism follow.” Christopher T. Lowenkamp, Jennifer Pealer, Paula Smith, & Edward J. Latessa, *Adhering to the Risk and Need Principles: Does it Matter for Supervision-Based Programs?*, 70 Fed. Probation 3, 4 (2006), available at <http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2006-12/adhering.html>. One study found that programs that targeted 4 to 6 more criminogenic than non-criminogenic needs reduced recidivism, on average, by about 30 percent. Programs that targeted 1 to 3 more criminogenic than non-criminogenic needs were associated with a slight increase in recidivism.” *Id.*
- The research indicates that reduced recidivism is more likely when higher level treatment or supervision interventions (i) target “defendants with a higher risk of recidivism” and (ii) target “their *dynamic* (amenable to change) criminogenic needs.” Kimberly Wiebrech, *Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations* ix (2008), available at <http://nicic.gov/library/files/023356.pdf>.
- The eight major risk and/or need factors and suggested targets of intervention are set forth in D.A. Andrews, James Bonta, and J. Stephen Wormith, *The Recent Past and Near Future of Risk and/or Need Assessment*, 52 Crime & Delinq. 7, 11 (2006);² see generally James Bonta and D.A. Andrews, *Risk-Need-Responsivity Model for Offender Assessment and Rehabilitation* (2007), available at http://www.publicsafety.gc.ca/res/cor/rep/_fl/risk_need_2007-06_e.pdf.

¹ Prepared by Laura E. Mate, Denise C. Barrett, and Anne E. Blanchard for distribution in connection with “Fighting Fiction with Fact to Attain Lower Sentences – Myths You Can Debunk with Current Research,” Advanced Federal Defender Seminar, Atlanta, Georgia, 2012.

² Much of the literature on risk/needs assessment also discusses the PCL-R, a quantified measure of psychopathy. The PCL-R has not proven reliable in criminal justice settings because, in large part, it contains many measures that depend on subjective judgment. For a quick introduction to this controversial instrument, see Alix Spiegel, *Can A Test Really Tell Who Is A Psychopath?* (May 27, 2011), available at www.npr.org/2011/05/26/136619689/can-a-test-really-tell-whos-a-psychopath.

- “Although the public tends to view sex offenders as high risk, clearly the research does not support this. This study found that ignoring the risk principle leads to a significant increase in recidivism for both low-and high-risk sexual offenders. Hence, legislators, as well as criminal justice agents, should recognize the importance of the risk principle in developing strategies for addressing sexual crimes.” Brian Lovins, Christopher Lowenkamp, and Edward J. Latessa, *Applying the Risk Principle to Sex Offenders: Can Treatment Make Some Sex Offenders Worse?*, 89 *The Prison Journal* 344, 354 (2009), available at <http://www.uc.edu/ccjr/Articles/sextxtprisonjournal.pdf>.

2. Long prison terms are not an effective method for reducing recidivism.

- “Among low-risk offenders, those who spent less time in prison were 4% less likely to recidivate than low-risk offenders who served longer sentences. Thus, when prison sentences are relatively short, offenders are more likely to maintain their ties to family, employers, and their community, all of which promote successful reentry into society. Conversely, when prisoners serve longer sentences they are more likely to become institutionalized, lose pro-social contacts in the community, and become removed from legitimate opportunities, all of which promote recidivism.” Valerie Wright, Sentencing Project, *Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment* 7 (2010), available at <http://www.sentencingproject.org/doc/Deterrence%20Briefing%20.pdf>.
- A recent Missouri study shows “that recidivism rates actually are lower when offenders are sentenced to probation, regardless of whether the offenders have prior felony convictions or prior prison incarcerations.” Missouri Sentencing Advisory Commission, *Probation Works for Nonviolent Offenders*, 1 *Smart Sentencing* 1 (June 2009), available at <http://www.courts.mo.gov/file.jsp?id=45429>. On a three-year follow up from the start of probation or release from prison, offenders on probation were incarcerated at a significantly lower rate than those who had been sent to prison.

Percentage of Offenders Incarcerated After Three Years

	Probation	Prison
1 or 2 prior felonies	36%	53%
1 prior incarceration or 3 prior felonies	47%	55%

Id.

- For a general discussion of the criminogenic effects of incarceration, see Martin Pritkin, *Is Prison Increasing Crime*, 2008 Wis. L. Rev. 1049 (2008).
- “[H]aving pulled together the best available evidence, we have been persuaded that *prisons do not reduce recidivism more than noncustodial sanctions.*” Francis T. Cullen, Cheryl Lero Johnson & Daniel S. Nagin, *Prisons Do Not Reduce Recidivism: The High Cost of Ignoring Science*, 91 Prison J. 48S, 50S (2011). “[A]cross the offender population, imprisonment does not have special powers in persuading the wayward to go straight. To the extent that prisons are used because of the belief that they reduce reoffending more than other penalty options, then this policy is unjustified. *Id.* at 51S.
- “[R]esearch does not show that the aversive experience of receiving correctional sanctions greatly inhibits subsequent criminal behavior. Moreover, a significant portion of the evidence points in the opposite direction—such sanctions may increase the likelihood of recidivism. The theory of specific deterrence inherent in the politically popular and intuitively appealing view that harsher treatment of offenders dissuades them from further criminal behavior is thus not consistent with the preponderance of available evidence.” Mark W. Lipsey and Francis T. Cullen, *The Effectiveness of Correctional Rehabilitation: A Review of Systematic Reviews* 3 Ann. Rev. L. Soc. Sci. 297, 302 (2007), available at http://cjjr.georgetown.edu/pdfs/ebp/lipsey_cullen2007.pdf; see also Don M. Gottfredson, National Institute of Justice, *Effects of Judges’ Sentencing Decisions on Criminal Cases, Research in Brief* 9 (Nov. 1999) (“confinement or increased length of incarceration served the crime control purpose of incapacitation but had little or no effect as a ‘treatment’ with rehabilitative or specific deterrent effects”), available at <http://www.ncjrs.gov/pdffiles1/nij/178889.pdf>.
- “The research. . . states that treatment interventions are more effective when provided to defendants while they are in the community rather than in an institutional setting.” Kimberly Wiebrecht, *Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations* 8 (2008), available at <http://nicic.gov/library/files/023356.pdf>.
- Research-based rehabilitation and prevention programs are more effective than incarceration in reducing crime. Wash. State Institute of Public Policy, <http://www.wsipp.wa.gov/>.
- “The research evidence is unequivocal that incarceration does not reduce offender recidivism.” Roger Warren, National Center for State Courts, *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries* (2007), available at <http://nicic.gov/library/files/023358.pdf>. “Incarceration actually results in slightly increased rates of offender recidivism.” *Id.*
- “[U]nlikely to be a significant effect on recidivism from punishment alone.” Edward J. Latessa & Christopher Lowenkamp, *What Works in Reducing Recidivism?*, 3 U. St. Thomas L. J. 521, 522-23 (2006).

- “[T]he experience of punishment may lead to a decrease not an increase in the punished individuals’ estimate of the certainty of being punished which, in turn, may encourage them to offend more frequently.” Paul Nieuwbeerta, Daniel Nagin, Arjan A.J. Bokland, *Assessing the Impact of First-Time Imprisonment on Offender’s Subsequent Criminal Career Development: A Matched Samples Comparison*, 25 J. Quant. Criminol. 227, 229 (2009), available at <https://openaccess.leidenuniv.nl/bitstream/1887/15158/2/2009+JQC+Nieuwbeerta+Nagin+Blokland.pdf>.
- “Our findings suggest that the experience of first-time imprisonment is associated with an increase in criminal activity in the 3 years following release. Thus, the analysis implies that on balance the criminogenic effects of imprisonment on the imprisoned are larger than any preventive effect that might stem from special deterrence.” *Id.* at 251 (this is a study in the Netherlands, which has more permissive sentencing practices than the U.S.).
- “[N]o scholar credits mass imprisonment with the bulk of the crime decline.” Vanessa Barker, *Explaining the Great American Crime Decline: A Review of Blumstein and Wallman, Goldberger and Rosenfeld, and Zimring*, 35 Law & Soc. Inquiry 489, 498 (2010), available on Westlaw. “[S]everal prominent scholars argue that increased imprisonment accounts for some of” the crime decline. *Id.* at 498. Those scholars “credit increased incarceration with about 10 to 20 percent of the crime decrease.” *Id.* “Most agree that a confluence of factors drove crime rates down, but pinpointing the weight and measure of each causal factor has been much more difficult.” *Id.* at 510. “Focus on the commonly cited factors – mass imprisonment, policing, demographics, and economic expansion – has been tempered by new findings and emerging opposition.” *Id.* “[S]ome researchers have returned to criminology’s roots in urban sociology have added a cultural dimension.” *Id.*

3. The triad of childhood behaviors – cruelty to animals, firesetting, and enuresis – is not predictive of future violence.

- “Even though the literature on violent behavior contains many references to the Macdonald triad (and its aliases), collectively these studies do not provide sufficient evidence of its ability to predict violence, nor in fact, of its existence as a bona fide phenomenon.” Kori Ryan, *The Macdonald Triad: Predictor of Violence or Urban Myth?* (unpublished master’s thesis), cited at <http://forensicpsychologist.blogspot.com/2012/05/macdonald-triad-predictor-of-violence.html>. Abstract available at <http://www.fresnostate.edu/gradstudies/thesis/AbstractsSpr09/KoriRYAN.pdf>. Instead, these behaviors are “hallmarks’ of childhood abuse.” *Id.*

4. Enhanced prison sentences for gun crimes have a weak effect on gun violence. Multi-dimensional community-based interventions have a greater effect.

- “[P]unitive interventions such as enhanced prison terms and prosecutorial strategies were shown to be much less effective” in reducing gun violence. Matthew D. Makarios & Travis C. Pratt, *The Effectiveness of Policies and Programs That Attempt to Reduce Firearm Violence: A Meta-Analysis*, 58 *Crime & Delinq.* 222, 237 (2012). “[M]ultidimensional, community-based approaches . . . noticeably outperformed other more limited interventions. This should come as no surprise because these programs capitalize on the strengths of multiple law enforcement strategies, such as directed patrol, federal prosecution, and specialized probation. Furthermore, the majority of these programs also included a community-level component that targeted well-established community risk factors, such as community organization and mobilization.” *Id.*

5. Intensive supervision should be limited to high risk offenders because it actually increases recidivism rates for low risk offenders.

- “The risk principle states that programming should be matched to the risk level of the offenders, and higher-risk offenders should receive more intensive programming for longer periods of time to reduce their risk of re-offending. Moreover, and equally important, applying intensive treatment to low-risk offenders may actually serve to increase their risk of recidivism.” Christopher T. Lowenkamp, Jennifer Pealer, Paula Smith, & Edward J. Latessa, *Adhering to the Risk and Need Principles: Does it Matter for Supervision-Based Programs?*, 70 *Fed. Probation* 3 (2006) (internal citations omitted), available at http://www.uc.edu/ccjr/Articles/cca_article_federal_prob.pdf.
- One study found that “programs that adhere to the risk principle reduced recidivism by 19 percent but programs that violated the risk principle increased recidivism by 4 percent.” *Id.* Another “found a 20 percent reduction in recidivism for higher-risk offenders that received more intensive supervision, but a 17 percent increase for lower-risk offenders.” *Id.* And yet another “found that ... intensive programs worked for higher-risk offenders and led to reductions in recidivism from 10 to 30 percent. However, most of these same programs increased recidivism for lower-risk offenders.” *Id.*
- “Lower-risk offenders should receive lower levels of supervision and treatment.” Christopher Lowenkamp & Edward Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, *Topics in Community Corrections* 3 (2004), available at <http://nicic.gov/Library/Files/period266.pdf>.
- “[R]esearch has clearly demonstrated that when we place low-risk offenders in our more intense programs, we often increase their failure rates.” Edward J. Latessa &

Christopher Lowenkamp, *What Works in Reducing Recidivism?*, 3 U. St. Thomas L. J. 521, 522-23 (2006).

- “The . . . least understood threat to public safety is when low risk offenders are subject to unnecessary levels of supervision or ‘dosages’ of treatment. Not only are valuable and increasingly scarce resources being diverted from those who truly need them, several studies have shown that exposing low risk offenders to treatment actually increases their recidivism rates.” James Austin, *The Proper and Improper Use of Risk Assessment in Corrections*, 16 Fed. Sent. R. 194 (2004).
- Eric Wodahl, *Utilizing Behavioral Interventions to Improve Supervision Outcomes in Community-based Corrections*, 38 Crim. Justice and Behavior 386 (administering rewards in proportionally higher numbers than sanctions produced best results in intensive supervision programs), summary prepared by Colorado Probation available at <http://www.courts.state.co.us/userfiles/file/Administration/Probation/ResearchInBriefs/RIBSanctionsRewards-Apr11.pdf> .

6. Violent and other serious offenders re-offend at no greater rate than non-violent offenders.

- “There is no correlation between recidivism and guideline’s offense level. Whether an offender has a low or high guideline offense level, recidivism rates are similar. While surprising at first glance, this finding should be expected. The guideline’s offense level is not intended or designed to predict recidivism.” USSC, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines* 15 (2004), available at http://www.ussc.gov/Research/Research_Publications/Recidivism/200405_Recidivism_Criminal_History.pdf.
- The Federal Pretrial Risk Assessment tool scores a 0 for all offenses but drug, firearms, and immigration. In other words, if the current offense is theft, fraud, or violent, the risk of rearrest pretrial is lower than it is for drug, firearm or immigration offenses.
- “[Though a felon has been convicted of a more serious offense than a misdemeanor, his or her relative risk of reoffending may have nothing to do with the seriousness of the crime.” Christopher Lowenkamp & Edward Latessa, *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*, Topics in Community Corrections 3 (2004), available at <http://nicic.gov/Library/Files/period266.pdf>.

7. Repeat offenders benefit more from drug treatment than do first time offenders.

- As to drug treatment alternatives, offenders “with extensive prior criminal history benefit more [from drug treatment] than offenders with no prior criminal history (a reduction in incarceration of 15 percentage points compared with 8 percentage points).” Missouri Sentencing Advisory Commission, *Drug Treatment Can Reduce*

Recidivism, 1 Smart Sentencing 2 (July 2009), available at <http://www.mosac.mo.gov/file.jsp?id=45342>.

8. Formal drug treatment can be contraindicated for some drug users and may actually increase recidivism.

- “A one-size-fits-all approach is decidedly naïve and scientifically baseless.” Douglas B. Marlowe, *Evidence-Based Policies and Practices for Drug-Involved Offenders*, 91 Prison J. 27S, 28S (2011). “What is not always appreciated . . . is that about one half of drug-involved offenders abuse illicit drugs or alcohol but are not addicted. . . . Formal substance abuse treatment can be contraindicated for such persons. Placing nonaddicted offenders into residential or group treatment has been associated with poorer outcomes and higher recidivism. Spending time with addicted peers might normalize the drug-using lifestyle, or treatment requirements might interfere with productive activities such as work or school. Thus, providing too much treatment is not merely a waste of scarce resources. It can lead to iatrogenic effects, in which outcomes are made worse.” *Id.* at 33S.

9. Treatment for sex offenders can reduce recidivism.

- Persons with pedophilia or “pedophilic motivations” can be treated and supervised in ways that reduce their risk of future offending. Reviews of sex offender treatment programs show that cognitive-behavioral therapy, relapse prevention, and self-regulation have proven successful in treating offenders. *See, e.g.*, Tony Ward, Theresa Gannon, and Pamela Yates, *The Treatment of Offenders: Current Practice and New Development with An Emphasis on Sex Offenders*, 15 Int’l Rev. Victimology 183 (2008); Steve Aos, Marna Miller, and Elizabeth Drake, Washington State Institute for Public Policy, *Evidence-Based Adult Corrections Programs: What Works and What Does Not* 5-6 (2006) (concluding after review of six “rigorous” studies that “cognitive-behavioral therapy for sex offenders on probation significantly reduces recidivism”). As one group of researchers put it: “[e]ven if a [risk] factor is immutable with current [treatment] technologies, treatment can still help offenders learn to manage or compensate for the propensity.” Ruth E. Mann, R. Karl Hanson, & David Thornton, *Assessing Risk for Sexual Recidivism: Some Proposals on the Nature of Psychologically Meaningful Risk Factors*, 22 Sexual Abuse J. Res. & Treatment 191, 209 (2010). The most effective treatments target criminogenic needs and are consistent with the same principles of effective intervention used with other offenders. Karl Hanson, et.al., *The Principles of Effective Intervention Also Apply to Sexual Offenders: A Meta-Analysis*, 36 Crim. Just. & Beh. 865, 886 (2009).
- “[T]he best available evidence suggests that these interventions hold promise for adults who have committed sex offenses.” Center for Sex Offender Management, *Understanding Treatment for Adults and Juveniles Who Have Committed Sex*

Offenses at 10 (Nov. 2006), available at http://www.csom.org/pubs/treatment_brief.pdf. While there are some studies that support a skeptical perspective on whether treatment works, the “most recent analyses converge around optimistic findings, namely that recidivism rates are lower for those who complete sex offender treatment than for those who do not receive or complete treatment.” *Id.* One study, that is “used by some to argue that treatment is *not* effective actually provides some evidence of the differential impact of treatment on different types of offenders. Namely, individuals with child victims who met the goals of treatment recidivated at lower rates than those who did not. Similarly, higher risk sex offenders who evidenced more progress in treatment had lower rates of recidivism than high risk sex offenders who made less progress in treatment.” *Id.*

10. Offenders convicted of internet child pornography offenses are NOT at a high risk of committing a contact offense against a child.

- “Online offenders rarely go on to commit detected contact sexual offenses.” Michael C. Seto et al., *Contact Sexual Offending by Men with Online Sexual Offenses*, 23 *Sex Abuse: J. of Research & Treatment* 124, 136 (2011). “[O]nline offenders who had no history of contact offenses almost never committed contact sexual offenses, despite a comparably high likelihood that they were sexually interested in children.” *Id.* at 137. See also Jérôme Endrass et al., *The Consumption of Internet Child Pornography and Violent and Sex Offense*, 9 *BMC Psychiatry* 43 (2009), available at <http://www.biomedcentral.com/content/pdf/1471-244X-9-43.pdf>.
- Recidivism rates for online offenders are “substantially lower than the recidivism rates of typical groups of offline sexual offenders.” Michael C. Seto et al., *Contact Sexual Offending by Men with Online Sexual Offenses*, 23 *Sex Abuse: J. of Research & Treatment* 124, 136 (2011). “It would. . . be a mistake to fail to differentiate online offenders by the risk they pose.” *Id.* at 140.
- “[I]t is important to recognize that, to date, there has not been a spike in the rate of child sexual abuse that corresponds with the apparent expansion of online [child pornography].” Janis Wolak, David Finkelhor, and Kimberly Mitchell, *Child Pornography Possessors: Trends in Offender and Case Characteristics*, 23 *Sexual Abuse: J. of Research & Treatment* 22, 23 (2011).
- Follow-up research carried out after a short period of time at risk – averaging 18 months – suggested that internet sex offenders were significantly less likely to fail in the community than child molesters in terms of all types of recidivism. L. Webb, J. Craiassait, and S. Keen, *Characteristics of Internet Child Pornography Offenders: A Comparison with Child Molesters*, 18 *Sexual Abuse: J. of Research & Treatment* 449 (2007).
- Child pornography offenders “do not, as a group, present a significant risk of escalation to contact sexual offenses.” Helen Wakeling, Phillip Howard, & Georgia

Barnett, *Comparing the Validity of the RM 2000 Scales and OGRS3 for Predicting Recidivism by Internet Sexual Offenders*, 23 *Sexual Abuse: J. Res. & Treatment* 146, 164 (2011).

- “The finding that Internet offenders do not appear to have the same levels of cognitive distortions or victim empathy distortions is potentially a very positive one. The lower frequency of pro-offending attitudes and beliefs that serve to legitimize and maintain sexually abusive behaviors displayed by Internet offenders suggests that they may be unlikely to represent persistent offenders or potentially progress to commit future contact sexual offenses.” Ian Elliott, Anthony R. Beech, Rebecca Mandeville-Norden, and Elizabeth Hayers, *Psychological Profiles of Internet Sexual Offenders: Comparisons with Contact Sexual Offenders*, 21 *Sexual Abuse: J. Res. & Treatment* 76, 87-88 (2009).
- Child pornography offenders have lower rates of recidivism than child molesters. See Richard Wollert et. al., *Federal Internet Child Pornography Offenders – Limited Offense Histories and Low Recidivism Rates*, in *The Sex Offender*, Volume VII (Barbara K. Schwartz ed., forthcoming 2012) (review of nine research studies confirms that “the great majority of [child pornography offenders] have not had problems with sexual contact crimes prior to being convicted of a child pornography offense, and the great majority will not have post-conviction problems with the commission of sexual contact crimes”).

11. When given full information about a case, the public believes sentences should be lower than what the Guidelines suggest and mandatory minimums demand.

- “The Guidelines and congressionally directed ranges are significantly harsher than community sentiment recommends.” Judge James S. Gwin, *Juror Sentiment on Just Punishment: Do the Federal Sentencing Guidelines Reflect Community Values?*, 4 *Harv. L. & Pol’y Rev.* 173, 195 (2010), available at http://hlpronline.com/wp-content/uploads/2010/02/gwin_jurorsentiment.pdf. A jury study of 22 criminal cases where the jury returned a guilty verdict, “strongly suggests that the Guidelines are untethered to appropriate punishments as determined by jurors actually hearing the case.” *Id.* at 175. “In over 22 jury trials, the corresponding low end of the Guidelines range was almost three times higher than the median juror’s recommendation, on average.” *Id.* at 187. “88% of the time jurors believed that the appropriate punishment was below the Guidelines recommended minimum for the offense.” *Id.* at 188. “On average, the Guidelines-recommended minimum sentence was more than twice the juror-recommended sentence.” *Id.* at 189. “[T]he size of [the] difference between the jurors’ and the Guidelines’ recommendations is very large – the Guidelines sentences equaling between 200% and 300% of the jurors’ sentences. With the high sentencing ranges of the cases that go to trial in federal court, these percentage differences result in average increases of seven to twelve years from what jurors would recommend.” *Id.* “Interestingly, jurors’ average

recommended sentences were longer than the Guidelines recommended sentences only in white-collar cases.” *Id.*

- “[T]here are differences between punitiveness as measured by sentence choice in a particular case and general views about sentencing patterns.” Kate Warner & Julia Davis, *Using Jurors to Explore Public Attitudes to Sentencing*, 52 *Brit. J. Criminology* 93, 110 (Jan. 2012), available on Westlaw. This study of juries in Australia compared juror’s opinions of sentences for different offenses in general with the sentence the juror would have imposed in the case the juror heard. The study found that “around two-thirds of respondents said that sentences for sex offenders (70 per cent) and violent offenders (66 per cent) were too lenient, even though much less than half (40 and 35 per cent) wanted more severe sentences for the defendants from the trials for these offense types.” *Id.* at 107. “This ‘duality of opinion’ is also demonstrated in studies that show that, despite general support for get-tough responses to crime, the public also supports rehabilitative responses.” *Id.* at 95.

12. The risk of injury in any burglary (completed or not) is fairly small, and the risk of injury in an attempt is much smaller than that in a completed burglary.

- From 2003-2007, only 7% of all household burglaries involved some sort of violent victimization. Of *completed* burglaries, a household member was present in 26.7% of cases. Of those, 8% experienced violence. Of *attempted* burglaries, a household member was present in 32% of cases. Of those, only 3.4% experienced violence. Shannan Catalano, Bureau of Justice Statistics, *Victimization During Household Burglary*, 1-2 (2010), available at <http://bjs.ojp.usdoj.gov/content/pub/pdf/vdhb.pdf>.
- “Household members were more likely to be injured during a completed burglary (48%) than an attempted forcible entry burglary (8%) when a household member was present and violence occurred.” *Id.* at 11.

13. Mental illness alone does not increase an offender’s risk of recidivism.

- “[N]o pathogenesis between mental illness and crime has even been established. . . . Thus, major mental illness, in and of itself, would seem to present little or no added risk of criminal activity.” Arthur Lurigio, *People With Serious Mental Illness in the Criminal Justice System: Causes, Consequences, and Correctives*, 91 *Prison J.* 66S, 74S (2011). “Serious mental illness alone rarely leads people to commit crimes and, therefore, the treatment of mental illness alone is unlikely to prevent or reduce crime or recidivism.” *Id.* at 75S. “Treating mental illness could, however, have an indirect effect on recidivism. Typically, relieving symptoms could help PSMI [people with serious mental illness] become sober, employed, find and retain stable housing, develop better self-control, return to school, mend relationships with family, and follow the designated rules of supervision, thereby avoiding probation and parole violations. Furthermore, relieving the symptoms of major mental illness can make

PSMI more amenable to interventions that will have a positive effect on crime, such as cognitive behavioral therapies that can change criminal thinking.” *Id.*

- Commission data show that the percentage of defendants with mental illness is approximately the same regardless of criminal history category, suggesting that mental illness does not indicate an increased risk of recidivism. See USSC, *Recidivism and the “First Offender”* 8 (2004), available at http://www.ussc.gov/Research/Research_Publications/Recidivism/200405_Recidivism_First_Offender.pdf.
- “[M]entally ill offenders, although more likely than the general population to offend generally and violently, are less likely to reoffend, both generally and violently, than a known nondisorder offender population.” A. Murray Ferguson, James R.P. Ogloff and Lindsay Thomson, *Predicting Recidivism by Mentally Disordered Offenders Using the LSI-R:SV*, 36 *Criminal Justice and Behavior* 5, 6 (2009).
- Therapeutic mental health court programs designed to treat mental disorders as an alternative to longer prison sentences can reduce recidivism rates. See Dale E. McNeil, Ph.D. and Renée L. Binder, M.D, *Effectiveness of a Mental Health Court in Reducing Criminal Recidivism and Violence*, 16 *Am. J. Psychiatry* 1395-1403 (Sept. 2007), available at <http://ajp.psychiatryonline.org/cgi/reprint/164/9/1395>; Ohio Office of Criminal Justice Services, *Research Briefing 7: Recidivism of Successful Mental Health Court Participants* (Apr. 2007), available at http://www.publicsafety.ohio.gov/links/ocjs_researchbriefing7.pdf.

14. Personality disorders are treatable and persons suffering from them can respond to various management strategies.

- “Treatment completion is important, and there are consistent findings that those offenders who drop out of treatment – whether in prison or the community – reoffend at significantly higher rates, more so than those who refuse to commence treatment at all.” United Kingdom Ministry of Justice, *Working with Personality Disordered Offenders*, at 44 (2011), available at <http://www.rcpsych.ac.uk/pdf/MoJguidanceofworkingwithPD.PDF>. “As a general guideline treatment effectiveness can be subdivided according to the level of risk. Interventions for low risk cases may make offenders worse (although exactly why this is the case is not fully understood); for medium to high risk cases the effectiveness is better.” *Id.* “The types of treatment can be thought of as lying on a continuum from behavioural to psychoanalytically-informed interventions. . . . In general, therapies for personality disorder are gravitating to the middle, incorporating both psychoanalytic and behavioural elements into one package.” *Id.* at 43.

15. Community service is an effective means of reducing recidivism.

- Compared with offenders imprisoned no more than 6 months: “[O]ffenders recidivate significantly less after community service than after imprisonment. This result is in line with results from prior research. In the short term as well as in the long term, community service is followed by less recidivism than imprisonment; nearly half as many reconvictions over an eight-year follow-up period.” Hilde Wermink et al., *Comparing the Effects of Community Service and Short-Term Imprisonment on Recidivism: A Matched Samples Approach*, 6 J. Exp. Criminology 325, 346 (2010) (internal citations omitted), available at <http://media.leidenuniv.nl/legacy/hilde-wermink-e.a.---effects-community-service.pdf>. “[R]ecidivism after community service is lower than after imprisonment, for all offenses as well as for property and violent offenses separately.” *Id.* at 343-44 “Community service leads to a reduction in recidivism of 46.8% compared to recidivism after imprisonment.” *Id.* at 343.