

## Pre-Trial Diversions and Alternative Sanctions

Since 1990, Connecticut has developed an extensive network of alternative incarceration options to be used in lieu of or to augment the traditional criminal sanctions of prison and probation. The primary goal of the state's alternative incarceration concept was clearly to help control the growth in the inmate population thus addressing prison overcrowding, which in the early 1990s had reach a crisis point. Beyond just an overcrowding remedy, it was intended to also better address offender rehabilitation, court backlog, and public safety concerns.

While these overall goals of the state's alternative incarceration policy have not changed, there has been a recent shift in focus from controlling prison overcrowding to reducing recidivism (Public Act 04-234). The underlying principle of the new strategy is that a reduction in the overall recidivism rate will also have a broader public safety impact by addressing the causes of crime rather than simply focusing on prison bed savings.

There are three categories of alternative incarceration options used in Connecticut. ***Pre-trial diversion*** is intended to redirect persons arrested for the first time for targeted offenses from further involvement with the criminal justice system by deferring prosecution and ultimately dismissing the charge upon successful compliance with certain court-ordered conditions. ***Alternative sanction*** is any punishment more restrictive than traditional probation and less punitive than incarceration. ***Specialized courts*** offer an alternative dispute resolution method to the standard criminal process of prosecution and sentencing.

As part of the committee's study, an analysis of the rate of recidivism among alternative incarceration program (AIP) clients was conducted. As part of the recidivism analysis, a profile of the AIP client population was developed.

### Profile of Client Sample

- The average AIP client was 29 years old and male.
- The total AIP population was almost evenly split among Caucasian (49 percent) and minority (51 percent) clients.
- Three-quarters of sentenced AIP clients had prior drug problems.
- Almost half of sentenced AIP clients were classified at the highest levels for risk of re-offending.
- Prior to program admission, almost 40 percent of AIP clients were arrested for a drug crime, 16 percent for a violent crime, 10 percent for a property crime, and 18 percent were arrested for a variety of other crimes including risk of injury to a minor, reckless endangerment, weapon violations, threatening or stalking, interfering with a police officer, and violation of probation.
- Overall, AIP clients were arrested for less serious and nonviolent misdemeanor crimes.

- Two-thirds of clients admitted to an alternative incarceration program were convicted and sentenced for a crime and 36 percent were in pre-trial status.
- About 51 percent of the AIP clients were admitted to an alternative sanction program and about one-quarter of the clients were each admitted to a pre-trial education diversion or a specialized court.

### **Recidivism Among AIP Clients**

- More than one-third of AIP clients were re-arrested for a new crime within one year of admission to a program.
- Over 20 were reconvicted of a new crime, but very few (1 percent) were sent to prison as a result.
- With a one-year recidivism rate comparable to the one-year rate found in the 2001 program review study on recidivism, it is anticipated that half of the current AIP clients will also be re-arrested within three years of program admission.<sup>1</sup>
- Sentenced AIP clients were more likely to be re-arrested than pre-trial AIP clients.
- Property offenders were more likely to recidivate and drug offenders the least likely.
- AIP clients committed a variety of new felony and misdemeanor crimes, but most were nonviolent and misdemeanor offenses such as larceny, assault, drug possession, disorderly conduct, and motor vehicle infractions.
- Male clients had a significantly higher recidivism rate than female clients.
- Young, minority clients were most likely to be re-arrested.
- AIP clients failing to complete a program (unsatisfactory discharge) were significantly more likely to be re-arrested than those who successfully completed a program.
- AIC and domestic violence program clients were most likely to be re-arrested prior to completing the program.
- Mixing pre-trial and sentenced clients in a program was least effective in reducing recidivism.
- Mismatched client treatment level and program intensity resulted in higher re-arrest rates among AIP clients.
- Alternative sanction programs targeting specialized client populations (e.g., sex offenders) and the Pre-trial Family Violence Education Program were the most likely to be effective for the time period measured.
- The Zero-Tolerance Drug Program and the Pre-trial Hate Crimes Diversion and School Violence Education Programs were the least effective in reducing recidivism among the clients.

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<sup>1</sup> Legislative Program Review and Investigations Committee report on *Recidivism in Connecticut* (2001).

## Alternative Incarceration Program Effectiveness

The principle measure of alternative incarceration program effectiveness used for this study was the rate of recidivism among the client population. *Overall, while assisting to ease prison overcrowding, alternative incarceration programs have mixed results in terms of reducing recidivism. There are certain identified factors that lead to alternative incarceration programs being more effective. The single best predictor of AIP effectiveness is whether a client was satisfactorily discharged from a program. However, several other factors were found to be strong predictors of recidivism among AIP clients:*

- *program discharge status (satisfactory and unsatisfactory completion);*
- *match between program intensity and client treatment level;*
- *level of program specialization;*
- *client substance abuse problem;*
- *mixing pre-trial defendants and sentenced offenders;*
- *unmet basic economic needs (e.g., housing, employment, education);*  
*and*
- *lack of services for low risk and pre-trial clients.*

1. **Given that the identified barriers to satisfactory completion of a program and successful community re-entry increase the likelihood a client is re-arrested, the Court Support Services Division shall examine ways to provide within its evidence-based program network the auxiliary services to address basic economic needs including, but not limited to employment, education, and housing.**

*Since 2003, the division has focused alternative incarceration programs on high and medium risk clients without adequate consideration of the potential risks among low risk clients. While these clients are less likely to be re-arrested than higher risk clients, almost one-third were re-arrested for a new crime within one year after admission to a program. Not giving adequate consideration to the potential risks among pre-trial and low risk sentenced clients is counterproductive to the overall evidence-based strategy adopted by CSSD.*

2. **As part of its evidence-based program strategy, CSSD shall develop a comprehensive understanding of the client profile, service needs, supervision requirements, and baseline recidivism rate for pre-trial and low risk sentenced clients, who account for almost half of the total AIP client population.**

The Court Support Services Division (CSSD), which administers and oversees the alternative incarceration program network, is currently spearheading a shift in its philosophy and process to focus on reducing recidivism among high and medium risk clients. It has adopted an evidence-based program strategy, which provides treatment, services, and supervision that: (1)

address the client risks and needs that have been scientifically shown to be predictors of criminal activity; and (2) have been found to significantly reduce recidivism rates.

Obviously, an evidence-based strategy does not exist without data, which is the evidence. *The Judicial Branch and CSSD have an abundance of quantitative data on defendants and offenders, but currently does not have the capability to accurately and readily link recidivism outcome data (criminal history) to program utilization and satisfactory discharge, and client assessment data.* The process used to compile a database for this study was unnecessarily cumbersome and time consuming given the branch's existing automated case management systems. While it was ultimately feasible to compile a database, *for all the data, the division had an unacceptably high data error rate.*

3. **The Court Support Services Division shall improve and integrate its two automated data management systems (CMIS and CRMV) to readily, reliably, and accurately: (1) analyze and track recidivism among the AIP client population; (2) develop new evidence-based programs; and (3) meet its statutory mandate to determine the effectiveness of alternative incarceration programs. It shall consistently use the CMIS client identification number in both systems.**
4. **The division shall collect and maintain client-based program performance data including, but not limited to:**
  - **all alternative incarceration programs to which a client is admitted during pre-trial or sentenced supervision by CSSD;**
  - **date of referral, admission, and discharge;**
  - **discharge status (e.g., satisfactory, unsatisfactory, other); and**
  - **AIP contract monitoring and compliance information.**
5. **CSSD shall standardize the definition of terms and centralize the process used to collect AIP client performance data from contracted provider agencies. It shall continue to collect this data on a monthly basis. The data shall be maintained in the division's case management information system.**

An evidence-based strategy is supported by evidence of the causes (predictors) of crime and research supporting correctional programs and practices provide to change criminal behavior. Without the evidence (data analysis), the strategy simply cannot be effectively implemented and any improvements in the recidivism rate cannot be tracked. This would defeat the underlying objective of the strategy. *It is apparent by adopting the evidence-based strategy the division recognizes the importance of data analysis. CSSD has allocated resources and staff to develop the technology to establish an automated data system, but it has not yet prioritized or given adequate resources to the data analysis (evidence) function.*

*Because it has out-sourced this function, CSSD has not established an internal, coordinated, and objective data analysis unit or process and, to date, has not conducted any of*

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*the principle analyses (e.g., client profile, baseline recidivism rate, treatment level and program intensity, and program effectiveness). The division is inexperienced in compiling data and conducting the sophisticated analysis necessary for effective managerial decision-making and efficient use of its resources. Without this capability, the division's implementation and assessment of an evidence-based strategy is seriously constrained.*

*Under its current organizational structure, CSSD has the functional components needed to improve data management and provide data analysis, but they are not operationally linked. The division will also need to retain experienced analysts and information technology staff.*

- 6. The Court Support Services Division shall allocate resources to and focus on developing an in-house alternative incarceration program review and analysis process and/or unit and establish a formal link between the division's Center for Best Practices and the Quality Assurance, Quality Control, Grants and Contract Monitoring, and Information Technology Units.**
- 7. The division shall conduct an on-going, comprehensive analysis of: (1) the AIP client profiles; (2) service needs and treatment levels; (3) determination of program intensity levels; (4) program discharge status and other predictors of recidivism; (5) the baseline recidivism rate; and (6) alternative incarceration program effectiveness for pre-trial and sentenced clients.**

CSSD does not directly provide alternative incarceration treatment and service programs. They are provided through a network of contracted provider agencies, most of which are nonprofit organizations. *The recommended data analysis will also assist contracted provider agencies in the programs they offer. It can be used to better assess clients, make appropriate program placements, and track client compliance and completion. The data are necessary for program development, monitoring, evaluation, and improvement.* Sharing data will help strengthen the partnership between CSSD and the contracted provider agency network, result in better service, and improve client outcomes.

- 8. CSSD shall share data with contracted provider agencies on a client basis, a program basis, and an aggregated basis including, but not limited to:**

***Client data upon referral:***

- CMIS client identification number;**
- full LSI and ASUS client assessment including recommended client treatment level; and**
- client status (pre-trial or sentenced), criminal conviction and sentence including docket numbers.**

*Program data quarterly:*

- utilization rate (and capacity);
- satisfactory discharge rate; and
- recidivism rate.

*Aggregate AIP measures annually:*

- utilization rate (and capacity);
- satisfactory discharge rate;
- recidivism rate; and
- contract program performance outcomes.

The recommended annual aggregate analysis shall combine the individual statistics of similar programs such as AICs for provider agencies to have a context for understanding their individual program statistics.

9. **CSSD shall include in its request for proposals (RFPs) for new and existing alternative incarceration programs comprehensive data analysis including, but not limited to:**

- profile of target client population including aggregate LSI-R and ASUS data for these clients;
- utilization and satisfactory discharge trends for the target client population and program category or type;
- baseline recidivism rate;
- predictors of re-arrest among target client population; and
- measures for identified contract performance outcomes (e.g., target recidivism rate).

The AIP contract award process is split within the Judicial Branch between CSSD and the Judicial Purchasing Unit. *The bifurcated contract award process is confusing, cumbersome, and results in unnecessary delays in alternative incarceration program start-up.*

10. **The Judicial Branch shall establish one comprehensive uniform contract process within CSSD that includes representatives from the Judicial Purchasing Unit in the bid review and contract award processes.**

In September 2003, the state Auditors of Public Accounts found some problems with CSSD's program monitor review and reporting processes, and recommended CSSD evaluate if the annual monitoring provided: (1) adequate assurance of service and program quality; and (2) proper review and report. The division addressed the state auditors' findings. *It appears, however, the division may have exceeded the state auditors' expectations and recommendations.*

- 11. CSSD shall establish and implement a contract audit schedule to allow contracted provider agencies with six months of continuous compliance to be audited semi-annually (once every six months) rather than monthly. The annual audit schedule shall remain in effect for all agencies.**

## **Recidivism Reduction**

*Connecticut's alternative incarceration system appears to meet the statutory objectives of controlling prison overcrowding, punishing and rehabilitating offenders, reducing court backlog, and protecting public safety. Since its inception, the alternative incarceration system has benefited from consistent and committed leadership within the Judicial Branch and Court Support Services Division. As a result, the alternative incarceration concept has evolved from a way to simply address prison overcrowding to a vital component of the state's new initiative to reduce recidivism.*

*With the enactment of the state's alternative incarceration concept in 1990, the Court Support Services Division was mandated to evaluate the effectiveness of alternative sanction programs. It has failed on an on-going basis to meet that mandate.*

During the initial implementation of the alternative sanction concept in the 1990s, CSSD narrowly defined the eligible client population and limited the program to sentenced offenders who absent the alternative sanction program would have been incarcerated. These clients became known as "jail bound" offenders. Those clients were targeted because diverting that population from prison had the most immediate impact on prison overcrowding. Over the past 20 years, the program network has expanded. In response, *CSSD has appropriately expanded the AIP network beyond the original target "jail bound" offender population. Since all pre-trial defendants and sentenced offenders are potentially at risk of re-arrest, the focus only on the original "jail bound" offender is not a logical distinction and would, in fact, be shortsighted especially given the state's new focus on reducing recidivism.*

*The program review committee agrees in theory with CSSD that the evidence-based efforts are the most likely method to affect a systematic change in the way community-based alternative incarceration programs have traditionally been developed and administered. The premise of the evidence-based strategy makes sense. Any improvements aimed at targeting specific client populations and/or their needs will better serve AIP clients, and thus, achieve the overarching goals to reduce recidivism, control prison overcrowding, and protect the public. However, the national research supporting evidence-based programming is limited. The evidence the strategy will be effective on the Connecticut offender population has not yet been determined.*

*The program review committee has concerns about the Court Support Services Division's implementation of the evidence-based strategy. In general, the division has not sufficiently completed the preliminary analysis stages or established the proper organizational structure to implement and administer an evidence-based program strategy as intended by the original research and criteria. Without the proper foundation, the strategy's long-term success will be undermined.*

*Also, it has not identified a standard set of contractual outcome measures for evidence-based programs. Without this information, the division will not be able to take corrective action to modify or develop evidence-based programs.*

While a considerable amount of CSSD's time, efforts, and other resources are spent on researching and understanding the evidence-based strategy, a critical planning element is lacking. *The division has not established a long-range strategic plan to identify the fundamental decisions and actions that will guide the implementation of the evidence-based strategy, evaluate its success, and improve upon its failures.*

**12. The Court Support Services Division shall develop a three-year strategic plan for the state's alternative incarceration concept and implementation of the new evidence-based program strategy. The plan shall identify the objective criteria and procedures for prioritizing AIP client needs and system expenditures based on the existing objectives of the program and the goals of the offender re-entry strategy (P.A. 04-234) to: (1) assist in maintaining the prison population at or under the authorized bed capacity; (2) promote the successful transition of offenders from incarceration to the community; (3) support the rights of victims; and (4) provide public safety.**

**During the strategic planning process, the division shall examine, but not be limited to, the following areas:**

- **current AIP network capacity and capacity to serve;**
- **opportunities to expand including locations, types of programs, and enhancements to existing programs;**
- **client treatment levels, service intensity, and risk and supervision levels based on a client profile and baseline recidivism rates;**
- **capacity of the contracted provider agency network to expand current services, enhancements to existing services, and provide new services;**
- **measurable objectives; and**
- **resource allocation.**

**In reviewing expansion of the contracted provider agency network, the strategic planning process shall consider and address elements normally outside the division's control including, but not limited to, municipal zoning and siting issues, local tax issues,**

**opposition from “host” communities, and use of state bonding funds for AIP facility acquisition, expansion, and improvement.**

**The strategic plan shall be submitted to the Appropriations and Judiciary Committees by January 1, 2006. Annual progress reports on strategic plan implementation shall be submitted to the Appropriations and Judiciary Committees by January 1 of the subsequent three years. The strategic plan shall be used to assist the General Assembly and Judicial Branch in determining and prioritizing the expansion of the alternative incarceration program and the re-investment of existing and new resources to the AIP network under the state’s offender re-entry strategy (P.A. 02-234).**

Currently, the Judicial Branch does not include alternative incarceration program facility acquisition, expansion, or improvements as part of its state bond request. These projects, however, are eligible to receive state bond funds.

**13. CSSD should include alternative incarceration program facility acquisition, expansion, and/or improvements as part of its 2006 request to the Connecticut Bonding Commission.**

Contracted, nonprofit provider agencies are eligible for state authorized cost of living adjustments (COLA) as part of the state contracts. New contract agencies typically are not eligible for a COLA during the first year of a contract cycle. CSSD defines a “new” contract agency as: (1) an agency under contract for a program for the first time; or (2) any agency in the first year of a contract cycle even if the agency had been under contract to previously provide the program. Under its current definition, many established provider agencies do not receive an authorized COLA during the first year of a renewed contract cycle. *This practice is viewed by contract provider agencies, which are general nonprofit organizations, as punitive and unfair. It harms the partnership between CSSD and its AIP network.*

**14. CSSD shall amend its definition of a “new” contract provider agencies and award COLA adjustments to agencies continuing a previous contract if the service and general contract requirements remain the same in the new contract.**