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TO: Grace Abbott, Majority Aide, Rep. Millett

FROM: Mary Geddes, Staff Attorney, Criminal Justice Commission

DATE: March 16, 2016

RE: Additional Information pertinent to Judiciary Committee Members' Questions on 3/14/16

What do pretrial assessments measure?

A helpful discussion of the topic is found at this link, Pretrial Risk Assessment 101: Science Provides Guidance on Managing Defendants. "Unlike other [types of] risk/needs assessments, the pretrial risk assessment instrument contains factors that are associated with increased chances of only two types of failure during a short period of time: failure to appear for all court hearings and re-arrest on a new charge.

Typically, instruments weigh such factors as nature of the current charge, any pending charges, number of prior convictions resulting in jail time, prior violent convictions, failure to appear history, residential stability, employment/caregiver history, and drug abuse history. Which factors are predictive, and the weight of each risk factor, varies by jurisdiction. Some of this variation is based on differences in statutes, data quality, availability of supervision resources, etc. It is important to validate any instrument on your population and revalidate on a regular basis."

Are prisoners eligible for Medicaid/Medicare?[1]

Federal law prohibits states from using federal Medicaid funds to pay for care provided to incarcerated individuals, even if they are eligible and enrolled. **The inmate exclusion rule** results in most health care provided in jails and prisons being financed by the state or local corrections agency, rather than by the state Medicaid program.

[1] Most of the information I provide is taken from an excellent article dated December 2013 on the Council on State Governments website. Here is the link: Medicaid and Financing Health Care for Individuals Involved with the Criminal Justice System. "

However, there is **an important exception**. Medicaid will reimburse states for "inpatient" medical care provided to enrolled Medicaid recipients. This allows federal funds to be used when the incarcerated individual is admitted as an inpatient in a hospital, nursing facility, juvenile psychiatric facility, or qualifying care facility if it is separate from the corrections system, after the first 24 hours.

Therefore, incarcerated offenders who are already enrolled in Medicaid should not be terminated – only suspended - by a State program because the state may thereafter bill Medicaid for all medically-necessary (covered) services provided to that individual.

"States that make full use of opportunities to enroll eligible individuals in their criminal justice systems in Medicaid and appropriately leverage the program to finance eligible care can realize considerable cost savings by diverting more individuals to treatment—which is significantly less costly than incarceration—and by reducing reliance on state-funded health care services for the uninsured."

At least 14 states—Arkansas, California, Colorado, Delaware, Louisiana, Michigan, Mississippi, Nebraska, New York, North Carolina, Oklahoma, Pennsylvania, Vermont, and Washington— currently bill Medicaid for at least some eligible inpatient health services provided to incarcerated individuals, and additional states are exploring this option.

An additional benefit of only suspending the benefits of incarcerated person, and of a State encouraging Medicaid enrollment of eligible persons while they are incarcerated, is that individuals can more easily access Medicaid services following release, which can be critical to a successful reentry.

<u>What are earned compliance credits? (Referencing Recommendation 14: Establish a system of earned compliance credits)</u>

In Recommendation 14, the Commission proposed "earned compliance credits" for individuals who are under DOC supervision, i.e. probationers and parolees. Earned compliance credits are a type of performance incentive which can reduce the length of probation or parole. Supervisees who are compliant each month with every condition of their supervision (e.g. make meetings, pay restitution, participate in treatment, stay drug free, obtain employment) can have the length of their supervision reduced by as much as one-half.

This policy incorporates incentives to enhance offender motivation and deter violations; moves successful offenders off supervision so that probation and parole officers can focus on high-risk offenders; and frontloads supervision resources during the time period that offenders are most likely to commit a new crime or break the rules.

Why implement this change? Certainly, the current system isn't working. Recidivism (while declining) remains outrageously high, at close to two out of three offenders recidivating within three years. The number of admitted but unsentenced supervision violators is up 135% in the last decade. Although the length of a revocation sentence has shortened slightly over the same time frame, the net effect is that supervision violators now represent 22%, nearly one-quarter, of the Alaska incarcerated population.

Research has shown that parolees and probationers are at the highest risk of recidivism during the first days and weeks of supervision and that recidivism rates decline subsequently. Therefore effectively front-loading supervision resources, for that first year in particular, and highly-incentivizing compliance during the same period serves to quickly separate the proverbial wheat from the chaff. It also heightens personal

accountability. Those who can be motivated and have the ability to self-rehabilitate will do so. However, those who cannot meet such incentivized benchmarks are clearly higher-risk individuals who do really need supervision.

Research also shows that moderate- to high-risk offenders gain the most benefit from supervision and that lower-risk offenders often do worse under these conditions. By allowing lower-risk offenders to reduce their sentences if they have fulfilled their obligations and conditions, and be done, probation can focus their resources on those who need it most.

Right on Crime notes "Providing incentives for meeting case-specific goals of supervision is a powerful tool to enhance individual motivation and promote positive behavior change. Research on human behavior indicates that offenders attempting to change behavior are even more motivated by positive reinforcement than negative. Specifically, earned compliance credits motivate supervised individuals can be more motivated to participate in appropriate programs, stay sober, and retain a job."

In general, what do we know about the effectiveness of sex offender treatment and whether sex offenders can be rehabilitated?

A meta-analysis by the Washington State Institute of Public Policy found that sex offender treatment during incarceration saves money (i.e., had a positive benefit to cost ratio). WSIPP found that funds spent on sex offender treatment programs were offset by decreases in future sex offender recidivism, fewer victims and decreases in costs to victims. (Report can be accessed at http://www.wsipp.wa.gov/BenefitCost/Program/112).

A slightly different analysis performed in 2009 by Alaska's Institute of Social and Economic Research (using Alaska data in WSIPP's framework) found that sex institutional offender programs do reduce recidivism, although they do not necessarily save money because they can be expensive to operate. Nevertheless, ISER recommended that the Alaska Department of Corrections expand institutional sex offender treatment programs because of the recidivism reduction benefit. (The report is available at http://www.ajc.state.ak.us/sites/default/files/imported/acjc/economics/isercost.pdf).

Sex offenders can be rehabilitated through programming focused on appropriate boundaries and cognitive behavioral programming that identifies thinking errors (justifications that place blame for antisocial behaviors on someone else or something else), that holds offenders accountable in group settings for those thinking errors, and that builds an offender's ability to make better choices. This, along with safeguards in community supervision conditions (restrictions on residency, travel, and internet use) plus the public shaming associated with sex offender registries, are extremely effective at reducing sex re-offending.

A recidivism report published by the Alaska Judicial Council in 2011 used a representative two-thirds sample of 22,813 people convicted of a felony or Class A misdemeanor to document recidivism rates. Nine per cent of these offenders had been convicted of a sex offense. All of the offenders in the study had returned to the community in 2008 and 2009. The chart below shows that sexual offenders had substantially lower rates of recidivism than other types of offenders, which is consistent with national data. Notably, rearrests and reconvictions refer to any crime, not just sex offenses.

Recidivism Rates by Type of Felony Offender Alaska Judicial Council Recidivism Study (2011)			
	Re-arrests within one year	Remands within one year	Reconvictions within two years
Violent offense	36%	50%	38%
"Other" offense	36%	37%	19%
Property offense	34%	46%	37%
Drug offense	24%	35%	25%
Felony driving & alcohol related	21%	36%	25%
Sexual offense	18%	32%	20%

The sexual offenders in the AJC study who did recidivate were not very likely to be convicted of another sex offense (only one felon in this study who had originally been convicted of a sex offense was convicted of another sex offense).

Is someone held **pretrial** in (1) a CRC or (2) a private treatment program eligible for time-served credit against a prison sentence later imposed?

If an in-custody pretrial defendant is "held" (meaning, placed by DOC) in a CRC, that individual will later, automatically, get both day-for-day credit and good-time credit against a prison sentence.

However, a defendant is not automatically entitled to day-for day credit if he is residing in the CRC because he asked the court to place him there as a bail arrangement. (The CRC in this circumstance is a third-party custodian.) The defendant will have to apply to the court if he seeks day-for-day credit. Day for day credit will only be given if the defendant makes a timely request and satisfies the criteria of AS §12.55.027 ("Credit for time spent toward service of a sentence of imprisonment.")[i]

This is also true if the defendant has been permitted as a bail arrangement to reside in a private treatment program during the pretrial or presentencing phase of the case.

An application must be made in advance of sentencing under AS § 12.55.027 for day-for-day credit, and the defendant must show he is eligible. Anecdotally, this procedure gives rise to a lot of court hearings.

Under current law, good-time credit is not available for a bail arrangement, whether the defendant is in a CRC, in a private treatment program, or under restrictions of house arrest or EM.

[ii] (a) A court may grant a defendant credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring only as provided in this section.
(b) A court may grant a defendant one day of credit toward a sentence of imprisonment for each full day the defendant resided in the facility of a treatment program and observed the rules of the treatment program and the facility if
(1) the court finds that the treatment program meets the standards described in (c) of this section;
(2) before the defendant entered the treatment program, the court ordered the defendant to reside in the facility of the treatment program and participate in the treatment program as a condition of bail release or a condition of probation; and
(3) the court has received a written report from the director of the program that

(A) states that the defendant has participated in the treatment plan prescribed for the defendant and has complied with the requirements of the plan; and
(B) sets out the number of full days the defendant resided in the facility of the treatment program and observed the rules of the treatment program and facility.
(c) To qualify for credit against a sentence of imprisonment for a day spent in a treatment program, the treatment program and the facility of the treatment program must impose substantial restrictions on a person's liberty on that day that are equivalent to incarceration, including the requirement that a participant in the program
(1) must live in a residential facility operated by the program;
(2) must be confined at all times to the grounds of the facility or be in the physical custody of an employee of the facility, except for
(A) court appearances;
(B) meetings with counsel;
(C) employment, vocational training, or community volunteer work required by the treatment program; and
(D) periods during which the resident is permitted to leave the facility for rehabilitative purposes directly related to the person's treatment, so long as the periods during which the resident is permitted to leave the facility are expressly limited as to both time and purpose by the treatment program;
(3) is subject to disciplinary sanctions by the program if the participant violates rules of the program and facility; sanctions must be in writing and available for court review; and
(4) is subject to immediate arrest, without warrant, if the participant leaves the facility without permission.
(d) A court may grant credit against a sentence of imprisonment for time spent under electronic monitoring if the person has not committed a criminal offense while under electronic monitoring and the court imposes restrictions on the person's freedom of movement and behavior while under the electronic monitoring program, including requiring the person to be confined to a residence except for a
(1) court appearance;
(2) meeting with counsel; or
(3) period during which the person is at a location ordered by the court for the purposes of employment, attending educational or vocational training, performing community volunteer work, or attending a rehabilitative activity or medical appointment.
(e) If a defendant intends to claim credit toward a sentence of imprisonment for time spent in a treatment program or under electronic monitoring either as a condition of probation or as a condition of bail release after a petition to revoke probation has been filed, the defendant shall file notice with the court and the prosecutor 10 days before the disposition hearing. The notice shall include the amount of time the defendant is claiming. The defendant must prove by a preponderance of the evidence that the credit claimed meets the requirements of this section. A court may not consider, except for good cause, a request for credit made under this subsection more than 90 days after the disposition hearing.