

A STATE REENTRY/DRUG COURT PROPOSAL:

A MEANS TO ACHIEVE CORRECTIONS REFORM

REENTRY COURT SOLUTIONS

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INTRODUCTION

California faces twin prison crises of epic proportions--an explosion in the number of those sent to prison (80% of whom are drug-involved) and the failure of most reentry programs designed to reintegrate the ex-offender into society. This paper will offer perspective on Reentry/Drug Courts, a reform strategy that will reverse the rush to imprisonment and improve the success of prisoner reentry efforts-- while reducing the present system's crippling financial costs.

The following summary reflects major concepts found in documents, "A Proposal for a National Reentry Court Initiative: Four Policy Papers" (Tauber,J; 2009 and "A Proposal for a Reentry/Drug Court Demonstration Project (Tauber,J; 2009):

- The author proposes a "State Reentry Court Initiative" that will reduce dependence on prison by expanding drug courts into community-based systems that rehabilitate high-risk, drug-involved, non-violent felons, from their entry into jails and prisons through their post-release supervision.
- Prison populations increased by 700% since 1970, with over 75% imprisoned for non-violent offenses. Today, prison does not work for the non-violent felon. Sending non-violent offenders to prison, to live among the most dangerous and violent offenders is a disastrous public policy.
- Community is central to all our lives, thus keeping the offender local makes a substantial difference. Prison is a radical departure from what came before. Until approximately 200 years ago, community control had been the most effective and prevalent form of behavior control.
- Drug Court and its progeny, Problem Solving Courts (PSC) are an attempt to replicate that community control. Drug Court and PSC are not radical, but research based models that provide the most effective control of offender behavior. Reentry/Drug Court (RDC) is a circular system reflecting the logical evolution of drug court beyond conventional pretrial program parameters.
- RDC works with the offender from the time of arrest through completion of probation/parole. RDC focuses community-wide coordination efforts upon both jail offenders and prison returnees. High-risk drug-involved offenders (who make up 80% of state prisoners) do best in drug court. Drug court success can be extrapolated to high-risk drug-involved offenders in RDC systems.
- Drug Court has the expertise, structure and process in place to involve large numbers of high-risk offenders. Drug Court is seriously underutilized, serving less than five percent of drug-involved offenders. RDC will expand drug court by adding non-violent, high-risk offenders.
- Jail-based RDC allows communities to keep the non-violent offender in local facilities (rather than prison); The RDC team is involved from arraignment through the completion of probation. Substantial incentives, including reductions in jail and probation terms are major motivators.
- Prison-based RDC has the potential to fix a prison reentry system that returns 60% of offenders to prison within 3 years of release. RDC will maximize "reintegration" of the returnee into the community through organizational/agency collaboration and court-based supervision/monitoring.

- Just because “reentry programs” are well resourced and well intentioned doesn’t guarantee success. RDC provide the motivation and accountability that make reentry programs work.
- A number of states have created successful “split sentencing” jurisdiction that allows prison returnees to be supervised by the RDC and staff both before and after a prison term. \
- The criminal justice system is cautious, clinging to “conventional wisdom” and averse to change. Evidence-based practices (EBP), best exemplified by drug court and PSC, will require extraordinary and innovative incentive and implementation strategies to successfully overcome CJS resistance.
- “Structurally Accountable” programs, coordinated at the federal/state levels, subject to strong leadership and state incentives, meeting state-wide performance based criteria, and structured to provide community-wide support, involvement, and coordination are critical to effective programs.
- State-wide training of CJS leaders (.i.e. presiding judges, drug court judges, etc.) and drug court teams will be critical to implement state wide standards in reentry court systems.

I. REENTRY COURTS ARE CRITICAL TO EFFECTIVE REENTRY SYSTEMS

One obvious way to deal with exploding prison populations and prisoner reentry failures is to refrain from sentencing non- violent offenders to prison in the first place.

Judge driven courts provide the leadership, focus, and motivation to make reentry programs successful. The most common judge driven model relies upon “split sentencing” jurisdiction to create a seamless supervision and rehabilitation process. A non-violent felon (drug-involved or otherwise) is sentenced to prison, to be returned to the court for a probationary period following prison, under the jurisdiction and active supervision of the reentry court.

While reentry from prison is a critical issue, the possibility of keeping the offenders in the local community (with an appropriate jail term), and using prison only as a last resort needs to receive equal attention. Creating an effective county jail-based reentry court program offers the possibility of reducing the state prison population with its extraordinary costs, keeping offenders local, while increasing public safety within a seamless and comprehensive jail-based reentry court system.

Part of the problem in establishing a jail-based reentry/drug court is the reluctance of the CJS to deal with the high-risk offender. Low/medium risk offenders do not need, nor do particularly well, in drug court (research shows them doing no better than those in control groups). Yet many communities prefer to fill their drug courts with offenders that could be better treated in less intensive programs, taking up space and resources better suited to the high-risk offender.

II. EXAMPLE OF A PROPOSED STATE-WIDE REENTRY/DRUG COURT SYSTEM

This dual mode model would optimally deal with four basic populations; A. those with new felony offenses, who receive a jail or other community-based sentence in lieu of Prison; B. those with felony probation violations; C. those returning to the community from jails and prison; AND D. those with parole violations.

Defendants to be sentenced in the Reentry Drug Court (whether on a new offense or probation /parole violation) are assessed for program eligibility as soon as they are brought into custody. If they meet program criteria and choose to opt in, they enter a guilty plea to the offense in front of the reentry/drug court judge and staff. Assessment and evaluation by probation and jail staff, for appropriate in-custody (later out of custody) rehabilitation programs, should follow immediately.

A model sentence would uniformly include Imposition of State Prison Sentence Suspended for a period of five years, under the following conditions: (1) 1 full year in the county jail; (2) no credit for time served up until date of plea (encouraging early program entry, optimally within 1 week of arraignment); (3) no good time/work time, except for what is granted as part of a Reentry Court Incentives Program. At sentencing (optimally 15 days after arraignment), the reentry judge would inform defendants of the team's requirements for successful in-custody rehabilitation. The defendant would then reaffirm the plea, accepting all program and probation condition, or opt out.

The in-custody participant appears in court every 2 months for a progress hearing, with opportunities to earn substantial reductions in both jail and probation terms. Those fully participating in rehabilitation/education programs could earn up to a 6 month reduction on a 1 year jail term (1 month at 1st progress report; 2 months at 2nd; 3months at 3rd). Out of custody and under the supervision of the reentry team, participants would be required to attend progress hearings every 3 month, earning reductions in fines fees and probation terms (a 2 month reduction in probation earned at Progress Reports would reduce a 5 year probation term to 2 1/2 years). [Note: Prison or other sanctions remain potent responses to serious probation violations]

III. DEVELOPING FUNDING STRATEGIES THAT WORK

Local agencies are very good at promising reform, policy implementation, and/or coordination with local community, while notorious for doing none or very little of the above. "Structurally Accountable" models need to be implemented whose very structure promotes coordination, stability, and program effectiveness over time.

Strategic models, such as "Co-funded Systems", allocate resources to the program as a whole, relying on the system's participants to determine the proper distribution of resources. Because continued funding depends on the effectiveness of policy implementation, the success of the program becomes a priority for all. Potential joint funding and monitoring by state and federal agencies further reinforces shared goals and encourages the CJS to take the federal and state policy mandates seriously. Implicitly, the funding agencies must be willing to withdraw funding should the local CJS fail to fulfill its obligations.

IV. CHALLENGING CONVENTIONAL WISDOM

The criminal justice system (CJS) and related agencies tend to be extraordinarily wary of change, no matter how compelling the reasons for reform. They are extremely protective of what they see as their independence and their prerogatives (this is especially true among elected judges and prosecutors). Recently, the promotion of Evidence-Based Sentencing Practices (EBP) by CJS leaders suggests the possibility of changes in conventional sentencing practices. While the EBP movement is a welcome development, its agenda will likely meet strong opposition.

V. RECOMMENDATION: A STATE REENTRY/DRUG COURT INITIATIVE

Establish a state reentry/drug court initiative, which will expand the population served by drug courts, by creating dual purpose drug court systems intended to keep non-violent offenders in jail-based reentry courts and provide prison-based reentry courts for returning prisoners.

- 1. The AOC should devise EBP criteria for jail-based and prison-based reentry courts providing standards for eligibility, sanctions/incentives, structure, programs resources and services.**
- 2. The AOC should provide substantial incentives to local jurisdictions, to combine funding sources in non-profit corporations or other structures dispersing resources community wide.**
- 3. The AOC should devise “Counter-Incentives” that encourage local jurisdictions to place high-risk non-violent offenders in reentry/drug courts, keeping offenders in local communities.**
- 4. The AOC should devise guidelines to limit RDC to high-risk, non-violent offenders.**
- 5. The AOC should work to increase resources to local court systems, probation agencies, and rehabilitation service organizations, to allow local jurisdictions to create county jail-based reentry/drug court systems that provide comprehensive community-based interventions.**
- 6. The AOC should incentivize and encourage local jurisdictions to adopt procedures and standards that provide substantial incentives for offenders placed in jail-based RDC.**
- 7. The AOC should propose “split sentencing” authority that allows judge driven reentry courts.**
- 8. The AOC should encourage the return of prison funding to communities with reentry courts.**
- 9. The AOC should promote strategies to overcome CJS resistance to RDC.**
- 10. The AOC should promote “Structurally Accountable” programs which promote coordination, effectiveness, and the sharing of resources among participating agencies and organizations.**
- 11. The AOC should develop educational curriculum and training to motivate CJS leaders and involved agencies and personnel to be effective administrators and participants of RDC.**
- 12. The AOC should promote program effectiveness through a state coordinator responsible for the development of education, training, and monitoring of effective RDC programs.**