

A PROPOSAL FOR A NATIONAL REENTRY COURT INITIATIVE

FOUR POLICY PAPERS

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EXECUTIVE SUMMARY

The following summary reflects the major concepts contained in this document:

- NADCP proposes a “National 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 or “take it to scale”, by adding 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 50% 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 “split sentencing” jurisdiction that allows prison returnees to be supervised by the RDC both before and after a prison term. Such judge-driven RDCs, along with hybrid RDC (often parole centered where court have no jurisdiction) are promising innovations.
- 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 need to employ innovative implementation strategies to successfully overcome CJS resistance.
- Strong national leadership and innovative funding strategies are needed to reform reentry policy. “Structurally Accountable” programs, coordinated at the federal/state levels, subject to strong federal incentives, meeting federal performance based criteria, and structured to provide community-wide support, involvement, and coordination are critical to effective programs.

Introduction To Reentry/Drug Court: The Importance of Community-Based Systems

Community or its absence pervades everything we do. It controls our behavior through a socialization process that begins almost from birth. Where it seriously deteriorates, “niche communities” fill the void, and can prove to be as destructive as the gang cultures in our prisons or as potentially beneficial as a church based youth choir.

State prison is a radical departure from what came before in the U.S., going back little more than 200 years. While prison is a necessary institution and provides an appropriate response to violent crime, it is not effective for non-violent offenders. Keeping non-violent offenders separated from family, friends, jobs, education, treatment and/or rehabilitation resources that exist in local communities, and isolating them among dangerous and violent criminals is a recipe for disaster.

The proven effectiveness of community control is not a historical vestige, but a critical means for controlling offenders, whether on probation, in treatment programs or county jail. Throughout history, communities have relied on social control to successfully encourage acceptable behavior and to correct the unacceptable. Drug Court and Problem-Solving Courts are successful because they replicate the extraordinary ability of community to control anti-social behavior. Drug Court creates a criminal justice system (CJS) environment where court-based therapeutic communities can thrive and treatment, rehabilitation, reentry, and crime reduction strategies can succeed.

The following four policy papers demonstrate how drug court, which serves five percent of drug involved offenders (NADCP data) can and should expand to accommodate the majority of high-risk drug-involved non-violent offenders through a comprehensive “next generation” drug court system, the Reentry/Drug Court (RDC). Think of RDC as the back end of a circular drug court system, dealing with custodial and post-custodial offenders, rather than just pre-trial participants. Successful implementation of RDC will require a paradigm shift in criminal justice thinking:

- *that community is central to all our lives, and that keeping the felon local makes a difference*
- *that even well resourced community reentry programs fail without offender accountability*
- *that RDC (a community-wide drug court system) requires full participation of all interveners*
- *that financing and resourcing of “reentry” systems need to be community-wide decisions*
- *that powerful financial interests stand to benefit when we choose state/prison over local/jail*
- *that RDC cannot exist as an isolated program, but only as a part of a fully integrated CJS*
- *that there tends to be a disconnect between policy makers/researchers and CJS practitioners*
- *that we often reach false conclusions based upon the myths of “conventional wisdom”*

That last point was brought home to me, when I recently reviewed a policy paper I wrote as one of a five part series for the Clinton transition team in 1992; The Principles of Court Ordered Rehabilitation: A Reality-Based Approach To The Drug-Using Offender. In it I tried to reach beyond the myths that we practitioners live by, to the truths that work for those caught in the cycle of drug abuse and criminality. Though accepted in principle, the drug court concepts espoused in that paper have failed to approach their full potential. It may be time to take that analysis to the next level, exposing the myths that continue to hold us back and promoting truths that will help us realize our goal of a more just, humane and effective criminal justice system.

REENTRY COURT POLICY PAPER NO.1: PROPOSAL FOR A NATIONAL REENTRY COURT INITIATIVE

This administration faces twin prison crises of epic proportions--an explosion in the number of Americans 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 a reform strategy that will both reverse the rush to imprisonment and substantially improve the success of prisoner reentry efforts-- while reducing the present system's crippling financial costs.

THE DIMENSIONS OF THE CRISIS

The Pew Center on the States released a report in 2008 finding that one in every 100 adults is now behind bars, the cost of imprisonment over the past twenty years has increased four fold (from \$10.6 to \$44 Billion), debilitating prison overcrowding is accompanied by over 600,000 ex-prisoners reentering our communities each year, and within three years of release, two thirds are rearrested and one half are returned to prison.

OBSTACLES TO A NATIONAL REENTRY COURT INITIATIVE

Breaking existing prison-dominated sentencing patterns will be extraordinarily difficult. There are substantial incentives for following the “conventional wisdom” that felons, non-violent or otherwise, belong in prison. Sending non-violent offenders to prison allows local jurisdictions to shift financial costs to the states. The prison industry is an increasingly powerful economic and political force championing imprisonment. Politicians (often judges and prosecutors) see prison as safe and politically advantageous. Imprisonment remains the easy and conventional sentence.

THE OVERWHELMING FINANCIAL AND HUMAN COSTS OF PRISON

The twin prison crises are slowly strangling and bankrupting many states, as essential services are threatened by the cost of prison expansion. Many states find overcrowded prisons under the threat of federal receivership. Prison populations have increased 700 percent since 1970, with over 75% imprisoned for nonviolent offenses¹. Tragically, non-violent offenders are introduced to violent criminal lifestyles in prison, while proven community-based alternatives, remain largely ignored.

COMMUNITY-BASED CONTROL: THE MOST EFFECTIVE ANTI-CRIME STRATEGY.

At the beginning of the 19th century, prison was a radical departure from existing community-based control strategies. With the breakdown of societal and community norms, incarceration and prison, in particular, began its transition to “conventional wisdom”. But prison’s ability to prevent crime has largely run its course (Pew reports a 50% return rate) and drug courts are once again proving that community-based strategies are the most effective means to control non-violent offenders. The drug court team (including the judge) and other practitioners replicate a community where institutionalized and systemic structures assure the program’s effectiveness and survival, while a larger community of practitioners and offender/participants exert control over offender behavior.

¹ All data (without attribution) are provided by the Department of Justice, Bureau of Justice Statistics

REENTRY/DRUG COURT: THE COMMUNITY-BASED ALTERNATIVE TO PRISON

RDC has the potential to successfully focus community-wide energies and institutional attention on the problem of the returning felon, where well-intentioned, well-resourced multi-modal reentry programs often fail (see Policy Paper No. 3). Optimally, offenders participate in what might be described as a comprehensive drug court, appearing at progress hearings before the judge on a regular basis to receive incentives and sanctions, and participating in mandatory and/or incentivized community-based programs, during the in-custody and out-of-custody segments of the program.

THE IMPORTANCE OF COMMUNITY: KEEPING THE OFFENDER “LOCAL”

A successful RDC provides seamless services and a level of accountability and coordination unheard of in other programs. Whether prison or jail based (described in the next two papers), the court creates a community focus for city and regional efforts, by engaging the offender in the reentry community, providing easily accessible community resources, keeping the offender close to jobs, services and family, and regularly monitoring the offender in the local community.

THE REENTRY/DRUG COURT SYSTEM: BASED ON TWENTY YEARS EXPERIENCE

It is important to recognize that RDC is not a new or radical model, but a logical extension or next generation of the research-based drug court model that has proven itself successful over the past twenty years. RDC is the final piece (the back end of a circular system) in an expanded or comprehensive drug court, allowing us to deal effectively with those who need drug court the most, the high-risk, drug-involved, non-violent offenders entering or returning from our jails and prisons.

RESEARCH-BASED REENTRY/DRUG COURT WORKS FOR HIGH-RISK OFFENDERS

In 2003, Dr. Doug Marlowe, of the University of Pennsylvania’s “Treatment Research Institute” reported, “We know that drug courts outperform virtually all other strategies that have been attempted for drug-involved offenders”. More importantly, Dr. Marlowe noted that “high-risk [drug involved] offenders who have more severe anti-social predispositions or a history of not having responded to standard community-based treatment services” did especially well in drug court. As the Bureau of Justice Statistics has estimated that 80% of those imprisoned are drug-involved (and applying Dr. Marlowe’s definition, largely “high-risk offenders”), the benefits of engaging those returning offenders in a RDC are overwhelming and obvious. *[It should be acknowledged that, as not all drug courts are created equal, federal performance benchmarks, best practices, and incentives as well as accreditation procedures will be needed to insure RDC effectiveness.]*

USING EXISTING STRUCTURE TO JUMPSTART REENTRY/DRUG COURT SYSTEMS

Drug courts have most, if not all, of the infrastructure, expertise and community partners in place that an RDC requires. Adding reentry court participants to an existing drug court would vastly increase the number of program participants, while improving high-risk offender compliance and successful reentry. Although it is estimated that there are over 2000 drug courts in the U.S., it is generally believed that most drug courts are substantially underutilized, with less than 5% of drug involved offenders placed in drug court programs. Putting reentry participants into drug court programs will create “systems” that work with offenders, pre-plea through post-custodial probation or parole, increasing the reentry/drug court’s cost-effectiveness, efficacy, and acceptance within the criminal justice system(CJS practitioner acceptance remaining a serious issue in many jurisdictions)

ENDORSEMENT BY STATE CHIEF JUSTICES AND ADMINISTRATORS

All 50 State Chief Justices and their State Court Administrators have gone on record in both 2000 and 2004, as unanimously endorsing the problem-solving court model, concluding that "drug court and problem-solving court principles and methods have demonstrated great success in addressing certain complex social problems, such as recidivism, that are not effectively addressed by the traditional legal process". *Conference of Chief Justices CCJ RESOLUTION 22*.

In 2007, CCJ endorsed research-based sentencing practices, often referred to as "Evidence-Based Practices" (EBP). Judge Roger Warren (ret.), President Emeritus of the National Center for State Courts (NCSC), wrote in 2007 on EBP and drug court, "The one area of state court operations whose current sentencing practices most closely conform with EBP is "problem-solving courts", which may explain the success that so many...problem-solving courts have achieved over the last fifteen years in reducing recidivism among the affected offenders" (82 Indiana LJ 1309).

RELEVANCE OF CONCEPTS AND PROPOSALS TO FEDERAL JUSTICE SYSTEM

Federal prison populations have doubled in the past ten years, with 90% incarcerated for non-violent offenses. The concepts and proposals found in these papers have as much relevance and applicability for federal sentencing, detention, and prison, as they do for the state systems.

CONCLUSIONS

In the Monograph, *REENTRY DRUG COURTS*, published in 1999, we wrote of the need to close the "custody gap" in drug courts: "Reentry drug courts provide a mechanism for the successful reintegration of the serious drug-using offender back into society. This is done by keeping offenders engaged in corrections-based treatment and court-based monitoring throughout their custody term and once released, providing a continuity of appropriate treatment and court-based accountability in the community." (National Drug Court Institute Monograph #3; J Tauber, W. Huddleston, p.2)

Unfortunately, since we wrote that passage there have been few reentry courts established and little significant data collected. What we do know now, however, after twenty years of research on drug courts, is that they provide the most successful rehabilitation strategy to date for high-risk drug-involved offenders, and a promising model for effective EBP. We can reasonably expect to replicate the success of drug courts with "high-risk", drug-involved, non-violent offenders in RDC systems. (See D. Marlowe , EBP in Drug Court, to be *published 2009*, Chapman Journal of Criminal Justice).

RECOMMENDATION: CREATING A NATIONAL REENTRY COURT INITIATIVE

- 1. Establish a national reentry court initiative, which will expand the population served by drug courts, by creating reentry/drug court systems intended to keep non-violent offenders in jail-based reentry courts and provide prison-based reentry courts for returning prisoners.**
- 2. Devise EBP criteria for jail-based and prison-based reentry courts that provide parameters for eligibility, sanctions/incentives, structural integrity, and programs resources and services.**
- 3. Provide substantial incentives for states and local jurisdictions, to establish and maintain community control of non-violent offenders, to keep non-violent offenders local, in jail-based and prison-based reentry/drug courts that fully comply with established federal criteria.**

REENTRY COURT POLICY PAPER NO.2: COUNTY JAIL-BASED REENTRY COURTS

It should be noted that one obvious way to deal with exploding prison populations and prisoner reentry failures is to refrain from sentencing offenders to prison in the first place. We need to begin thinking of prison as the sentence of last resort, and the reentry/drug court system as the mainstream community-based approach to the non-violent, high-risk, drug-involved offender.

The problem with our reliance on extended incarceration is not in its use, but in our overdependence upon it. Prison works by protecting the community from the violent, predatory and dangerous offender. But imprisonment does not work for non-violent offenders who compose 75% of prisoners, nor for substance involved offenders who make up 80% of those imprisoned. Dr. Doug Marlowe, of the University of Pennsylvania wrote in 2006, “The research evidence is quite clear that if incarceration is imposed as a final disposition-with no further intervention from the court and no further provision of services-then it has no palliative effects whatsoever. The average effect of prison sentences on crime and drug use is close to zero.”

FOCUSING REENTRY/DRUG COURT ON NON-VIOLENT, HIGH-RISK OFFENDERS

Typically, when one thinks of a reentry process, the focus is on state prisoners reentering society. While this is a critical issue (see Policy Paper No.3), the possibility of keeping the offenders in the local community (with an appropriate jail term), and using prison as a last resort has never been fully explored. 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 (Dr. Marlowe’s 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.

THE COUNTY JAIL-BASED REENTRY MODEL: AN INCENTIVIZED SYSTEM

Optimally, jail-based reentry/drug courts engage the offender at the time of plea and assessment through sentencing and entry into a jail-based rehabilitation program. At the core of every successful reentry court should be substantial incentives and rewards such as reductions in custody and probation terms (rather than symbolic or inconsequential ones). An incentivized process, often using a “Contingency Contract”, spells out the consequences of compliance and noncompliance at its very beginning, motivating participants to take control of their own rehabilitation. In effect, the offender is given the opportunity to become a participant rather than a self-described victim of the program. When released into the community, the same reentry court judge and team continue to monitor the probationer through progress hearings, while substantial incentives are used to maximize successful reintegration into the community.

AN EXAMPLE OF A PROPOSED JAIL-BASED REENTRY/DRUG COURT SYSTEM

A model sentence might optimally include Imposition of State Prison Sentence Suspended for a period of five years, under the following conditions: (1) one full year in the county jail; (2) no credit for time served up until the date of plea (encouraging early program entry); (3) no good time/work time, except for what is granted as part of a Reentry Court Incentives Program.

Program eligibility would be determined soon after the arrestee is taken into custody. Defendants would enter a conditional guilty plea to a felony in front of the reentry court judge and team (optimally within a week of arraignment). At sentencing, the reentry judge would inform defendants of the team's expectations for successful in-custody rehabilitation participation. The defendant would then formally reaffirm the plea, accepting all program and probation conditions.

The in-custody participant appears in court every two months for a progress hearing, with opportunities to earn substantial reductions in both jail and probation terms. Those fully participating in rehabilitation/education programs would earn up to a six-month reduction on a one-year jail term. Once out of custody (and under the supervision of the reentry team), participants would be required to attend progress hearings until the probation term expires. The participant continues to earn reductions in probation terms, fines and fees, based on progress in the community. [Note: Prison or other sanctions remain potent responses to probation violations]

CONCLUSION

The county jail-based reentry/drug court has the potential to become the mainstream approach for at least half our prison population, the high-risk drug-involved non-violent offenders. Participants move through the program together, while engaged with the local community and its rehabilitation programs. Finally, during an in-court graduation ceremony, successful participants graduate from in-custody to out of custody status, leaving the courthouse with family members, friends and certificates of accomplishments, rather than as hardened ex-cons with little hope or direction.

RECOMMENDATIONS

Most local jurisdictions transfer all economic costs to the state when a prison sentence is imposed. This presents a powerful inducement for jurisdictions to send felons to prison, to avoid local jail and probation expenses. Creating "counter incentives" to encourage jurisdictions to keep non-violent felons under local community control is critical to reducing our dependence on prison.

- 1. "Counter-Incentives" must be devised that encourage states and local jurisdictions to place high-risk non-violent offenders in reentry/drug courts, keeping such offenders local. Those who are not high-risk offenders should not be in the intensive, resource-rich RDC.**
- 2. Increased resources must be provided 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.**
- 3. Federal incentives should encourage states to develop accreditation procedures and standards (including state-wide contingency contracts) that provide substantial incentives for offenders placed in jail-based RDC.**

REENTRY COURT POLICY PAPER #3: PRISON BASED REENTRY COURTS

The prisoner reentry system in the U.S. is broken. Prisoners are coming home in greater numbers than ever before—and with prison overcrowding—often sooner than later. Supervision and rehabilitation, historically the province of the executive branch of state government is largely ineffective. The Pew Charitable Trust reports, 600,000 prisoners will be released this year, with sixty percent rearrested and half returned to prison within three years.

REENTRY COURT SYSTEMS: BEST AT REINTEGRATING RETURNING FELONS

For the most part, state courts have minimal jurisdiction over the felon once sentenced to prison. Research shows high-risk drug-involved offenders (which make up at least a majority of those returning from prison) do better in judge-driven rehabilitation programs, such as reentry/drug court systems, than state parole agency programs or any other reintegration strategy yet devised.

A systems approach to drug court requires an extraordinary level of integration of effort. It requires institutional, agency, and community commitment to systemic and structural integrity over the long term. It requires a willingness to share resources, fully participate as a system's partner and assist each other as well as hold each other to their obligations and responsibilities.

In his book, But they all came back: "Facing the challenge of prison reentry, Jeremy Travis, President of the John Jay School of Justice and formerly Director of the Department of Justice's Bureau of Justice Statistics, had this to say about prison-based reentry court:

*"Reentry Courts offer numerous advantages over our current system of reentry supervision. Judges command the public's confidence and, by contrast, our parole system is held in low public esteem. Judges carry out their business in open courtrooms, not closed offices, so the public, former prisoners, family members, and others can benefit from the open articulation of reasons for the government's decisions. Judges have been trained in the law, with experience in applying legal standards to facts about making tough decisions after weighing advocates' competing proposals...**However, the most compelling reason for moving toward a universal system of reentry courts is these court's ability to promote reintegration.**" [Emphasis added]*

Whether prison or jail-based (see Policy Paper No.2), a unified reentry/drug court system creates a focus for city and region wide efforts to coordinate a wide range of reintegration strategies: rehabilitation and treatment, education and mental health, job training and placement, housing and health, as well as regular monitoring through police, parole, and probation. The courts stand in a unique position; in effect, at the center of a circle of interveners, where service agencies and community organization can interact. Participating organization are used to working closely with or under the supervision of the courts. In fact, the court is often the only place that some agencies such as police and treatment ever have significant contact. Agencies traditionally unfriendly or even hostile to one another, work cooperatively under the court's leadership.

JUDGE DRIVEN COURTS ARE THE MOST EFFECTIVE REENTRY COURT MODEL

A number of states such as Missouri, Texas, Indiana, Delaware, Ohio and Nevada allow reentry/drug courts to regain jurisdiction over high-risk drug offenders sent to prison, once they return to their communities for rehabilitation, reintegration and supervision services.

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 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 judge and team.

Alternative reentry court models typically involve the use of state agencies, administrative law judges, and/or collaborations between parole or other executive agencies and the local court. By my count, there are as many as ten distinct variations of these executive agency based reentry courts. While clearly important innovations, that appear to provide much better results than ordinary parole, these alternative models lack judicial independence and leadership, and need to prove themselves to be more effective agents of successful reentry than their predecessors.

JUST BECAUSE IT’S CALLED REHABILITATION DOESN’T MEAN IT WORKS

It’s important to remember that just because a reintegration program or process is labeled rehabilitative or treatment based does not mean it will be effective. Dr. Doug Marlowe notes in his critique of Project Greenlight, a well resourced multi-modal, non-court based reentry effort in New York City, “Most offenders are characteristically irresponsible and have considerable difficulty satisfying basic obligations... It appears probable that without the leverage of sanctions, the in custody or reentering offender is apt to disregard rehabilitation programs and opt for doing as little as possible.” Meaning, it doesn’t matter how good the rehabilitation program is, if the participant is absent or lacks motivation (Note: Project Greenlight is no more). Judge driven reentry courts offer both the substantial incentives and sanctions that motivate the offender to successfully engage in the reintegration process and remain drug and crime free.

CONCLUSION

The preceding policy papers have been an attempt to focus on community-based reentry court as an alternative to prison and parole. To that end, they present a manageable framework for a reduction in imprisonment. The issue of our overdependence on incarceration is a much larger issue. What is needed is a systemic structure and analysis that can be adopted with reasonable expectations of local CJS compliance. While EBP based proposals such as the PEW Policy Framework to Strengthen Community Corrections (12/15/08) are promising, adoption at the local level is problematic and ability to achieve real compliance a critical issue. (Policy Paper 4)

RECOMMENDATIONS

State agencies that have had historic authority to monitor returning felons are reluctant to share that jurisdiction, authority and its attendant resources. Nor do most state courts have the resources, structure, or interest to discharge such responsibilities. It will take national leadership and powerful incentives to promote community based reentry/drug court systems.

- 1. Resources must be provided to encourage states to establish judge driven reentry courts.**
- 2. States must develop “split sentencing” authority that allows judge driven reentry courts.**
- 3. States must be encouraged to return prison funding to communities with reentry courts.**

REENTRY COURT POLICY PAPER NO.4 IMPLEMENTING A NATIONAL REENTRY COURT INITIAITVE

This paper follows three policy papers on a reentry/drug court proposal that promise extraordinary change in how we deal with felons both before and after a prison term. The proposed system is experiential, science-based and pragmatic. But even if adopted, it will face challenges within the criminal justice system, reflecting a profound resistance to change

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 ambitious agenda will likely meet strong opposition.

HUMAN LIMITATIONS OF REFORM

We've learned over the past fifteen years that most practitioners are largely motivated by how a proposed reform impacts them in their everyday life. While idealism may initially move the CJS, after a time the system usually returns to its previous state of inertia. Therefore, the best way to effectively implement substantial change within the CJS is to make sure that implementation of a proposed reform is seen as being in the institutional, professional and financial interests of the CJS and companion agencies. To do that will take strong national leadership, compelling federal incentives programs (The Department of Transportation state incentive's program is an excellent example) and an ability to reach out to the general public as well as the CJS and its practitioners.

DEVELOPING A PERFORMANCE BASED APPROACH TO INCENTIVES

The federal government has taken tentative steps to base its funding decisions upon the performance of local governmental programs. John Carnevale, former Budget Director at the Office of National Drug Control Policy, and a pioneer in the development of performance based criteria, wrote in 2005, "PART [the Program Assistance Rating Tool] is a method for assessing program performance and assesses four areas: program purpose and design; strategic planning; management; and results. Mr.Carnavale concluded that even though designed to provide relevant data to assist federal funding decisions, "the evidence does not indicate that PART was central to shaping the federal drug control budget". Performance-based criteria must be a national priority.

THE COLLABORATION PROBLEM AT FEDERAL AND STATE LEVELS

In the past, local program coordination suffered because of the inability of federal and state agencies to coordinate among themselves and present unified goals. Local agencies followed their own interests, supported by their federal/state sponsors and promoting their own constituencies. Those constituencies would compete rather than cooperate for limited resource.

DEVELOPING FUNDING STRATEGIES THAT WORK

National funding strategies have now been devised that encourage and mandate effective policy implementation across the CJS and companion agencies. For example, by requiring coordination as a condition of funding, program success should naturally become a shared goal of participating agencies. However, 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 (see below) need to be implemented whose very structure promotes coordination, stability, and program effectiveness over time.

CO-FUNDED REENTRY SYSTEMS: A STRUCTURALLY ACCOUNTABLE MODEL

Under one such structure or strategic model, described as “Co-funded Systems”, resources are allocated 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 co-funding obligations. (*A National Strategy For The Co-Funding Of Unified Drug Court Systems*, Tauber, 1993)

INVOLVING THE GENERAL COMMUNITY: A CRITICAL PART OF THE SYSTEM

It is important to involve the entire community--including government, rehabilitation, treatment, religious, and neighborhood organizations--in the planning, resourcing, and implementation of successful policy initiatives. There are great opportunities in the extraordinary resources and energy that the larger community can bring to a reform agenda. It should be acknowledged however, that the greater community is often viewed as an outsider and even a threat by the local CJS. Bringing community organizations, both governmental and non-profit, to the funding table will go a long way to correct that narrow view, and help develop community-wide cooperation and coordination that will promote successful “reentry” reform.

CONCLUSION

Many of the ideas discussed in this document date back to papers written fifteen years ago. Unfortunately, most of the issues discussed then, remain as problematic and relevant as ever. This writer’s concern is that this unique transitional moment may be lost, unless adopted reforms and innovations incorporate effective CJS implementation, monitoring and incentive strategies.

RECCOMENDATION

- 1. CJS resistance to change must be designed into EBP and other reform strategies.**
- 2. Program incentives and goals need to be coordinated on state and federal levels, and program effectiveness monitored through performance based criteria (PART).**
- 3. “Structurally Accountable” programs need to be designed whose structures promote coordination, and the sharing of resources among participating agencies and organizations.**