

STATE PRISON BASED MODELS

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INTRODUCTION

For the most part, state courts have minimal jurisdiction over the felon once sentenced to prison. Traditionally, judges have not had the authority to change sentences or supervise felons returning from prison. State agencies that have had historical authority to monitor returning felons are reluctant (extremely reluctant in many cases) to share that jurisdiction, authority and its attendant resources. Nor do most state courts have the resources or structure in place to discharge such responsibilities. Most judges, like their colleagues in probation, the county jail and other local agencies are glad to see the felon leave their jurisdiction and become the state's responsibility.

For obvious reasons, state prison based reentry courts have far less in common with drug courts than the county jail based model described above. Still, it is becoming apparent to many that the courts need to play a greater role in the reintegration of the returning felon (as they have with the drug user in their community). Felons are definitely coming home to our communities (with prison overcrowding, often sooner than later), and would benefit from a structured reentry/drug court program providing community based monitoring, rehabilitation, and reintegration services.

As we shall see, there are a number of states that are creating these innovative Reentry Court Models:

A: COUNTY-BASED JUDICIAL JURISDICTION MODEL

Responsibility for monitoring the returning felon rests with the same judge or court that sentenced the individual. Felons know that they will be returning to the court's jurisdiction and the control of the sentencing judge and probation department.

Comment: This is perhaps the most promising reentry drug court hybrid developed to date. The court maintains jurisdiction and authority over the felon and a well-structured program beginning (optimally) at the time of plea or probation violation, provides a seamless process, with the same personnel working with the participant over the course of the program. Future programs may see the value of interim progress reports and the opportunity for negative incentives while in prison.

Model #1: SPLIT SENTENCING/PRISON TO PROBATION

A few states have what is sometimes called split sentencing. This means a convicted felon can be sentenced to prison for a determinate sentence and returned to the jurisdiction of the court for a probationary period following the prison sentence.

COMMENT: While several states have given their courts this statutory authority, courts have generally been reluctant to accept the additional responsibilities that jurisdiction over the returning felon would bring. This may change as states provide additional judicial and other resources necessary to establish reentry courts dedicated to working with returning felons.

In Allen County, Indiana, offenders enter the Reentry court program post plea/presentence, receive treatment and monitoring in prison and are transitioned into the Reentry court to complete their sentence on probation.

MODEL#2: Split Sentencing/Returning for Special Court Program

A number of states allow the sentencing judge to send the felon to prison to complete a drug treatment or other rehabilitation program, to be returned to the sentencing judge and probation supervision after the successful completion of that program.

COMMENT: This places significant pressure on the offender to fully participate in the prison based rehabilitation program, measuring up to the expectations of the judge and probation official present at sentencing

Texas statutes provide for a County based prison sentence of up to one year to culminate in the felons return to the sentencing court and probation for further monitoring and rehabilitative services. Dallas reentry courts presently supervise several hundred felons who have been returned to county jurisdiction under existing statutory authority. The Court has final jurisdiction over the returning offender once that returnee leaves the state prison.

MODEL 3: SCARED STRAIGHT SENTENCE/RETURN TO COURT

This model relies on the state prison to provide relatively short upfront assessment and rehabilitative services before the offender is returned to state court jurisdiction for continued supervision, rehabilitative services and monitoring (and incarceration where appropriate). Typically the offender returns to the County and its Reentry Court after a three to six month prison term.

COMMENT: This program is based on a “scared straight” stratagem. Many states give a judge the jurisdiction to bring a sentenced state prisoner back to county court for resentencing and a possible term of probation rather than state prison. This would serve a similar purpose for Reentry participants, giving them a taste of prison before returning them to the County Reentry Court. Research suggests that informing the felon of the possibility of resentencing and local time would improve offender accountability and increase the success of such a program (...).

[A possible modification would have prisoners waive their state time in order to receive probation and enter the Reentry Court Program, thus maximizing leverage and increasing the incentives of the Reentry Court].

Missouri provides statutory authority to its courts to sentence offenders to prison with the possibility of early discharge after four months for resentencing as a means of incentivizing the offender and improving rehabilitation success.

Model #4: SINGLE CORRECTIONS AGENCY-BASED MODEL

This model is found in many smaller states where jails and prisons come under the same agency authority. Some believe unified corrections to be a substantial benefit to reentry courts by providing more cohesive and cooperative correctional services.

COMMENT: This model operates an integrated parole and probation system, with the potential for increased cooperation between corrections and the courts, and the courts maintaining its jurisdiction over the felon over the course of incarceration.

New Castle County, Delaware presents an example of a single corrections agency that is able to work directly with the courts to offer prisoners an opportunity for release into the community through probation monitoring and a reentry court.

MODEL #5: EARLY RELEASE/PRIOR TO TERM COMPLETION

Allowing the offender to reenter the community before formal release from Prison allows an incentivized reentry court to become involved early in the reentry process.

COMMENT: This model presents the possibility of doing a final assessment before release and introducing the offender to incentivized reintegration services and education while in custody/or concurrent with release into the community.

Nevada allows the offender to enter a halfway house environment before formally completing the prison term, and engaging the offender in educational, rehabilitation, and job related services while the offender is being supervised by the Reentry Court. Interestingly Nevada presents another example of a state where there is a single corrections/probation agency and the court has final say as to the disposition of reentry cases before it.

B: STATE CORRECTIONAL AGENCY JURISDICTION MODEL

Most states operate under the premise that the state correctional agency (or its parole equivalent) will have primary authority over the felon when he/she leaves prison. As such, Reentry Courts in these jurisdictions are either part of the corrections system or operate under the watchful eye of such an agency.

COMMENT: The benefit of using parole officials or administrative personnel are three-fold; they're familiar with the system and how it works, they are part of the criminal justice system and have access to funding and resources, and they have familiarity and access to participants while in prison and can begin incentivized progress hearings early.

On the other hand, parole is part of the bureaucracy that has largely failed to have an impact on this same Reentry population. Before accepting the continuation of this system, it would be useful to determine how it would be different from the present system and how it might be structured as a Problem-Solving Court to produce better outcomes.

MODEL #6: ADMINISTRATIVE HEARING OFFICER MODEL

Presently this model operates only when the felon is released from prison as a parolee.

COMMENT: This model has the advantage of a quasi-judicial official potentially engaging the participant in incentivized rehabilitation earlier in their prison term. Acting in the same capacity as the Reentry Judge, the official could hold progress reports on regular basis, order sanctions and incentives and move the participant forward toward release into the community. Upon release from prison, the official could continue to hold regular progress hearings (or shift the responsibility to a Superior Court judge).

The Harlem Reentry Court has been in operation since 2001. Presided over by an Administrative Court Judge who is a part of the state correctional agency, the judge operates the court as a problem-solving court, part of the larger service based Harlem Community Justice Center.

MODEL#7: RETIRED JUDGES PRESIDE IN REENTRY COURT

Retired Judges, as well as active Commissioners and other judicial officers may be used to provide a judicial presence in the Reentry court. At this time, this model operates within at least one existing Court Structure.

COMMENT: This collaborative partnership between Corrections and the Courts could be situated at a local Prison or nearby, allowing the emerging parolee to develop a relationship with the Reentry Judge, community based rehab programs and the Parole Authority. In the second phase, parolees could be ordered to report to the same Reentry Court Judge at their local court (or other appropriate facility) on a regular basis to review the parolee's progress and met out incentives and sanctions where appropriate.

Washoe County, Nevada uses two rotating retired judges to serve on the Reentry court.

Model #8: NO PAROLE/LIMITED PAROLE MODEL

A number of states have eliminated or allowed offenders to opt out of a parole.

COMMENT: Something of an object lesson, these states find themselves in the unenviable position of having little or no control of offenders when they leave prison.

Florida is an example of a state that has, at least formally, eliminated parole, but experiments in a significant way with split-sentencing and early conditional release.

C: COLLABORATIVE JURISDICTION MODELS

Jurisdictions are attempting to create collaborative Reentry Court structures that encourage the involvement of both the Court and Corrections agency.

COMMENT: State corrections agencies and the courts are struggling mightily to develop innovative hybrid courts that would feature the benefits of problem-solving courts, while corrections maintains formal control. While some programs have had initial success, over time the cooperation required tends to break down as controversies over the court's authority comes to the fore.

MODEL 9: COURT/CORRECTIONS; DUAL JURISDICTION MODEL

Many jurisdictions are developing collaborative programs engaging both the Courts and correctional authorities. Often, these courts have dual jurisdiction, as the offender may have a new county offense/and or probation violation along with a parole violation. Under these circumstances most collaborative models rely on the county to provide a problem solving court structure for responding to offender conduct, with the parole authority taking a participatory role (often as a staff participant).

COMMENT: This model relies on the abilities of Judge and Corrections personnel to work closely together and cooperate in the reentry process. Typically, the correctional authority has ultimate parole jurisdiction and may remove the offender from court to return to prison.

Based on existing Ohio statutory authority, the Richland county superior court Judge and a member of the Parole Board sit “en banc” in a pioneering Reentry Court that provides a Problem-Solving court structure for offenders who are under the jurisdiction of Corrections and/or the State Court.

MODEL #10: COLLABORATIVE HEARING COURT

A fair number of states are experimenting with various court/corrections collaborations. By far the most common is where the parolee is placed in a reentry court upon his release from prison (either immediately upon release or after a parole violation). Corrections maintains jurisdiction over the offender but takes a participatory role in the Reentry Court

COMMENT: The involvement of parole personnel at the reentry court level encourages better mutual understanding between the two systems. It also allows the court to do what it does best, develop a “community of interveners” focused on the judge and a “community of participants” that progress through the reentry court together.

In Marion County, Indiana, parolees are transitioned into a Reentry Court with parole staff fully participating in court proceedings and corrections providing reduced parole terms for successful program completion.

(See: Prison-Based Treatment And Reentry Courts, Reentry Drug Courts; NDCI Monograph series No. 3, pp. 9-13)