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Prison Reform Through Offender Reentry: A Partnership Between Courts and Corrections

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Although both court and correctional systems can rightly lay claim to being the impetus to prison reform throughout the history of American prisons, the relationship between the two criminal justice entities has rarely been described as a partnership. Traditionally, discussions that evoke both court and corrections matriculate into more contentious rather than cooperative dialogue. This has been particularly personified in regard to the relationship between corrections and the federal courts due to the plethora of inmate litigation alleging civil rights violations. Despite its effect on limiting the amount of inmate litigation, the Prison Litigation and Reform Act¹ has not

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1. Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996) (codified at 11 U.S.C. § 523; 18 U.S.C. §§ 3624, 3626; 28 U.S.C. §§ 1346, 1915, 1915A; 42 U.S.C. §§ 1997-1997h).

quelled the adversarial posturing between correctional personnel, inmate litigants and the federal courts.² Yet recently, the concept of offender reentry is spurring a spirit of cooperation between courts, corrections and other justice partners, such as crime victims, to the realization of a mutual goal toward greater prison reform.

Accomplishing prison reform through offender reentry initiatives is not a new concept to either the field of corrections or to court systems at any level of government. Both have historically provided variant programming and sanctions in an effort to change behavior and have enacted or improved policies or rendered legal decisions in order to reform institutional operations.³ Despite serving vastly different constitutionally (state and federal) governed functions and the utilization of distinct terminologies to describe reentry processes, the partnering between courts and corrections has most recently become more assessable.⁴ Following along the path undertaken with police-corrections partnerships that began in earnest during the 1990s, the implementation of court-corrections collaboration programs has gained greater attention and support on a national scale. Similar to the argument that police-corrections partnerships have the potential to reshape the way both policing and correctional services are performed,⁵ court-corrections partnerships are at a critical point in their development in defining both fields in the future. The potential, however, has yet to be fully demonstrated. At the same time, it is clear that the attainment of further prison reform through offender reentry

2. Margo Schlanger, *Inmate Litigation*, 116 HARV. L. REV. 1555, 1620-21 (2003).

3. See, e.g., *Taylor v. Perini*, 413 F. Supp. 189 (1976) (ordering a special master to supervise an Ohio correctional institution in effectuating the court's order that involved prisoner's legal mail, jailhouse lawyers and prison censorship). Among others, courts have sanctioned offenders to community service, substance abuse programming, probation and incarceration. Similarly, correctional agencies offer numerous programs in such areas as education, vocation and anger management, and sanction offenders through the use of special management housing, commissary restrictions and extra work duties, for example.

4. Reentry, for instance, has been referred to as re-integration and therapeutic jurisprudence. The enactment of drug courts and reentry courts have recently signified the partnership between courts and corrections.

5. DALE PARENT & BRAD SNYDER, U.S. DEPT OF JUSTICE, BULL. NO. NJC 175047, POLICE-CORRECTIONS PARTNERSHIPS 5-9 (1999), available at <http://www.ncjrs.org/pdffiles1/175047.pdf>.

programs has become the catalyst toward court-corrections partnerships, particularly in the context of drug and reentry court initiatives and the maintenance of greater offender accountability.⁶

The Concept of Offender Reentry

Unlike past practices within the judicial and correctional system, preparing offenders for successful reentry into the community has recently encountered the beginnings of a shift in paradigms. What frequently has been perceived to be a fragmented criminal justice system that, by design, shuffles offenders through a complex array of transitioning venues without much accountability or continuity is now being re-examined in a different light. This re-examination involves a shift from the historical notion that preparing an offender for release into the community commences toward the end of their incarceration, to one that establishes a seamless transition of accountability and resources at the outset of one's entry into the system through the completion of any post-release supervision and beyond.⁷ With recent estimates suggesting that twenty percent of all inmates leaving prison have no post-release supervision due to the expiration of their sentence,⁸ it has become more imperative to reassess the management of offenders within and outside the criminal justice system. Only recently have practitioners begun to question the conceptual framework used to prepare offenders

6. One of the principal components to reentry and drug courts involves offenders meeting with a judge, parole or probation officer and treatment provider to establish and monitor benchmarks toward success. By design, reentry and drug courts have established further offender accountability through closer supervision and monitoring by both the court and corrections agency. See Hon. Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System's Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439 (1999).

7. Reginald Wilkinson, *Offender Reentry: A Storm Overdue*, 5 CORRECTIONS MGMT. Q. 46 (2001).

8. JOAN PETERSILIA, U.S. DEP'T OF JUSTICE, NO. 9, WHEN PRISONERS RETURN TO THE COMMUNITY: POLITICAL, ECONOMIC, AND SOCIAL CONSEQUENCES, SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY (2000), available at <http://www.ncjrs.org/pdffiles1/nij/184253.pdf>; JEREMY TRAVIS, U.S. DEP'T OF JUSTICE, NO. 7, BUT THEY ALL COME BACK: RETHINKING PRISONER REENTRY, SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY (2000), available at <http://www.ncjrs.org/pdffiles1/nij/181413.pdf>.

for release and to acknowledge its contrast to the current realities of managing offenders.⁹

Faced with overburdening caseloads in both the judicial and correctional systems, a scarcity of available programming and the demand for fiscal accountability, the need to reinvent has become more of a necessity than ever before. Given the changes in sentencing structures and the fact that an unprecedented number of offenders are reentering the community, the paradigmatic shift in reentry ideology has begun to bring some consensus between not only criminal justice entities but the interests of communities and victims groups as well.¹⁰ Correctional, court and even some jail systems are now attempting to reengineer programs and services that equate to the reentry philosophy, i.e., pre-release readiness, reintegration training, job preparedness and discharge planning.

Contrasted to past practices, today's concept of offender reentry is prison reform. Over the past century, preparing offenders for release centered almost exclusively on correctional systems. The utilization of indeterminate sentencing presented inmates with the opportunity to actively engage in a variety of rehabilitative programs if only to improve their chances with the paroling authority. It was at this point toward the end of one's incarceration that reentry initiatives began to be extensively reviewed by practitioners. By the latter part of the twentieth century, Martinson's culmination that "nothing works" in correctional rehabilitative efforts became mainstream thought for a vast majority in the criminal justice system.¹¹ Compounded with a "tough on crime" ideology, the reduction of pre-release type programming, a lack of community-corrections linkages and a policing style of parole supervision led many to

9. Wilkinson, *supra* note 7, at 46.

10. See, e.g., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. NJC 170032, SPECIAL REPORT, TRUTH IN SENTENCING IN STATE PRISONS 1-3 (1999) (according to this report fourteen states have abolished parole board release for all offenders), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/tssp.pdf>; BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. NCJ 175687, PRISONERS IN 1998 (1999) (this report indicates that in any given year, approximately forty percent of all offenders housed in state prisons are released), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p98.pdf>; PETERSILIA, *supra* note 8, at 9 (suggesting that nearly 700,000 parolees are now doing their time on U.S. streets).

11. Robert Martinson, *What Works? Questions and Answers About Prison Reform*, 35 THE PUB. INT. 22 (1974).

be returned to prison for either a new crime or technical violation.¹² In fact, recent estimates continue to indicate that re-incarceration due to a parole violation or new offense while under supervision account for a much larger proportion of all prison admissions, representing forty percent in 2001.¹³ Despite the intense scrutiny of an offender's parole plan (e.g., housing, employment), the existence of an inverse relationship between offender needs and desires during post-incarceration has continued to occur. In other words, the inability of correctional systems to assess and meet one's needs upon release contrasts with the strong initial desire found by Nelson, Deess, and Allen on the part of inmates to succeed after incarceration.¹⁴

Over the past decade the "nothing works" ideology has come under intense scrutiny by practitioners and scholars alike.¹⁵ A considerable amount of the literature has begun to reflect programs and interventions that have been found to reduce offender recidivism.¹⁶ In effect, much of the research involved with offender rehabilitation has focused on the assessment of several domains that are intended to address the criminogenic needs of an offender.¹⁷ Considered dynamic due to the potential to effect behavioral change through appropriate

12. See, e.g., BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. NJC 193427 SPECIAL REPORT, RECIDIVISM OF PRISONERS RELEASED IN 1994 (2002), available at <http://www.rainn.org/stats/recidivism2002.pdf> (estimating that within three years 51.8% of prisoners released in 1994 were back in prison for either a new crime, for which they received another prison sentence, or because of a technical violation of their parole)

13. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO. 195669, PROBATION AND PAROLE IN THE UNITED STATES 2001 6 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ppus01.pdf>.

14. MARTA NELSON ET AL., THE FIRST MONTH OUT: POST-INCARCERATION EXPERIENCES IN NEW YORK CITY, (1999) (executive summary), available at http://www.vera.org/publication_pdf/first_month_out.pdf.

15. Donald A. Andrews et al., *Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-Analysis*, 28 CRIMINOLOGY 369 (1990); Paul Gendreau, *Offender Rehabilitation: What We Know and What Needs to be Done*, 23 CRIM. JUST. & BEHAV. 144 (1996); Mark W. Lipsey & David B. Wilson, *Effective Intervention for Serious Juvenile Offenders: A Synthesis of Research*, in EFFECTIVE INTERVENTION FOR SERIOUS JUVENILE OFFENDERS: RISK FACTORS AND SUCCESSFUL INTERVENTIONS 313 (Rolf Loeber & David P. Farrington eds., 1998).

16. See Andrews et al., *supra* note 15; Gendreau, *supra* note 15; Lipsey & Wilson, *supra* note 15.

17. Larry Motiuk, *Using Dynamic Factors to Better Predict Post-Release Outcome*, 10 F. ON CORRECTIONS RES. 1 (1998).

programs or interventions, these domains attempt to impact behavior in the areas of employment, family, associates, substance abuse, community functioning, personal and emotional stability and attitude.¹⁸ Research suggests that each of these domains has been found to be significantly related to recidivism and support the notion that the assessment of criminogenic needs should be driving correctional interventions.¹⁹ In Ohio, for example, the linkage between needs assessment and intervention has come to the forefront in its correctional practices where a comprehensive evaluation of each offender is undertaken at the time of admission.²⁰

Outlined in *The Ohio Plan for Productive Offender Reentry and Recidivism Reduction* (the Ohio Plan), Ohio has developed a plan that provides a coordinated systems approach to offender reentry that requires continued and expanded collaboration with community partners and providers, as well as other agencies with a responsibility for public safety including law enforcement and the courts.²¹ Specifically, the Ohio Plan involves forty-four sets of recommendations for each of six areas found to affect offender reentry: (1) Reception, offender assessments, and reentry planning, (2) Offender programming targeting criminogenic needs, (3) Family involvement, (4) Employment readiness and discharge planning, (5) Reentry-centered offender supervision and, (6) Community justice partnerships.²²

- *Offender Assessments and Reentry Planning*: The reception process is augmented by the philosophy of reentry to include risk and needs assessment of every offender entering prison, and results in a Reentry Accountability Plan. This plan provides the core document that guides offender programming throughout their reentry transition.²³
- *Addressing Criminogenic Needs Through Offender Programming*: Programming that targets the specific needs of offend-

18. *Id.* at 2.

19. *Id.* at 1.

20. See NANCY G. VIGNE ET AL., A PORTRAIT OF PRISONER REENTRY IN OHIO 44-47 (2003), available at http://www.urban.org/UploadedPDF/410891_ohio_reentry.pdf.

21. REGINALD A. WILKINSON ET AL., THE OHIO PLAN FOR PRODUCTIVE OFFENDER REENTRY AND RECIDIVISM REDUCTION (2002), available at <http://www.drc.state.oh.us/web/ohio%20plan%20final1.pdf>.

22. *Id.* at i.

23. *Id.* at 4-7.

ers. A new policy has been developed that incorporates the principles that drive the Department's programming and involves empirical evaluations of existing programs relative to the extent to which they effectively address offender needs.²⁴

- *Family Involvement in Reentry*: The development of new avenues for engaging families during incarceration through the adoption of a family orientation program at each reception center, and the formation of a family council to elicit greater family involvement during confinement and any community supervision upon release.²⁵
- *Employment Readiness and Discharge Planning*: Adopts a new policy titled "Transitioning the Offender" that provides significant discharge planning and includes the development of reentry resource centers in each institution and parole region, career exploration programs for offenders, and enhanced marketing strategies for ex-offenders.²⁶
- *Reentry-Centered Offender Supervision*: Ohio's Adult Parole Authority will be guided by a philosophy of supervision that adopts a balanced approach in working with offenders. Community collaboration is expanded through Citizens' Circles that involve local community members in the reentry process. Reentry orientation sessions are conducted by parole officers prior to release.²⁷
- *Community Justice Partnerships*: A new and critical focus on community justice is the creation of a Faith-Based Advisory Council. Regional councils will be formed within the larger Council and linked with the institutions and parole offices to establish viable connecting points across the prison-community divide. Victims' safety planning needs are also addressed for designated higher risk offenders through the Department's Office of Victim Services.²⁸

Paralleling the Correctional Service of Canada Offender Intake Assessment,²⁹ Ohio's Reentry Accountability Plan involves the collection of an array of offender information to determine

24. *Id.* at 7.

25. *Id.* at 11.

26. WILKINSON ET AL., *supra* note 21, at 14.

27. *Id.* at 18.

28. *Id.* at 21.

29. Larry Motiuk, *Classification for Correctional Programming: The Offender Intake Assessment (OAI) Process*, 9 F. ON CORRECTIONS RES. 23 (1997), available at http://www.csc-scc.gc.ca/text/pblct/forum/special/spe_e_e.pdf.

future criminal risk and the identification of needs.³⁰ Upon analysis, a reentry management team develops a reentry accountability plan that is reviewed with the offender and sets forth the types of programs or interventions deemed necessary for successful reintegration into the community.³¹ Reentry management teams are established at each of Ohio's thirty-three institutions and in every regional parole office.³² At a minimum, each offender's team includes a unit and case manager, and may include relevant staff representatives from medical, mental health, education, recovery services, job coordinators and victim services.³³ Once received at their parent institution, the offender's reentry plan is closely monitored to ensure that the fulfillment of the plan's goals is being met.³⁴ As an offender transitions to, and eventually in the community, the reentry management team is modified to include staff from the parole authority, offender services network and appropriate community-based representatives.³⁵ Where appropriate, also included in what becomes termed the community reentry management team is the offender's family or support system to ensure continuity in the reentry planning. Shown below is a flowchart of the systemic changes associated with reentry in Ohio.³⁶

Offender Reentry and the Courts

Despite the dramatic changes that have occurred in sentencing structures and practices throughout a majority of the states, the sentencing of offenders has continued to require judges to predict human behavior. Even the existence of sentencing guidelines has not necessarily led to a significant reduction of judicial discretion in deciding an offender's future. What once was viewed as simply a means to punish an offender has now become a complex decision-making process that involves broadly divergent objectives that take into account the concepts

30. WILKINSON ET AL., *supra* note 21, at 4.

31. *Id.*

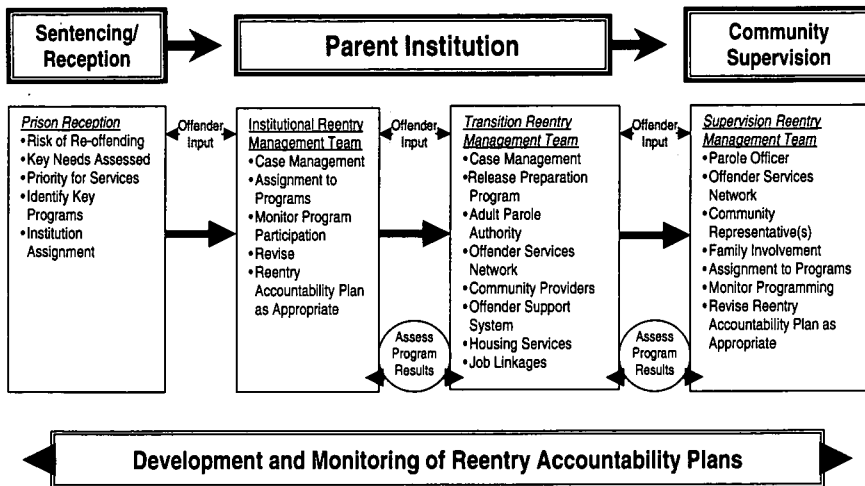
32. *Id.* at 5.

33. *Id.* at 6.

34. *Id.* at 11.

35. WILKINSON ET AL., *supra* note 21, at 11.

36. *Id.* at 3.



of reintegration, incapacitation and deterrence.³⁷ In effect, judges have now taken on a greater responsibility in becoming the gatekeepers of reentry initiatives, as the decisions being rendered clearly impact the processes to follow in leading an offender to become a productive member of society.³⁸

While the concept of offender reentry has rarely been associated with the courts, decisions on the sentencing of individuals have become more confounded by the inherent paradox between the needs of the offender and those of the community. Unlike past practices where decisions to incapacitate were made easier due to the rehabilitative philosophy underlying indeterminate sentencing, the consequences of today's sentencing are immense.³⁹ Although it can be argued that the partnership

37. EDWARD J. LATESSA & HARRY E. ALLEN, CORRECTIONS IN THE COMMUNITY 27 (1997).

38. Judicial responsibilities in the reentry court process involve active oversight of offenders during supervised release, including the use of graduated and parsimonious sanctions for violations, routine visits with all offenders, and positive reinforcement for successful behavior and compliance with the conditions of release. See Hora et al., *supra* note 6.

39. The premise underlying indeterminate sentencing is that sentence length should not be an arbitrary or flat sentence, but one related to the reform and rehabilitation of the offender. As such, release prior to the maximum term set is contingent upon offender behavior and change that is monitored by correctional personnel and decided by a parole board. See Erik Luna, *Punishment Theory, Holism, and the Procedural Concept of Restorative Justice*, UTAH L. REV. 205, 250-60 (2003); Candace McCoy, *The Politics of Problem-Solving: An Overview of the Ori-*

between courts and corrections under an indeterminate structure became more prevalent as judges shared sentence length determination with the paroling authority where release was related to the rehabilitation of the inmate, the implementation of "flat" sentences has led to a greater demand to focus on offender needs.⁴⁰ Courts have traditionally played a marginal role in the process of offender reentry.⁴¹ In large part, judges have not found their responsibilities to involve the preparation for release nor the transitioning of an offender back into their community.

With determinate sentencing, however, the provision and election by offenders to participate in needed intervention or programming has become more cumbersome due to the knowledge that a release date is imminent regardless of their motivation.⁴² As has been portended to by scholars and practitioners alike, program completion is a critical foundation for successful community reintegration.⁴³ Despite the positive effects of programming not being fully known in all instances, program participation has been demonstrated to improve the likelihood of post-release success.⁴⁴ At the same time, assignment to programs or interventions where a need has not been identified or is inappropriate may have no benefit and, in fact, elicit the opposite effect being sought. As such, programs and interventions mandated by a court should be selected carefully as to match the attitude, orientation and characteristics of each offender. All too often programs set forth during sentencing have been

gins and Development of Therapeutic Courts, 40 AM. CRIM. L. REV. 1513, 1514 (2003).

40. Under flat or determinate sentencing, an offender has a defined release date regardless of their participation in any rehabilitative programs. Therefore, the ability of an offender to decline participation in a rehabilitation program such as education, for example, inhibits attempts to change behavior prior to release into the community. See generally Luna, *supra* note 39; McCoy, *supra* note 39.

41. See David Rottman & Pamela Casey, *Therapeutic Jurisprudence and the Emergence of Problem-Solving Courts*, NAT'L INST. OF JUSTICE J., July 1999, at 12, 13-14, available at <http://www.ncjrs.org/pdffiles1/jr000240.pdf>.

42. Larry Motiuk, *The Safe Return of Offenders Through Selection, Intervention and Supervision*, 13 F. ON CORRECTIONS RES. 3, 3 (2001), available at http://www.csc-scc.gc.ca/text/pblct/forum/e131/131a_e.pdf; PETERSILIA, *supra* note 8, at 2.

43. Motiuk, *supra* note 42, at 3.

44. *Id.*

generic and in the model of a "one glove fits all" perspective.⁴⁵ This has also been the case within the correctional environment as well.⁴⁶ Yet more recently, a new form of court has begun to emerge in which the judge becomes actively involved in the oversight of transitioning an offender into the community. The most established example of this new form of court being the drug court.⁴⁷

First implemented in 1989, the enactment of drug courts has been unprecedented with over 1,000 state and county programs currently in operation.⁴⁸ As further research has shown that court-imposed sanctions combined with drug treatment contribute to decreases in drug use and related crime,⁴⁹ the utilization of drug courts has become a strong testimony to the effectiveness of judicial authority in asserting a mixture of coercion and treatment on offenders. By taking a personal interest in an offender's success through frequent court appearances, required treatment and drug screening, and the administration of predetermined, graduated sanctions for violations has led a number of jurisdictions to develop other special dockets modeled after the drug court format. Due to the relative success of drug courts, courts and judges have become more receptive to new approaches to what has been labeled therapeutic jurisprudence or problem-solving courts.⁵⁰ These have included the implementation of specialized courts for driving while intoxicated (DUI), domestic violence, mental health and

45. For example, alcohol anonymous or narcotics anonymous for substance abusers regardless of dependency level.

46. For example, an anger management course for violent offenders.

47. See STEVEN BELENKO, RESEARCH ON DRUG COURTS: A CRITICAL REVIEW 2001 UPDATE 5 (2001) (according to the review, 668 drug courts were in operation as of May 2001, with an additional 432 in the planning process), available at <http://www.casacolumbia.org/absolutenm/articlefiles/researchondrug.pdf>.

48. AM. UNIV., OFFICE OF JUSTICE PROGRAMS DRUG COURT CLEARINGHOUSE AND TECHNICAL ASSISTANCE PROJECT: SUMMARY OF DRUG COURT ACTIVITY BY STATE AND COUNTY (2004), available at <http://spa.american.edu/justice/publications/drgchart2k.pdf>.

49. Douglas Anglin & Yih-Ing Hser, *Legal Coercion and Drug Abuse Treatment: Research Findings and Policy Implications*, in HANDBOOK OF DRUG CONTROL IN THE UNITED STATES 151 (James A. Inciardi ed., 1990).

50. Hora et al., *supra* note 6; Rottman & Casey, *supra* note 41; David B. Wexler, *Robes and Rehabilitation: How Judges Can Help Offenders "Make Good"*, CT. REV., Spring 2001, at 18, available at <http://aja.ncsc.dni.us/courtrv/cr38-1/CR38-1Wexler.pdf>.

reentry. Through their implementation, courts have begun to follow along the path taken by law enforcement where a problem-solving label emerged via the concept of problem-oriented policing.⁵¹

Drug courts as well as other community-based court programs emerging throughout the judicial system are a clear indication of the movement toward a reentry philosophy of providing a coordinated, systemic approach to offenders. Although considered diversionary programs by design, these courts have also incorporated a community justice perspective that is founded on earlier innovative strategies implemented in the fields of probation, parole, and community corrections.⁵² In effect, court programs such as the drug court are designed to reflect community concerns, priorities and resources, include community organizations in policymaking decisions and seek general community participation and support.⁵³

In the context of drug courts, the partnering between the judiciary and corrections is less noticeable, yet still existent. Because of its systemic approach to alcohol and other drug (AOD) offenders, the drug court is a partnership of organizations that includes the corrections community. In many states, for example, departments of corrections provide assistance and guidance in the development and operation of local sentencing initiatives that includes drug courts.⁵⁴ It is apparent that drug courts have played a critical role in forming partnerships between the community and each facet of the criminal justice system and, in turn, has led to the development of the reentry court.⁵⁵ The emergence of reentry courts should, therefore, be viewed as a logical extension of the success encountered

51. HERMAN GOLDSTEIN, *PROBLEM-ORIENTED POLICING* 33 (1990).

52. For example, use of treatment programs with clear rules and structured goals, active oversight of offender, management of support services, graduated and parsimonious sanctions.

53. DRUG COURTS PROGRAM OFFICE, U.S. DEP'T OF JUSTICE, *DEFINING DRUG COURTS: THE KEY COMPONENTS* 6-7 (1997), available at <http://www.nadcp.org/docs/dkeypdf.pdf>.

54. For example, Arizona, Florida, Missouri, Nevada, New Jersey, Ohio, Oregon.

55. Franz Maruna & Thomas LeBel, *Welcome Home? Examining the "Reentry Court" Concept from a Strengths-Based Perspective* 4 W. CRIMINOLOGY REV. 91 (2003); Peggy B. Burke, *Collaboration for Successful Prisoner Reentry: The Role of Parole and the Courts*, 5 CORRECTIONS MGMT. Q. 11 (2001).

through drug courts. As one is viewed as a front-end criminal justice approach to an offender's reintegration into the community, the other concerns more of a back-end process of preparing those confined to prison for successful reentry. The back-end focus of the reentry court is perhaps one of the most important initiatives being undertaken by both courts and corrections for it is these offenders leaving prison who need to be held accountable and most in need of assistance as they reenter society.

Reentry Courts

Reentry courts represent a new form of jurisprudence that has elevated the partnership between courts and corrections in seeking the common goal of successful offender reintegration. The concept of the reentry court necessitates considerable cooperation between corrections and local judiciaries since it requires the coordination of the work of prisons in preparing offenders for release and actively involving community corrections agencies and various community resources in transitioning offenders back into the community through active judicial oversight.⁵⁶

As with the drug court concept, active judicial authority is applied to the reentry court to provide graduated sanctions, positive reinforcement and to marshal resources for offender support. Central to this effort is the development of a three-fold strategy that seeks to improve the supervision of offenders, prepare communities to address public safety concerns and to provide services to aid offenders in reentering society.⁵⁷ Despite being in its infancy with pilot sites in California, Colorado, Delaware, Florida, Iowa, Kentucky, New York, Ohio and West Virginia, several core elements are present in each of these reentry

56. Burke, *supra* note 55, at 16.

57. See OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, REENTRY COURTS: MANAGING THE TRANSITION FROM PRISON TO COMMUNITY, A CALL FOR CONCEPT PAPERS 2-9 (1999), available at <http://www.ncjrs.org/pdffiles1/ojp/sl000389.pdf>.

court initiatives.⁵⁸ According to the Office of Justice Programs,⁵⁹ these core elements include:

- *Assessment and Planning* that involves the offender, corrections department, and judiciary to identify the needs and develop a plan to begin building linkages in the community to support successful reintegration.⁶⁰
- *Active Oversight* whereby the reentry court meets with the offender at a high degree of frequency that also includes other relevant supporters or representatives from the supervising agency, family, and community. The underlying premise is for the judge to meet with offenders who are making progress as well as those who have failed to perform.⁶¹
- *Management of Supportive Services* marshaled by the court to draw upon community resources. The reentry court must have a broad array of supportive resources including substance abuse treatment, job training programs, faith institutions, and housing services.⁶²
- *Accountability to Community* through the development and involvement of citizen advisory boards, crime victims' organizations, and neighborhood groups. Accountability mechanisms may include ongoing restitution orders and participation in victim impact panels.⁶³
- *Graduated and Parsimonious Sanctions* established by the court that involves a predetermined range of sanctions for violations of the conditions of release. Paralleling drug courts, an array of relatively low-level sanctions that could be swiftly, predictably, and universally applied is developed.⁶⁴
- *Rewards for Success* that incorporate positive judicial reinforcement such as negotiating early release from parole after

58. Colorado Reentry Court Pilot Program (Pike's Peak Mental Health Organization), Delaware Reentry Court Pilot Project (Superior Court of the State of Delaware), Florida Reentry Court Project (Broward County, Florida Drug Court), Iowa Reentry Court Project (Iowa Department of Corrections), Kentucky Reentry Court Project (State of Kentucky, Administrative Office of the Courts), New York Reentry Court Project (New York Division of Parole), Ohio Reentry Court Project (Richland County Adult Probation Department), California Reentry Court Project (San Francisco Sheriff's Department), West Virginia Juvenile Reentry Court Project (State of West Virginia, Department of Military Affairs and Public Safety, Division of Juvenile Services).

59. OFFICE OF JUSTICE PROGRAMS, *supra* note 57, at 7-9.

60. *Id.* at 7.

61. *Id.*

62. *Id.* at 8.

63. *Id.*

64. OFFICE OF JUSTICE PROGRAMS, *supra* note 57, at 8.

established goals are achieved or by conducting graduation ceremonies similar to those used in drug courts.⁶⁵

Although variations exist between the nine reentry court pilot programs in regard to their emphases and approaches to successful offender reentry, Ohio's reentry court offers an example of how the court, corrections and community have partnered under this initiative.⁶⁶ Ohio's reentry court is a collaboration of efforts between the Richland County Common Pleas Court and Ohio Department of Rehabilitation and Correction.⁶⁷

Ohio's reentry court model offers a unified and comprehensive approach to managing offenders from court, to incarceration, and the transition back into the community.⁶⁸ The court targets all felony offenders originally sentenced to prison by the Richland County Common Pleas Court.⁶⁹ Upon completion of an assessment of the effects of the offender's crime on the victim and community, the court develops a reentry plan that identifies the needs and/or interventions an offender must address to enhance their eligibility for release and eventual adjustment to the community.⁷⁰ Through partnership with the Ohio Department of Rehabilitation and Correction, the reentry plan expedites the offender's processing into prison and attempts to place the offender into an institution in or near Richland County, Ohio.⁷¹ At the onset of the reception process, the reentry plan for the offender commences and is closely monitored through a coordinated effort among the institution, court and adult parole authority to prepare the offender for release into the community.⁷² This coordinated effort for eventual release addresses the core issues of the reentry plan that continues to be in effect upon release to make adjustment to community reintegration more successful. Community collaborations among corrections,

65. *Id.* at 9.

66. LEITENBERGER ET AL., RICHLAND COUNTY COURT SERVICES, REENTRY COURT CONCEPT PAPER (2000). Technical assistance for the Richland County reentry court program is provided by the Office of Justice Programs, U.S. Department of Justice.

67. *Id.* at 1.

68. *Id.*

69. *Id.* at 4.

70. *Id.* at 6.

71. LEITENBERGER ET AL., *supra* note 66, at 7.

72. *Id.*

law enforcement, social service agencies, treatment providers and citizen organizations all aid in this process.⁷³ Upon release, an offender must report to a joint court-parole authority committee for a formal monthly progress review for up to one year.⁷⁴ All reentry court participants are expected to adhere to a two-part supervision plan that involves specific offender criminal and treatment issues while also centering on victim restoration, restitution, family and community reintegration.⁷⁵

It is interesting to note that some scholars have espoused the notion that reentry courts are merely another term for parole supervision or simply reflect the age-old paradigms of carrot and stick practices of parole supervision.⁷⁶ On one hand, research has shown that the "risk-based" or intensive control strategies of supervision has not deterred offenders from committing crimes, while the "needs-based" approach toward meeting criminogenic needs has not been politically attractive and can be seen as an expansion of further social control through coerced treatment.⁷⁷ As Maruna and LeBel point out, "As everyone has needs, can it make sense for the state to prioritize the needs of persons who have recently been punished by the criminal justice system?"⁷⁸ As such, the carrot and stick model to offender reentry that has plagued community-based supervision over the past century has merely resulted in the suppression of bad behavior and a non-voluntary conformity toward responsible behavior. Yet, concurrently, the growing conviction that community-based supervision no longer represents a credible response to the problem of crime has actually aided in the emergence of the reentry court initiative.⁷⁹

73. *Id.* at 8.

74. *Id.* at 9.

75. *Id.* at 14.

76. See James Austin, *Prisoner Reentry: Current Trends, Practices, and Issues*, 47 CRIME AND DELINQ. 314, 329-32 (2001).

77. Joan Petersilia & Susan Turner, *Intensive Probation and Parole*, in 19 CRIME AND JUSTICE: AN ANNUAL REVIEW OF RESEARCH 281 (Michael Tonry ed., 1993).

78. Maruna & LeBel, *supra* note 55, at 95.

79. Edward Rhine, *Probation and Parole Supervision: In Need of a New Narrative*, 1 CORRECTIONS Q. 71, 72-73 (1997).

Reentry, Restorative and Community Justice

The shifting paradigm transpiring in regard to offender reentry not only attempts to meld both the control and treatment approaches to the carrot and stick ideology, but also adds a restorative justice connotation that emphasizes offender contributions rather than offender deficits.⁸⁰ After all, research has shown that released offenders view themselves as being “in” but not “of” society⁸¹ and that some would rather accept a prison sentence than to be subjected to loss of autonomy in the community.⁸² What is lacking is the positive reinforcement or acknowledgement from criminal justice and community entities that released offenders have a role to play in society; that they are more than merely liabilities to be supervised.⁸³

Prison reform through offender reentry involves a shift from the historical fragmentation between not only each criminal justice component, but the community as well. All too often each entity has perceived offenders from a past-oriented rather than future-oriented reference point. Although public safety dictates knowledge of past criminal history, reentry cannot succeed in a backward-looking mindset. By the addition of a restorative justice component to reentry, offenders are provided an orientation toward their future by taking responsibility willingly, which in turn, sends a message to the community that offenders are worthy of further support and investment in their reintegration process.⁸⁴ In Ohio, for example, the concepts of

80. Reentry programs often involve community service work by offenders as a form of restitution or reparation to the community, with some involving reconciliation through mediation between the offender and victim(s). Offender accountability for their behavior is maintained through varying degrees of sanctions such as increased supervision, additional programming and the reinstatement of criminal proceedings. Conversely, incentives can include reduced supervision, less frequent urinalysis and extended curfews, for example. See generally Hora et al., *supra* note 6.

81. ROBERT JOHNSON, *HARD TIME: UNDERSTANDING AND REFORMING THE PRISON* 319 (3d ed. 2002).

82. TODD R. CLEAR, *HARM IN AMERICAN PENOLOGY: OFFENDERS, VICTIMS, AND THEIR COMMUNITIES* 25 (1994).

83. TRAVIS, *supra* note 8, at 8.

84. Gordon Bazemore, *After Shaming, Whither Reintegration: Restorative Justice and Relational Rehabilitation*, in *RESTORATIVE JUVENILE JUSTICE* 155 (Gordon Bazemore & Lode Walgrave eds., 1999).

restorative justice and reentry have become the primary fabrics of prison reform.⁸⁵

Ohio has acknowledged that most inmate offerings in prison can be improved and that programming should not be perceived as a whimsical notion.⁸⁶ For example, community service work on the part of offenders has continued to be a mainstay of programming and has steadily increased over the past decade.⁸⁷ In calendar year 2000 inmates performed more than 5 million hours of community service work.⁸⁸ This work has included a wide variation of activities including the rehabilitation of low-income housing, training pilot and companion dogs, computer restoration for donation to schools and the building of playgrounds in the community.⁸⁹ As a prerequisite to performing community service work, each offender participates in a service learning curricula based on a model of the American Association of Community Colleges.⁹⁰ Through the attainment of vocational skills and good work habits, for instance, offenders preparing for reentry are providing the community with proof to support and invest in their future.⁹¹

Many state correctional agencies and Ohio in particular have demonstrated a strong commitment to restorative justice for many years and have fostered partnerships among other entities that share responsibility for public safety including the courts. As with reentry, the restorative justice model places a

85. The Ohio Plan contains forty-four recommendations that have either been accomplished or are currently in progress that involve restorative justice and reentry. WILKINSON ET AL, *supra* note 21. Each of Ohio's thirty-three correctional facilities is currently implementing multiple reentry programs such as GED instruction, ABLE literacy, victim awareness, responsible family life skills, advanced job training, criminal thinking errors, and financial management beyond the fence.

86. Wilkinson, *supra* note 7, at 48.

87. According to the Ohio Department of Rehabilitation and Correction's Bureau of Quality and Community Partnerships, inmates performed 75,550 hours of community service in 1991 and over 6 million in 2002. OHIO DEPT OF REHAB. AND CORR., *Community Service Frequently Asked Questions (FAQ)*, at <http://www.drc.state.oh.us/Quality/CS%20FAQs.htm> (last visited Aug. 22, 2004).

88. Wilkinson, *supra* note 7, at 48.

89. *Id.* at 48.

90. *Id.* at 49.

91. Reginald A. Wilkinson, *The Impact of Community Service Work on Adult State Prisoners Using a Restorative Justice Framework*, 4 CORRECTIONS MGMT. Q. 104 (2000), available at <http://www.drc.state.oh.us/web/Articles/article63.htm>.

strong emphasis on repairing the harm done to victims of crime by requiring offenders to take responsibility for their crimes.⁹² In this regard, offender victims of crime are viewed to encompass direct victimization to other(s), indirect victimization to family members and vicarious victimization to the community. Carey has suggested that restorative justice is a future-focused model that emphasizes problem solving instead of “just desserts.”⁹³

Carey further outlined a restorative justice model that:

- Holds the offender directly accountable to the individual victim and specific community affected by the criminal act;⁹⁴
- Requires the offender to take direct responsibility to “make things whole again,” to the degree that it is possible;⁹⁵
- Provides victims purposeful access to the court and corrections processes, which allows them to shape offender obligations and;⁹⁶
- Encourages the community to become involved directly in supporting victims, holding offenders accountable, and providing opportunities for offenders to reintegrate into the community.⁹⁷

By all indications, this collaborative philosophy of the restorative or community justice model has emerged in many courts alongside other efforts that are placing more reliance on the community as a critical component to effective criminal justice.⁹⁸ As Rottman and Casey point out, the approaches of restorative and community justice offer the field of therapeutic jurisprudence potential strategies to achieve the desired therapeutic outcomes.⁹⁹ Yet, the transition to implementing a restorative justice framework into reentry initiatives is more painless if personnel believe that the model and accompanying policies

92. Paul McCold, *Restorative Justice: The Role of the Community*, Paper Presented to the Academy of Criminal Justice Sciences Annual Conference 3 (March 1995), available at <http://www.iirp.org/library/community3.html>.

93. Mark Carey, *Restorative Justice in Community Corrections* 58 CORRECTIONS TODAY 152, 152-55 (1996).

94. *Id.* at 153.

95. *Id.*

96. *Id.*

97. *Id.*

98. For example, drug courts, reentry courts, DUI courts, domestic violence courts, mental health courts.

99. Rottman & Casey, *supra* note 41, at 13.

contain a clear purpose.¹⁰⁰ Community courts are one example of the impact of these models on the judiciary by implementing offender restitution to compensate communities through service projects and using judicial authority to sentence offenders to complete social services to help them address problems.¹⁰¹

Reform and Reentry

Although the reforms being undertaken in departments of correction are seen as reflecting the ever-growing movement toward offender reentry, there is little question that the initiatives emanating from local judiciaries has helped spur the rethinking of reintegration in the correctional environment as well.¹⁰² The converse is also true. The reciprocal nature of one criminal justice agency feeding off of the initiatives of another for the benefit of reforming the manner in which offenders are handled should lead to sounder, more effective strategies.

Reentry initiatives have led to a more direct relationship between courts and corrections (as a reminder, reentry partners are indeed more expansive than just courts and corrections). Both have come to the realization that a shift in philosophy is needed to promote behavioral change in offenders. The long held notion that the reentry process should be limited to the prison-community transition is still important, but limited in scope.¹⁰³ Neither prisons nor courts can operate in a vacuum where the success or failure of offender reintegration is set solely on the shoulders of these two professions. Concerted efforts on the part of law enforcement, courts, corrections and

100. Mark Umbreit & Mark Carey, *Restorative Justice: Implications for Organizational Change*, 59 FED. PROBATION 47 (1995).

101. John Feinblatt et al., *Neighborhood Justice at the Midtown Community Court*, in CRIME AND PLACE: PLENARY PAPERS OF THE 1997 CONFERENCE ON CRIMINAL JUSTICE RESEARCH AND EVALUATION 81 (1998), available at <http://www.ncjrs.org/pdffiles/168618.pdf>.

102. For example, Ohio's correctional processes have transitioned toward a reentry philosophy where preparations for an offender's return to the community commences immediately upon their arrival into the state prison system through the development of a individualized reentry accountability plan designed to identify and target offender risk and need areas. The plan also sets forth a guide for the programming needs of offenders from reception to their parent institution and through community supervision. See *supra* note 21-36 and accompanying text. .

103. Richard Seiter & Karen Kadela, *Prisoner Reentry: What Works, What Does Not, and What is Promising*, 49 CRIME AND DELINQ. 360 (2003).

community providers must all work for the same goal. With the number of offenders released increasing considerably whereby placing more constraints on communities to provide the needed resources, rethinking how criminal justice agencies work together can no longer be viewed as conceptual thought but as an operational reality.¹⁰⁴ If not, then the revolving door that has been perseverant to criminal justice and has led to much criticism will only get worse considering that per capita incarceration rates continue to rise. According to recent statistics, the incarceration rate of state and federal prisoners sentenced to more than one year was 474 per 100,000 U.S. residents at mid-year, 2002.¹⁰⁵

However, the success of a courts-corrections partnership that is centered on community collaboration must have a system in place that provides consistency to the fact-finding procedures that dictate the risks and needs of an offender. Agreements between agencies, particularly in regard to the facts or reasoning surrounding an offender's risks and needs are difficult in terms of relevancy and perspective. As Smith points out, it is often a complex process to determine which facts are relevant to crucial decisions about what treatment to impose and the manner of supervision required in the community.¹⁰⁶ This also holds true from the restorative justice perspective in regard to the reasons for the crime, the harms resulted and the mechanisms for reparation for all involved.

Time will only tell as to whether the partnering between criminal justice entities such as that described with the courts and corrections will bring about effective change in offender behavior. However, to achieve the desired outcomes will require continuous improvement processes on the part of all entities including the community at large.

104. See JOAN PETERSILIA, *WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY* (STUDIES IN CRIME AND PUBLIC POLICY) 21-23 (2003) (Petersilia estimates that ninety-three percent of all prison inmates will eventually return home, with 606,225 released in 2000).

105. BUREAU OF JUSTICE STATISTICS, U.S. DEP'T OF JUSTICE, BULL. NO NCJ 198877, *PRISON AND JAIL INMATES AT MIDYEAR 2002* 4 (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim02.pdf>.

106. See MICHAEL E. SMITH, U.S. DEP'T OF JUSTICE, NO. 11, *WHAT FUTURE FOR "PUBLIC SAFETY" AND "RESTORATIVE JUSTICE" IN COMMUNITY CORRECTIONS?, SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY* (2001), available at <http://www.ncjrs.org/pdffiles1/nij/187773.pdf>.