

**AN ADVOCACY ORGANIZATION'S VIEW OF
ISSUES SURROUNDING REENTRY:
SETTING AN AGENDA FOR
RESEARCH AND POLICY**

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INTRODUCTION

Since the early 1980s and the passage of federal and state sentencing laws that mandated incarceration and specific sentence lengths for those convicted of many types of drug offenses, the number of inmates in state and federal prisons has risen dramatically. The 1.3 million individuals who constituted the prison population in 2002 represent a 187 percent increase from the mid-1980s (Bureau of Justice Statistics 2003: Table 6.22). This growth was primarily triggered by the passage of the 1986 Anti-Drug Abuse Act and the Omnibus Anti-Drug Abuse Act of 1988, both of which mandated stiff penalties for offenses involving drug distribution, especially those involving the distribution of crack cocaine (United States Sentencing Commission 1991). These Federal Acts, which followed the lead of many states (e.g., New York's Rockefeller drug laws), were compellingly symbolic to state legislatures, many of which passed laws requiring sentencing enhancements for certain types and levels of crime, as well as for certain levels of criminal history (e.g., three-strikes laws) in the late 1980s and early- to mid-1990s. This collective legislation has had a significant effect on correctional systems: recent data indicate that almost 4,000 people enter state and federal prisons every day (Bureau of Justice Statistics 2003: Table 6.22).

The dramatic increase in the number of people entering prison since the mid-1980s has been mirrored, in delayed-action, in similarly large numbers of people being released. Almost 650,000 people are released annually (Hughes 2003; Bureau of Justice Statistics 2004). Most are released under parole supervision (Bureau of Justice Statistics 2004: Table 6.1), but many are released with neither supervision required nor a structured system of services offered by the state or communities to which they return. Every day almost 1,800 people reenter their communities needing jobs, housing, education, healthcare, and systems of social support.

Mauer and Chesney-Lind (2002) comprehensively examine the consequences of policies that reflect a reliance on incarceration and identify forms of "invisible punishment" that can have an emotional and financial effect on families, undermine community-level economies, exacerbate racial division, pose significant health risks, and raise fundamental questions of citizenship in a democratic society. Invisible punishments are also experienced by the those returning from prison in the forms of disenfranchisement; disqualification from public housing, student loans,

welfare benefits, job training, and certain types of employment; stigmatization; and lowered earning capacity.

The purpose of this paper is to offer an agenda for practice, research, and policy in the domain of reentry. This agenda reflects the outlook of the Center for Community Alternatives (CCA), a community-based organization that has a broad view of reentry policy and practice grounded in its experience in conducting advocacy work with courts, defense attorneys, and individuals who are involved in the criminal justice system. This work has included providing sentencing planning services to defense attorneys, outpatient drug treatment services to court-mandated women, employment and HIV-related services to reentering inmates, and aftercare services for people in recovery who have a history of involvement in the criminal justice system. Historically, CCA's primary focus has been as a provider of direct services. During the past four years it has undertaken a policy and research initiative, "Justice Strategies," that has allowed for the development of advocacy work in the public policy arena.

This paper begins by describing CCA's work and perspective and the ways in which that perspective relates to reentry; describes the context in which reentry advocacy work takes place; presents our vision of reentry planning; offers a research agenda designed to illuminate factors and processes in a way that can promote a strategy for rational reentry-related practice and policy making; and offers recommendations for practice, policy, and advocacy around reentry issues.

ADVOCACY BY THE CENTER FOR COMMUNITY ALTERNATIVES

CCA operates programs in both Syracuse, New York and New York City. It pioneered and continues to promote an individualized approach to sentencing through its Client Specific Planning (CSP) services. It also provides direct service to those in transition from prisons back to the community, addressing their health related issues, focusing on HIV/AIDS. More recently, CCA has implemented a reentry program for young adults returning to the community from the local jail and a Recovery Community Support Program for adults recovering from addiction to drugs or alcohol who have had some involvement with the criminal justice system. The advocacy approach essential to CSP is adopted as a core component of all direct service programs.

These direct service programs have been critical in helping CCA to understand and analyze policy and research considerations through Justice Strategies, CCA's research, training, public advocacy, and policy division. In the last three years the Justice Strategies team has helped to draft local legislation; testified before the U.S. Senate; published a report on racial disparities in the local (Syracuse) criminal justice system; authored studies on drug court and community initiatives; and trained hundreds of attorneys, community leaders, young people, educators, and employment counselors on criminal and juvenile justice issues. Researchers on the Justice Strategies team conduct empirical studies to strengthen understanding of criminal and juvenile justice issues and to enhance the quality of decision making and public dialogue.

Three direct service programs substantially informed CCA's concept of reentry planning. They are the Self-Development: Reentry Program, the Syracuse Recovery Community Support Program (SRCSP), and Client Specific Planning (CSP). The Syracuse-based Self-Development: Reentry Program (Reentry Program) is a demonstration project funded by the United States Department of Labor. A consortium of partners and organizations collaborate to provide a comprehensive reentry strategy for young offenders, ages 16-24, who are released from the Onondaga County Correctional Facility. It consists of ten weeks of pre-release programs and one year of post-release services. The pre-release "empowerment" classes encourage connection and involvement with the community and individual goal development. Post-release services begin immediately upon release and focus on job placement, job training, housing, education, mental health, and relapse prevention. Program participants are assigned both a transition advocate and a mentor to work with them throughout the pre-release and post-release period.

The SRCSP is a project funded by the Department of Health and Human Services, SAMSHA, and CSAT. It provides peer driven and peer-led services to men and women who are in recovery and who have had some criminal justice system involvement. The SRCSP operates a Drop-In Center, and provides support services in leadership development, employment readiness and placement, life-skills, civic restoration, and overcoming the collateral consequences of a criminal conviction.

CSP is CCA's alternative sentencing service and provides a foundation for the design of all agency programs by virtue of its focus on the individual client within a context of promoting

public safety. CCA's CSP sentencing advocacy work relies on defense counsel referrals and targets felony-level defendants who face a high likelihood of incarceration absent program intervention. Upon referral, CCA staff conduct a thorough background investigation and assessment. Based on this evaluation and assessment the project develops a "client-specific" alternative sentencing plan. Traditionally, the written report that was submitted to the court included a sentencing recommendation; a psycho-social history and evaluation of the strengths and weakness of the defendant; and information about referrals to specific treatment programs, employment, vocational, or education programs, housing, and other relevant support services. Alternative sanctions often included "client-specific" community service placements, victim restitution, home confinement, or some components of a restorative justice plan. Occasionally the sentencing plan included incarceration and a plan for transition back to the community.

CSP has proven useful beyond the context of a sentence recommendation. It is also used at the plea-bargaining stage of a case to present to both the prosecutor and the court a more complete picture of the individual and the plea and sentence that would be appropriate for him or her. CSP has also been used for pre-trial release advocacy. The CSP model serves as the basis for CCA's work outside the courts as well. It is used in the context of parole release, parole revocation hearings, health-related transitional planning, and correctional programming. More recently it has been utilized in transitional planning for the reentry program.

Today, reentry planning is being pioneered as a component of the traditional CSP sentencing report.

BACKGROUND

The Growth of Prisons

Over the past 30 years the prison population has experienced significant growth. By yearend 2002 the number of people held in the nation's prisons had risen to 1,440,665 (Harrison and Beck 2003). That is almost seven times what it was three decades previous (Petersilia 2003). When the people held in local jails and other facilities are added to this figure the total number of people incarcerated in the United States at yearend 2003 reached 2,166,260 (Harrison and Beck

2003). The overall rate of incarceration in the U.S. was 701 inmates per 100,000 residents in 2002 up from 601 per 100,000 in 1995. This translates into 1 in every 143 residents being incarcerated in prison or jail on December 31, 2002 (Harrison and Beck 2003). The number of adult Americans affected by some form of correctional supervision (jail, prison, parole or probation) reached an all time high by yearend 2002 of 6.7 million people, or 1 in every 32 adults (Glaze 2003).

African Americans are over-represented within incarcerated populations. At yearend 2002, African-American inmates represented 45 percent of all inmates sentenced to more than one year, while whites accounted for 34 percent, and Hispanic inmates 18 percent (Harrison and Beck 2003), compared with their representation in the overall population as 13, 68, and 14 percent, respectively. This translates into high rates of incarcerated people within racial and ethnic minority population groups: 3.4 percent of African Americans, .4 percent of whites, and 1.2 percent of Hispanics. Stratifying by gender and age reveals that African American males between the ages of 25 to 29 had the highest incarceration rate of any group—10.4 percent, compared to 2.4 percent of Hispanic males and 1.2 percent of white males in the same age group (Harrison and Beck, 2003). The racial disparities appear at all levels of imprisonment; County, State, and Federal (Rosenthal, 2001). The racial/ethnic profile of the imprisoned population is carried over into the profile of those being released. Programming for transitioning people must accommodate the needs of young African-American men who typically return to urban neighborhoods with few material and human resources.

Reentry

As the incarceration rate has grown so too has the number of people who are released from prison each year (Travis, 2000). Over the past 24 years the number of prisoners released from state and federal prisons has grown more than fourfold. In 1977 the number of prisoners released was 147,895, consisting of the release of 16,015 federal prisoners and 131,880 state prisoners (Harrison, 2004). In 2001 the number of prisoners released from state prison reached about 592,000 (Hughes, 2003). During 2000 the Federal Bureau of Prisons released 55,876 (Bureau of Justice Statistics, 2004). Combing these totals allows us to estimate the number of prisoners reentering the community from both State and Federal prisons in 2001 to be

approximately 648,000. If we add to this the number of people returning to their communities from local jails after an arrest or sentence to a local jail, the number of people reentering their communities swells to over 10 million (see Pastore and Maguire (2002) for the number of arrests in 2000).

Recidivism

In 2002 the Bureau of Justice Statistics released the results of the first major recidivism study in more than a decade (Langan and Levin 2002). The study tracked 272,111 prisoners discharged in 15 states, which accounted for two-thirds of all state prisoners released in 1994. Langan and Levin found that 67 percent of the former prisoners released in 1994 were rearrested for at least one serious crime within three years of their release and that 44 percent were rearrested within one year. It is during the first year after release that transitioning people are at greatest risk of rearrest. The study showed that 47 percent of the releasees were convicted of new crimes and 52 percent were returned to prison for either a new crime or a technical violation.

Petersilia (2003) compared the findings of the Langan and Levin (2002) study with those of Beck and Shipley (1989) who investigated the recidivism outcomes of a sample of prisoners released in 1983. Over this eleven year period rehabilitation had been all but abandoned as a central sentencing and correctional goal. Both prison and sentences became more harsh. If this new punitive policy was to fulfill its promise of deterrence, recidivism rates should have declined over this period as released prisoners would presumably seek to avoid future incarceration. Instead they rose by five percent.

Mental Illness

People with mental illness have increasingly been processed through the corrections system instead of the health system. This has been the result of both the growth of prisons in general and the fundamental change in mental health policy commonly referred to as deinstitutionalization. Few would disagree with the proposition that prison is no place for the mentally ill criminal. Yet in practice a growing number of seriously mentally ill people have been sent to prison, and most will eventually reenter the community (Petersilia 2003).

It is difficult to estimate with much confidence the number of people with mental illness who are in prison and jail. The Bureau of Justice Statistics (1999) used prisoner self-reports to examine the prevalence of mental illness in the incarcerated population. Nearly 16 percent of all people incarcerated in prison or jail were identified as mentally ill (Ditton 1999). That same study found that 16 percent of those on probation also were mentally ill. The National Commission on Correctional Health Care (NCCHC) found that eight percent of short-term jail detainees have psychiatric conditions requiring medical intervention and that among state and federal prisoners, 13 percent will require psychiatric care for an acute episode of mental illness some time during their incarceration (NCCHC 2002:65). If these same percentages are applied across the board to all persons under criminal justice control, we estimate that over one million people with mental illness are currently under some form of criminal justice supervision.

Prisoners' mental health may be significantly compromised by confinement. Haney (2002) has found that prisons, especially those that are overcrowded, can produce negative, long-lasting effects, and that "supermax" units can cause serious psychological problems. It is not unusual for prisoners to spend 23 hours a day in solitary confinement or segregation. (Petersilia 2000). The longer the time in isolation, the more likely depression and anxiety will increase (Liebling 1999).

During incarceration a significant percentage of prisoners receive some mental health care. Nearly 13 percent of all State inmates were receiving mental health therapy or counseling services from a trained professional on a regular basis, and nearly 10 percent receive psychotropic medication during their confinement (Beck and Maruschak, 2001). Although the confinement of large numbers of people with mental illness creates an opportunity for treatment, some inmates are not provided with (or choose not to access) treatment: 39 percent of state prison inmates with diagnosed mental health conditions and 59 percent of jail inmates with mental health conditions reported not receiving treatment (Ditton, 1999). Mental health evaluations are not universally provided either: 40 percent of jails and 17 percent of prisons do not provide them (NCCHC, 2002, p. xii).

In general, mentally ill people transitioning back to the community from prison typically have difficulty coping with the most basic reentry goals such as acquiring housing and

employment. Such difficulties could be significantly diminished by treatment in the community, especially for people who received mental health treatment while they were incarcerated (Solomon 2004). Unfortunately, however, without a well coordinated system of support many people fail to access community-based mental health treatment (Sentencing Project, 2002). Parole supervision does not appear to enhance transitioners' ability to connect with services. Seventy-five percent of parole administrators responding to a 1995 national survey reported that they did not have special programs to serve the needs of mentally ill parolees (Petersilia 2003). Lurigio (2001) notes that persons with mental illness on parole are an under-identified and under-served population, and most parole officers are unable to handle the problems of those parolees successfully.

REENTRY AND REINTEGRATION

The Prevailing Model

The commonly accepted definition of reentry is the process and experience of leaving prison after serving a sentence and returning to society and includes the activities and programming conducted to prepare prisoners to return safely to the community to reintegrate as law-abiding citizens. Reintegration is the process by which the reentering former prisoners adjust and reconnect to employment, families, communities, and civic life.

Most current reentry models focus on providing reentry services immediately upon release of the prisoner who has completed at least the incarceration portion of the sentence although some models recognize the need to prepare for the transition back to the community prior to release from incarceration. They envision the reentry planning process as beginning at the time the sentence begins and the person is admitted into the reception and classification phase of the sentence. It is during reception that the prisoner would undergo a thorough evaluation process. Under such a model, prison staff and the prisoner together develop a reentry plan that includes a strategy for using the time spent in incarceration to acquire the tools needed for successful reintegration.

Redefining Reentry

From the perspective of an agency engaged in sentencing advocacy and as a provider of reentry planning and services, the commonly accepted definition of reentry falls short of reentry's potential. Reentry should more appropriately be defined as a process that begins at arrest and continues through community reintegration. Conceptualized in this way, reentry is redefined as the process and experience that begins at arrest and continues through community reintegration, including release from jail during pretrial proceedings, release at the time of sentencing, or release after service of the sentence. Reentry encompasses the evaluation, planning, and programming conducted, and support services implemented, to prepare and assist people who were previously incarcerated, to return safely to the community to reintegrate as a law-abiding citizens. There is no small significance in conceiving of reentry in this way. If reentry starts at arrest, then that is when the reentry planning begins. By starting reentry planning at the time of a person's arrest, the reentry plan can be an effective tool for both advocacy and reintegration at six distinct stages of the criminal justice process.

Some of the challenges associated with reentry can be anticipated as early as at the time of arrest. Defense attorneys working with a sentencing advocate can be instrumental in anticipating these challenges and developing plans to address them. Reentry planning can be incorporated into advocacy and the reentry activities at each of these six stages:

- pretrial release
- plea bargaining and sentence negotiations
- sentencing
- self-development and preparation for reentry while in prison
- release after serving sentence
- parole revocation

If reentry planning is not commenced until immediately prior to, or upon release, as occurs in the prevailing model, valuable opportunities to use the reentry plan are lost. Even if reentry planning is started immediately after the sentence has commenced, as in the more visionary models, the reentry plan could only be utilized at the last three stages. If reentry planning is started at the time of arrest, a reentry plan can be developed to be used at any of the

six stages. Once developed, the basic plan remains the same, with modifications over time and adjustments for the stage at which release actually occurs. CCA's experience argues for a staged approach that begins with a bail application and accompanying reentry plan that support release from pretrial detention and reintegration and form a foundation for subsequent reentry planning. Incorporating reentry planning at the pretrial stage is an opportunity for early identification of problems and assets that strengthens subsequent planning that could continue, if necessary, through all six stages, to increase the likelihood of the transitioner's successful reintegration into the community.

REASONS TO START REENTRY PLANNING AT ARREST

Professional Guidelines and Standards

The requirement for early reentry planning, without using that terminology, is found in the professional standards for defense counsel. The American Bar Association Standards for Criminal Justice (ABA 1993) address several of the responsibilities of defense counsel that are components of reentry planning.

- Standard 4-6.1 concerning defense counsel's duty to explore disposition without trial states that "defense counsel should explore the possibility of an early diversion of the case from the criminal process through the use of other community agencies." (This is clearly a component of reentry planning and can only be accomplished by starting at or shortly after arrest.)
- Standard 4-8.1(a) provides that defense counsel should "at the earliest possible time, be or become familiar with all of the sentencing alternatives available to the court and with community and other facilities which may be of assistance *in a plan* for meeting the accused's needs.
- Standard 4-8.1(b) instructs defense counsel at the time of sentencing to "submit to the court and the prosecutor all favorable information relevant to sentencing and ... be prepared to suggest a program of rehabilitation based on defense counsel's exploration of employment, educational, and other opportunities made available by community

services.” (In order to fulfill his or her responsibility under this Standard the exploration and research would need to start immediately upon defense counsel’s entry into the case.)

- Standard 14-3.2 cautions defense counsel in subsection (f) to “advise the defendant, sufficiently in advance of the entry of the plea, as to the collateral consequences that might ensue from entry of the contemplated plea.” (For reentry planning to meet the needs of a person who seeks to reintegrate back into the community these collateral consequences must be anticipated and problem solving engaged in to make a reentry plan successful.)

Standards addressing the same requirements are found in the National Legal Aid and Defender Association Performance Guidelines for Criminal Defense (NLADA 2001). Guidelines 6.2, 6.3, and 6.4 require advising clients of the consequences a of conviction; Guideline 8.2 requires defense counsel to be familiar with collateral consequences, diversionary programs, available drug rehabilitation programs, psychiatric treatment, and healthcare; Guideline 8.3 requires counsel to advise the client of the options, alternatives, and the consequences of the sentencing alternatives; and Guideline 8.6 requires counsel to submit a defense sentencing memorandum that includes:

- information favorable to the defendant concerning such matters as the offense, mitigating factors and relative culpability, prior offenses, personal background, employment record and opportunities, education background, and family and financial status;
- information which would support a sentencing disposition other than incarceration, such as the potential for rehabilitation or the nonviolent nature of the crime;
- information concerning the availability of treatment programs, community treatment facilities, and community service work opportunities; and
- presentation of a sentencing proposal.

In order for defense counsel to fulfill the responsibilities imposed by these standards and guidelines, he or she would, in effect, create a transitional plan for reintegration. In many jurisdictions sentencing advocates work with defense counsel and defendants to create sentencing memoranda to be used during plea bargaining, diversion, and sentencing.

A review of *The Ten Principles of Sentencing Advocacy* prepared by the Sentencing Project (Clarke, Wamsley, and Young 2003) reveals that most of the principles are consistent with reentry planning. According to these principles sentencing advocacy

- is individualized,
- is holistic,
- is problem-solving,
- requires comprehensive preparation,
- opposes racial disparity and cultural bias in criminal justice,
- informs,
- builds coalitions,
- is a catalyst for treatment alternatives and community services, and
- furthers the goal of fundamental fairness

Above all sentencing advocacy strives for fair sentencing for every individual. There are two purposes for sentencing advocacy under these principles. First, it is to minimize punitive and non-productive aspects of criminal sanctions upon an accused person and to maximize constructive use of available resources for that person. Second, whenever possible, sentencing advocacy seeks to assist the accused person in making sufficiently comprehensive and positive changes to lead him or her away from crime. Although the accused person is the immediate beneficiary, the cumulative impact of sentencing advocacy is improved public safety (Clarke et al 2003). Sentencing advocates already perform many of the tasks involved in reentry planning starting at the time of arrest. There is no reason that their function should not be expanded to provide reentry planning for people held in pretrial detention.

In addition to plans that are submitted at stages one and two (pretrial release and plea negotiations), defense counsel should submit to the judge, for each defendant to be sentenced, a plan for reintegration. This would be in accord with NLADA Guideline 8.6. This provides the judge the opportunity to construct an individualized sentence that takes into account the goal of reintegration. For mentally ill defendants it provides the opportunity to make the judge aware of the role that serious mental illness may play in their behavior and the need to consider sentencing options including comprehensive treatment and supervision and the need for intensive

community reintegration support. To date this concept has received only limited attention, primarily from the Sentencing Project (Young 2003), Travis (2001; 2002), and Karp and Clear (2000). Information submitted by the defense in a sentencing plan may be useful for the corrections staff during classification, identifying mental health needs and support services that require development during incarceration.

Early Access to Records and People

By starting on reentry planning during the pretrial stage, collection of records and documents is facilitated. Medical and mental health records retrieved at this early stage can provide great insight into what support services will be necessary for reintegration. Family and friends will be much easier to contact while the person is still in a local jail. Because ties with family and friends break down once the person is sent to prison, these interviews are best conducted while the relationships are still current.

Reducing Dependence on Prison

One of the strongest arguments that can be made in support of undertaking reentry planning starting from the time of arrest is that it will help to reduce the swollen prison population. In his address to the American Bar Association on August 9, 2003, Associate Supreme Court Justice Anthony M. Kennedy (Kennedy 2003) called for fundamental changes in current judicial and corrections practices. He implored the American Bar Association to initiate a public discussion about the prison system. “When it costs so much more to incarcerate a prisoner than to educate a child we should take special care to ensure that we are not incarcerating too many people for too long.” He went on to underscore the need for change in sentencing practices, perhaps foreshadowing the need for reintegration to be elevated to a sentencing goal. “Our resources are misspent, our punishments too severe, our sentences too long.”

Reentry planning holds out the hope of reducing the prison population as pointed out by the Sentencing Project. “To be most effective in reducing prison use, reentry programming should be available to sentencing courts or even pretrial services and defense sentencing advocates” (Young, 2003). The current system fails to distinguish adequately between those who are truly dangerous and those who are not. Instead, we send far more people to prison than need

to be there for incapacitation or deterrence purposes (Petersilia 2003). Money spent on confining low-risk prisoners would be better invested in community-based treatment for transitioning people and education to reduce the likelihood of young people's involvement in the criminal justice system.

Criminologists have long suggested that prisons breed crime, act as schools for criminal learning, and produce a variety of criminogenic effects (Petersilia 2003). Assuming this is true, attention paid to promoting alternatives to incarceration through "front end" reentry planning can have a considerable public safety payoff.

Increasing the Likelihood of Post-Release Success

From the perspective of effectiveness, there is no better time to formulate a reentry plan than at the time of arrest. By creating the reentry plan at this early stage it can be used for several purposes. First, it can be presented to the judge at the time of a bail application as a pretrial release plan. From the outset the judge will be given a vision of what services and supports have been put in place to assist this defendant in reintegration and living a crime free life. Reentry services can be built into the pretrial release plan to encourage the judge to release the defendant on low or no bail in those instances where the defendant is unable to post cash bail or pay the premium for a bail bond. Second, the plan can be developed with defendants' full participation and authorship as a way of getting him or her to focus on what needs to be done to help reintegrate upon release and to create buy-in to this reentry plan at an early stage. Third, once developed the reentry plan can be adapted beyond its pretrial release purpose to be used at any of the other five stages of reentry process from sentencing to parole revocation.

Affecting Sentence Outcomes

The pretrial stage is a critical time for demonstrating one's worthiness of consideration by key decision makers. The primary distinctions between those who are released pretrial and those who are confined are financial status and ability of defense counsel. Research has shown that defendants who had been subject to pretrial detention were more likely to be incarcerated, and to receive longer sentences if they were incarcerated, than defendants who had been released pending case disposition (William 2003). There may be several reasons for this but perhaps the most compelling are that a defendant who is out on bail has the ability to demonstrate to the

sentencing judge that he or she is not a danger to the community and that he has taken concrete steps to “get his life turned around.” These are things that a defendant who is confined during the pretrial period cannot do. For many, the road to reentry and reintegration may begin at pretrial release. Yet for others, perhaps for no other reason than that the person was unable to make bail, reentry may be delayed for years, and for some, reintegration may be further retarded by the prison experience.

Recent studies inform us that most people who are arrested will be released pretrial. Rainville and Reaves (2003) estimate that 62 percent of all state court defendants arrested on felony charges were released by the court prior to the disposition of their case. A similar study of defendants charged with a federal offense found that 66 percent were released during the pretrial stage of the case (Scalia 1999). With that many people returning to the community shortly after their arrest and confinement in jail, it makes sense to provide “early reentry” services that are likely to influence judge and prosecutor in a positive way. This will lead to savings on the cost of imprisonment and help promote public safety, while benefitting families and communities.

Pretrial Releasees are Part of the Reentry Population

Rainville and Reaves (2003) found that 74 percent of all persons arrested for a felony had at least one prior felony or misdemeanor arrest and 58 percent had at least one prior conviction for a felony or misdemeanor. At the time of their arrest 35 percent had an active criminal justice status such as probation, release pending disposition of a prior case, or parole. This is a population that can benefit from early reentry planning services. Of all felony defendants who were released prior to trial, 32 percent were either rearrested for a new offense, failed to appear in court as scheduled, or committed some other violation that resulted in the revocation of their release (Rainville and Reaves, 2003). If we are correct that reentry planning does help in reintegration, surely we would want to include pretrial releasees in our efforts. This can only be done by reentry planning that starts at the time of arrest, thereby putting into place supports and services that will provide the opportunity for early reintegration.

Expediting and Facilitating the Provision of Mental Health Treatment Services

For people with mental illness reentry planning that starts at the time of arrest takes on added importance. In large part this has to do with the difficulties jails have delivering services

to the jail population. The NCCHC (2002) reports that although most jails offered at least one mental health service, few jails provided a comprehensive range of services. While 42 percent of jails provided psychiatric medication, only half that number, 21 percent of jails, provided case management or discharge planning. The Commission concluded that beginning discharge planning early in confinement is important. The earliest possible diversion of individuals to the community or to residential treatment services is generally in the best interests of all concerned (Gainsborough 2002).

Upon release, individuals with mental illness typically require specific community-based services including housing, financial support and entitlements, healthcare, and mental health clinic services. Critical to the reintegration process is the continuity of mental health treatment, particularly uninterrupted medication. Lack of medication and basic necessities of life virtually guarantee the return of the individual to jail (NCCHC 2002). For all persons with special needs, linkages to community services, particularly if the linkage is more than a telephone appointment, can make a significant difference in engagement in community-base services (NCCHC 2002).

Sentencing advocates, at the pretrial detention stage, can fill this role and make the necessary linkages and provide the discharge (reentry) planning. If enrollment in treatment can be accomplished during the pretrial release stage, and the person successfully connected to support services, the person can be prepared to re-connect smoothly to these services once his or her period of incarceration (if any) is finished. This will provide critical continuity of care that is normally not available to transitioning people. Typically, prisons lack the capability of providing discharge planning due to their location outside the inmate's community and lack of working relationship between prison staff and local providers. Therefore locating an early point for case management for those with mental illness creates superior client outcomes, reduces recidivism and helps individuals in reintegration (NCCHC 2002). The sentencing advocate can intervene early and make the connection to case management services in the community. An ideal solution, from a continuity-of-care perspective, is to avoid prison entirely and keep the mentally ill person involved with community-based case management, thus reducing the likelihood of arrest and violent or harmful behavior. Early reintegration can help promote public safety.

EARLY REENTRY PLANNING IN PRACTICE

How CSP is Used

Planning for reentry can and should begin as early as the arrest. But who will do it and how will it be done? For over twenty years CCA has used its Client Specific Planning (CSP) model to provide defense counsel, the prosecution, and the courts with comprehensive alternative sentencing plans, usually presenting an alternative to incarceration. Whenever possible and practical, the goal is the release of the defendant back into the community at the time of sentencing. However, CSP plans are also prepared for defendants facing mandatory prison sentences and the only issue that is still open at sentencing is the length of incarceration. CSP plans address this issue in several ways. First, there is an analysis of what prison programs are available to help address the needs of this particular defendant. Second, is an analysis of how long a period of incarceration is necessary for the defendant to receive the full benefit of the programs. Third, the appropriate length of the sentence is discussed with an eye towards both punishment and rehabilitation. In effect, what has been presented at the time of sentencing is the elementary development of a reentry plan.

CSP has also been used in other settings such as for prisoners seeking parole. Plans are presented to the parole board to give a complete picture of the support systems, treatment, education, and employment that have been put in place to assist in the prisoner's reentry. The goal of these plans is to increase the prospect for a successful parole release.

CSPs are also used at the front end. That is, they are used at the time of the bail application motion or request for bail reduction. It is a tool that CCA provides to defense counsel to advocate more effectively for pretrial release. An evaluation of the defendant's strengths and weakness is very helpful at this early stage. If the person's needs can be identified shortly after arrest, then reentry planning can actually begin at the front end as reentry from pre-trial detention, rather than at the back end, as reentry after serving a prison sentence.

As CCA began to implement its Self-Development: Reentry Program the need and opportunity to use CSP to do reentry planning as early as the time of arrest became clear. Not

only could CSP be used at this initial stage to assist with reentry planning for pretrial detainees seeking release on bail, but in virtually every CSP report a reentry plan could be included.

If the reentry planning waits until reception at a prison, it is, of course, too late to use it for sentencing advocacy purposes. In fact, for some, reentry planning after an unduly punitive period of incarceration may prove to be an exercise in futility. But, if the reentry plan is developed at the time of arrest, it can be used during both the plea-bargaining process and also for purposes of sentencing advocacy. A well constructed reentry plan can help to overcome the judicial and prosecutorial resistance to a more moderate or community-based sentence. This has been CCA's experience with CSP reports submitted in Onondaga County, New York.

CCA's reentry program is a pilot project that limits its reentry services to prisoners returning to the community after serving a definite sentence ranging from six months to one year in the local jail. Many of the young men and women facing sentences for class B, C, D and E felonies are eligible to be adjudicated Youthful Offenders if they are between the ages of 16 and 19. As a Youthful Offender they face a possible indeterminate sentence in state prison of 1 1/3 to 4 years. They are also eligible for a definite sentence of up to one year in the local jail. For those who are between 19 to 24 years old (24 for being the maximum age for the pilot project), who have been convicted of class D or class E felonies, they may be sentenced to a definite sentence of one year or less. However, they could also face a maximum sentence of 2 1/3 to 7 years for a class D felony and 1 1/3 to 4 years for a class E felony. Because the CCA reentry program is only available to those sentenced to the local correctional facility on one year or less definite sentences, sentencing advocates have been able to argue persuasively that the judge should exercise his discretion and sentence the defendant to a definite local sentence rather than an indeterminate sentence in state prison so that the defendant will have the opportunity to benefit from the reentry program. CCA has also had positive results in arguing for a shorter state prison sentence by analyzing the prison programs available to the defendant that could be completed in a relatively short period of time. This shorter period of incarceration becomes more judicially palatable when combined with a well constructed transitional plan for reentry.

The Contents of a Client-Specific Plan

A transitional plan for reentry addresses such issues as:

- housing/living arrangements
- family
- education
- vocational training
- employment
- health care
- mental health treatment
- substance abuse
- probation
- community/civic activities

The reentry plan also identifies the collateral consequences the person will face upon reentry which include:

- obtaining housing
- voter registration
- obtaining employment
- obtaining a driver's license
- obtaining federal student loans
- family issues
- stigma
- obtaining identification
- prisonization

The plan presented for judicial consideration at sentencing begins with a statement that sentencing reflects a concern for public safety. Consequently, appropriate determination is necessary regarding what sentence will create the highest likelihood that the individual will not re-offend upon release. The question that is posed is not how long the sentence should be to satisfy the need for punishment and retribution, but rather what sentence will be most conducive to successful reintegration. This is simply a recognition that all but a very few will eventually be released from prison and return to the community from which they were sentenced. In light of the national rate of recidivism which is 67% within three years of release, imprisonment as a

deterrence has proven relatively ineffective in correcting future behavior. Reentry programs are designed to respond to the concern that a growing number of young men and women are returning to their communities ill-prepared to be productive and remain crime-free. In fact there is some evidence to indicate that prisons have proven to be criminogenic. There is also some evidence that the longer the sentence, the more difficult the reentry process will be. If the purpose of the sentence is to promote public safety then every sentence must be considered in light of what effect the sentence will have on the successful reintegration of the defendant.

The Process of Developing a Plan

In order to develop a plan the sentencing advocate must undertake an assessment. This assessment takes into account the defendant's individual needs, family circumstances, problems, strengths, weaknesses, behavioral and emotional issues, and where the defendant is at in terms of stages of change (Prochaska and DiClemente 1984).

The plan is developed by seeking out and establishing the resources to be used to address the issues unique to the individual. The plan also identifies the support system or solution to help address each of the collateral consequences. Goals are established and a systematic way of accomplishing each goal is agreed upon.

The first step in creating a plan is to establish with the defendant whose plan it is. It is made clear that it is the defendant's plan. It is not the sentencing advocate's plan. The plan is created with the defendant. In doing so the defendant takes ownership of the plan. This buy-in is essential if the defendant is going to establish reentry goals and work towards them. The purpose of the plan is to empower the defendant. This is done by setting a personal "mission" and taking control by problem solving. In the course of addressing the issues that have been identified, self-confidence, skills, and organized problem solving are developed. The reentry plan is obviously a tool to assist the defendant in transitioning back into the community. The reentry plan can also play a significant role in sentencing advocacy.

CONCEPTUALIZING THE REENTRY PROCESS FOR RESEARCH

Two types of audiences can benefit from reentry-related studies that are scientifically designed and implemented: those who advocate for individuals in sentencing and those who advocate for effective criminal justice policies that reduce recidivism and promote active community involvement in the sentencing process. Research can be used to advance arguments for more community based sentences. For example, scientific evidence regarding the extent to which non-incarcerative sentences, shorter sentences, and individualized planning during the earliest stages of criminal justice system processing are effective in reducing the likelihood of recidivism could strengthen sentencing recommendations and influence judges' decisions, especially in marginal cases. It could also strengthen the ability of advocacy agencies to gain a voice in policy debates at the local, county, state, and national levels of government. In this section we identify an agenda for research that can inform advocacy in both arenas.

Our advocacy-oriented research agenda includes the same range of approaches that characterize scientific research in general. These approaches include a variety of non-empirical (e.g., reviews, syntheses, methodological and measurement development, and theory-building) and empirically-based studies (e.g., exploratory studies, studies of efficacy, and descriptive modeling). In this paper we focus on several topics that have arisen out of our reading of the current literature on reentry; out of our sentencing advocacy work; out of our experiences in working with transitioning people; and out of focused conversations and interviews with our staff, people who have more or less successfully experienced a transition process, and other members of the community who are stakeholders in the transitioning process.

What Does Service Delivery Actually Look Like?

First, we see a need for in-depth, qualitative, research that will inform policymakers about what policy implementation actually looks like in service provision for transitioning people. Studies that demystify those settings would examine such factors as integration of services; case management; acceptance of "difficult" people; the community's involvement in decision making; adoption of strengths-based intervention models; use of culturally appropriate language; use of assessment instruments; and training.

Understanding Barriers to Service Utilization

Several barriers diminish the likelihood of transitioners' accessing services in a variety of domains such as public assistance, housing, health prevention and treatment services, employment services, and education and vocational training. Barriers reside within the transitioners themselves as well as within the agencies from which they could benefit. Among the personal characteristics we have identified as significant are our clients' lack of confidence in navigating the world of social service agencies, their lack of motivation or readiness for change, and their mental health status. Among the enrollment and processing characteristics of social service agencies that function as barriers to access for ex-offenders are lengthy and challenging paperwork, unhelpful agency personnel, and complicated and personally challenging eligibility requirements.

An in-depth investigation of transitioners' decision-making processes that we would like to see would include an exploration of the roles of transitioners' perceived costs and risks of engaging "the system"; human capital (skills and education); social capital (families, peers, fictive kin, and members of the wider community); and motivation. An increase in our knowledge of the roles these and other factors play in decision-making outcomes can serve to inform the design of interventions, potentially increase accessibility and utilization of services, and hence enhance the likelihood of successful transitions.

Understanding Barriers to Service Availability

From an organizational perspective we would like to know more about the extent to which gaps exist in the quantity and quality of services for transitioning people. We would also promote an examination of the economic, sociological, and political reasons for the existence of any gaps that exist. We anticipate that such factors as sources of funding (e.g., whether it is from corrections or social service budgets); regulatory policies and standards; the extent to which funding streams are categorical/fragmented v. integrated; extent of funding; the extent to which services are mandated/discretionary; staffing policies; and payment structures for patients/clients are important for understanding any barriers that exist.

Understanding the Role of Social Capital in the Transitioning Process

Few of those with whom we work on transitioning have the forms of social capital that typically allow people to succeed in life. Wolff and Draine (2002) have advocated research on the roles that various forms of nonmaterial resources or social capital (e.g., family compared with other caring adults) play in the transitioning process. We are also interested in the various types of benefits offered by those people (e.g., emotional care or assistance in accessing and securing particular assets or services); the role of exchange in those relationships (i.e., what kinds of mutual expectations attend the provision of these forms of capital); and the roles they play in the transitioner's ability to overcome obstacles to success.

Strategies for Enhancing Transitioners' Political Voices

The strengthening of one's political voice with respect to becoming "informed citizens in their own care and maintenance" (Gaes and Kendig 2002:32) can be difficult to achieve among people who have spent months, perhaps years, having few decisions to make. Interventions that focus on encouraging the development of a political voice in transitioning clients, through leadership training and workshops that are informative about strategies for successful transitioning, must understand those clients' values, goals, concerns, and motivations. The potential consequences of individuals' acquiring such a voice would include well being in the areas of physical and mental health as well as personally and socially productive expenditures of time. Research that illuminates the process by which people acquire a political voice, the range types of voices acquired, and the consequences of acquiring those voices could add a valuable component to transitioning interventions.

Understanding Processes of Identifying Mental Health Conditions and Referring Clients for Counseling and Treatment

Prisoners exhibit a wide range of mental health problems. For the most part, correctional systems are unsystematic in their provision of psychiatric evaluations and delivery of mental health services. Transitioning ex-offenders are even less positioned for attention with mental health problems. Interventions can benefit from research that illuminates the perceptions of service coordinators; the range of mental health conditions found in transitioning populations

(e.g., from worry to psychosis); the extent of the problem; and the nature of the problems releasees experience in terms of obtaining access to mental health services.

Effects of Length of Sentence on Transitioning Outcomes

Research (Petersilia 2003) indicates that incarcerative sentences increase the likelihood of recidivism, compared to community-based supervision. It is also clear that people with histories of incarceration have transitional difficulties in the domains of labor market participation and earnings; family unification; and health. The role of length of sentence in transitional outcomes is less understood.

The Relative Effectiveness of Transitional Programs Introduced at Different Stages of Criminal Justice Processing

We argue that introducing transitional planning and programming as early as the pretrial stage of criminal justice processing can have a significantly positive effect on the long-term outcomes of transitioning people. This has not been empirically tested, however, and we do not yet have an understanding of what types of approaches work best with which populations and how short-term, intermediate, and long-term outcomes should be measured.

The Effectiveness of Transitional Programs Operated by Community-Based Organizations (CBOs)

We expect that reentry programs run by CBOs, especially when they provide services both within prisons and jails (pre-release) as well as in the community (post-release) are more likely to be effective than programs that are administered by corrections departments themselves, pre-release, and then operated by CBOs post-release. The former arrangement would be a seamless delivery and be more likely to result in programs that are more heavily invested in the transitioners and thus produce more satisfactory outcomes in the areas of employment, family unification, and health.

CONCLUSIONS

Reintegration as a Sentencing Goal

The focus on reentry over the last few years, culminating in President Bush highlighting the issue in his 2004 State of the Union address, should be seen as an opportunity. It is an opportunity to reconsider the traditional goals of sentencing, which include incapacitation, deterrence, punishment, and rehabilitation. Over the last 30 years, as we have filled our old prisons, and built many new ones, the goal of rehabilitation has been all but abandoned, leaving us with little more than punitive sentencing practices. Reintegration should supersede the much criticized goal of rehabilitation. Reintegration as a sentencing goal changes the focus from "fixing the offender" to a more complex recognition of shared responsibility.

The opportunity to reconsider sentencing philosophy is provided not only by the emergence of reentry, but by the developing theories of community justice. Making reintegration the primary sentencing goal is consistent with the theories of community justice explored by Karp and Clear (2000). Community justice, as they conceptualize it, has twin foci: restoration and reintegration. Public safety and the quality of community life are promoted by the restoration of the community and the victim and also by the effective reintegration of offenders. At the same time, community justice places punishment as a sanctioning philosophy in a greatly diminished role (Karp and Clear 2000).

Placing the goal of reintegration within the range of goals to be served by sentencing will bring us back to a more individualized approach. It will require each judge, at the time of sentencing, to address several questions. "How will this sentence promote the ability of this defendant to reenter society successfully at the end of their incarceration?" "Will a community-based sentence better serve the end of reintegration?"

Reduction of the Prison Population

If we carefully attend to the wide range of concerns that affect reentry, we can substantially reduce the prison population. If we seek to reduce the cost of incarceration in both dollars and human suffering, the most effective way to do so is to begin reentry at the time of arrest. For those who can safely and successfully be reintegrated directly from pretrial detention,

the benefits are clear. For those who still face incarceration at the time of sentencing, that sentencing must be imposed with reentry in mind. The unprecedented increase in the prison population over the last thirty years is only partially explained by crime rates. Research examining growth in the prison population over the past two decades attributes the increase to changes in sentencing policy and practice (Blumstein and Beck 1999). If we can control our penchant for punishment, we can again change our sentencing policy and practice, embrace reintegration, reduce the prison population, and increase public safety.

Swing the Pendulum Back

Reentry provides us with a vehicle for change. It is a significant departure point from which to begin the discussion of crime and criminal justice practices. In recent years legislatures have disregarded evidence that crime does not readily respond to severe sentence, or new police powers, or a greater use of imprisonment, and have repeatedly adopted a punitive “law and order” stance (Garland 2001). This new focus on reentry provides an opportunity for a dialogue about a less punitive sentencing policy that promises to be smart on crime.

Reentry Planning and Advocacy Begin at Arrest

Reentry plans established and implemented during pretrial detention offer the benefits of early reintegration and fewer days spent in jail. Once the foundation of a reentry plan has been laid, it can be more fully developed and presented to the judge at the time of sentencing. This sentencing plan can be used to advocate for a more humane, less punitive, individualized sentence.

If we see reentry only as a back end process, starting even as early as entry into prison, we have conceded to irrational notions of punitive sentencing. Such policies relegate us, as William Spriggs of the National Urban League suggested, to a reentry process that “pieces together the lives broken by stupid policies” (Travis 2001). It is up to those of us who work with transitioning people not only to implement practices that mitigate the effect of punitive sentencing policies but also to promote policy reform.

Reentry: An Opportunity for Advocacy on Multiple Levels

Reentry provides an opportunity for advocacy on several levels. On the micro-level there is the case-by-case advocacy that will make the difference in the lives of defendants as they pass

before the judge. Advocacy at this level will focus on the appropriateness of the sentence and the reentry plan that can be implemented to assist in reintegration with a minimum amount of incarceration. On the macro-level there will be the opportunity for advocacy as we seek to change public policy. It will require us to address a wide range of policy issues, including the collateral consequences of imprisonment that must be removed if reentry is to realize its potential. There will also be the challenge of sentencing policy change—elevating reintegration to a sentencing goal. As we come to recognize the difficulties families and communities face in embracing the reentry process, we will need a change in policy that provides resources for housing, employment, and physical and mental health care, among a host of other issues.

A Role for Research

Through research we can develop the case that prison is the least ideal setting for effective reintegration. We view scientific work as a vital strategy for strengthening our ability to contribute to an improved transitioning process. The mechanism through which such an improvement can take place comes first with the identification of factors that are critical to successful transitioning. The illumination of such factors can lead to the development of measurement instruments and the generation of testable hypotheses that, in turn, can lead to the development of narrowly-focused interventions and experimental studies that can formally test the efficacy of those interventions.

Our advocacy work can be greatly enhanced by rigorous testing of theoretically-based interventions that are designed to strengthen the transitioning process and to increase the likelihood of favorable outcomes. The results of such studies, especially when designed as experiments with random assignment of subjects to a treatment or control group (the gold standard of program evaluation research), can be a powerful tool in the designing of future programs; in working with individual prosecutors and judges on sentencing plans; in working with legislators and their staffs; and in developing messages for public consumption, such as op-ed pieces for national and local newspapers.

A Reason for Hope or Impending Disaster

Reentry is a policy arising out of the criminal justice systems's schizophrenic approach to crime. On the one hand there is the penchant to punish that has damaged so many individuals,

families, and communities. On the other hand there is the compassion for fellow human beings to help reintegrate back into the community. But if reentry is simply implemented as a “program” for those leaving prison, and nothing more, it will provide us little more opportunity than to pick up the damaged pieces that our penchant for punishment created.

There are sea changes that must be made to make successful reintegration a reality: innovating, advocating, researching, and improving. We have made prison an increasingly worse place from which to stage reentry. An analysis of 1997 state prison data shows an across the board decrease since 1991 in pre-release treatment, educational programs, and vocational treatment (Mumola 1999). The infrastructure of many of the cities from which prisoners were taken are worse off now than when they left. The community-based supports that will be necessary to assist in the reentry effort have been devastated by a budget crisis, driven in large part by a build up in police, criminal justice, and corrections. Judge Nancy Gertner (2004), a U.S. District Court Judge in Massachusetts recognized the course we are on and the need to change sentencing practices:

“While ever increasing prison terms enable some to vent their spleen about the “crime problem,” they do little or nothing to effect a solution: Lengthy prison terms undermine an offender’s chances for a meaningful life after prison. They destroy communities and decimate families that are already struggling, especially in our inner-cities. And from those decimated communities comes more crime.”

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