



**A New Sentencing Model to Meet the Challenge
of Reentry and Public Safety**

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On June 7, 2006 Governor George Pataki signed into law an important change affecting sentencing in New York. Penal Law § 1.05(6) has been amended to add a new goal, “the promotion of their (convicted person’s) successful and productive reentry and reintegration into society...” (Chapter 98 of the Laws of 2006), to the four traditional sentencing goals of deterrence, rehabilitation, retribution and incapacitation. This amendment became effective immediately (bill text at www.communityalternatives.org/pdf/bill_text.doc).

This legislative change is consistent with the reintegrative sentencing model that was developed by the Center for Community Alternatives (CCA) in 2004 and championed by the Interfaith Coalition of Advocates for Reentry and Employment (ICARE), an alliance of communities of faith, direct service providers, and policy organizations including the New York State Council of Churches, Legal Action Center, Center for Community Alternatives, Reentry Net/NY and many congregations throughout New York State. In CCA’s sentencing model, reintegration is placed at the core, and the individual returns to the community in a way that promotes public safety. To read more about CCA’s reintegration-focused sentencing model *See* CCA Working Paper at www.communityalternatives.org/pdf/unlocking_potential.pdf, “Unlocking the Potential of Reentry and Reintegration.”

This amendment to New York's Penal Law marks a significant shift in sentencing policy by the legislature. For 30 years legislatures and courts have neglected rehabilitation as a goal to be considered during the sentencing process (Garland 2001) in favor of the more punitive goals of punishment, deterrence, and incapacitation. Identifying reintegration as a sentencing goal promises not only to restore the person's well-being as a focus of decision-making but also to extend that consideration, by implication, to the well-being of the community as a whole. The new law will require every judge presiding at sentencing in a criminal case to consider carefully what kind of sentence will best help to promote the defendant's reintegration into society and recognizes that such reintegration is the best way to achieve public safety. It also requires an individualized approach to sentencing.

As highlighted in the recently released report of the Special Committee of the New York State Bar Association, *Re-entry and Reintegration: The Road to Public Safety*, (available online at <http://www.nysba.org>, the issues of public safety, high recidivism rates, and prisoner reentry and reintegration are inextricably entwined. If people returning home from prison are not successful in their reintegration back into the community it is public safety that suffers. In order to reintegrate people need housing, medical and mental health treatment, education, and employment. The fulfillment of these needs increases the likelihood of an individual establishing a stake in the community. People who establish a stake in the community are less likely to engage in illegal activities and are more likely to live law-abiding lives (Petersilia 2003). Sentencing that recognizes the important role of community reintegration is simply good public policy.

In his address to the American Bar Association on August 9, 2003, Associate Supreme

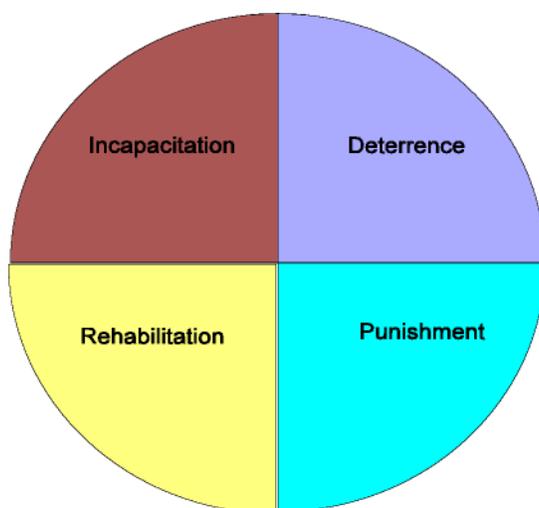
Court Justice Anthony M. Kennedy (Kennedy 2003) called for fundamental changes in current judicial and corrections practices. He implored the American Bar Association to initiate a public discussion about punishment and sentencing. “When it costs so much more to incarcerate a prisoner than to educate a child, we should take special care to ensure that we are not incarcerating too many persons for too long. [...] Our resources are misspent, our punishments too severe, our sentences too long.” Justice Kennedy went on to underscore the need for changes in sentencing practices, foreshadowing the development of a sentencing model that incorporates reintegration as a sentencing goal. “The debate over the goals of sentencing is a difficult one, but we should not cease to conduct it. [...] We must try, however, to bridge the gap between proper skepticism about rehabilitation on the one hand and improper refusal to acknowledge that the more than two million inmates in the United States are human beings whose minds and spirits we must try to reach.” (Kennedy 2003). New York’s new reintegration-focused sentencing model holds out the potential to bridge that gap. It provides an opportunity for New York to come to grips with the effects of a policy of mass incarceration, public safety, spiraling costs of the criminal justice system, the inevitability of reentry, high recidivism rates, and the positive impact of reintegration.

The focus on reentry over the last decade pioneered by Jeremy Travis (Travis 2000), culminating in President Bush’s highlighting the issue in his 2004 State of the Union address, coupled with the challenge posed by Justice Kennedy, was apparently seen by the New York State legislature as an opportunity to reconsider the traditional goals of sentencing - incapacitation, deterrence, punishment, and rehabilitation - in light of reentry. Reintegration refocuses the purposes to be served by sentencing. Reintegration as a sentencing goal changes the emphasis

from punishment and “fixing the offender” to a more complex recognition of shared responsibility that requires an active role by community institutions and organizations.

The differences between the traditional sentencing model and the new sentencing model can be seen in the graphics below. In the new model shown at the bottom of the page reintegration becomes the focus and leads back to the community and public safety.

Traditional Sentencing Model



Reintegrative Sentencing Model



New York's new sentencing law at once recognizes that one of the purposes of sentencing is to enhance public safety and that the failure to address issues of community reintegration adequately leads to more crime. The amendment to New York's Penal Law opens the door to sentencing practices that will reduce reliance on incarceration, and consideration of the many ways that prisons impede reintegration.¹ Under the new law, every judge must consider the following question when weighing the appropriate sentence to impose: What sentence will best promote the defendant's successful and productive reintegration into society and thus serve public safety? As Judge Michael Marcus has suggested, judges must explore whether community-based and shorter prison sentences promote reintegration and consequently enhance public safety (Marcus 2003).²

Sentencing judges will confront many other questions in light of this new model. Will a community-based sentence better serve the goal of reintegration? How can we best promote public safety now and in the future with a reintegration plan for this defendant? In order to incorporate reentry and reintegration into the "sentencing equation," what length or type of sentence should be imposed? To answer these questions judges will, by necessity, require

¹This concept is developed by Professor of Sociology at Princeton University, Bruce Western, in his newly released book, *Punishment and Inequality in America*. In this book he argues that prisons are counter-productive and impede reintegration, or in a term coined by Western, "incarceration is disintegrative." Approaching this issue from a slightly different perspective is Oregon trial court judge, Michael Marcus, who has forcefully argued in his many writing on the goals of sentencing that we need to move away from our fixation on punishment and focus on public safety and crime reduction through sentences and programs that reduce the likelihood of recidivism by increasing the likelihood of reintegration. In his writing Judge Marcus has developed the thought-provoking conclusion that prison terms as a means of incapacitation work very well during the period of imprisonment, however, "when measured by its impact on recidivism *after release*...any sentence longer than six months is probably counterproductive" (Marcus 2004)(Marcus 2003). Byrne and Taxman conclude that prisons, rather than increasing the likelihood of law-abiding behavior, tend to be criminogenic (Byrne and Taxman 2004).

²Evidence from a United States Sentencing Commission report suggests that alternatives to incarceration and shorter sentences for those who are sentenced to prison are associated with successful reintegration, as indicated by lowered risk of recidivism (United States Sentencing Commission 2004).

additional information from the defense, District Attorneys and Probation Departments to help them undertake this new and substantially more challenging sentencing analysis.

The legislature has opened the door to reintegrative sentencing. The challenge now shifts to New York's judges, prosecutors, defense lawyers, sentencing advocates and probation officers to apply skill, reasoning, creativity, and research to give real meaning and substance to New York's commitment to reintegrative justice and our best hope for public safety and more humane criminal justice practices.

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LIST OF REFERENCES

- Byrne, James, M, and Faye S. Taxman. 2004. "Targeting for Reentry: Inclusion/Exclusion Criteria Across Eight Model Programs." *Federal Probation* 68:53-61/
- Garland, David. 2001. *The Culture of Control: Crime and Social Order in Contemporary Society*. Chicago: The University of Chicago Press.
- Kennedy, Anthony M. 2003. Address at the American Bar Association Annual Meeting, August 9, 2003. http://www.supremecourtus.gov/publicinfo/speeches/sp_08-09-03.html.
- Marcus, Michael. 2004. "Sentencing in the Temple of Denunciation: Criminal Justice's Weakest Link." *Ohio State Journal of Criminal Law* 1:671.
- Marcus, Michael. 2003. "Archaic Sentencing Liturgy Sacrifices Public Safety: What's Wrong and How We Can Fix It" *Federal Sentencing Reporter* 16:76.
- New York State Bar Special Committee on Collateral Consequences of Criminal Proceedings. 2006. "Re-Entry and Reintegration: The Road to Public Safety.
- Petersilia, Joan. 2003. *When Prisoners Come Home: Parole and Prisoner Reentry*. New York: Oxford University Press.
- Travis, Jeremy. 2000. *But They All Come Back: Rethinking Reentry*. Washington, D.C.: National Institute of Justice.
- United States Sentencing Commission. 2004. *Measuring recidivism: the Criminal History Computation of the Federal Sentencing Guidelines*. Washington, D.C.: Author.
- Western, Bruce. 2006. *Punishment and Inequality in America*. New York: Russell Sage Foundation.

BILL TEXT:

STATE OF NEW YORK

S. 7588

A. 10832

SENATE - ASSEMBLY

April 25, 2006

IN SENATE -- Introduced by Sens. VOLKER, MALTESE, MORAHAN, RATH -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

IN ASSEMBLY -- Introduced by M. of A. AUBRY, WRIGHT, PERALTA, GORDON -- Multi-Sponsored by -- M. of A. WEISENBERG -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to the purposes of such law; and to amend the correction law, in relation to certificates of relief from disabilities issued by courts

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 6 of section 1.05 of the penal law, as amended
 2 by chapter 612 of the laws of 1982, is amended to read as follows:
 3 6. To insure the public safety by preventing the commission of
 4 offenses through the deterrent influence of the sentences authorized,
 5 the rehabilitation of those convicted, **the promotion of their successful**
 6 **and productive reentry and reintegration into society**, and their
 7 confinement when required in the interests of public protection.
 8 § 2. Subdivision 6 of section 702 of the correction law, as added by
 9 chapter 121 of the laws of 1982, is amended to read as follows:
 10 6. Any written report submitted to the court pursuant to this section
 11 is confidential and may not be made available to any person or public or
 12 private agency except where specifically required or permitted by stat-
 13 ute or upon specific authorization of the court. However, it shall be
 14 made available by **or at the direction of** the court **[for examination by]**
 15 **to** the applicant's attorney, or the applicant himself, if he has no
 16 attorney, **upon the court's issuance of a decision on the application.** In
 17 its discretion, the court may except from disclosure a part or parts of
 18 the report which are not relevant to the granting of a certificate, or
 19 sources of information which have been obtained on a promise of confi-
 20 dentiality, or any other portion thereof, disclosure of which would not
 21 be in the interest of justice. The action of the court excepting infor-
 22 mation from disclosure shall be subject to appellate review. The court,

EXPLANATION--Matter in **italics** (underscored) is new; matter in brackets [] is old law to be omitted.

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1 in its discretion, may hold a conference in open court or in chambers to
2 afford an applicant an opportunity to controvert or to comment upon any
3 portions of the report. The court may also conduct a summary hearing at
4 the conference on any matter relevant to the granting of the application
5 and may take testimony under oath.
6 § 3. This act shall take effect immediately.