

Pathways for Offender Reentry: An ACA Reader



Russ Immarigeon and
Larry M. Fehr, Editors

Part 5: Future Perspectives



Unlocking the Potential of Reentry Through Reintegrative Justice*

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Introduction

Transitional planning for reentry is now widely embraced as a mechanism to improve prospects of people returning to their home communities after a period of incarceration. The National Institute of Corrections, for example, has promoted the “Transition from Prison to Community Initiative,” which is now at various stages of implementation in fourteen states. However, most of the discussion about reentry planning is limited to a “backend” focus, an exercise that begins shortly before the person is released from incarceration.¹ While this intervention envisions reentry planning through the use of a Transitional Accountability Plan that starts early on during the term of incarceration, even this initiative is distanced from the major events that occur at the beginning of the criminal justice continuum—pretrial release, plea bargaining, probation investigating and reporting, and sentencing—and is focused on reentry needs post-incarceration.

In this paper, we argue that the focus on promoting reentry and reintegration should begin at arrest. A person who is arrested and eventually incarcerated may travel among six points along the criminal justice continuum that lend themselves to reentry planning:

- Decision making regarding pretrial release
- Plea and sentence negotiations
- Sentencing
- Jail and prison programming and release decisions
- Post-release services and
- Parole revocation decisions

If such planning were systematically incorporated into these six phases of criminal case processing, people involved in the criminal justice system would be more likely to reintegrate into their communities

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earlier, and thus be more successful at maximizing their capacity for productive citizenship. The goal is to create a systemwide approach so that stakeholders at every juncture of the criminal justice system, not just corrections and parole, focus on promoting reintegration as a means to reduce recidivism and advance public safety.

This approach to reentry planning reflects the perspective of the Center for Community Alternatives, a community-based organization whose principal mission is to promote reintegrative justice as the means to enhance public safety and reduce society's reliance on incarceration. This is accomplished through the Center for Community Alternatives' direct service programs that include sentencing advocacy, treatment, employment, and reentry services, and violence prevention for both juveniles and adults. The Center for Community Alternatives uses this service experience, which brings us into daily contact with men and women facing incarceration or experiencing the challenges to reentry, to inform the work of Justice Strategies, our research and policy division.

In this paper we describe our vision of reentry planning as a six-stage approach, clarify how it differs from the traditional reentry planning model, and explain the advantages of this approach. To unlock the potential of reentry, we propose transforming traditional sentencing by incorporating reintegration into the sentencing model and practices by adding it to the four traditional goals of sentencing (Wolf and Rosenthal, 2004). By setting the same goals at the front and the backend, transitional planning can be comprehensive, seamless, and more effective.

Reentry and Reintegration

The Prevailing Model

The growing number of people released from prison—729,295 in 2009 (West and Sabol, 2010)—has generated a body of empirical and conceptual work in the area of reentry. From this recent work, a narrow view of reentry has emerged that defines reentry as the process and experience of leaving prison after serving a custodial sentence and returning to society. It includes the activities and programming conducted to prepare prisoners to return safely to the community and to reintegrate as law-abiding citizens. The related concept, known as “reintegration,” is the process by which the formerly incarcerated person adjusts and reconnects to employment, education, family, community, and civic life.

Reentry encompasses risk, strength, and needs assessment; evaluation; planning; programs; and support services to prepare and assist people who are or were previously incarcerated, to return safely to the community and to reintegrate as law-abiding citizens. Most current reentry models are still limited to providing reentry services to people immediately upon their release from incarceration as they transition to parole or other post-release supervision. Advancements in reentry research have spurred models that recognize the need to prepare for the transition back to the community prior to release from incarceration. Some, like the Transition from Prison to Community Initiative, envision that reentry planning begins when the person enters prison. Although the reentry planning differs between these two models, the definition of reentry remains the same, essentially focusing solely on prison and release programming to improve outcomes *after* completion of a prison sentence.

Redefining Reentry

From the perspective of an agency working to reduce the use of incarceration at the “front,” in other words, at pretrial release and sentencing, as well as providing reentry services, the commonly accepted definition falls short of unlocking the potential of reentry. To promote a more rational and holistic approach, we propose that reentry be defined as a process that begins at arrest and continues throughout the entire criminal justice process—release from jail during pretrial proceedings; release at the time of sentencing; or release after serving the sentence. Such a definition is consistent with the defense function in a criminal case. The requirement that defense counsel engage in early reentry planning can be found in professional standards and guidelines (Wolf and Rosenthal, 2004).²

Defense counsel is also responsible for advising clients about the collateral consequences of a criminal conviction. There is an array of collateral consequences that emerge upon arrest that have a devastating impact on defendants and their families. Some of these consequences can be life-long, such as loss of employment, educational opportunities, housing, and suspension of licenses, and, as such, can undermine reentry efforts. Planning for reentry at the earliest moment offers opportunities to address the litany of collateral consequences of a criminal conviction before it is too late (Smyth, 2005).

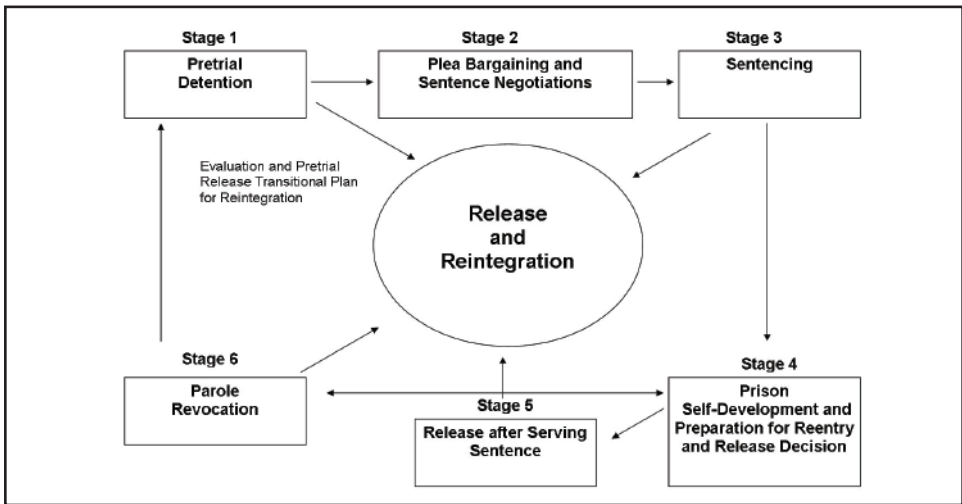
Commencing reentry planning as early as arrest is compatible with the emerging concept of “holistic representation” by defense counsel. Pinard (2004) discusses the paradigm shift in defense philosophy and ideology that has been ushered in by this approach to representation, which expands the delivery of services to a client beyond criminal representation to such non-criminal matters as housing, public benefits, employment, and deportation. Holistic representation promotes reintegration by identifying the various underlying issues that often lead to a client’s criminal conduct, with the aim of ameliorating those circumstances and preventing future criminal involvement (Pinard, 2004). In the criminal defense community the movement is toward a public safety ideal that promotes reintegration.

Enormous benefits can be realized throughout the entire criminal justice continuum by conceiving of reentry in this way. If reentry starts at arrest, then that is when the reentry planning should begin, making the reentry plan an effective tool for advocacy and reintegration at six distinct stages of the criminal justice process, not just following a prison sentence.

Six-Stage Reentry Model

Some of the challenges associated with reentry can be anticipated as early as arrest. The need for employment, education, housing, and drug treatment do not emerge solely as post-prison considerations. Considering reentry needs throughout the criminal justice process brings in new allies and resources including defense attorneys, sentencing advocates, alternative-to-incarceration (ATI) programs and probation officers. For example, a sentencing advocate working with a defense attorney early in the process can identify reentry challenges arising at arrest and develop plans and identify services and supports to address them even as part of alternative-to-detention programming. Such a plan might well be incorporated into a pre-sentence probation report.

Figure 1: Six-Stage Reentry Model: Reentry Begins at Arrest



As illustrated in Figure 1 above, reentry planning is shown to begin at arrest, when a plan is constructed to support the advocacy for pretrial release. Reentry planning at any of the six stages of the criminal justice process can either lead to reentry or to the next stage where the reentry plan is reconsidered and revised, if needed.

Reentry planning that commences at the pretrial stage also offers several advantages from the perspective of “best practices” and evidence-based sentencing for the courts (Warren, 2009). It also promotes fiscal responsibility, efficiency, public safety, and social justice.

Reentry plans established and implemented during pretrial detention offer the benefits of early reintegration and fewer days spent in jail. Not only is there a cost reduction but also improved outcomes. It opens the door for early diversion, community supports, and accountability measures that would support a sentence other than incarceration, which is both costly and criminogenic. Once the foundation of a reentry plan has been established, it can be more fully developed and used during plea negotiations and for presentation to the judge at the time of sentencing. Providing the court with information about a person’s reintegration needs, and showing that there are proven community programs that can address those needs can result in a more humane, less punitive, individualized sentence. Reentry plans can be shared with and expanded upon by probation officers and help to “jump start” effective and meaningful supervision.

Reentry planning prior to sentencing also provides opportunities for judges to mitigate some of the collateral consequences that present life-long barriers to reintegration. This is consistent with the growing call for evidence-based sentencing and the need to provide more information to assist judges to exercise their evidence-based discretion (Wolff, 2008). Limiting reentry to only a back-end process, starting in prison, implicitly concedes to the primacy of punitive, custodial sentencing.

Even when sentencing does not result in an immediate return to the community, the reentry plan can be used as the basis for self-development and preparation for reentry while in prison. It provides information and goals that can be used immediately by correctional counselors for prison-based programming and incorporated into correctional tools such as the Transition from Prison to Community Initiative model. It can be used to inform release decision-making and post-release services. The reentry plan would be revised as the person serves his or her prison sentence, attains goals, establishes new goals, and ultimately prepares for release. Finally, the methodology of reentry planning is useful for parole violations. New York State, for example, has adapted its application of Transition from Prison to Community Initiative to the parole-revocation process. Using a transitional plan that “travels” with the individual through the six stages promotes efficiency and consistency of planning.

Reintegration-Focused Sentencing Model

Reintegration as a Sentencing Goal

The focus on reentry that began with Jeremy Travis’ pioneering work dating back more than a decade (Travis, 2000), was advanced by President Bush highlighting the issue in his 2004 State of the Union address, and operationalized through the 2008 Second Chance Act. It has opened the door to both transitional planning to promote reintegration after prison and sentencing to promote public safety. There is growing support for “evidence-based sentencing,” which recognizes that to reduce the likelihood of recidivism judges should adopt the tools of reentry risk and needs assessment and the knowledge about the efficacy of particular interventions for particular individuals should be applied to sentencing as well (Warren, 2007; Wolff, 2008; Redding, 2009; Marcus, 2004, 2009).

Judge Michael Marcus, a leading proponent of evidence-based sentencing, points out that traditional sentencing, grounded in “just-deserts”,

has been particularly unsuccessful at reducing crime. His conclusion that judges throughout the United States have been sentencing by hubris (Marcus, 2004 p. 672), or as Redding (2009 p. 1) puts it, “by gut instincts and experience,” leads them both to conclude that this is no longer sufficient and to call for sentencing decisions that focus on what will reduce future criminal conduct. On the backend, that focus is referred to as “reintegration.” There is a unity of interest without a unifying system.

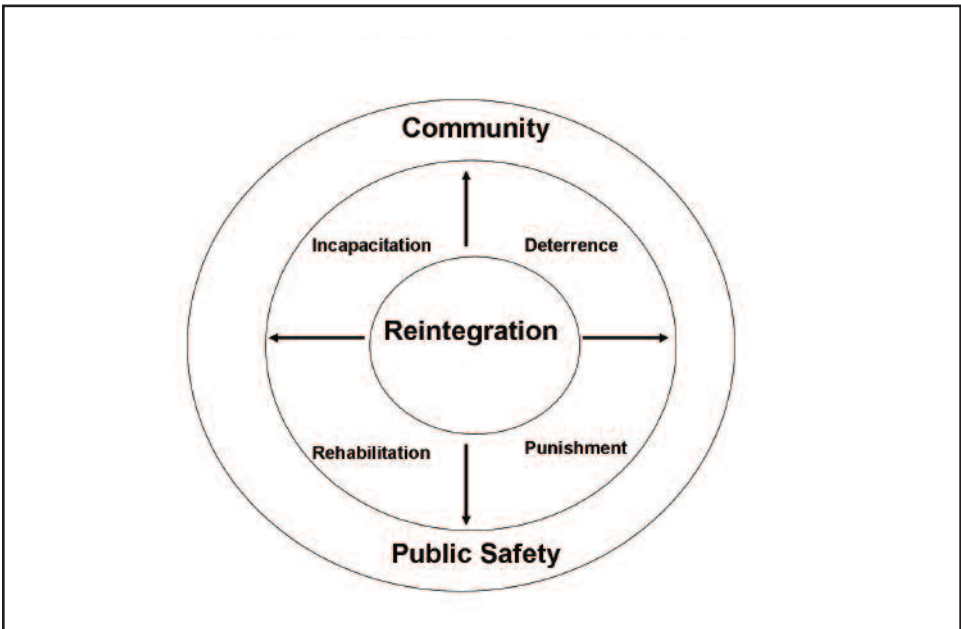
New York State offers one example of how reducing recidivism through the promotion of successful reentry can become an explicit sentencing goal. New York State Penal Law §1.05(6) was amended in June 2006 to add a new goal to the four traditional sentencing goals of deterrence, rehabilitation, retribution, and incapacitation. The law now requires that sentencing decisions take into account “*the promotion of their (convicted persons’) successful and productive reentry and reintegration into society...*” (Chapter 98 of the Laws of 2006). The addition of this fifth sentencing goal should carry with it significant implications for sentencing practice (Rosenthal, Weissman, and Wolf 2006). Of course, as Judge Marcus correctly observes, merely including new goals in statutes “proclaiming multiple purposes of sentencing or of the criminal law demonstrably fails to ensure best practices in sentencing toward the goal of crime reduction,” or reintegration (Marcus, 2005 p. 21). Without a change in sentencing practice and culture, changes in sentencing goals will be meaningless.

We have an opportunity to reconsider the traditional goals of sentencing. During the past thirty 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 (Garland, 2001). Reintegration however can 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 the shared responsibility of both the person seeking reintegration and the community in promoting public safety.

The opportunity to reconsider sentencing philosophy is provided not only by the emergence of reentry as a public policy issue and an awakening to the severity of mandatory sentences, but by the emerging 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 the person who caused the harm. At the same time, community justice places punishment as a sanctioning philosophy in a greatly diminished role (Karp and Clear, 2000).

Figure 2: Reintegration-Focused Sentencing Model



As illustrated by Figure 2, reintegration is at the core of the reintegration-focused model. Reintegration brings the individual back to the community in a way that promotes public safety. The four traditional goals of sentencing remain, but are considered in the context of reintegration. With reintegration as the central goal we are brought 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 his or her incarceration?” “Will a community-based sentence better serve the end of reintegration?” “How can we best promote public safety now and in the future with a reintegration plan for this defendant?”

A Reason for Hope

If reentry is simply implemented as a “program” for those leaving prison, and nothing more, it will provide us with little else than an opportunity to pick up the damaged pieces that our affinity for punishment has created. However, if we carefully attend to the wide range of concerns that affect reentry, we can substantially reduce the prison population, avoid damaging the individual, and promote reintegration. The most effective way to reduce the cost of incarceration in both dollars and human suffering 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, 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. Changes in sentencing policy and practice have also fueled the increase (Blumstein and Beck, 1999). If we can control our penchant to punish, we can change our sentencing policy and practice, embrace reintegration, reduce the prison population, and increase public safety.

There are sea changes that must be made to make successful reintegration a reality. Reintegration cannot become a reality without changing our sentencing model and sentencing practices. We cannot rely on prisons alone as the locus from which to stage reentry, in light of the reduction in prison-based treatment, educational and vocational programming due initially to punitive attitudes and more recently because of severe state budget deficits (Cadue, 2010; Thompson, 2010; Scott-Haywood, 2009). An analysis of 1997 state prison data showed an across-the-board decrease since 1991 in pre-release treatment, educational and vocational programs (Mumola, 1999).

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 sentencing and corrections practices, perhaps 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. Prevention and incapacitation are often legitimate goals

There are realistic limits to efforts at rehabilitation. 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.

A reintegration-focused sentencing model would bridge that gap.

Conclusion

When reentry is conceptualized as starting at the time of arrest, it provides an opportunity for all stakeholders, individual defendants, communities, defense counsel, sentencing advocates, prosecutors, judges, probation officers, and human service providers to join with corrections and parole to undertake transitional reentry planning that seamlessly travels along the criminal justice continuum, uniting an otherwise disjointed system into one systemwide strategy—reintegrative justice. When this occurs, public safety will be enhanced, lives can be reclaimed with dignity and respect, and we can begin to move away from three decades of mass incarceration.

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Endnotes

¹ The Transition from Prison to Community Initiative (TPCI) is one of five reentry initiatives on the national level that have been advanced during the past decade. The four others are the Jail to Prison Initiative, the Serious and Violent Offender Reentry Initiative (SAVORI), Reintegration of Ex-Offenders (RExO) (formerly known as the Prisoner Reentry Initiative), and the Second Chance Act. All of these initiatives have a back-end focus.

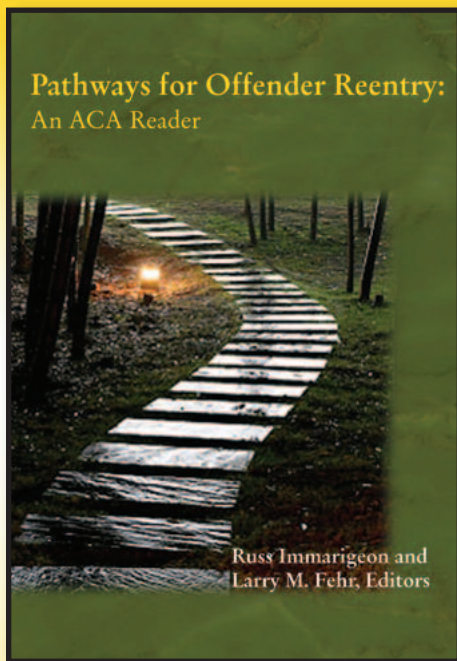
² For a review of the professional standards and guidelines of the American Bar Association (ABA) and the National Legal Aid and Defenders Association (NLADA) and the specific responsibilities of defense counsel that appear to make the preparation of a transitional plan for reintegration a necessity *see* Wolf and Rosenthal, 2004.

About the Authors

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Pathways for Offender Reentry

An ACA Reader



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Russ Immarigeon and Larry Fehr, Editors

ACA's newest reader features 22 leading practitioners' essays on five themes in offender reentry, in an engaging, easy-to-read format. The reader covers topics such as reintegration issues unique to female offenders, collateral consequences, and ways to ease the strain of prisoners' reintroduction to society. Resources available through faith-based and other initiatives are discussed, along with issues relevant to families, mental health care, substance-abuse treatment, and housing. The book closes with a section on future perspectives, evaluating what is next in offender reentry. Includes appendix of additional

resources. "This is a must-read for anyone engaged in the discourse on prisoner reentry... a great text for students entering the correctional field."—Sarah C. Walker, COO, 180 Degrees, and Founder of Minnesota Second Chance Coalition.

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