



The District of Oregon Reentry Court: An Evidence-Based Model

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The District of Oregon Reentry Court: An Evidence-Based Model

Each of us, law-abiding or not, operates in communities that affect our behavior, opportunities, and views of the world. The District of Oregon Reentry Court is a judicially involved, evidence-based program designed to prepare former inmates to reenter their communities successfully so as to make them less likely to reoffend. The reentry court recognizes the critical importance of its participants' work, family, treatment, and other social communities as they attempt a durable shift toward sobriety and desistance from crime. Because this issue of the *Federal Sentencing Reporter* focuses on the very timely and important topic of alternatives to incarceration, it is useful to begin with a word about how the reentry court relates to that category.

I. Reentry Court as an Alternative to Incarceration

The District of Oregon Reentry Court is a voluntary, *post-release* program requiring enhanced, judicially-involved supervision for individuals who are released in the district after having completed a term of incarceration.² The reward for the successful reentry court graduate is a one-year reduction in the supervision period. Thus, from the perspective of an individual, reentry-court participant, the program is not an alternative to a term of incarceration; rather, it is an alternative to full-term supervision. It is earned reduction of probation.

Even so, a discussion about the District of Oregon Reentry Court aligns with the theme. By encouraging successful reintegration of offenders into their communities, reentry courts work to achieve what many alternatives to incarceration are designed to achieve—offender accountability, increased public safety, cost efficiency, and decreased recidivism. In the face of startling recidivism rates,³ reentry courts offer an alternative to incarceration to offenders who are at risk of reincarceration over a time spectrum. By providing interventions designed to equip them with the right skills to avoid reoffending and reincarceration, reentry courts offer an ultimate "alternative" to incarceration in a new, law-abiding way of life.

II. The District of Oregon Reentry Court Model

Like most offenders in the federal corrections system, District of Oregon reentry court participants typically have a history of drug or alcohol abuse. Like state drug courts, the

reentry court was developed in response to revolving-door adjudication and sentencing of offenders whose criminal acts were directly or indirectly related to drug or alcohol use. More particularly, the reentry court was created in response to Oregon's methamphetamine epidemic, which created a pool of offenders in the late 1990s that tested the capacity of state and federal courts, jails, and social services.⁴ Treatment and counseling programs for individuals in jail or prison or under conventional supervision were insufficient to stop the revolving door, leading authorities to the obvious conclusion that, as long as the sobriety of methaddicted offenders went unaddressed, they would continue to strain the justice system and social services and threaten public safety.

Using state drug court models as a guide, stakeholders in the federal justice system developed a post-release reentry court, designed to break the recidivism cycle. The District of Oregon reentry court reconfigured resources and authorities familiar in conventional correctional interventions to address needs that had remained unmet by integrating concepts from the treatment context and encouraging the development of social supports. The newer blueprint began with evidence-based practices that have been empirically tested in controlled studies and proven effective.

The model was designed to complement in-prison treatment by allowing participants to address sobriety and other criminogenic risk factors after their release, when support for meeting the full complement of reentry challenges—housing, education, employment, sobriety, transportation, social stability—is most critical. With accountability to a nonadversarial team, support of peers, and counseling and other services continued over a minimum of twelve months, reentry court participants are offered an opportunity to make a permanent shift away from behaviors that led to illegal activity.

The reentry court team conducts hearings with reentry court participants (usually 10–12 at a time) on a monthly basis. Participants are initially referred by a probation officer and enter voluntarily. Typically, they have had the occasion (either by their own initiative or on the advice of a probation officer) to observe reentry court beforehand, and they enter with a willingness to make the most out of



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the reentry court opportunity and to further their own efforts to desist from substance abuse and criminal behavior. Each participant signs a contract in which he or she agrees to abstain from drug and alcohol use, participate in treatment, and undergo monthly hearings. In addition, all participants are required to comply with any other general terms of supervision, including drug testing.

The reentry court team consists of a district court judge, an assistant U.S. attorney, an assistant federal defender, substance abuse counselor, mental health counselor, and a reentry court probation officer. In addition, an investigator from the Eugene division of the Federal Defender's office staffs the Eugene reentry court team as a "utility infielder," who assists participants with individualized reentry challenges, typically involving bureaucratic difficulties with relevant agencies or services. Every month, each participant undergoes random urinalysis, and compliance with sobriety programs or other counseling services is monitored, along with employment status. The reentry court probation officer may address any problems with supervision or minor violations between monthly hearings. The reentry court probation officer sends each member of the reentry court team a briefing about the participants' progress and setbacks before the monthly

During the hearings, the team works in a nonadversarial setting to engage each participant in self-assessment and problem-solving to address an individual's particular challenges, usually in the areas of sobriety, employment, education, housing, family problems, transportation, or financial literacy. Motivational interviewing is used to assist the participant in strategizing individualized solutions for personal reentry challenges, whether it means finding ways to avoid triggers to drug use, developing job contacts, or reconciling with family. Exchanges between the participant and reentry court team often focus on the participant's interactions with family, work associates, and friends, and participants are encouraged to develop and rely on prosocial networks as they accomplish their reentry plans.

When appropriate, the reentry court judge rewards the participant with praise and encouragement for progress in his or her reentry plan. When a participant has violated a condition of his or her release, or has not complied with a requirement of his or her individual reentry court program, the reentry court judge may issue a sanction at the hearing. Sanctions are tailored, progressive, proportional, and implemented immediately after a report of misconduct in a hearing. The reentry court team assists to help participants anticipate and avoid relapse as they undertake the recovery process. Even so, accountability for any relapse is warranted, and continued use of alcohol or other drugs can indicate an unwillingness to comply with a mandated treatment plan.⁶ The reentry court contract specifies a range of sanctions for violations of program requirements and procedures for challenging an alleged violation. Sanctions can include a judicial reprimand, orders to observe court proceedings or to comply with

enhanced restrictions, a term of residence at a community corrections center or jail, or termination from the program. The list is not exclusive, and individualized sanctions might include writing exercises designed to require the participant to reflect on the triggers for a relapse or reasons for noncompliance with a supervision term and to strategize about making better decisions if similar circumstances were to arise again.

Pursuant to the reentry court contract, a challenge to a sanction may be based only on an assertion of actual innocence, and the federal defender who staffs the reentry court team may be asked to assist the participant in articulating his or her challenge. The reentry court judge decides whether the allegation of misconduct is true and may issue a sanction upon such a finding. Where a participant's misconduct involves a new criminal offense or a probation violation that would warrant termination from the reentry court, he or she is subject to arrest and conventional adjudication on a violation or new charge.

Successful completion of the program depends on twelve continuous months of sobriety, as indicated by clean urinalyses, and progress toward individual reentry benchmarks. Completion is marked by a graduation ceremony where members of the reentry court team publicly commend the graduate on his or her progress. Members of the graduate's school, family, and work communities have the opportunity to acknowledge the participant's progress and commitment to a new way of life. Graduates often attend reentry court hearings even after graduating, to support their own continuing sobriety programs and to mentor and encourage participants who share a number of the same struggles. In doing so, graduates provide a separate prosocial network for participants, adding to the community supports that the participant is urged to acquire and preserve during his or her involvement in reentry court.

A number of the risk factors that can contribute to an individual's criminality are subject to change. Among those are antisocial attitudes, criminal associates, substance abuse, family factors, and low levels of educational, vocational, or financial achievement. Reentry court supplements in-prison attempts to address those factors by assisting the participant in replacing criminogenic conditions, attitudes, and associates with prosocial and constructive alternatives. Unlike conventional probation supervision, reentry court offers a structure and network of individuals who can assist in identifying and resolving barriers to reentry while encouraging self-evaluation and accountability. In doing so, the participant creates a normalizing environment for law-abiding behavior.

The foregoing features of the reentry court model combine to provide participants with an opportunity to experience a structure and network of support over time that can help them become equipped with "social capital" and "recovery capital," as they meet and surmount barriers to successful reentry. In their "life course" theory of desistance from crime, Sampson and Laub have argued

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persuasively that the accumulation of social capital, such as useful reciprocal networks, community ties, and supportive relationships, in a former offender's work and family life can contribute to inhibiting further illegal behavior.7 In their view, a reservoir of social capital sets the stage for development and maintenance of informal social controls that encourage compliance with the law. In the treatment context, recovery capital refers to the conditions within an individual's family, professional, and social contexts, such as job and family stability and recovery supports, that can increase an individual's capacity to recover from drug or alcohol abuse.⁸ By offering a minimum of twelve months of support, and by facilitating the development of a prosocial network that continues after graduation, reentry court provides participants an environment conducive for building social and recovery capital.

The Oregon model has been in practice since 2005. An initial, quantitative and qualitative evaluation was completed in 2008. The qualitative component demonstrated interventions designed to address particular reentry barriers through reconstructed case studies that illustrate the types of interactions between the participants, their peers, and the reentry-court team during monthly hearings. The quantitative analysis tracked the number and types of interventions available to reentry court participants, which exceeded those available to a comparison group comprised of individuals under conventional supervision. It also compared reentry court participants with others under conventional supervision. Due in part to a limited sample size, there were no statistically significant differences between reentry court completers and a comparison group that underwent conventional supervision.9 The quantitative study did, however, demonstrate that those currently participating in reentry court, those who graduated from it, and those in the comparison group under conventional supervision were more likely to be employed than those who were terminated from reentry court. Those results comport with the more general and uncontroversial point that sustained employment contributes to success upon reentry.10

The practices in use at the District of Oregon reentry court are evidence-based and guided by the conclusions of experimental and quasi-experimental studies of effective interventions in reentry, treatment, and problem-solving courts. As the data set grows, further research will assist in identifying effective interventions or variables linked to successful completion or termination. Longitudinal study is required to compare recidivism rates for reentry court participants and those under conventional supervision. Because reentry courts in general are relatively new, few such studies are available, but early findings suggest that the model can be effective at reducing recidivism. 12

III. Judicial Participation During Supervision

Reentry courts differ from conventional supervision in a number of important respects: participants experience (I) increased individual attention and closer monitoring; (2) accountability to and assistance from a nonadversarial team; and, (3) an opportunity to develop a prosocial network with fellow reentry court participants and graduates. The participation of the reentry court judge, however, distinguishes the model most clearly from other types of supervision.

As Jeremy Travis has explained, the reentry court judge is ideally equipped to leverage authority within the justice system and community, to configure the components required to address reentry barriers, and to foster a new relationship between the offender and the community.¹³ Judicial authority alone can motivate the participant to make progress in building recovery capital. Frequent hearings before the reentry judge in the context of close monitoring set the stage for timely, proportional, and individualized sanctions. But encouragement from the reentry court judge has also been identified as a powerful intervention. A number of focus group studies and surveys indicate that, in the context of drug court, participants value and benefit from the motivation and encouragement of a judge. 14 The judge, as leader of the nonadversarial reentry court team and a supporter in the participant's progress, can enable a new and affirmative relationship between the participant and the criminal justice system.

Although ongoing judicial participation in monitoring at the supervision stage for reentry court participants might be novel, it comports readily with the court's many conventional responsibilities in the adjudication, sentencing, and supervision of offenders. 18 U.S.C. §3583 explicitly authorizes federal judges to impose a term of supervised release after incarceration and conditions for the supervision and, notably, requires monitoring for controlled substance use regardless of the nature of the conviction. Otherwise, judges are afforded great discretion in imposing conditions of supervision. The court may, therefore, order any condition of supervised release, to the extent that it is consistent with Sentencing Commission policy, is imposed pursuant to specifications in 18 U.S.C. §3583, and is reasonably related to (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) deterrence or protection of the public from further crimes of the defendant; and, (3) provides the offender with "needed educational or vocational training, medical care, or other correctional treatment in the most effective manner."15

Judges are, of course, also involved directly when a violation or new offense occurs: They may sign an arrest warrant, adjudicate the allegation, and again sentence the violator. Sentencing at this stage, as in the context of the initial offense, provides an occasion in which the judge might urge the offender to reflect on his or her action and use the time spent incarcerated to become equipped to avoid recidivism.

Judicial involvement in recidivism prevention in reentry courts is no less appropriate. In fact, when judicial involvement increases the rates of sobriety and employment for offenders, it can be much more consequential

than even the most well intended sentencing pronouncement. The reentry court judge interacts with released individuals at a vulnerable moment, when access to prosocial networks and services aimed at reducing barriers to reentry is most critical. Because reentry court participants remain under supervision during their involvement in reentry court, monitoring and threat of sanctions can incentivize good faith participation. The offender is not left to his or her own devices to learn the lesson of avoiding future criminal behavior that a sentencing judge might hope to teach from the bench. Rather, the reentry court judge (along with the reentry court team and service providers) engages directly by allowing the participant to work through that lesson over time and within his or her actual post-release life circumstances. In these respects, judicial involvement in the reentry court context corresponds with, and works to accomplish, the sentencing goals of rehabilitation, accountability, and protection of public safety. Finally, even the novelty of the contractual context of the judge's interaction with the participant in the reentry court context fades as judges become more involved in similar interactions, such as in preadjudicative diversion programs.

IV. Reentry Court and Evidence-Based Practices

The District of Oregon reentry court is the second of its kind in the federal judicial system. As of the publication of this issue, reentry courts have been developed or are in various planning stages in a sizeable and growing minority of federal districts. The autonomy that federal districts enjoy in determining internal practices has allowed the adoption of reentry court programs that are suited to meet local needs, whether emphasizing employment, mental health, or particular drugs of choice, as well as agility in modifying the program as local needs change.

Standing alone, the few reentry courts that currently operate in state and federal jurisdictions hardly chip away at a much larger and unrelenting recidivism problem nationwide. Thus, the work of reentry courts would be facilitated and their burden decreased if offenders, at every stage in their involvement in the criminal justice system (trial detention, sentencing, supervision, and revocation), were met with evidence-based interventions designed to encourage desistance.16 For at-risk populations, those interventions are put to valuable use before any criminal activity is committed. Just as revolving-door justice can have adverse and reticulated effects on public health, family and community stability, and workforce and industry, reduction of recidivism through the use of evidence-based programs can increase the health of society and reduce the harm that results from criminal activity and failed reentry.

Recent initiatives have advanced the public discussion about evidence-based practices in criminal justice interventions. The much-acclaimed Second Chance Act of 2007 was designed in part to "encourage the development and support of, and to expand the availability of, evidence based programs that enhance public safety and reduce

recidivism, such as substance abuse treatment, alternatives to incarceration, and comprehensive reentry services." It created a grant program for reentry courts, administered by the Department of Justice, and authorized funding for FY 2009 and 2010, and, significantly, it requires the collection of outcome data and links funding for reentry services to recidivism reduction.¹⁷ Once fully implemented, the authorized activities will have great potential to mitigate recidivism and improve the state of knowledge concerning effective practices. On the heels of the Second Chance Act, the United States Sentencing Commission listed "consideration of alternatives to incarceration" in its 2008 Notice of Final Priorities. The priority included disseminating proceedings of a symposium on that issue, which featured a number of presentations describing evidence-based models in operation in state and federal jurisdictions. 18 In March 2009, Senator Jim Webb introduced "The National Criminal Justice Commission Act of 2009," which would create a federal commission charged to "make recommendations for changes in policies and laws designed to . . . institute the use of policies and practices proven effective throughout the spectrum of criminal behavior."19 If enacted, the policy recommendations required by the bill would promise to align existing corrections policy with evidence-based practices explicitly designed to reduce recidivism and remove policies adverse to that goal.

State legislatures, too, have undertaken evidence-based initiatives in criminal justice interventions. Oregon was the first state to incorporate evidence-based principles into its corrections and sentencing policies. Of More recently, Maine has created a commission devoted to assessing and reframing its corrections system based on evidence, and Pennsylvania has instituted evidence-based recidivism risk reduction incentive programs. Draft revisions to the Model Penal Code propose new sentencing guidelines that call for the development and use of evidence-based tools for assessment of recidivism risk in new sentencing guidelines.

Although statutes have been slow to acknowledge the improved state of our knowledge about practices that can reduce recidivism, the cost reductions associated with those practices²⁵ can encourage quicker progress down that path. Strategic allocation of resources to develop more effective interventions and build capacity and sustainability of reentry courts would advance that work, as well. Even so, adopting policies based on evidence necessarily requires developing a public expectation that laws and practices can and should continue to change as the state of our knowledge improves.

Notes

This article was substantially completed prior to the fellowship, and the discussion herein should not be attributed to any institution or organization with which the author is currently or was previously affiliated.

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- ² A full description of the District of Oregon reentry court and the evidence-based practices on which it is based appears in Daniel W. Close, Melissa Aubin & Kevin Alltucker, The District of Oregon Reentry Court: Evaluation, Policy Recommendations, and Replication Strategies (2008), available at www.ord. uscourts.gov/ReentryCourtDoc.pdf. (Last visited October 12, 2009). Professor Daniel Close is credited for conceiving of the model in "ecological" terms, and Kevin Alltucker is credited for developing the qualitative and quantitative analysis of the program. The reentry court operates in the Portland, Oregon, division under the leadership of Judge James Redden, and in the Eugene, Oregon, division under the leadership of Chief Judge Ann Aiken. These models differ slightly in practice, and, in the interest of brevity, a description of the Eugene model is used here. The author thanks Chief Judge Aiken for her assistance in reviewing and editing this article.
- ³ See Bureau of Justice Statistics, Recidivism of Prisoners Released in 1994, available at www.ojp.usdoj.gov/bjs/pub/ pdf/rpr94.pdf. Among nearly 300,000 prisoners released from 15 states in 1994, 67.5% were rearrested for a new offense within three years of their release. (Last visited October 12, 2009).
- ⁴ See generally Steve Suo, Unnecessary Epidemic: A Five-Part Series, THE OREGONIAN, available at www.oregonlive.com/special/oregonian/meth/ An investigative report concerning the scope and operation of the methamphetamine trade in Oregon at the turn of the twenty-first century. (Last visited October 12, 2009).
- See generally Eric J. Miller, The Therapeutic Effects of Managerial Reentry Courts, 20 Feb. Sent. Rep. 127, 127 (2007); Claire McCaskill, Next Steps in Breaking the Cycle of Reoffending: A Call for Reentry Courts, 20 Feb. Sent. Rep. 308 (2008).
- Faye Taxman, Unraveling 'What Works' for Offenders in Substance Abuse Treatment Services, II (2) NAT'L DRUG CT. INST. REV. 91–132 (1999).
- John H Laub & Robert J. Sampson, Turning Points in the Life Course: Why Change Matters to the Study of Crime, 31 CRIMI-NOLOGY 301–325 (1993).
- ⁸ R. Granfield & W. Cloud, Social Capital and Natural Recovery: The Role of Social Resources and Relationships in Overcoming Addiction without Treatment, 36 SUBSTANCE USE & MISUSE 1543–1579 (2001).
- ⁹ See Close, Aubin & Alltucker, supra note 2, at 89–96.
- Studies linking participation in post-release employment programs with improved reentry outcomes include Sheldon X. Zhang, R.E.L. Roberts & Valerie Callanan, Preventing Parolees from Returning to Prison through Community-Based Reintegration, 52 CRIME & DELINQ. 551–7 (2006); Jessica Pearson & Lanae Davis, Serving Fathers Who Leave Prison, 41 FAM. CT. Rev. 307–20 (2003).
- $^{11}\,\,$ See generally Close, Aubin & Alltucker, supra note 2.
- See, e.g., Judge John Creuzot, SAFP Re-Entry Court Outcome Study, in U.S. Sentencing Commission Alternatives to Incarceration Symposium Proceedings, available at www.ussc.gov/ SYMPO2008/Material/Creuzot.pdf Indicates a significant decrease in recidivism rates among SAFP reentry court program participants in comparison to others who did not receive reentry court interventions. (Last visited October 12, 2009).
- Jeremy Travis, But They All Come Back: Rethinking Prisoner Reentry, 7 Sentencing and Corrections Issues for the 21st Century: Papers from the Executive Sessions on Sentencing and Corrections (2000).
- See, e.g., Donald J. Farole & Amanda B. Cissner, Center for Court Innovation, Seeing Eye to Eye? Participant and Staff

- Perspectives on Drug Treatment Courts (2005); John S. Gold-kamp, Michael D. White & Jennifer B. Robinson, Office of Justice Programs, From Whether to How Drug Courts Work: Retrospectives Evaluation of Drug Courts in Clark County (Las Vegas) and Multnomah County (Portland) (2001); Rachel Porter, Vera Institute of Justice, Implementing a Drug Court in Queens County: A Process Evaluation (2000); Rachel Porter, Vera Institute of Justice, Treatment Alternatives in the Criminal Court: A Process Evaluation of the Bronx County Drug Court (2001); Scott Senjo & Leslie Leip, Testing Therapeutic Jurisprudence Theory: An Empirical Assessment of the Drug Court Process, 3(1) W. CRIMINOLOGY REV., available at wcr.sonoma. edu/v3n1/senjo.html (Last visited October 12, 2009).
- ¹⁵ 18 U.S.C. § 3583(d) (2006).
- Evidence-based sentencing tools are described in a number of recent articles, including Michael A. Wolff, Evidence-Based Judicial Discretion: Promoting Public Safety Through State Sentencing Reform, 83 N.Y.U. L. Rev. 1389 (2008); Roger K. Warren, The Most Promising Way Forward: Incorporating Evidence-Based Practice into State Sentencing and Corrections Policies, 20 Feb. Sent. Rep. 322 (2008); Michael Marcus, Responding to the Model Penal Code Sentencing Revisions: Tips for Early Adopters and Power Users, 17 S. CAL. Interdisc. L.J. 67, 72 (2007).
- ⁷ Second Chance Act of 2007, Pub. L .110–199, 122 Stat. 657 (codified as amended in sections of 42 U.S.C.).
- ¹⁸ U.S. Sentencing Commission Notice of Final Priorities, available at www.ussc.gov/FEDREG/20080908_Finalpriorities.pdf (Last visited October 12, 2009).
- ¹⁹ S. 714, 111th Cong. § 6(a)(4) (2009).
- ²⁰ See Or. Rev. Stat. § 182.525 (2008) Mandates increased corrections funding devoted to evidence-based practices over time, discussed in Roger K. Warren, The Most Promising Way Forward: Incorporating Evidence-Based Practice into State Sentencing and Corrections Policies, 20 Feb. Sent. Rep. 322 (2008)
- See Me. Rev. Stat. Ann. tit. 34-A §1209-A Establishing State Sentencing and Corrections Practice Coordinating Council, "created for the purpose of conducting continuous study and coordination of corrections and sentencing practices. The council shall promote the use of the most effective criminal interventions necessary to protect public safety, administer punishment and rehabilitate offenders; enhance and increase support of state and county partnerships in the management of offenders; and promote and support the use of evidence-based correctional practices for managing the risks and needs of offenders and pretrial defendants."
- 44 Pa. C.S.A. § 5304 "the department may designate a treatment program or other program as a recidivism risk reduction incentive program if there is appropriate scientific research that demonstrates that the proposed program would likely reduce overall recidivism rates or serious crime rates of program participants."
- Reginald Wilkinson, Gregory A. Bucholtz & Gregory M. Sieg-fried, Prison Reform through Offender Reentry: A Partnership Between Courts and Corrections, 24 PACE L. REV. 609, 621 (2004).
- Model Penal Code § 6B.09 (Discussion Draft No. 2, 2009).
- ²⁵ See, e.g., John Roman, Lisa E. Brooks, Erica Lagerson, Aaron Chalfin & Bogdan Tereshchenko, Urban Institute Justice Policy Center, *Impact and Cost-Benefit Analysis of the Maryland Reentry Partnership Initiative* (Jan. 2007) Describes taxpayer savings of \$7.2 million between March 2001 and January 2005 resulting from Maryland's Reentry Partnership Initiative.

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