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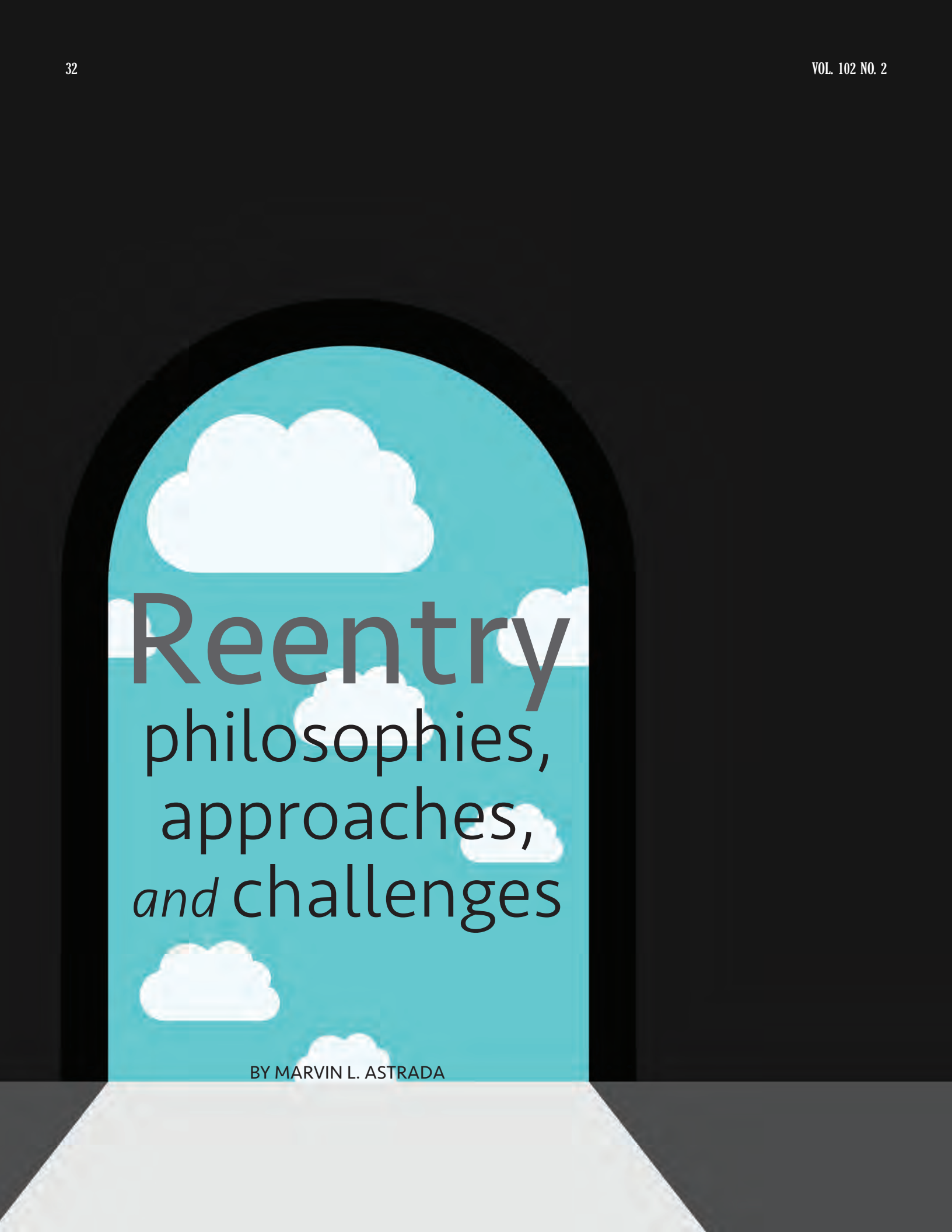
Reentry courts

Are they worth the cost?

The following two articles focus on reentry courts — a type of problem-solving court that addresses the challenges former offenders face when reintegrating into the community after a period of incarceration. Each article in its own way attempts to grasp the slippery subject of how to measure success regarding such programs, and whether they are worth their costs in time, money, and resources. Marvin L. Astrada analytically reviews reentry courts and lays out competing metrics for measuring success, discussing their relative pros and cons. Conversely, Judge Jeffrey Alker Meyer and Carly Levenson take a different tack, describing the reentry court in the U.S. District Court for the District of Connecticut from a front-lines perspective, allowing for measurement of its effectiveness by its impact on the lives of participants.

The debate about whether problem-solving courts work and are cost-effective is a lively one. Perhaps more so in the federal system, doubts have recently been cast on whether such special court dockets are worth the considerable time, money, and resources they require to operate. Cold calculations regarding impact on recidivism — the quantitative approach to evaluating success — render a mixed bag of results, with a recent federal study sponsored by the Federal Judicial Center finding little positive impact on recidivism. The two articles in this issue of *Judicature* suggest that perhaps a qualitative approach has a place in the evaluative process — an approach that takes into account the impact of such programs on the lives of participants, and looks to other metrics such as employment, sobriety, stable housing, improved mental health, and more positive perceptions of the legal system as measures of success. To that I say Amen, and read on.

— Judge Timothy D. DeGiusti of the United States District Court for the Western District of Oklahoma is a 2018 graduate of the Duke Master of Judicial Studies program. He studied reentry programs for his master's thesis, "Innovative Justice: Federal Reentry Drug Courts – How Should We Measure Success?"



Reentry philosophies, approaches, *and* challenges

BY MARVIN L. ASTRADA

Competing notions of crime and punishment have shaped the administration of criminal justice in the United States ever since the Quakers established the Walnut Street Prison in 1773 in Philadelphia, creating the first penitentiary in the country. Since then, the form and substance of criminal punishment have evolved from penitence, to rehabilitation, to retribution. From the mid-1970s onward, public policy has emphasized punishment and retribution. The result today is a burgeoning prison population, massive state and federal expenditures on the prison system, and a growing realization that releasing offenders without support mechanisms creates a revolving-prison-door phenomenon.

In recent years, reentry programs have emerged as a way to address the challenges of reintegrating ex-offenders into society and, increasingly, as a tool for combatting mass incarceration and reducing persistent recidivism rates. Reentry programs are managed by the court and designed to provide broad, comprehensive support to ex-offenders in building a productive life outside prison. This article provides an overview of reentry philosophy and approaches, and discusses some of the challenges of measuring the success of reentry programs.

THE PROBLEM

Statistics from the Bureau of Justice (BJS) indicate that, in 2012, the overall prison population in the U.S. was approximately 1,570,400.[1] Although the overall nationwide prison population rate has declined and the rate of release continues to increase, data from 2005 to 2010 show that recidivism is a tremendous challenge.[2] In 2005, 67.8 percent of 404,638 state prisoners released in 30 states were arrested within three years of release, and 76.6 percent were arrested within five years.[3] In the 23 of those 30 states with available data on inmates who returned to prison, 49.7 percent of inmates had either a parole or probation violation or an arrest for a new offense within three years, and 55.1 percent had a parole or probation violation or an arrest within five years.[4]

The BJS has estimated that *nearly three-quarters of all released prisoners will be rearrested within five years of their release* — and about six in ten will be reconvicted.[5] Furthermore, people of color are overwhelmingly encumbered with the profoundly negative consequences of having been incarcerated, because they disproportionately constitute the majority of the incarcerated population.[6]

In 2014, "1,561,500 people were under the control of state or federal correctional authorities. . . . This represents almost a one percent decline from the previous year, yet it still remains [the case] that almost one in every 100 Americans remains in prison. The Equal Employment Opportunity Commission . . . suggests that if the current trends continue, 'approximately 6.6 percent of all persons born in the United States in 2001 [could] serve time in state or federal prison during their lifetimes.'"[7] The growing rate of offenders transitioning into the community; high prospects of re-arrest, re-conviction, and re-incarceration; offenders' limited or ill preparedness to reenter the community; and communities' inability or lack of capacity to provide support during the transition exacerbate the profound challenges communities face in attempting to curb recidivsm.

The recidivism rate has remained virtually unchanged for the last decade or more.[8] Of the two-thirds of former inmates who are re-arrested within three years of release, more than half will eventually be re-incarcerated. Additionally, more parolees are returning to prison than ever before: about one-third of all prison admissions nationwide are parole violators returned to prison for new crimes or technical violations.[9] By some estimates, ex-offenders account for about 15 to 20 percent of all arrests among adults, although this varies considerably by state and type of criminal behavior.[10]

The costs to communities are high. The sheer volume of offenders being released and unsuccessfully reintegrated into the community negatively affects the structural integrity and stability of host communities, straining public health, public housing, homelessness, mental health services, community and family relationships, and civic participation. Furthermore, the costs associated with incarceration and re-incarcerating ▸

offenders are putting immense pressure on already overextended state budgets.[11]

The struggle to successfully transition from prison to society is not a novel problem. The increasing scale of the problem, however, has presented new and serious challenges.[12] Over the last two decades the U.S. "has commenced the largest multi-year discharge of prisoners from state and federal custody in history."[13] This exploding population of ex-offenders makes reducing rates of re-offending and recidivism more difficult.[14] Lack of oversight, poor transitional preparation, and a lack of access to substantive social, financial, and educational resources and opportunities such as affordable housing, gainful employment, physical and mental health care, and treatment programs for substance abuse are serious problems that ex-offenders face.[15] Over "650,000 people are released from prison each year," and often they return to the "high-crime, poverty-stricken communities from which they came, still battling . . . intractable poverty, educational and job training deficits, [and] drug addictions or mental illnesses that contributed to their criminality in the first instance."[16]

There is growing realization that releasing offenders without providing support mechanisms creates a revolving-prison-door phenomenon. Academics and professionals have begun to explore alternatives to focusing strictly on retribution, with a particular focus on offenders' release and subsequent (failure of) reintegration into the community. Although the goal of the modern criminal justice system, broadly speaking, has been "to control crime with justice," some argue that "prosecutors must look beyond simple 'control' to recognize that public safety may be achieved with tools other than imprisonment."[17] Looking beyond "control" led to a focus on post-incarceration. Employing recidivism rates as a quantifiable measure of correctional programs' success and effectiveness, many analysts found that a large percentage of offenders were returning to prison. This phenomenon prompted, in part, further research into post-incarceration and the effects of a purely retributive ethos. Some advocates claim that reentry programs offer a much-needed alternative tool "other than imprisonment" to address these challenges and more effectively administer justice.[18]

The logic of a reentry program is relatively straightforward: Keeping ex-offenders out of prison helps stem the growth of the prison population. In the reentry context, the court is part of a team-based approach to offender processing, release, and reintegration.

REENTRY, THE COURTS, AND THE ADMINISTRATION OF JUSTICE

Since the early 2000s, the courts have begun to reevaluate the role of the judge and other major criminal justice players, including prosecutors and defenders, in the administration of justice. In light of the crucial role that successful offender release and integration into the community assumes in reducing the prison population — and with the realization that recidivism rates have not been optimally reduced — courts began to consider and implement reentry programs as a way to help reduce recidivism and stem the tide of mass incarceration.[19]

The concept of reentry encompasses all activities and programming geared toward better preparing ex-offenders to permanently return to the community.[20] Reentry programs "may be broadly defined as the processes and experiences associated with offenders' incarceration and release from prison, jail, or some form of secure confinement."[21] The logic of a reentry program is relatively straightforward: Keeping ex-offenders out of prison helps stem the growth of the prison population.[22]

In the reentry context, the court is part of a team-based approach to offender processing, release, and reintegration.[23] Judges, defense lawyers, prosecutors, and probation officers work together,

> bringing their diverse professional expertise collectively to bear on solving the problems on which the program is focused. As a team, the stakeholders have better access to institutional resources and information and consequently can better shepherd participants through the bureaucratic obstacles [that] often stymie successful reintegration. Joint problem solving and resource sharing among stakeholders in the criminal justice system is a marked departure from the courts' normal way of doing business.[24]

Reentry programs thus reflect local conditions and the local criminal justice ethos, and are thoroughly affected by local circumstances. Reentry programs may be adapted, refined, reconfigured, and repurposed by various courts to reflect unique local circumstances.

Although local circumstances, such

as legal culture and philosophy, play a substantial role in how reentry is conceptualized and implemented by the courts, reentry programs are rooted in a common philosophical-legal approach that informs how success is perceived and measured. Generally speaking, reentry is premised on the notion that a formal and comprehensive transition process after release from prison is necessary to address an ex-offender's basic survival needs, such as safe housing, gainful employment, and healthcare, as well as skills-based need such as treatment, literacy, and job training, to prevent a revolving-prison-door syndrome.[25] Reentry is a "therapeutically oriented judicial approach to providing court supervision and appropriate treatment to offenders"[26] to effectuate this transition process.

Some criminal justice scholars view reentry programs as reconfiguring the notion of rehabilitation. That is, rehabilitation, according to some commentators, "with an eye to reentry, has been repackaged, not as a way to improve the individual offender for his or her own sake, but rather as a way to improve public safety for all of society."[27] This aspect of reentry programs, some advocates contend, begins to address some of the failures of a purely retributive paradigm, which focuses mainly on punishment of the individual offender. While punishment plays a fundamental role in the administration of justice, reentry programs focus on the challenges ex-offenders face during post-incarceration, taking into account the well-being of the offender and of the community that he or she will return to. Reentry programs thus attempt to provide therapeutic rehabilitative programs to enhance an ex-offender's prospects of permanent reintegration into the community after punishment, to concomitantly help the ex-offender build a sustainable, productive life, and to improve the well-being of the overall community. The community benefits when ex-offenders become contributing members of society who do not commit new crimes. For this reason, some advocates contend that reentry programs are an important tool for courts and communities to employ when addressing the pressing challenges posed by the mass release of ex-offenders into the community.[28]

The recent shift from decades of retributive criminal justice to more "non-brick-and-mortar social control options"[29] means that some courts are more willing to view reentry as a viable means to address the collateral consequences of being a ex-offender. Collateral consequences entail legal "sanctions and restrictions that limit or prohibit people with criminal records from accessing employment, occupational licensing, housing, voting, education, and other opportunities."[30] Recently highlighted by the U.S. Supreme Court in *Padilla v. Kentucky* — "holding that defendants have a Sixth Amendment right to be informed of a collateral consequence (in *Padilla*, deportation) attaching to a guilty plea"[31] — these collateral consequences make it very difficult for ex-offenders to productively move on with their lives post-incarceration.

The criminal justice system devotes considerable resources to investigating and punishing crime.[32] Reentry programs seek to prevent ex-offenders from reoffending and returning to prison. Sustaining the present trajectory of the exponentially growing prison population — a revolving-prison-door phenomenon wherein offenders are serving longer sentences and often returning to prison, and governments are devoting substantial economic resources to manage revolving-door-prison populations — is not an economically viable nor desirable option. Reducing recidivism and focusing on the endpoint of the correctional process, reentry advocates contend, constructively addresses the problem of mass incarceration by shrinking the number of ex-offenders who return to the courts and the prison system.[33] Given the present rates of incarceration, release, and recidivism, it seems to be in the best interests of the judiciary and the broader community to create and support effective and efficient reentry processes.

HOW A REENTRY PROGRAM WORKS — ISSUES & CHALLENGES

The state and the federal courts have implemented reentry programs that reflect local contexts and community issues and are specifically designed to comprehensively address the challenges exoffenders face during post-conviction.[34] Attempts to clearly define, operationalize, and measure the efficacy of a reentry program highlight its complex nature and the important role that the courts assume in the process. If reentry is more than simply programmatic in nature, and encompasses a comprehensive process, does it possess an empirically sound basis for establishing programs geared toward reintegration? Are reentry programs overly broad to the point where such programs are not monetarily feasible?

Some courts view reentry holistically rather than as a single ad-hoc program.[35] In a holistic approach, the courts and criminal justice professionals actively participate in reentry efforts, which may better serve the goal of "the effective integration of former federal [and state] prisoners into our communities and the reduction of recidivism."[36] Here, reentry is not based solely or mainly on objective quantitative measures and methodology. Indeed, some commentators qualitatively characterize reentry as a movement, an approach, or a continuing process that begins at the point of release and continues afterwards. ▸

Assessing the strength or weakness of reentry programs, and whether they "work," will depend in part on whether one views reentry programs from a qualitative or quantitive perspective.

The reentry paradigm "builds on the notion that the transition from prison to the community does not happen automatically and without preparation. Reentry strategies encourage the establishment of broad linkages that support offender transitions and community partnerships and penetrate through and beyond prison walls."[37] Reentry thus focuses on the socioeconomic environment that offenders will be released into, and what the courts can do to help offenders successfully reintegrate.[38]

Reentry programs generally take a holistic rehabilitative approach that recognizes and addresses the complex factors that directly impact successful reintegration — such as socioeconomic status, education, age, mental health, substance abuse, and sustained employment — with the expectation that programs designed to address these challenges will improve the ex-offender's chances for successful reintegration. Reentry programs take into account the fact that ex-offenders likely "are less educated, less likely to be gainfully employed, and more likely to have a history of mental illness or substance abuse — all of which have been shown to be risk factors for recidivism."[39]

Some scholars contend that reentry programs help reduce recidivism because the courts assume such a proactive role in the post-conviction period.[40] Traditionally, "the role of the judge in a criminal case is to oversee courtroom proceedings relating to a defendant's guilt or innocence and the appropriate disposition of the case."[41] In problem-solving and reentry courts, the judge is an active participant, which allow the courts to assume a different role in the administration of justice. Under a reentry approach, judges can set and monitor an offender's post-conviction agenda and can impose explicit conditions on an offender's behavior with directives such as "do not use drugs," "get regular drug testing," or "go to treatment."[42]

In this way, the court employs a mix of graduated sanctions and incentives to influence and redirect offenders' behavior and to reinforce success if such changes are effectuated.[43] Sanctions may include community service, increased supervision levels, ordering drug testing or treatment, or short periods of re-incarceration. Incentives may include various rewards, such as a reduction of length of stay in prison in return for satisfactory progress in various educational, vocational, and drug treatment programs and work assignments, and for good behavior.[44] These incentives and sanctions may help ex-offenders better navigate the complex challenges associated with release and reintegration. The court thus assumes an active and comprehensive role rather than a passive presence in an ex-offender's attempt to reintegrate into the community.

> When evaluating reentry programs, it is important to note that how recidivism is conceptualized and defined will directly affect evaluation results. [And] there are . . . competing views about what recidivism means or should mean.

Like other problem-solving courts, reentry courts include problem-solving and therapeutic components in supporting an ex-offender's planned transition into the community. The court tailors a reentry plan to fit an offender's unique risks and needs and attempts to address the specific issues and challenges an offender will face upon release from prison, such as employment and substance abuse treatment, to maximize successful reintegration.[45] To help accomplish this, the court must be able to draw upon a range of supportive and supervision resources to implement the plan and must exercise the authority and discretion needed to efficiently and effectively impose sanctions and incentives.[46]

DOES REENTRY WORK?

Defining and measuring success are major points of contention in the reentry debate among advocates and critics — on and off the bench. Some reentry program advocates subscribe to or emphasize a qualitative approach, stressing the value of intangible and humanistic benefits that accrue from reentry; a qualitative argument is based on the idea that success cannot be measured solely or mainly in quantitative terms. Some critics, on the other hand, approach reentry from a quantitative perspective; successful outcomes are objectively measured via empirically data-driven, cost-benefit analysis, and evidence-based practices rooted in statistical analysis.

The literature on reentry programs is scattered in criminological, sociological, and psychological publications, although much of it can be found in state and federal agency and government reports.[47] Generally speaking, the literature has a pronounced sociological, rather than a psychological, bent. Methodologically,

this has resulted in focusing less on the individual offender, treatment provider, and program characteristics when measuring outcomes and instead assessing programs using recidivism outcome studies. A program is generally classified as one that *works*, *does not work*, or *is promising*; the "what works" literature tends to be program-based, as opposed to principles-based.[48] The largest and most influential "what works" study in the U.S., *Crime Prevention: What Works, What Doesn't, and What's Promising*, was conducted by the University of Maryland and funded by the U.S. Justice Department in 1997.[49] The report attempted to identify effective reentry programs by creating scientific scoring systems to evaluate programs based on whether they can be proven to have an empirical impact in reducing recidivism.[50]

When evaluating reentry programs, it is important to note that how recidivism is conceptualized and defined will directly affect evaluation results. Recidivism is "often defined as the re-arrest, reconviction, or re-incarceration of an ex-offender within a given time frame."[51] Recidivism, when viewed critically, provokes debates about the overarching social, economic, and political conditions associated with crime.

There are two general competing views about what recidivism means or should mean: 1) recidivism is viewed broadly as constituting *any* new contact with the criminal justice system, and 2) recidivism is more narrowly construed as commission of a particular type of new crime, such as a felony, resulting in a new sentence.[52] What one includes in the definition of recidivism has a substantial impact on the rate of recidivism.[53] Recidivism also can be viewed in terms of the individual criminal; for instance, one could conclude that a particular offender is resistant to crime-preventing mechanisms. Another view is that recidivism is the direct result of debilitating structural socioeconomic conditions conducive to criminal conduct.[54] Some commentators contend that these different definitions of recidivism and the resulting variation in rates make recidivism an insufficient measure of the effectiveness of reentry, since reentry programs aim for permanent reintegration, which is more than merely remaining arrest-free for a specified time period.

Another problem with using recidivism rates as a measure for reentry is that of sample size: Programs are localized, and therefore often quite small. They do not provide sufficient sample sizes to generate generalizable conclusions. Some studies have focused on assessing the effectiveness of a standalone program, while others have taken a comprehensive approach by evaluating the effectiveness of a program statewide or nationwide. Some studies have demonstrated successful outcomes, others have found no discernible effects, and others have found a mix of positive and negative findings.[55]

Some advocates of reentry programs contend that to accurately measure successful reintegration, researchers need to build into their evaluations "measures of attachment to a variety of social institutions. Research shows that these factors are related to long-term criminal desistance," such as whether or not programs address underlying issues of substance abuse, sobriety, and attendance at treatment program.[56] To better gauge the effectiveness and success of reentry, it has also been suggested that researchers keep track of whether or not programs help offenders become involved in community activities, in a church, or in offender support groups or victim sensitivity sessions.[57] There are many outcomes that reentry programs strive to improve upon, and these are usually not operationalized and measured in traditional recidivism-only outcome evaluations.[58]

To empirically measure reentry programs' relative success or failure, some reentry advocates suggest narrowing the scope and focus of such programs by defining them as programs that either specifically focus on the transition from prison to community or initiate treatment in a prison setting and link up with a community program to provide continuity of care.[59] Within this broad definition, only programs that have an outcome evaluation are included. A narrow definition, however, discounts programs that have not been formally evaluated, do not specifically focus on the transition process, or do not begin in the community.[60]

As noted earlier, reentry programs are inherently local. There is no universal reentry approach or singular program model; the structure of a program varies depending on local needs, resources, and statutory frameworks. Programs vary significantly by type, number of phases, treatment modality employed, duration of treatment, location of treatment, presence of aftercare, risk level of offender, and type of treatment provider.[61] This makes quantitative assessment of reentry very difficult. Furthermore, because the authority for post-prison supervision is often not vested within the judicial branch, reentry courts operate based on a variety of approaches, each consistent with local statutory frameworks. For instance, in New York City, an administrative law judge — with authority from the parole board — has managed reentry participants within a community court setting. In Fort Wayne, Ind., the Indiana Parole Commission has authorized judges to supervise returning prisoners on the commission's behalf.[62] In each model, the court and the offender work coop-

eratively to address the risks associated with release from prison and to improve successful reintegration.

The debate over the effectiveness of rehabilitation efforts reaches back for decades. After Robert Martinson published his influential article in 1974 asserting that rehabilitative programs were not producing results,[63] some critics attempted to refute the allegation and demonstrate that treatment efforts could be effective. A key element of such attempts was the notion that empirical data should guide the correctional enterprise, as opposed to common sense or politics.[64] The focus on scientific data to inform risk assessment ushered in the present practice of evaluating rehabilitative programs using an *Evidence-Based Practice* approach (EBP). Although recently embraced by the criminal justice system, EBP has its origins in 19th-century medical practice. More than a century later, the medical definition of EBP — "the conscientious, explicit, and judicious use of current best evidence in making decisions . . . integrating individual clinical expertise with the best available external clinical evidence from systematic research"[65] — is very much in line with the therapeutic, problem-solving, and comprehensive reentry approach. EBP "has shifted the focus of supervision and services to the factors that are most likely to impact . . . involvement in criminal behavior . . . targeting antisocial thought patterns, peer associations, and other dynamic risk factors using approaches research has shown generally reduce the likelihood of future criminal behavior."[66]

Many states, relying upon EBP, have initiated program reforms aimed at reducing recidivism.[67] At the center of EBP is a commitment to understanding the individual and using a strategy that provides the best option for achieving the desired result.[68] EBP, however, also has its critics. For example, some commentators contend that EBP has been simplified to a "this worked for most, so it should work for you" model that erroneously expects all offenders to respond to the same mode of service delivery.[69] This approach ignores an offender's unique characteristics, circumstances, and priorities for successful reintegration. While it is the case that many offenders have similar risk factors — such as drug addiction — it is also the case that each offender's specific circumstances require different treatment responses based on unique characteristics, including race, ethnicity, age, sex, gender, and mental health.[70]

> Whether the benefit of having a single program participant successfully avoid re-incarceration merits the financial costs of a reentry program is likely to remain a serious point of contention and debate.

The debate over the success of reentry programs probably will not cease even when more and better empirical data becomes available. Instead, the discussion is likely to focus on the extent and cost of success. A reentry program's success, for example, from a qualitative perspective, could be defined as *any* observable reduction in recidivism. An observable reduction can constitute a single program participant who does not reoffend after completing a reentry program. Whether the benefit of having a single program participant successfully avoid re-incarceration merits the financial costs of a reentry program is likely to remain a serious point of contention and debate. Recidivism is thus a "complicated criminological and social concept . . . measuring the recidivism-reducing effect of any program is challenged by the complexity of interdependent variables that affect the measure."[71]

CONCLUSION

Whether viewed expansively or narrowly, reentry programs reflect a significant departure from how the courts have traditionally administered justice.[72] Within the realm of criminal law, the courts have traditionally limited involvement to fact finding and application of the law from a detached, procedural standpoint. Reentry courts are essentially problem-solving courts that require court involvement throughout the offender's experience with the criminal justice system. Such courts attempt to actively, effectively, and efficiently use limited resources to address particular problems that offenders face when attempting to reintegrate into the community. The development of reentry courts builds upon the claimed success of problem-solving courts in reducing the recidivism rates for the various at-risk clients they target: drug addicts, the mentally ill, the homeless, and juveniles, among others.[73]

At a time when most communities are hard-pressed to fund equally important societal needs, such as education, infrastructure, and health care, the allocation of funds for reentry programs will most likely be subject to contentious debate concerning cost-benefit analyses, as well as differing views as to how ex-offenders should be supported during post-con-

viction. But the costs to society of mass incarceration and recidivism are also very real and escalating. More empirical study must be conducted to provide better guidance to local communities struggling with these challenges, with the caveat that there be a degree of flexibility in determining how to evaluate successful reentry programs.

For now, judges, working in tandem with support staff and key actors in the criminal justice system, especially prosecutors and defenders, may have a unique opportunity to enhance an ex-offender's prospects of permanent reintegration into the community by actively participating in programs that "go beyond" punishment. Reentry programs of all types can thus be viewed as experimental legal laboratories attempting to mollify the pernicious effects of mass incarceration and recidivism. Regardless of the controversy surrounding reentry programs, as presently conceptualized and applied, they may provide judges and other key criminal justice actors with additional tools to play a more proactive, positive, and expansive role.

MARVIN L. ASTRADA holds master's and doctoral degrees in politics and international relations from Florida International University (FIU) and a J.D. from Rutgers University. He teaches in the Politics & History Department at New York University in Washington, D.C. He has served as a research scientist with the Applied Research Center at FIU.

[1] E. Ann Carson & Daniela Golinelli, U.S. Dep't of Justice, Prisoners in 2012: Trends in Admissions and Releases 1991–2012, at 1–3 (2013).

[2] Leslie Helmus et al., *Absolute Recidivism Rates Predicted by Static-99R and Static-2002R Sex Offender Risk Assessment Tools Vary across Samples: A Meta-Analysis*, 39 Crim. Just. & Behavior 1148 (2012); *see also* U.S. Sentencing Comm'n, Recidivism Among Federal Offenders: A Comprehensive Overview 5 (2016) (finding that federal offenders recidivate at an alarming pace: 49.3 percent were rearrested within eight years of their release from prison).

[3] Matthew R. Durose, Alexia D. Cooper, & Howard N. Snyder, Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010 (2014), p. 1. *See also* Joel M. Caplan, *Parole System Anomie: Conflicting Models of Casework and Surveillance*, 70 Fed. Probation 32 (Dec. 2006); Matthew G. Rowland, *Assessing the Case for Formal Recognition and Expansion of Federal Problem-Solving Courts*, 80 Fed. Prob. 3, 12 (2016) (finding recidivism in the state system has been reported to be as much as 68 percent within three years of release from prison).

[4] *Id.*

[5] *See* Nathan James, Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism 1–4 (2015), *available at* https://fas.org/sgp/crs/misc/RL34287.pdf.

[6] William Hubbard, *Remarks on Collateral Consequences of Mass Incarceration*, 2 Crim. L. Prac. 10 (2014).

[7] Lisa A. Rich, *A Federal Certificate of Rehabilitation Program: Providing Federal Ex-Offenders More Opportunity for Successful Reentry*, 7 Ala. C.R. & C.L.L. Rev. 249, 251 (2016).

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[13] Anthony C. Thompson, *Navigating the Hidden Obstacles to Ex-Offender Reentry,* 45 B.C.L. Rev. 255, 256 (2004).

[14] *Id*. at 257.

[15] *See* Marta Nelson et al., Vera Inst. of Justice, The First Month Out: Post-Incarceration Experiences in New York City (1999); *see* Stephen Metraux & Dennis P. Culhane, *Homeless Shelter Use & Re-Incarceration Following Prison Release: Assessing the Risk*, 3 Criminology & Pub. Pol'y 139 (2004).

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[18] *See* Reginald A. Wilkinson, et al., *Prison Reform Through Offender Reentry: A Partnership Between Courts and Corrections*, 24 Pace L. Rev. 609, 612 (2004).

[19] *See, e.g.*, Keith O'Brien & Sarah Lawrence, Implementing a Reentry Program According to Best Practices, Mass. Exec. Office of Pub. Safety (2007), *available at* http://www.mass.gov/eopss/docs/eops/publications/implementing-a-reentry-program-according-to-best-practices-march-2007.pdf; Timothy Hughes & Doris James Wilson, U.S. Dep't of Justice, Bureau of Justice Statistics, Reentry Trends in the United States (2002), *available at* http://www.bjs.gov/content/pub/pdf/reentry.pdf; Stephen E. Vance, *Federal Reentry Court Programs: A Summary of Recent Evaluations*, 75 Fed. Prob. 64, 65, 72 (2011).

[20] *See* Rich, *supra* note 7, at 249.

[21] Edward E. Rhine & Anthony C. Thompson, *The Reentry Movement in Corrections: Resiliency, Fragility and Prospects*, 47 Crim. L. Bull. art. 1, 2 (2011).

[22] *See* Melissa A. Knopp, *Breaking the Cycle: Ohio Reentry Courts*, 41 Ohio N.U. L. Rev. 747 (2015) ("With the latest criminal justice reform efforts focused on reducing ballooning state corrections budgets and the number of inmates in state prisons, policy makers have been more willing to reassess the past punitive approaches that heavily relied on imprisonment as the principal crime control strategy.").

[23] *See, e.g.*, Michael C. Dorf & Jeffrey A. Fagan, *Problem-Solving Courts: From Innovation to Institutionalization*, 40 Am. Crim. L. Rev. 1501 (2003).

[24] Gottschall & Armour, *infra* note 32, at 38–40; *see* Seiter & Kadela, *infra* note 50, at 368; *see also* Hamilton, *infra* note 55, *and* D.J. Farole, The Harlem Parole Reentry Court Evaluation: Implementation and Preliminary Impacts (2003). Note that BJS data from 2000-2013 indicate that the majority of offenders on community supervision are on probation (on average 84 percent between 2000-2013).

[25] *See* Faye S. Taxman, *The Offender & Reentry: Supporting Active Participation in Reintegration*, 68 Fed. Prob. 31 (2004).

[26] Knopp, *supra* note 22.

[27] See Henry, *supra* note 16, at 2; *see also* James M. Byrne & Don Hummer, *Prisoner Reentry — Examining the Role of the Police in Reentry Partnership Initiatives*, 68 Fed. Prob. 62 (2004).

[28] *See, e.g.*, Berman, *supra* note 12; Vivian Nixon et al., *Life Capacity Beyond Reentry: A Critical Examination of Racism and Prisoner Reentry Reform in the U.S.*, 2 Race/Ethnicity: Multidisciplinary Global Contexts 21 (2008), *available at* https://muse.jhu.edu/article/252430/pdf; Thompson, *supra* note 13, at 256–57.

[29] Wayne A. Logan, *Informal Collateral Consequences*, 88 Wash. L. Rev. 1103, 1104 (2013).

[30] The Council of State Governments Justice Center, National Inventory of Collateral Consequences of Conviction (2012, 2017), *available at* https://niccc.csgjusticecenter.org/

[31] Logan, *supra* note 29, at 1103–05.

[32] Joan Gottschall & Molly Armour, *Second Chance: Establishing a Reentry Program in the Northern District of Illinois*, 5 DePaul J. for Soc. Just. 31, 67 (2011). Examples include: funding "police and other investigative agencies; public prosecutors; taxpayer-funded defender services (which represent the vast majority of defendants accused of crime); the judicial system, including judges and their staffs, court clerks, stenographers and marshals and other court security personnel; pretrial and probation officers; addiction counselors; and the enormous state and federal prison system." *Id*; *see also* Laura Knollenberg & Valerie A. Martin, *Community Reentry Following Prison: A Process Evaluation of the Accelerated Community Entry Program*, 72 Fed. Prob. 54 (2008).

[33] *See* Jeremy Travis and Christy Visher, eds., Prisoner Reentry and Crime in America (2005).

[34] For examples of federal courts that have implemented reentry programs, such as the District of Oregon, the District of Massachusetts, the Western District of Michigan, the Southern District of Ohio, the Middle District of Florida, and the Eastern District of Pennsylvania, see Hon. Michael J. Newman & Matthew C. Moschella, *The Benefits and Operations of Federal Reentry Courts*, Fed. Law. 26, 26–35 (2017), *available at* http://www.fedbar.org/Resources_1/Federal-Lawyer-Magazine/2017/December/The-Benefits-and-Operations-of-Federal-Reentry-Courts.aspx; Stephen E. Vance, *Federal Reentry Court Programs: A Summary of Recent Evaluations*, 75 Fed. Prob. 64 (2011), *available at* http://www.uscourts.gov/sites/default/files/75_2_11_0.pdf. For a listing of various state reentry court programs, see *State by State Listing of Re-Entry Programs for Prisoners*, Lionheart Found., http://lionheart.org/prison/state-by-state-listing-of-re-entry-programs-for-prisoners/ (last visited June 14, 2018).

[35] *See, e.g.*, *Re-Entry Court*, U.S. Prob. Off.: Eastern District of PA., *available at* http://www.paep.uscourts.gov/re-entry-court (listing the description and materials pertaining to the Supervision to Aid Reentry (STAR) Program in Philadelphia, PA, overseen by the Third Circuit Court of Appeals).

[36] *See* Gottschall & Armour, *supra* note 32.

[37] Rhine & Thompson, *supra* note 21, *at* 18. *See also* Patrick J. Carr, *The New Parochialism: The Implications of the Beltway Case for Arguments Concerning Informal Social Control*, 108 Am. J. Soc. 1249 (2003); April Pattavina, et al., *An Examination of Citizen Involvement in Crime Prevention in High-Risk Versus Low to Moderate Risk Neighborhoods,* 52 Crime & Delinq. 203 (2006); *and* Robert J. Sampson & Stephen W. Raudenbush, *Seeing Disorder: Neighborhood Stigma and the Social Construction of "Broken Windows*," 67 Soc. Psych. Q. 319 (2004).

[38] Rhine & Thompson, *supra* note 21, at 8. *See also* Joan Petersilia, *Prisoner Reentry — What Works in Prisoner Reentry? Reviewing and Questioning the Evidence*, 68 Fed. Prob. 4 (2004); Gordon Bazemore & Jeanne Stinchcomb, *Prisoner Reentry — A Civic Engagement Model of Reentry: Involving Community Through Service and Restorative Justice*, 68 Fed. Prob. 14 (2004).

[39] *See* James, *supra* note 5.

[40] *See* Shadd Maruna & Thomas P. LeBel, *Welcome Home? Examining the Reentry Court Concept from a Strengths-Based Perspective*, 4 W. Criminology Rev. 91 (2003).

[41] A.B.A., *Reentry Courts*, 17 Crim. Just. 15 (2002).

[42] *See* Martha Neil, *2 Federal Judges Work with Ex-Cons in Chicago Re-Entry Program*, A.B.A. J. (Aug. 16, 2012), http://www.abajournal.com/news/article/federal_judges_work_with_ex-cons_in_chicago_re-entry_program/news/article/judges_and_the_administrative_state/?icn=sidebar&ici=bottom.

[43] A.B.A, *supra* note 41.

[44] Ga. Dep't of Corr., Performance Incentive Credit (2017), *available at* http://dcor.state.ga.us/sites/all/themes/gdc/pdf/PIC_v032017.pdf

[45] *See* Alaska Prisoner Reentry Task Force, Five-Year Prisoner Reentry Strategic Plan, 2011-2016, *available at* http://www.correct.state.ak.us/TskForce/documents/five-year-prisoner-reentry-plan.pdf.

[46] Keith O'Brien & Sarah Lawrence, *Implementing a Reentry Program According to Best Practices* (2007), *available at* http://www.mass.gov/eopss/docs/eops/publications/implementing-a-reentry-program-according-to-best-practices-march-2007.pdf.

[47] Two distinct literatures that have emerged using distinct disciplinary traditions and methodologies for assessing reentry and "what works." These differences have evolved over the last two to three decades due to disciplinary training (mainly psychology versus criminology) and the methods each discipline has adopted. Each literature, while finding some support for the efficacy of a reentry approach to criminal justice, nonetheless have produced different conclusions based on different foci of analysis. Petersilia, *supra* note 38, at 4–5.

[48] *Id*. at 6.

[49] Lawrence W. Sherman, et al., Preventing Crime: What Works, What Doesn't, What's Promising 6–12 (1997), *available at* https://www.ncjrs.gov/works/.

[50] *See* Richard P. Seiter & Karen R. Kadela, *Prisoner Reentry: What Works, What Does Not, and What Is Promising*, 49 Crime & Delinq.,

360, 370–72 (2003). The researchers developed the following criteria to determine whether a crime prevention program was effective or ineffective:

What Works: "For a program to be considered 'working,' there must be at least two Level 3 evaluations with significance tests indicating that the intervention was effective, and the preponderance of the remaining evidence must support that conclusion." *Id.* at 372.

What Does Not Work: "For a program to be coded as 'not working,' there must be at least two Level 3 evaluations with statistical significance indicating the ineffectiveness of the program, and the preponderance of the remaining evidence must support the same conclusion." *Id*. at 372.

Promising: "These are programs for which the level of certainty from available evidence is too low to support generalizable conclusions. However, there is some empirical basis for predicting that further research could support such conclusions, such as programs are found effective in at least one Level 3 evaluation, and the preponderance of the remaining evidence supports that conclusion." *Id.* at 372–73.

Unknown: "Any program not classified in one of the three previous categories is defined as having unknown effects." *Id*. at 373.

[51] James, *supra* note 5, at 5*; see also* Robert Weisberg, Meanings & Measures of Recidivism, 87 S. Cal. L. Rev. 785, 786–87 (2014). As noted by Weisberg, stepping outside the parameters of recidivism so defined, one can, for example, limit the definition of a recidivist act to a new criminal act, a new prison-eligible felony, or to a technical violation of parole. *Id.* at 786. One can also lengthen or shorten a given time frame; thus, the definition of recidivism is "a matter of [being a] legal concept and [having] criminological significance." *Id.* One can also question a case wherein "a technical violation was charged to see if the act was actually a new crime that the prosecutor just chose to treat as an administrative violation, for ease of proof and procedure. That approach would have raised difficult fact-finding issues, so the definition of recidivism remains[s] contingent on empirical uncertainty." *Id*. at 786-87.

[52] *See* James, *supra* note 5, at 5-6.

[53] *Id*.

[54] *See* Stephanie Slifer, *Once a Criminal, Always a Criminal?*, CBS News (Apr. 23, 2014, 7:35 AM), https://www.cbsnews.com/news/once-a-criminal-always-a-criminal/.

[55] For examples of varying studies and results, *see* Z. K. Hamilton, *Adapting to Bad News: Lessons from the Harlem Parole Reentry Court*, 50 J. of Offender Rehabilitation, 385–410 (2011); J. A. Wilson & R. Davis, *Good Intentions Meet Hard Realities: An Evaluation of the Project Greenlight Reentry Program*, 5 Criminology & Pub. Pol'y, 303–38 (2006); J.A. Bouffard & L.E. Bergeron, *Reentry Works,* 44 J. of Offender Rehabilitation 1–29 (2006); P.K. Lattimore, D.M. Steffey & C.A. Visher, *Prisoner Reentry in the First Decade of the Twenty-First Century*, 5 Victims & Offenders 253–67 (2010); J.A. Inciardi, et al., *An Effective Model of Prison-Based Treatment for Drug-Involved Offenders*, 27 J. of Drug Issues, 261 (1997).

[56] Petersilia, *supra* note 38, at 7.

[57] *See* Jamie Yoon & Jessica Nickel, Reentry Partnerships: A Guide for States & Faith-Based & Community Organizations, Council of State Gov'ts Justice Ctr., N.Y., N.Y. (2008), https://www.bja.gov/Publications/CSG_Reentry_Partnership.pdf.

[58] Petersilia, *supra* note 38, at 7; *see also* Henry, *supra* note 16, at 8; Arthur J. Lurigio et al., *The Effects of Serious Mental Illness on Offender Reentry*, 68 Fed. Prob. 45 (2004); James E. Robertson, *Civil Disabilities and Citizenship: The New Color Line*, 21 Correctional L. Rep., 57, 63 (2010); Wendy S. Still, *San Francisco Realignment: Raising The Bar for Criminal Justice in California*, 25 Fed. Sent'g Rep. (2013).

[59] Anna Crayton et al., Urban Inst., Partnering with Jails to Improve Reentry: A Guidebook for Community-Based Organizations (2010), *available at* https://www.urban.org/sites/default/files/publication/29146/412211-Partnering-with-Jails-to-Improve-Reentry-A-Guidebook-for-Community-Based-Organizations.PDF.

[60] Petersilia*, supra* note 38, at 4–5 (citing Seiter & Kadela), *supra* note 50, at 368*; see also* Chuck Colson, *Thirty-Sixth Annual Review of Criminal Procedure — Justice That Restores: A Paradigm-Shift in Criminal Justice Practices*, 36 Geo. L.J. Ann. Rev. Crim. Proc., at iii (2007).

[61] Mirlinda Ndrecka, *The Impact of Reentry Programs on Recidivism: A Meta-Analysis* (2014), (unpublished Ph.D. dissertation, University of Cincinnati) at iii.

[62] A.B.A., *supra* note 41, at 15.

[63] Robert Martinson, *What Works Questions and Answers About Prison Reform*, 35 Pub. Int. 22 (1974).

[64] Christopher T. Lowenkamp et al., *When A Person Isn't A Data Point: Making Evidence-Based Practice Work*, 6 Fed. Prob. 11, 12–15 (Dec. 2012).

[65] *Id*.

[66] *Id*.

[67] *See, e.g.*, Or. Rev. Stat. § 182.525, 2003; Ark. Code § 16-93-104; S. C. Code Ann. § 24-21-10; Ky. Rev. Stat. Ann. § 532.007; 730 Ill. Comp. Stat. Ann. § 190/10; *and* Tex. Bus. & Com. Code Ann. § 501.092 .

[68] *See* Lowenkamp, et al., *supra* note 64, at 12–15.

[69] For an in-depth discussion of the merits and pitfalls of EBP, see Laura K. Abel, *Evidence-Based Access to Justice*, 13 U. Pa. J.L. & Soc. Change 295 (2009); Douglas B. Marlowe, *Evidence-Based Policies and Practices for Drug-Involved Offenders*, 91 Prison J. 27S (2011); Gerald P. Lopez, *How Mainstream Reformers Design Ambitious Reentry Programs Doomed to Fail and Destined to Reinforce Targeted Mass Incarceration and Social Control*, 11 Hastings Race & Poverty L.J. 1 (2014) .

[70] *See* Gottschall & Armour, *supra* note 32, at 53–55; *see also* Douglas B. Marlowe, et al., *Matching Judicial Supervision to Clients' Risk Status in Drug Court*, 52 Crime & Delinq. 52, 54 (2006).

[71] Weisberg, *supra* note 51 at 799–800.

[72] Kristin Brown Parker, *The Missing Pieces In Federal Reentry Courts: A Model For Success*, 8 Drexel L. Rev. 397 (2016). *Available at* http://drexel.edu/law/lawreview/issues/Archives/v8-2/brown/.

[73] Eric J. Miller, *The Therapeutic Effects of Managerial Reentry Courts,* 20 Fed. Sent'g Rep., 127, 127 (2007).