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The Influence of Social Distance on Community Corrections Officer Perceptions of Offender Reentry Needs

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APPROXIMATELY 600,000 OFFENDERS return to society from federal and state prisons every year (Petersilia, 2003). Of approximately 300,000 offenders released in 15 states in 1994, 67.5 percent were rearrested within three years (Langan and Levin, 2002). Offenders' ability to reintegrate successfully is hindered by obstacles such as difficulty in obtaining employment, acquiring housing, and admission to colleges and universities (Allender, 2004; Cowan & Fionda, 1994; Graffam, Shrinkfield, Lavelle, & McPherson, 2004; Harris & Keller, 2005; Hunt, Bowers, & Miller, 1973; Nagin & Waldfogel, 1993; Paylor, 1995; Starr, 2002; Whelan, 1973), serious social and medical problems (Petersilia, 2003), and mental health issues ranging from depression to low self-esteem to anger management problems (Fletcher, 2001; Heinrich, 2000; Helfgott, 1997). Newly released offenders encounter stigmatization (Bahn & Davis, 1991; Funk, 2004; Steffensmeier & Kramer, 1980; Tewksbury, 2005) and loss of social standing in their communities (Chiricos, Jackson, & Waldo, 1972), and are in need of social support (Cullen, 1994; Lurigio, 1996) and substance abuse and mental health treatment (Lurigio, 2001; Petersilia, 2003).

Many communities recognize the importance of assisting offenders in the reentry process and provide services to newly released offenders. Recognizing this importance at the federal level, the U.S. Congress has introduced [update info] the Federal Second Chance Act of 2005, which calls for the expansion of offender reentry services (Pogorzelski, Wolff, Pan, & Blitiz, 2005). In 1997, Helfgott examined the relationship between ex-offender needs and community opportunity in Seattle, Washington by surveying transition agencies, employers, property managers, colleges and universities, the general public, and offenders to determine the extent to which ex-offenders' needs were being met by transition agencies and gestures of support extended to them by the community in the reentry process in Seattle. Helfgott (1997) [✉](#) found that housing acquisition and coordination of services were major obstacles for offenders. Further, ex-offenders believed that their community corrections officers (CCOs) did not truly understand their needs, and offenders interviewed in the study did not see their CCOs as a resource in the reentry process. One offender stated, "they [CCOs] just want you to tell a good lie...they have no understanding of what it's like...take them out [of their environment] and they wouldn't be able to survive on the streets" (Helfgott, 1997, p. 16). A missing piece in the study was data on community corrections officers' views of ex-offender reentry needs and challenges as well as their perception of whether or not officer-offender social distance influences the reentry process.

Recent research has explored whether criminal justice professionals are aware of ex-offenders' needs and the challenges they face upon reentry (Brown, 2004a; Brown, 2004b; Graffam et al.,

2004; Gunnison & Helfgott, 2007). Brown (2004a) examined perceptions of federal parole officers regarding ex-federal offenders' needs in Canada and found that federal officers are well aware of the needs faced by offenders. Graffam et al. (2004) examined criminal justice professionals' perceptions of needs of ex-offenders in Melbourne, Australia. More recently, Gunnison & Helfgott (2007) examined community correction officer perceptions' of ex-offender needs, the value officers' placed on the specific needs, and the opportunities available for offenders to meet their needs in Seattle, Washington. Since both Brown's (2004a) and Graffam et al.'s (2004) research was conducted outside of the United States, the findings from their studies are not necessarily consistent with community officer perceptions of ex-offender needs in the United States or in the city of Seattle. Additionally, the research conducted by Brown (2004a), Graffam et al. (2004), and Gunnison and Helfgott (2007) did not include variables related to perceptions of social distance of offenders or officer. It is not clear from the existing research whether social distance does indeed impact the officer-offender relationship in ways that hinder reentry process, as suggested by ex-offenders in Helfgott's (1997) research, or whether, like offenders, community corrections officers also see social distance between themselves and offenders as an obstacle in assisting offenders to succeed upon release.

As a follow-up to previous research (Brown 2004a; Brown 2004b; Graffam et al., 2004; Gunnison & Helfgott, 2007; Helfgott, 1997), this study seeks to fill the gap in the literature by examining community corrections officers' perceptions of the influence of officer-offender social distance on the reentry process. The study addresses two questions: 1) *What is the relationship between officer-offender social distance and CCO perceptions of offender needs, challenges, and the ability of offenders to develop niches in the community upon release?* 2) *What is the relationship between officer-offender social distance and attitudes of community corrections officers towards offenders?*

Literature Review

This study draws from the research literature on offender reentry needs and challenges, officer-offender social distance, and officer perceptions of offenders. The needs of ex-offenders and the challenges they face, whether community corrections officers can identify ex-offenders' needs and challenges, and the relationship between officers and offenders are components that have the potential to play a role in the success of offenders upon release.

Ex-Offender Needs and Challenges in Reentry

Reentry needs consistently identified in the literature include housing, employment, and substance abuse treatment. Housing has been identified as one of the most difficult obstacles offenders face (Corden, Kuipers, & Wilson, 1978; Cowan & Fionda, 1994; Graffam et al., 2004; Harding & Harding, 2006; Helfgott, 1997; Paylor, 1995; Starr, 2002; Wodhal, 2006). Ex-offenders often have limited credit, rental history, and finances, which closes the door on many housing opportunities (Helfgott, 1997). Many landlords are reluctant to rent to ex-offenders due to their fear for community safety (Harding and Harding, 2006). Without suitable housing, ex-offenders must resort to being homeless or residing in an environment that undermines their likelihood of successful rehabilitation (Bradley, Oliver, Richardson, & Slayter, 2001; Rodriguez & Brown, 2003). Additionally, ex-offenders may find that the only place that they can find housing is in impoverished neighborhoods where they are less likely to find employment, which is another key obstacle to successful offender reentry (Bradley et al., 2001; Petersilia, 2001; Visher, Baer, & Naser, 2006).

Many ex-offenders have few employment prospects. The National Institute for Literacy (2001) reports that 7 in 10 prison inmates function at the lowest levels of prose and numeric literacy. Searching for employment is hampered by their inability, after long-term imprisonment, to search for employment via the internet or newspaper or even fill out a job application and many offenders rely on personal connections to find a job (Visher, LaVigne, & Travis, 2004). Many employers are reluctant to hire ex-offenders (Buikhuisen & Dijksterhuis, 1971; Holzer, 1996; Holzer, Raphael, & Stoll, 2003). Possessing a felony record disqualifies the ex-offender from certain occupations (Petersilia, 2001) and criminal background checks create barriers to

employment for ex-offenders (Harris & Kellar, 2005).

Substance abuse is also a major hindrance to success upon release (Wodhal, 2006). Drug addiction is a struggle for ex-offenders (McKean & Raphael, 2002), many of whom are in need of mental health support (Lurigio, 1996; White, Goldkamp, & Campbell, 2006) and may resort to drastic measures such as suicide in response to the stress (Biles, Harding, & Walker, 1999). LaVigne, Visher, and Castro (2004) found that 11 percent of their sample of 205 ex-offenders in Chicago consumed alcohol and 8 percent used drugs within eight months of release from prison. It is clear that offenders need assistance with the prevention of relapse into alcohol and/or drug use (Prendergast, Wellisch, & Wong, 1996).

Community Corrections Officers' Perceptions

Most research on officer perceptions has focused on correctional officers in institutional contexts. Studies of correctional officers' attitudes about their job, offenders, or rehabilitation philosophy have highlighted differences in attitudes based on an officer's age, education, gender, or years of service (Farkas, 1999; Hemmens & Stohr, 2001; Latessa & Allen, 1999; Maahs & Pratt, 2001; Robinson, Porporino, & Simourd, 1997; Zupan, 1986). Early research found no significant relationship between education and officers' attitudes towards inmates (Crouch & Alpert, 1982; Cullen, Lutze, Link, & Wolfe, 1989; Jurik, 1985; Shamir & Drory, 1981). However, recent research shows that officer characteristics are significantly related to officer perceptions of offenders. Officers with higher levels of education are more likely to possess favorable attitudes towards rehabilitation (Hepburn, 1984; Robinson et al., 1997) and more highly educated respondents have greater empathy, punitiveness, and support for rehabilitation (Lariviere, 2002). In an examination of 358 corrections officer in five state prisons, Hepburn (1984) found that officer education, employment length, and job satisfaction influenced whether or not the officer perceived that the offenders had a right to protest. Hemmens & Stohr (2000) found that age & education have little impact on perceptions of the correction officer role, but gender plays an important role in perceptions of the correction officer role. Farkas (1999) found that more mature (i.e., older, more senior) officers favored rehabilitation and that female officers exhibited more of a counseling role with offenders. Finally, Jurik (1985) found that the corrections officers who were interested in and enjoyed the challenge of their job had more favorable attitudes towards inmates.

Findings on officer perception of newly released offenders' needs has been recently emerging. Seiter (2002) examined parole officer perceptions of what is important to offender reentry and how their own job contributions could be a factor in successful reintegration. More recently, Brown (2004a; 2004b) examined perceptions of federal parole officers regarding ex federal offenders' needs and challenges in the first 90 days of release in Canada. Similar to previous research on offender reentry needs, officers identified food, clothing, shelter, transportation, life skills, education, and employment assistance as the most important needs that parolees have when first released. Gunnison and Helfgott (1997) found that community corrections officers could readily identify offender needs and challenges upon release, and their findings were consistent with previous research (Brown 2004a; Brown 2004b; Helfgott, 1997).

Officer-Offender Social Distance

"Social distance" has been defined in the research literature as the level of trust one group has for another (Schnittker, 2004) and the degree of perceived similarity of beliefs between a perceiver and target (Jones, 2004). Findings from Helfgott (1997) suggested that offenders perceived social distance as the differences in education, income, lifestyle, and background characteristics between themselves and their community corrections officers and believed that officers who came from backgrounds of higher social class, education, and prosocial lifestyle have too little in common with most offenders to be able to understand, appreciate, and help them meet their needs. Several scales in the institutional corrections literature have been developed to measure social distance between officers and offenders (e.g., Hepburn, 1984; Klofas & Toch, 1982). However, no clear consensus exists regarding the definition or measurement of offender-officer social distance.

Whitehead & Lindquist (1989) and Freeman (2003) used Klofas & Toch's (1982) social distance scale to measure officer-offender social distance and its influence on officer perceptions. In an examination of 258 correctional officers in Alabama, Whitehead & Lindquist (1989) found that officers hired at early age preferred greater distance than officers hired at a more advanced age. Freeman (2003) examined attitudes of 74 correctional officers employed in a female prison and found that corrections officers who prefer high social distance file a higher number of minor misconduct reports than corrections officers who prefer low social distance, although there were no significant gender differences.

The present study seeks to fill in the gaps left by previous research by examining community corrections officer perceptions of officer-offender social distance and its influence on officer perceptions of offender reentry needs and challenges. In this study, officer-offender social distance is conceptualized as the extent to which officer-offender social backgrounds differ. Prior research (Helfgott, 1997) suggests that offenders perceive their community corrections officers as out of touch with their situations because they do not share the same social backgrounds and that this makes it difficult to see their community corrections officers (CCO) as allies in the reentry process. The present study utilized data from a survey administered to federal and state community corrections officers in the Western Washington/ Seattle-Tacoma area. Survey items in the study were designed to measure CCO perceptions of offender needs and challenges in the first 60-90 days upon release, attitudes toward offenders and the CCO role, officer characteristics, and officer-offender social distance. This paper addresses the question – *does social distance between the officer and offender influence officer perceptions of/style of interacting with offenders?*

Method

Sample

The data used in this study was gathered from a voluntary self-report survey of state (n=110) and federal (n=20) community corrections officers in the Seattle-Tacoma region in Washington State. The survey collected information on officers' identification, perceptions, and the importance of the needs and challenges that newly released offenders face during reintegration and officer demographic information as well as data on officer background, including items from the National Youth Survey dealing with drug and substance use in childhood and adolescence and indicators of neighborhood disorganization. Before data collection began, approval from the Institutional Review Boards at Seattle University and at the Washington State Department of Corrections was sought and granted.

The mail survey method of data collection was selected for several reasons. First, surveys were mailed to the supervisors at each field office site to increase response rate. It was thought that if the CCOs knew the research was supported by their respective agencies, they would be more trusting of the researchers and more willing to complete the survey. Due to the number of community corrections agencies, the researchers needed the assistance of supervisors to disperse the surveys because individual site visits were time prohibitive. In the weeks prior to the mailing of the surveys, the researchers contacted supervisors at each office by phone to explain the purpose of the survey and to ask for their cooperation and assistance with the distribution of it. Supervisors were mailed a sufficient number of surveys for their staff and were instructed to distribute the survey to them. To further increase our response rate, several e-mail announcements were sent to officers by their supervisors on our behalf. To ensure anonymity of the participants and confidentiality of responses, after the officers completed the surveys, they placed them in manila envelopes with no identifiers and returned them to their supervisors. The supervisors then returned all completed surveys by their staff in self-addressed stamped envelopes.

At the time of this research investigation, 368 state and 26 federal community officers were employed in Seattle. A total of 132 surveys were completed, for a response rate of 34 percent, which included 110 state and 20 federal officers (a response rate of 30 percent for state officers

and 77 percent for federal officers). The majority of the sample was Caucasian (66 percent), male (51 percent), and held a bachelor's degree (80 percent), and the average age was 39. (See Table 1 for additional detail.)

Table 1. Respondent Demographics (N = 132)

Characteristic	Mean	Sd
AGE	39.32	10.69

Characteristic	Frequency	Percentage
GENDER		
Male	67	50.8
Female	62	47.0
Missing	3	2.3
RACE /ETHNICITY		
Black, Non-Hispanic	16	12.1
White, Non-Hispanic	84	66.1
Asian	5	3.8
American Indian	4	3.0
Hispanic	5	3.8
Bi-Racial	12	9.1
Other	1	.8
Missing	5	3.8
EDUCATION		
Bachelors Degree	106	80.3
Graduate Degree	22	16.7
Missing	4	3.0
STATE/FEDERAL		
State	110	83.3
Federal	20	15.2
Missing	2	1.5
CARRY FIREARM WHILE WORKING		
No	70	53.0
Yes	52	39.4
Sometimes	8	6.1
Missing	2	1.5

PRIOR WORK IN CORRECTIONS		
No	42	31.8
Yes	88	66.7
Missing	2	1.5
NUMBER OF YEARS WORK EXPERIENCE AS COMMUNITY CORRECTIONS OFFICER		
0	7	5.3
1-5	67	50.8
6-10	27	20.5
11-15	13	9.8
16-20	6	4.5
21-24	3	2.3
25-30	6	4.5
Missing	3	2.3

Measures of Constructs

The researchers created several needs and challenges variables from needs and challenges identified by previous researchers (see Brown 2004a; 2004b; Helfgott, 1997) to acquire a better understanding of officer perceptions. To determine inter-officer agreement on the variables, we solicited educational and job experience information from our participants. To measure perceptions of social distance, we constructed a social distance scale, including items from the National Youth Survey that solicited information about drug and alcohol use in childhood and adolescence, delinquent behavior and association with delinquent peers, and social disorganization of the neighborhood/community in which the respondent grew up.

Officer Perceptions of Offender Needs, Challenges, and Opportunities

Needs. According to Aubrey and Hough (1997), offenders have multiple needs that should be met while they are under supervision. Thus, several measures of needs were included in the current analysis. Adapting from Brown's (2004b) research, subjects were asked, "In the first 90 days of post-release, what do offenders need to succeed while on supervision?" Respondents were first asked to check the needs of six categories that also were largely adapted from Brown (2004b). The six need categories included: basic supplies (such as medical care, bus pass), community supervision (such as realistic supervision conditions), life skills (such as money management counseling), insight into problems (ex. conflict resolution skills), corrections programs (such as drop-in workshops, cognitive-behavioral programs), and education and employment (such as job placement services, funding for education). After identifying the needs, respondents were then asked to rate the importance of the identified needs by indicating 1=not important, 2=somewhat important, 3=important, and 4=very important.

Niches. Studies of offender adaptation to the prison environment suggest that offenders better adapt to the prison setting if they can create "niches" (Johnson, 2002; Seymour, 1981) or a match between individual needs for meaningful/constructive activity, privacy/relaxation, personal safety, emotional feedback, support for self-advancement, structure (environmental stability), and personal autonomy, with opportunities within the institutional environment to meet these needs. This notion of need-opportunity matching has been extended to offender reentry with the

understanding that an ecological fit between the offender's needs and the opportunity to meet those needs in a given community is also critical in the reentry process (Helfgott, 1997; Joyce, 1996). To determine the extent to which CCOs perceive ex-offenders as being able to meet their needs and to create niches in the community, respondents were asked, "Based on your observations, to what extent are offenders able to meet the needs upon release?" on a scale of 1-10 where 1=no opportunities to meet needs and 10=many opportunities to meet needs. Next, respondents indicated "how important are each of these needs in terms of enhancing offender success?" on a scale of 1-10 where 1=not important at all and 10=extremely important. Finally, the officers were queried as to "What do you see as the primary factor obstructing offenders' ability to get their needs met?" in order to determine how officers perceive offenders who can't get needs met or are unable to create niches.

Challenges. As Brown's (2004a) research suggests, offenders face a myriad of challenges upon release. Several measures of challenges were included in the current analysis. Adapting from Brown's (2004a) research, subjects were asked, "What challenges do offenders face in the first 90 days of release?" Officers were first asked to check the challenges of seven categories that were also largely adapted from Brown (2004a). The seven challenge categories included: low income (such as finding housing), lack of work experience and skills such as lack of education), establishing family support (such as difficulty reintegrating with family), finding community support (such as no community support), return to previous behaviors (such as poor work ethic), using old coping strategies (such as returning to substance use), and corrections programming (such as lack of female programs). After identifying the challenges, respondents were then asked to rate how challenging the obstacles are to offenders by indicating 1=not very challenging, 2=somewhat challenging, 3=challenging, and 4=extremely challenging.

Prior Experience

Officer Education. If officers have a higher educational level, they may better understand the needs and challenges of new released offenders. Since we wanted to assess the level of inter-officer agreement on the items, we created an education variable to ascertain if there were any similarities/differences in the identification and assessment of needs and challenges. Education was coded as 1=high school diploma, 2=GED, 3=some technical school, 4=technical school diploma, 5=some college, 6=associate's degree, 7=bachelor's degree, and 8=graduate degree.

Job Experience. With greater experience on the job, perhaps more seasoned officers would identify different needs and challenges faced by newly released officers compared to more novice officers. We included several items to assess job experience. We first asked, "Have you ever worked in the corrections field prior to your current position?" If officers answered yes, they were asked to indicate how many years that they worked in that prior position. Next, we asked "how many years have you worked as a community corrections officer?" and officers recorded their years of job experience.

Officer Style. Previous research on officer style (Farkas, 1999; Seiter, 2002) suggests that style plays an important role in how officers perceive offenders and approach their jobs. To obtain information about officer style, we asked respondents an open-ended question to, "Describe your personal style of interaction with ex-offenders."

Social Distance

To obtain information on officer-offender social distance, the survey included questions from the National Youth Survey Neighborhood Problems scale regarding early peer influences, community disorganization, and community/pro-social support (see Elliott, Huizinga, & Ageton 1985 for detailed explanation of items). These survey items were included as a proxy for social distance based on the assumption that, as compared to community corrections officers as a group, the backgrounds of offenders would be more likely to include antisocial peer influences, community disorganization, and less of pro-social support. We created a "Social Distance Scale" comprised of three subscales (Neighborhood Social Distance, Peer Social Distance, and Positive Support). The "Neighborhood Distance Scale" included 15 items measuring community disorganization

The Cronbach alpha for this scale is .95. The “Peer Social Distance Scale” included 13 items measuring peer influence with a Cronbach alpha for this scale of .95. The “Positive Support Scale” included 7 items measuring prosocial community support with a Cronbach alpha for this scale of .81. The “Total Social Distance Scale” consisted of all three subscales and had a Cronbach alpha of .64 [3]. The Total Social Distance Scale was recoded into a dichotomous variable (Hi/Low Social Distance).

Results

Analyses of the relationship between social distance and officer perceptions of offender needs, challenges, niches, and attitudes toward offenders were conducted. Additional analyses were conducted to examine the relationship between social distance, attitudes toward offenders, and select officer characteristics. A series of Chi Squares and T-tests analyses were conducted. *Offender-CCO Social Distance & Officer Perceptions of Offender Needs, Challenges, & Niches*

Results from Chi-square analyses demonstrated that of the 60 needs listed on the survey, a significant difference with respect to low/high social distance was found on identification of only two needs and level of importance of four needs. Community corrections officers (CCOs) with high social distance from offenders are significantly more likely than CCOs with low social distance to identify long-term ($\chi^2=10.8$, $df=1$, $p>.00$) and transition programs ($\chi^2=5.2$, $df=1$, $p<.02$) as a need. Of the 41 challenges listed on the survey, results show significant differences with respect to low/high social distance on identification of only two challenges and level of importance of two challenges. Specifically, CCOs with high social distance from offenders are significantly more likely than CCOs with low social distance to identify housing ($\chi^2=7.1$, $df=1$, $p<.01$) and developing positive associations ($\chi^2=4.3$, $df=1$, $p<.05$) as challenges in the first 90 days post-release. High Social Distance CCOs were also more likely than low social distance CCOs to identify having a bank account ($t=2.36$, $df=54$, $p<.02$), a community plan ($t=-2.25$, $df=103$, $p<.03$), and understanding risk factors ($t=-2.52$, $df=102$, $p<.01$), and interpretive services ($t=-2.06$, $df=51$, $p<.05$) as important needs. Of the 7 niches/opportunities listed on the survey, results show a significant difference with respect to only one. CCOs with low social distance from offenders were significantly more likely than high social distance CCOs to identify support for self advancement as a critical reentry need ($t=2.17$, $df=107$, $p<.03$) (See Table 2).

IDENTIFICATION OF NEEDS (Yes/No)	N	% (n)	Chi Sq.	df	Sig.
Long-term Programs	LSD = 35	63% (22)	10.8	1	.00
	HSD = 81	89% (72)			
Transition Programs	LSD = 35	60% (21)	5.2	1	.02
	HSD = 81	80% (65)			
IMPORTANCE OF NEEDS	N	Mean	Sd	t	Df
<i>1 = Not Important – 4 = Very Important</i>					
Bank Account	LSD=16	2.13	.89	2.36	54
	HSD=40	2.58	.75		
Community Plan	LSD=30	3.13	.82	-2.25	103
	HSD=75	3.48	.67		
Understand Risk Factors/Relapse Program	LSD=31	3.10	.83	-2.52	102
	HSD=73	3.49	.69		
Interpretive Services	LSD=15	2.47	.83	-2.06	51
	HSD=45	2.53	.66		
IDENTIFICATION OF CHALLENGES	N	% (n)	Chi Sq.	df	Sig.

(Yes/No)					
Finding Housing	LSD = 35	91% (32)	7.1	1	.01
	HSD = 81	100% (81)			
Developing Positive Associations	LSD = 35	88% (30)	4.3	1	.05
	HSD = 81	96% (78)			
LEVEL OF CHALLENGE	N	Mean	Sd	t	Df
<i>1 = Not Very Challenging – 4 = Extremely Challenging</i>					
Lack of Transportation	LSD=16	2.77	.73	-2.10	103
	HSD=40	3.12	.79		
Lack of Patience	LSD=27	3.48	.64	2.25	87
	HSD=62	3.15	.65		
IMPORTANCE OF NICHEs	N	Mean	Sd	t	Df
<i>1 = Not at all Important – 4 = Extremely Important</i>					
Support for self advancement/improvement	LSD=33	8.67	1.271,48	2.17	107
	HSD=76	8.03			

Offender-CCO Social Distance and Officer Attitudes Toward Offenders

Of the 25 Likert statements included in the survey, results showed a significant difference with respect to only 4 of the statements. Significant differences were found with respect to several attitude variables. CCOs with low social distance with offenders were significantly more likely to agree with the statement, “I do not think it is possible to predict when an offender will reoffend” ($t=2.52$, $df=114$, $p<.02$) and less likely to agree, “I cannot fully understand the past experiences of an offender,” ($t=-2.22$, $df=114$, $p<.03$) “I believe that all human beings are inherently good,” ($t=-2.13$, $df=113$, $p<.04$) and “The community and other agencies need to play more of a role in helping offenders to reintegrate.” ($t=-2.26$, $df=113$, $p<.03$) (See Table 3).

ATTITUDES TOWARD OFFENDERS	N	Mean	Sd	t	Df
<i>1 = Strongly Disagree – 4 = Strongly Agree</i>					
“I do not think it is possible to predict when an offender will reoffend.”	LSD=35	2.74	.89	2.52	114
	HSD=81	2.32	.67		
“I cannot fully understand the past experiences of an offender.”	LSD=35	1.69	.80	-2.22	114
	HSD=81	2.06	.86		
“The community and other agencies need to play more of a role in helping offenders to reintegrate”	LSD=34	3.15	.89	-2.26	113
	HSD=81	3.51	.67		
“I believe that all human beings are inherently good”	LSD=34	2.29	1.00	-2.13	113
	HSD=81	2.69	.88		

Respondents were also asked whether or not they see social distance as a barrier to reentry

success. Analysis of qualitative data revealed that the majority of CCOs (66 percent) do not see social distance as a barrier to offender reentry success. When CCOs were asked: "Previous research suggests that some offenders feel their community corrections officers do not understand their situations because they come from very different social backgrounds. We are interested in obtaining your perspective on this issue. Is social distance (differences in past experiences, economic circumstances, drug/alcohol use, etc.) between offenders and CCOs a problem that hinders offenders' success upon release?": their responses could be categorized into three themes. First, *offenders use social distance as an excuse not to take responsibility*. Officers reported: "Offenders use anger at anything as an excuse for their behavior, we all don't need to commit crime... to know it's a bad... path to take," and "I may not have grown up in the hood, but I am an educated man. I realize and appreciate the struggle low income offenders have" Second, *social distance is necessary, desirable, and appropriate*. For example, officers stated: "We're law enforcement, they're criminals;" "We're not here to be their best friend;" and "A CCO is a role model. Offenders should look at CCO's lifestyles as the norm..." Third, *CCOs attitudes are more problematic than social distance*. Responses included: "Sometimes depends on the CCO if they have a superior attitude or not," and "Many CCOs believe they are better. This feeling can be communicated to offenders."

Offender-CCO Social Distance, Officer Characteristics, & Officer Attitudes Toward Offenders
Results of the analyses of the interaction between social distance, officer perceptions, and officer characteristics such as gender, agency (federal/state), years employed, firearms use, and officer style were also conducted. Results show that state CCOs with low social distance were less likely to agree, "Most offenders are good people who made bad choices" ($\chi^2=5.3$, $df=1$, $p<.02$), "I believe some human beings are born evil" ($\chi^2=4.21$, $df=1$, $p<.05$), "I believe that all human beings are inherently good" ($\chi^2=5.40$, $df=1$, $p<.03$), and "I think most offenders on my caseload see me as an ally" ($\chi^2=4.73$, $df=1$, $p<.03$). Federal officers with low social distance were more likely to agree, "I often feel sorry for the clients on my caseload" ($\chi^2=6.7$, $df=1$, $p<.02$).

Male CCOs with low social distance were significantly more likely than female and male CCOs with high social distance to agree with the statement, "I do not think it's possible to predict whether an offender will reoffend" ($\chi^2=4.01$, $df=1$, $p<.05$) and to disagree: "I believe some human beings are born evil" ($\chi^2=4.99$, $df=1$, $p<.03$). Low social distance officers employed under five years were more likely to agree: "I do not think it is possible to predict when an offender will reoffend" ($\chi^2=5.1$, $df=1$, $p<.04$). Less experienced CCOs (under 10 yrs) with high social distance were more likely to agree: "I do not understand what makes a person lead a life of crime" ($\chi^2=4.1$, $df=1$, $p<.04$).

CCOs with low social distance who do not carry firearms were more likely than CCOs with high social distance who do not carry firearms to agree, "Most offenders feel sorry for what they have done" ($\chi^2=4.7$, $df=1$, $p<.04$), "I often feel sorry for clients on my caseload" ($\chi^2=4.6$, $df=1$, $p<.04$), "I think few offenders have the capacity to succeed upon release" ($\chi^2=4.7$, $df=1$, $p<.03$). CCOs with low social distance who carry firearms are more likely than high social distance CCOs who carry firearms to agree, "I often feel sorry for clients on my caseload" ($\chi^2=10.5$, $df=1$, $p<.00$). CCOs with high social distance who carry firearms are more likely than low social distance CCOs who carry firearms to agree, "I cannot fully understand the past life experiences of ex-offenders" ($\chi^2=5.5$, $df=1$, $p<.02$), "Most offenders have the ability to choose whether or not to commit crime" ($\chi^2=6.4$, $df=1$, $p<.01$), and "I believe some human beings are born evil" ($\chi^2=5.1$, $df=1$, $p<.03$). No significant differences were found with respect to officer style.

Discussion

While offenders have indicated concern that the community corrections officers (CCO) do not adequately understand their needs as a result of differences in social background, the results of the present study suggest that, from the perspective of community corrections officers, social distance is not an important determinant of CCO identification of needs and challenges, nor is

social distance an important determinant of CCO identification of niches, and social distance is not significantly related to CCO style. The results suggest that social distance is minimally related to CCO attitudes, and that officer characteristics such as gender, years employed, type of agency (federal/state), and whether or not the officer carries a firearm interact with social distance to influence CCO attitudes toward offenders. While social distance is significantly related to officer identification of some offender needs and challenges and officer attitudes towards offenders, it does not appear to play a large role in officer ability to identify offender reentry needs. Furthermore, results from narrative responses suggest that officers do not collectively perceive officer-offender social distance as a hindrance in the reentry process.

One of the more interesting findings is the relationship between social distance and officer firearms use. While there were some significant differences with respect to gender, years worked in corrections, state/federal x social distance, results show that *whether or not the CCO carries a firearm is associated with the greatest number of significant differences when social distance is also considered*. Thus, whether or not the CCO carries a firearm appears to be a strong determinant of CCO attitudes. Future research should further explore the relationship between CCO firearms possession, social distance, and officer attitudes. Such research is especially important in light of findings by Parsonage (1997) that showed that officer style is a critical variable in worker safety in community corrections in Washington State. Future research is also needed on the relationship between political ideology, social distance, and CCO attitudes.

This study represents one of the few to examine the relationship between officer-offender social distance and perceptions of community corrections officers. However, it is not without its limitations. First, the data were collected only from officers in the Seattle-Tacoma region in Washington State and are not necessarily generalizable to community corrections officers in other jurisdictions. Second, while we were able to sample a greater number of community corrections officers than previous researchers, the sample size was small and the survey response lower than desirable, perhaps due to utilizing a mail survey, which tends to produce a low response rate (see Singleton et al., 1999). Ideally, future research with a larger sample could expand upon the current research. The current findings are only one small piece in making sense of the offender-officer relationship within a much larger context that contributes to reentry success/failure.

Recent research by Lutze et al. (2004), evaluating the implementation of Neighborhood Based Supervision Programs that co-locate CCOs with community-oriented police officers in the offenders' neighborhoods, found that officers who work closely with offenders in their own neighborhoods and social contexts are perceived by offenders as being more supportive and helpful in assisting them in the reentry process. Future research is needed to examine the interaction between officer perceptions, offender perceptions, and the situational-environmental contexts in which offenders attempt to reintegrate. Lutze et al. (2004) note that attempts to change the relationship between the CCO and the offender can only go so far in affecting change related to offender success and that increasing prosocial activities beyond traditional supervision practices is a more difficult challenge that may be beyond the power of correctional agencies.

An important next step in reentry research is to bring together the research literatures in correctional rehabilitation (Andrews & Bonta, 2003; Gendreau et al., 1996; Harland, 1996; McQuire & Prestly, 1995; Van Voorhis, Braswell, & Lester, 2000), institutional adaptation (Johnson, 2002), community supervision practices (Cullen, & Bonta, 1994; Cullen, Wright, & Applegate, 1996; Gendreau, Jackson, DeKeizer, & Michon, 1995; Petersilia, 2003; Petersilia & Turner, 1993), the officer-offender relationship and community context for offender reentry (Brown, 2004a, 2004b; Helfgott, 1997; Lutze et al., 2004), and the interaction between statistical predictors of recidivism and contextual factors (Schwaner, 1998; Van Voorhis, Cullen, & Applegate, 1994). Future research is needed examining offenders' situational contexts and the interaction between offender risk, need, and responsivity in the community corrections context. Officer-offender social distance is an important variable to include in future research examining offender risk, need, and responsivity (Andrews & Bonta, 2003) in institutional and community corrections contexts.

The results of this investigation bring us one step closer to understanding factors that may

influence community corrections officer perceptions, offender perceptions, and the officer-offender relationship. The major finding of the present study is that there is a discrepancy between offender and officer perceptions of the role social distance plays in officers' ability to assist offenders in the reentry process. One implication from this research is that officer training should focus on this discrepancy in officer-offender perceptions. If offenders (mis)perceive their officers as unable to help them in the reentry process, to what extent does this create a negative offender-officer dynamic that may influence offender responsivity and receptivity to assistance offered by the CCO? How can this misperception be addressed within the context of orientation to community supervision or interactions between the officer and offender in the context of office visits? This misperception may represent a large hindrance to offender success in the minds of some offenders. Furthermore, if, as some of the officers in the present study indicated in their narrative responses, some offenders use social distance as an excuse or deflection of responsibility, findings from the present study offer CCOs evidence to suggest that social distance does not have a large impact on their ability to identify offender needs and challenges.

This research adds to the literature on community corrections officers and should serve as a stepping-stone for further research on the role of officer-offender dynamics in reentry success/failure. Understanding how officer characteristics and officer-offender dynamics potentially influence officer perceptions is important to ensure equity in delivery of services to offenders in the reentry process. Research on the responsivity principle in correctional rehabilitation suggests that the offender-officer interaction and dynamics may play a critical role in rehabilitative and reentry success/failure. Knowledge of officer-offender dynamics and the relationship between officer-offender perceptions can inform policy and practice regarding appropriate matching of offenders and officers and/or training of officers to enhance constructive officer-offender relationships. Future research should examine how the offender perception of the role of social distance hinders offender success, in particular what role the possible misperception of officer-offender social distance plays in the perpetuation of criminal thinking patterns such as victim stance (Yochelson & Samenow, 1976) and general deflection of responsibility.

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The First 20 Years of Drug Treatment Courts: A Brief Description of Their History and Impact

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SINCE THE 1980s, an overwhelming emphasis on law enforcement strategies to combat illegal drug possession and sales has resulted in dramatic increases in the nation's arrest and incarceration rates. Although general population surveys reported declines in illegal drug use during the 1990s, rates of arrest and incarceration for drug offenses rose at a record pace into the twenty-first century (Tonry, 1999). Drug offenses have been among the largest categories of arrests for the past 20 years. From 1980 to 2000, arrests for drug offenses more than doubled. In 2000 alone, more than 1.5 million persons were arrested for a drug offense—more than four-fifths for a drug possession (Bureau of Justice Statistics, 2002).

Prison sentences for drug offenses contributed significantly to the burgeoning of the incarcerated population in the United States. Between 1990 and 1999, the number of drug offenders in prison grew by more than 100,000, constituting 20 percent of the total increase in the country's prison population. Between 1995 and 2003, the number of persons incarcerated for a drug crime accounted for the largest percentage of growth in the nation's prison population (49 percent) (Bureau of Justice Statistics, 2005). At year-end 2005, more than 1.2 million people were incarcerated in state prison — approximately 240,000 of them for a drug crime (Harrison & Beck, 2006).

By the late 1980s, drug-addicted offenders, in unprecedented numbers, were clogging the criminal justice system at every stage — from arrest to prisoner re-entry. Rigorous prosecutions and sentencing policies are very expensive and largely ineffective in reversing the cycle of drug use and crime; especially costly and ill-advised is the use of prison to solve America's chronic drug problem (Hennessy, 2001). Hence, various community-based programs were instituted to curb the alarming rise in drug-related imprisonment. The proliferation of drug cases, particularly in large urban jurisdictions, forced numerous courts to adopt new approaches for clearing crowded dockets. An example of such a program is drug treatment court (DTC), the most popular and widely adopted specialized drug court model in the United States (Cooper & Trotter, 1994). In their various forms, drug courts have been distinguished by several features, such as expedited case processing, outpatient treatment, and support services (e.g., job placement and housing). DTCs often combine any or all of these components and involve mandatory drug testing and intensive court or probation supervision.

This article focuses on adult DTCs and is divided into three sections. Section 1 discusses the implementation of first-generation specialized drug courts as well as their impetus, rationale, and early manifestations, which concentrated on offender diversion and case expedition. Section 1

also presents research exploring the effects of these courts on case processing and sentencing. Section 2 defines the concept of therapeutic jurisprudence and the theoretical underpinning of DTCs, which are the second generation of specialized drug courts, and briefly describes the country's oldest and best-known DTC ; it also enumerates the core elements of DTCs. Section 3 examines the rise in the number of drug courts nationwide and summarizes research on their impact on rearrest and treatment retention. The article concludes with some recommendations for future investigations of DTCs.

Specialized Drug Courts

Rationale and Impetus

As their name suggests, drug courts handle only defendants with felony or misdemeanor drug cases—usually nonviolent arrestees with substance use disorders. The argument for segregating drug crimes from other offenses is threefold. First, judges, state's attorneys, and public defenders who specialize in drug cases become more proficient and efficient in all aspects of case processing; they improve at screening cases, using case information, presenting motions, submitting guilty pleas, and filing case dispositions (Belenko, Fagan, & Dumanovsky, 1994; Davis, Smith, & Lurigio, 1994). With focused practice, they can complete court tasks and resolve problematic cases more quickly and effectively (Inciardi, McBride, & Rivers, 1996).

Second, in omnibus felony courts, drug cases compete with violent crimes for judges' and attorneys' time and attention. Drug cases are often relegated to lower positions on court dockets and, as such, are subject to postponements and protracted continuances, pending the adjudication of violent crimes. In specialized drug courts, drug offenses are the court's first and only priority — an approach that precludes inordinate delays and generates more successful prosecutions and convictions of drug offenders.

Third, the development of drug cases through street-level enforcement activity produces strong evidence and reliable witnesses. These cases are unlikely to be settled by a trial. In drug courts, the “going rate” for felony drug crimes is well established and understood by attorneys and defendants, significantly reducing the time to adjudicate cases and leading to greater fairness and equity in sentencing. In order to save considerable case processing time and resources, drug courts have also devised innovative procedural rules for expediting indictments, plea negotiations, motion hearings, and trials (Belenko & Dumanovsky, 1993).

To support their operations, many specialized drug courts receive funding from the Bureau of Justice Assistance's Differentiated Case Management and Expedited Drug Case Management Programs (Davis et al., 1994). First-generation drug court programs were designed to divert offenders through deferred prosecution tactics or suspended sentences, supervising offenders and then dismissing their charges after the successful completion of court conditions (General Accounting Office, 1997; Smith, Davis, & Lurigio, 1994). Deferred prosecution programs afford defendants the opportunity to avoid a felony conviction, which could lead to the loss of a job as well as future employment prospects, federal entitlements, or subsidized housing. Those who repeatedly fail in the program return to court to have their cases adjudicated through the standard dispositional process (Cooper & Trotter, 1994). The first jurisdiction to implement a drug court was New York City; it created the court in 1974 in response to the enforcement of the draconian Rockefeller Drug Laws, which overwhelmed the state's criminal justice system with an unrelenting spate of drug cases throughout the 1970s (Belenko & Dumanovsky, 1993).

Downside of Specialization

Drug courts are grounded in the notion that not all criminal cases are alike or require the same investment of court resources or time. Using various case management techniques, early drug courts in Philadelphia , Milwaukee , Los Angeles , and Detroit significantly reduced case-processing days and increased annual case dispositions (Copper & Trotter, 1994). However, researchers found that case expedition had unexpected negative consequences such as less efficient use of resources, more lenient dispositions, and higher operational costs. Furthermore,

no evidence indicated that the specialized drug courts had actually decreased rearrests among drug offenders (Davis, et al., 1994).

Inundated with drug cases, Cook County's (Chicago) Court System, the largest single-site felony court system in the United States, experienced a serious caseload management crisis in the late 1980s and early 1990s (Smith, Lurigio, Davis, Goretsky-Elstein, & Popkin, 1994). The size of court dockets had mushroomed and case-processing times had risen exponentially, leading to crushing workloads for judges and court staff and extraordinary delays in case dispositions. In an attempt to break the logjam, five new night drug courts were opened, handling drug cases from 4 pm to midnight and removing most of the drug-case overflow from the day courts' calendars. As a result, drug cases took less time to process, the percentage of prison sentences declined and the length of probation terms was shortened. Also reduced were the proportion of cases tried (the vast majority were settled by guilty pleas), dismissed, and represented by private attorneys.

Notwithstanding the case-processing advantages of night narcotics court, staff complained of fatigue, isolation from fellow agency personnel, problems obtaining case information, and a lack of security in and around the court building. Many night narcotics court staff, mostly public defenders, complained that the fast pace of the courts had led to "assembly line justice." The evaluators of Cook County's night narcotics court concluded that

substantial changes in the processing and outcomes of drug cases were brought about through the establishment of new night drug courts in Cook County. By setting up new courts, staffing them with new judges, and introducing better case management practices, the judicial administration successfully overcame the inertia built into the system. Processing drug cases became far more efficient, but with some possible costs to the quality of justice (Smith et al., 1994, p. 51).

Drug Treatment Courts

As noted above, DTCs, the second generation of specialized drug courts and the most prominent, are more service-oriented than their predecessors, which were aimed primarily at improving the speed and efficiency of case processing (Davis et al., 1994). Although DTCs differ in their structures, operations, and staffing, they are predicated on the assumptions that drug use is deeply rooted in the community, addiction is "as much a public health problem as a criminal justice problem," and drug treatment is the only long-term solution "to the drug crisis" (General Accounting Office, 1997; Vigdal, 1995, p. 6). DTC was created for persons with substance-use disorders who enter the criminal justice system because of a drug-defined (e.g., possession of small amounts of drugs) or drug-related offense (theft to obtain money to purchase drugs). DTC is client-centered and as such its success is measured in "human" (sobriety and employment) rather than "statistical" terms (number of closed cases).

Therapeutic Jurisprudence

DTC is grounded in the concept of therapeutic jurisprudence, which was introduced in 1987 and has been extensively discussed in the legal literature (Wexler, 1992). Therapeutic jurisprudence studies the "role of the law as a therapeutic agent" (Wexler, 2000, p. 131). Therapeutic jurisprudence is also defined as the social scientific study of the law's effects on people's psychological and physical well-being (Slobogin, 1995). According to the proponents of therapeutic jurisprudence, the law is an active social force that can have profound consequences (for better or worse) on a defendant's problems. Therefore, courts can be change agents that exert a therapeutic (or non-therapeutic) influence through their procedures, rulings, and dispositions (Wexler & Winck, 1996). Therapeutic jurisprudence is a perspective or paradigm that guides court interventions for the purpose of improving clients' lives.

The Prototype

Dade County's Felony Drug Court (Miami) was the first DTC in the nation. Located in Florida's Eleventh Judicial Circuit, the court began hearing cases in 1989 and was widely touted

for its innovative procedures and emphasis on teamwork, cooperation, and collaboration among members of the courtroom work group (Davis et al., 1994). Drawing on the principle of therapeutic jurisprudence, its philosophy and operational design became the prototype for future DTCs. The court is based on the premise that addiction is a disease that promotes criminal behavior; it is therefore highly treatment-orientated and supportive of clients' recovery efforts. Defendants are neither prosecuted nor punished for their substance use problems. Instead, the court provides or brokers drug treatment and other services that help them achieve sobriety and stability in their lives (Florida 's Eleventh Judicial Circuit, 2007) .

Participation in Miami 's DTC court is voluntary. Eligible defendants must be charged with purchasing or possessing illicit drugs. Those with histories of violent crime, drug trafficking, or felony convictions are not accepted into the program. The court's procedures are non-adversarial. Led by a judge, its operations are conducted by a team that includes defense and prosecution attorneys as well as other court personnel and treatment providers. The team appreciates the nature of addiction, relapse and recovery; participates in a shared decision-making protocol; and fosters clients' efforts to remain sober. The judge plays a central role in monitoring participants' progress, encouraging them to remain crime- and drug-free, and dispensing sanctions for their failure to comply with program requirements. Throughout the program, judges and clients meet often to ensure that the judge's presence is paramount in clients' lives (Florida 's Eleventh Judicial Circuit, 2007) .

Clients participate in the program for a minimum of 12 months, pursuant to statute, but can spend 18 months or more in the program, depending on their ability to fulfill the court's mandates. Treatment services are delivered in three phases: detoxification, stabilization, and aftercare. After clients complete their one-year (or more) term in the program and need no further monitoring or case management services, the DTC team's counselor recommends discharge to the judge, who makes the final decision based on the counselor's evaluation of clients' readiness and the judge's review of clients' overall recovery from addiction and progress in educational, vocational, and other service activities. During the final court appearance, a graduation ceremony is held and clients are formally released from court supervision. Following graduation, clients may file a petition to expunge their current arrest from the record . If clients consistently fail to comply with the conditions of court supervision, they can be expelled from the program at any time and prosecuted in criminal court (Florida 's Eleventh Judicial Circuit, 2007) .

Basic Features of DTC

Like the Miami Dade Court , most DTCs present defendants with the option of pleading guilty and participating in mandatory treatment or going to trial and risking incarceration or other criminal justice sanctions. Failure to comply with program requirements can culminate in various judicial sanctions, ranging from a verbal reprimand to a probation sentence to confinement in jail or prison (Canadian Centre on Substance Abuse, 2007; Mugford & Weekes, 2006). In general, the defining components of DTC are consistent with Miami Dade's DTC model. For example, the Drug Courts Program Office, United States Department of Justice (1997) and the National Association of Drug Court Professionals have enumerated the following key elements of DTC (Drug Strategies, 1999):

- Prompt identification of clients and their immediate placement in treatment;
- Non-adversarial court proceedings enacted by a team of judges, attorneys, and treatment providers and designed to protect community safety as well as defendants' and offenders' due process rights;
- Regular contact between clients and judges in judicial status hearings or other types of court sessions;
- Intensive supervision practices that include close monitoring and frequent, random drug testing of clients;
- Treatment interventions that are delivered on a continuum of care, evidence-based, comprehensive, and integrated for individuals with co-occurring psychiatric disorders;
- Contingencies of rewards and punishments that encourage compliance with treatment and

- other conditions of program participation;
- Ongoing evaluations to monitor program implementation and measure the accomplishment of program objectives and goals;
- Close working relationships with a wide range of community service providers and public agencies; and Interdisciplinary educational opportunities to help program staff stay current with the latest advances in offender drug treatment and case management strategies.

A study of lessons learned from the implementation of DTCs suggests that the most successful programs are characterized by effective management information systems for tracking cases, a screening and assessment pipeline that controls the number of clients accepted into the program, protocols to coordinate the individual efforts of the DTC team members, accurate and reliable drug-testing services, and incentives to foster client retention (Finigan & Carey, 2002). In addition, scholars have suggested different typologies to characterize the structures and operations of DTCs. For example, one interesting conceptual framework with heuristic and practical value suggests that DTCs can be differentiated along five dimensions: leverage (incoming participants' perceptions of the consequences of program failure), program intensity (requirements that must be satisfied to graduate from the program), predictability (the certainty and swiftness of program rewards and sanctions), population severity (the eligibility requirements for program admission), and rehabilitation emphasis (the extent to which DTC team members collaborate on decisions regarding client services and recovery) (Longshore, Turner, Wenzel, Morral, Harrell, McBride et al., 2001).

In summary, the DTC model has transformed specialized criminal courts from adversarial and legalistic to therapeutic and rehabilitative (Fulton-Hora, 2002). DTCs adopt a common mission and team approach to working with drug-involved offenders. Judges, prosecutors, defense attorneys, probation officers, and treatment providers execute a coordinated case management plan that holds offenders accountable through graduated sanctions for rule infractions and rewards them through reductions in sentences and dismissals of charges for successful program completion (Belenko, 1998; MacKenzie, 1997).

Growth and Effectiveness of DTC

The Rise of DTCs

The number of DTCs has grown rapidly since their inception, as “greater numbers of criminal court judges and observers [came] to see traditional jurisprudence as merely a revolving door for drug-using offenders” (Longshore et al., 2001, p. 7). In their earliest stages, DTCs attracted considerable attention, owing to the enthusiastic endorsements of national leaders such as United States Attorney General Janet Reno, President Bill Clinton, and the Director of the Office of National Drug Control Policy (ONDCP), General Barry McCaffrey, who stated, “The establishment of drug courts, coupled with [their] judicial leadership, constitutes one of the most monumental changes in social justice in this country since World War II” (Drug Strategies, 1999, p. 5). DTCs also gained momentum with generous federal funding from the Violent Crime Control and Law Enforcement Act of 1994 and the Drug Courts Program Office, which awarded \$56 million for the initial planning, implementation, and expansion of drug courts throughout the country (Belenko, 1998).

In 1997, more than 370 drug courts were operational or being planned in the United States ; at that time, the largest numbers of drug courts were in California , Florida , Ohio , Oklahoma , and New York (Cooper, 1998). By April 2007, more than 1,000 specialized drug courts were operational in all 50 states as well as the District of Columbia , Guam , and Puerto Rico . A total of 41 states, the District of Columbia , Guam , and Puerto Rico have enacted legislation that supports the planning and operations of DTCs (American University , 2007). The White House has hailed DTCs as “one of the most promising trends in the criminal justice system” (White House, 2004).

Program Impact

A study of Miami 's DTC found that participants had fewer cases dropped, fewer rearrests, and lower incarceration rates than nonparticipants (Finn & Newlyn, 1993). A separate study of Miami's drug-court participants also reported that they were less likely to be rearrested or sentenced to prison than were nonparticipants. Among those who were rearrested, drug court participants' time-to-rearrest was two to three times longer than that of nonparticipants (Goldcamp & Wieland, 1993).

Another study compared DTC probationers with those on electronic monitoring, intensive probation supervision, and standard probation supervision. Results showed that DTC probationers were less likely than those in the other groups to test positive for illicit drugs while on supervision (Santa Clara County Courts, 1996). In one of a growing handful of randomized experiments of a DTC , researchers reported that program participants had fewer rearrests and reincarcerations than a control group of nonparticipants (Deschenes, Turner, Greenwood, & Chiesa, 1996). Another randomized trial found that DTC clients were less likely to be rearrested and had fewer rearrests than did control subjects (Gottfredson & Exum, 2002). Two years following their graduation from the program, DTC participants in the study were again less likely to be rearrested than control subjects (Gottfredson, Najaka, & Kearley, 2003).

DTC clients in two large court jurisdictions in Florida's First Judicial Court had lower rates of rearrest the longer they stayed in the program —a finding that underscored the importance of program retention for subgroups of clients such as young people, women with polydrug use problems and histories of prostitution, and individuals with co-occurring psychiatric disorders (Peters, Haas, & Hunt, 2001; also see Cooper, 1998). During a 30-month follow-up period, graduates of the two DTCs were less likely to be rearrested or abusing drugs and more likely to be employed than DTC non-graduates or a matched comparison group of probationers (Peters & Murrin, 2000).

Thorough reviews of a large number of evaluations have found that rates of client retention in DTCs were much higher than those of offenders and non-offenders in other types of drug treatment programs (Belenko, 1998; 1999; 2001). Studies demonstrate that a substantial percentage of drug-court participants have lengthy criminal and substance abuse histories. In addition, research shows that DTCs more closely monitor and test clients for drug use than do other types of community supervision programs. Investigations also indicate that DTCs generate savings — at least in the short term — accruing from reduced jail and prison use, diminished criminality, and lower criminal justice costs. Research also finds that retention in treatment is significantly higher among DTC participants than among offenders in outpatient drug treatment programs. Most important, studies demonstrate that drug use and criminal behavior are substantially reduced while clients are participating in and after graduating from DTC .

The validity of these highly positive results is undermined by the methodological shortcomings of many of the studies of DTCs, such as inadequate comparison groups, biased samples that include only those who graduate from the program, short follow-up periods, and limited outcome measures (Marlowe & Festinger, 2000; Peters & Murrin, 2000). Despite these flaws, an impressive number of investigations conducted in a broad range of jurisdictions with widely varying participants have consistently reported favorable outcomes for DTC clients compared to non- DTC clients.

As Marlowe and Festinger (2000) noted, "Clearly *something* is happening [in DTC], and there *is* room for optimism" (p. 4, italics in original). Nonetheless, questions concerning how and why DTC works are largely unaddressed and unanswered (Longshore et al., 2001). Future studies should explore the specific operational and treatment components of DTCs that are most responsible for fostering offender change. Finally, subsequent research should investigate DTC's effects on participants who differ in race, age, gender, type of substance-use disorder, and beliefs about addiction and recovery (Marlow & Festinger, 2000; Peters & Murrin, 2000).

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Evaluating Pretrial Services Programs in North Carolina

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THE CONCEPT OF PRETRIAL services or pretrial diversion programs was originally delineated in *The Challenge of Crime in a Free Society*, which was the final report of the 1967 Presidential Commission on Law Enforcement and Administration of Justice. Over the course of the last 40 years these programs have experienced significant popularity and acceptance, as demonstrated by the widespread distribution of Law Enforcement Assistance Administration (LEAA) funds during the early 1970s to establish and expand this alternative to detention; they have also experienced significant periods of disrepute and decline. These programs fell into disfavor during the 1980s and were all but dismissed as over-rated failures by researchers and policymakers.

A revival began in the 1990s and continues today, with pretrial services programs being touted as a more cost effective and treatment-oriented approach to housing indigent and special population defendants in a county detention facility for lengthy periods of time before trial. Pretrial programs are also advocated as tools for preventing jail or detention center overcrowding and as a mechanism for ensuring that defendants appear in court, thus reducing failure to appear arrest warrants and eliminating unnecessary court continuances and delay. These programs also reduce the size of court dockets and the number of criminal trials and improve judicial processing efficiency by dismissing charges against the defendants upon their successful completion of the pretrial program conditions; thus substantially reducing the amount of time the court expends per defendant (Bellassai, n.d.).

As Mahoney, Beaudin, Carver, Ryan and Hoffman (2001) cogently note, pretrial services programs perform two essential functions. Program staff compile relevant information about new defendants in order to provide judicial decision-makers with more complete and reliable data for making informed decisions regarding the defendants' release or custody status prior to trial. These programs also perform the essential role of monitoring released defendants to ensure compliance with treatment and other special conditions, to improve the likelihood of the defendant attending scheduled court appearances and to enhance community safety.

These programs also benefit defendants directly by allowing them to remain in the community prior to trial, thus facilitating continued employment, contact with family, the acquisition of needed counseling or treatment as well as the ability to more properly and thoroughly prepare a

defense with the assistance of counsel (Freed and Wald,1964). Research has also demonstrated that defendants who are held in secure custody prior to trial are statistically significantly more likely to plead guilty or be convicted and are more likely to receive an active prison sentence than defendants who remain in the community during the pretrial phase (Rankin, 1964).

Research on the effectiveness and efficacy of pretrial programs to attain these programmatic goals, or to test these assertions, has been sparse, with the majority of work merely documenting program processes and internal operations or providing descriptive historical comparisons to trace the evolution of these programs over time. Typically research in the area of pretrial services has been directed toward developing and validating more reliable risk assessment instruments, rather than evaluating the effect of these programs on the defendant, the community, and other components or agencies within the local criminal justice systems.

Clark and Henry (2003) conducted the most exhaustive and definitive documentation of pretrial services program operations and how these programs have evolved over time by performing a meta-analysis of historical data from the Pretrial Services Resource Center's 1979, 1989 and 2001 national surveys. The authors examined such factors as program staffing, administrative budgets, the use of risk assessment instruments, service provision and types of defendant supervision. While their study catalogues excellent material for formative evaluations and for comparative purposes, the authors did not assess how these program attributes or factors affect or interact with program performance and defendant outcomes nor the extent to which pretrial programs affect positive change or improvements for the criminal justice system.

Commenting on the lack of client satisfaction survey research in the area of pretrial services, Bare, Miller and Wilcoxon (2004) surveyed seven different customers or consumers of these services in an effort to assess respondent viewpoints on the quality of federal pretrial services delivery and programming. Their work was seminal for introducing the concept of summative research and evaluation to the field of pretrial services and for making a significant contribution to the extant literature on the impact of pretrial services programs. However, the study did not include any assessment of actual program or administrative data, relying solely upon the perceptions of various client groups to determine the impact or efficacy of pretrial service programs.

This article presents the findings of a study that sought to assess North Carolina's pretrial services programs from both formative and summative perspectives. The study sought to analyze both 1) program processes, as in Clark and Henry's (2003) formative work, and 2) client perceptions, following the summative work of Bare, et.al. (2004) regarding the impact that these programs exert on the community, program clientele or defendants, jail populations and judicial processing. The study 3) also examined existing administrative data in an effort to present actual quantitative information on program efficacy and impact as opposed to measuring these factors solely by relying on client perceptions. In other words, this research sought to advance the work of Bare, et al. (2004) by comparing and contrasting actual impact with perceived impact. Program budgetary data was compiled in an effort to obtain reliable estimates of annual program operations, as was cost comparison data between maintaining defendants in pretrial programs versus the local county detention facility. Performance measurement data on the number and types of defendants served, as well as outcome data, i.e., the number successfully completing pretrial program requirements, was also analyzed in an effort to assess the impact of these pretrial service programs.

Methods

Survey Instruments

Two survey questionnaires were developed in order to 1) effectively assess the processes associated with operating and managing pretrial service programs and 2) analyze the impact that these programs exert on their supervised defendants, the local detention and judicial systems as well as the community.

A 40-item survey was constructed for administration to the pretrial services program directors and included questions on program operations and annual performance and budgetary data, as well as their perceptions on program impact across the four domains referenced above. Specifically, a) section one addressed program structure and administrative data, including questions on the agency's annual operating budget and funding sources, personnel, training, program goal and objectives as well as policies and procedures. These questions were derived in part from Clark and Henry's (2003) national programmatic survey of pretrial services programs and a self-assessment guide for pretrial programs developed by the Pretrial Services Resource Center (2000).

b) Section two addressed performance and output measures such as the number and types of defendants interviewed or screened, program admissions as well as dispositional outcomes such as successful program completion and program terminations. C) The final section of the survey covered program impact and included questions on interactions with the community, program strengths and weaknesses and Likert-type scale questions to assess program directors' perceptions of how their respective programs benefit defendants and affect the efficiency of the judicial process and court trials and what perceived impact these programs have on local detention facility populations.

The second questionnaire, which was designed for administration to the constituents or agencies that use or are affected by pretrial programs, consisted of 24 questions subdivided into three distinct sections. Respondents were asked to rate pretrial programs on a variety of measures, including written reports and recommendations, defendant supervision and programming, as well as to delineate program strengths and weaknesses. The survey also included identical Likert-type scale questions, as contained in the pretrial program directors' questionnaire, in order to compare and contrast the consumers' perceptions with those of the pretrial administrators' perceptions on program impact. These questions sought to identify how pretrial service programs are exerting an impact on defendants, the community, and the local detention and court facilities.

Survey Sample

Currently there are 33 pretrial services programs or centers that have operational jurisdiction in 40 of the state's 100 counties. Surveys were mailed to each of the 33 pretrial program directors, with the shorter constituent survey being mailed to the 19 chief district court judges who preside over these 40 counties. Surveys were also mailed to 40 chief magistrates and 40 sheriffs, who were requested to either complete the questionnaire themselves or have their jail or detention administrator compile the information.

Results

Responses were obtained from 23 pretrial service program directors (69.7 percent) and 29 program constituents (29.3 percent), producing a cumulative return rate of 39.4 percent.

Pretrial Program Operations

In an effort to assess program operational processes, numerous questions were included in the survey asking pretrial services program directors to provide information on their respective programs' annual operating budgets, sources of funding, and personnel and staff training, as well as on program goals and objectives and internal policies and procedures.

Table 1 depicts the current annual operating budgets for the responding pretrial programs by the size of their respective jurisdictions. The operational budgets of those programs participating in the survey varied considerably, ranging from a low of \$19,880 to a group high of \$563,480, with an average of \$181,785 across the programs. The median, or midpoint, was considerably lower with an annual operating budget of \$80,500. Twenty-one (91.3 percent) of the programs do not pay rent or lease office space, suggesting that the majority of their funds go directly to staff salaries and service provision.

Table 1

Average Annual Operating Budget x Population Group

<u>Population</u>	<u>Number</u>	<u>Range</u>	<u>Average Operating Budget</u>
Less than 50,000	3	\$ 19,880 – 81,000	\$ 45,293
50,000 – 100,000	4	\$ 20,000 – 75,000	\$ 36,279
100,001 – 500,000	12	\$ 36,000 – 563,480	\$ 251,226
500,001 – 1,000,000	1	-----	\$ 340,000

Survey data indicate that program funding is overwhelmingly a county responsibility, with no state, federal or private foundation funds supporting these programs. Almost every program (22 out of 23 or 95.7 percent) reported that 100 percent of their budget came from county funds. Only one program varied, with 90 percent of their budget being drawn from county funds and the remaining 10 percent coming from fees for service.

The mean or average number of staff positions for all studied programs was 4.2 or 4 positions within a program. Slightly more than a third (34.8 percent) of all programs had only one position, with the largest pretrial program having 26 staff positions. The typical program has one managerial position, two line staff or screener positions and one to two administrative positions.

The types of staff training varied considerably, with 9, or 39.1 percent providing on-the-job training as the only type of training for new employees. The remaining programs offered a combination of on-the-job training, a more formalized and structured program for new hires, as well as in-service training and managerial training for supervisory personnel. Across all of the responding agencies on-the-job training (95.7 percent) and in-service training (47.8 percent) were the two most common forms of training offered. Slightly more than one-third (34.8 percent) of the programs offered managerial training for supervisors.

The pretrial programs participating in this study appear to have strong internal operating procedures in place as evidenced by the fact that 20, or 87 percent have written goals and objectives while 21 (91.3 percent) have certified and standardized policies and procedures as outlined in a manual or handbook. Further, more than three-fourths of these programs (87.7 percent) have reviewed and updated their specified goals and objectives within the past year, and 60.8 percent have updated and revised current policies and procedures within the same period.

Pretrial Services and Clientele

Program directors were asked to delineate information on the various services that are offered by their pretrial services programs. The most common services offered include substance abuse (91.3 percent) and mental health referrals (78. percent), followed by drug testing (69.6 percent), electronic monitoring (56.5 percent), and alcohol testing (47.8 percent). Other services included GED classes, career development/vocational counseling, and anger management courses. The majority of these programs do not levy financial charges or require defendants to pay for the receipt of services (87 percent).

Table 2 presents information on the various types of defendants who are eligible for program participation. Misdemeanant and non-violent felons (95.7 percent) were the most commonly accepted types of defendants, followed by defendants with traffic violations (87 percent) and the mentally ill (60.9 percent). Fewer programs accepted juveniles (39.1 percent), with only 30.4 percent accepting violent felons into their respective programs.

Table 2

Eligible Defendants x Percent of Programs Accepting Each

Defendant Type	Number of Programs Accepting	Percent
Violent Felons	7	30.4%
Non-violent Felons	22	95.7%
Misdemeanants	22	95.7%
Traffic	20	87.0%
Juvenile	9	39.1%
Mentally Ill	14	60.9%

Last year pretrial program staff from those participating agencies interviewed an average of 448 felons, 694 misdemeanants and 45 traffic defendants to assess their program eligibility. Of this number an average of 152 felons (33.9%) were admitted, 156 misdemeanants (22.5 percent) and on average each program admitted 36 (80 percent) traffic defendants. Conversely, an average of 458 defendants were excluded or ruled ineligible by program policy or through the interview process.

Arrest records and court dispositions were the most frequently consulted records that the program respondents utilized when making their assessments on pretrial program eligibility. Most of the programs (82.6 percent) obtained both arrest records and dispositions on the defendants during the information-gathering and verification process. Only 8.7 percent of the surveyed programs requested and reviewed arrest records alone, while only one (4.3 percent) of the programs sought no records. The other types of records that were reviewed included outstanding warrants, NCIC or national arrest data, pending criminal cases, revocation of probation occurrences and correctional data from the Department of Correction.

Pretrial Directors' Perceptions of Program Impact

Pretrial services program staff were highly concordant in the belief that their programs and services benefit defendants more than traditional bail procedures, with 86.6 percent of the respondents strongly agreeing with this statement. One respondent (4.3 percent) slightly agreed, while three (13.0 percent) remained neutral in this regard.

Commenting on the effect of pretrial services programs on the local judicial and detention systems, nearly half (43.5 percent) of the pretrial services program directors surprisingly stated that their programs have no effect on speeding up the local judicial process, while another 17.4 percent were unsure of this effect. Eight (34.8 percent) either agreed or strongly agreed that pretrial services programs reduce the number of trials, while 13 percent disagreed. The remaining 12 (52.1 percent) either viewed pretrial services programs as having no effect or were unsure as to the effect on the number of trials. All of the respondents either slightly agreed (8.7 percent) or strongly agreed (91.3 percent) that pretrial programs do reduce the size of jail populations.

As part of the survey pretrial services staff were asked a series of questions regarding the visibility of their programs in the community, how these programs are perceived by community residents and how the programs seek to increase awareness. From the respondents' answers it is apparent that community awareness is a focus for pretrial services programs. Only three of the twenty-three returned surveys failed to list any type of community information resources (17.4 percent). However the type of resources offered varied greatly across the responding agencies. The most common methods of increasing community awareness were pamphlets (47.8 percent), followed by community forums at 30.4 percent. Other techniques included open houses, job fairs,

local community access television and including community members on their advisory boards.

None of the pretrial services program staff felt that returned surveys felt that the awareness of their programs had declined in their communities. Most of the service programs' staff felt that the awareness in their communities had risen, while 26.1 percent felt that it had stayed the same, 39.1 percent felt that it slightly increased, and 34.8 percent felt that it largely increased. While most respondents felt that the level of awareness had increased in their communities, the majority have not conducted surveys or interviews in the community for feedback on their services.

Commenting on the extent to which pretrial services programs impact the local communities, an overwhelming number of the respondents (95.7 percent) agreed that these programs have had a significantly positive effect with the one remaining respondent (4.3 percent) suggesting that the program has had a slightly positive impact on the community. In response to open-ended question on what impact these programs have, the respondents offered numerous comments that were clustered into two primary response categories. Respondents noted the positive effect that these services have on program participants in terms of keeping them in the community with family and vocational responsibilities remaining intact (52.2 percent) and the cost savings associated with these programs versus the cost of detention (39.1 percent).

Program Impact

Table 3 presents program admission and completion data for 27 of the state's 33 pretrial service programs as well as their respective success rates for fiscal year 2005/2006. The number of program admissions ranged from a low of 12 to a high of 6,232 with a total of 14,995 admissions or an average of 555.3 per program. The number of successful completions, i.e., no new arrests or violations of program stipulations, during the defendants' time in the program, ranged from 6 to 4,752 per program. A total of 11,602 persons successfully completed a pretrial program during fiscal year 2005/2006, for an average of 429.7 per program. The number of programs with success rates at or above 50 percent was 26 or 96.3 percent of the total sample. Completion rates ranged from a low of 47.2 percent to a sample high of 100 percent, with the average completion rate for these 27 programs being 77.4 percent.

Table 3

Pretrial Service Program Admissions and Completions: FY 2005/2006

Program	Number of Admissions	Number of Completions	Success Rate
Alexander	40	24	60.0%
Brunswick	101	56	55.4%
Buncombe	1,055	801	75.9%
Catawba	298	298	100%
Cumberland	366	310	84.7%
Davie	60	42	70.0%
Edgecombe	202	144	71.3%
Forsyth	398	221	55.5%
Gaston	1,400	1,246	89.0%
Guilford	137	69	50.4%
Harnett	114	67	58.8%
Henderson	19	13	68.4%
Mecklenburg	6,232	4,752	76.3%
Montgomery	53	25	47.2%
Moore	55	34	61.8%
New Hanover	828	630	76.1%
Orange-Chatham	128	83	64.8%
Randolph	130	48	36.9%
Robeson	95	87	91.6%
Rockingham	51	44	86.3%
Rowan	513	340	66.3%
Stokes	12	6	50.0%
Surry	95	54	56.8%
Wake Pretrial Elec. Monitoring	205	172	83.9%
Wake ReEntry	2,302	1,943	84.4%
Wilkes	61	57	93.4%
Yadkin	45	36	80.0%
Total	14,995	11,602	77.4%

While program terminations, or failure rates, varied across the responding pretrial programs, the greatest or most common reason for this failure can be attributed to the violation of programmatic special conditions, with an average of 12.8 revocations per program. Revocations or failures based on the defendants' failure to appear for their

respective court proceedings was the second most common reason, with an average of 9 FTA revocations per program. Revocations as a result of committing a criminal

offense while under pretrial supervision were relatively uncommon, with only 4.5 per program. Program termination as a result of electronic monitoring violations and revocations for failing an alcohol or drug test were the least common, with an average of 2.1 per program and .5 per program respectively.

Table 4 depicts cost comparison data for pretrial programs and incarceration in local detention facilities on an average daily basis per defendant, as well as aggregate costs for maintaining the average number of defendants in pretrial programs as opposed to housing them in a detention facility. For example: New Hanover's pretrial program services an average of 200 people per day at a daily cost of \$6.54 per person. These individuals remain in the program for an average of 180 days or six months at a total cost of \$235,440. Housing these same 200 defendants in the local detention facility for six months would cost the county \$2.88 million. Thus, maintaining these defendants in the community and under pretrial supervision saves the county \$2.64 million. Cost savings are clearly indicated for each of the ten pretrial services programs, with an average cost savings of \$ 1.05 million. At an average cost of \$6.04 per person, per day, pretrial services

programs offer a significant savings potential for the counties, which on average expend \$ 57.30 a day to house a defendant in the local detention facility.

Table 4

Cost Comparison Data for Pretrial Service Programs versus Incarceration (FY 05/06)

County	Pretrial Service Programs			Incarceration			Cost differential/ savings
	Avg. daily pop	Avg. Cost per day/per defendant	Avg. length of stay	Total cost	Avg. cost per day/per defendant	Total cost	
Brunswick	50	\$ 2.87	134 days	\$ 19,229	\$46	\$308,200	\$288,971
Buncombe	263	\$ 4.85	66 days	\$ 841,863	\$77	\$1,336,566	\$494,703
Cumberland	93	\$ 1.76	30 days	\$ 4,910	\$62.88	\$175,435	\$170,525
Guilford	80	\$ 7.90	165 days	\$ 104,280	\$58	\$765,600	\$661,320
New Hanover	200	\$ 6.54	180 days	\$ 235,440	\$80	\$2,880,000	\$2,644,560
Orange-Chatham	42	\$ 1.85	106 days	\$ 8,236	\$55	\$244,860	\$ 236,624
Robeson	76	\$ 11.75	186 days	\$ 166,098	\$32.54	\$ 459,985	\$293,887
Wake Pretrial Electronic Monitoring	63.6	\$ 10.74	113 days	\$ 77,186	\$ 56	\$ 402,461	\$ 325,275
Wake ReEntry, Inc.	852	\$ 2.17	135 days	\$ 249,593	\$ 56	\$ 6,441,120	\$ 6,191,527
Wilkes	18.7	\$ 10	68 days	\$ 12,716	\$ 50	\$ 63,580	\$ 50,864
Average	173.8	\$ 6.04	118 days	\$ 123,870	\$ 57.30	\$1,175,131	\$1,051,261

Source: North Carolina Sentencing and Policy Advisory Commission

Table 5 depicts the impact of pretrial services programs on 17 different county detention facilities. During November, 2006, nine of these facilities had average daily populations in excess of their respective rated capacities. Overcrowding ranged from a low of five percent in Robeson County to a high of 68 percent in Harnett County. Eight facilities were not over their rated capacity during this period. Assuming that pretrial services programs were not available and that the average number of people in these programs would remain in jail produces a dramatic effect on the county detention facilities' populations. If pretrial programs were non-existent and those assigned to such programs were not permitted to remain in the community unsupervised, the number of overcrowded facilities would increase from nine to 14, with overcrowding ranging from a low of 3 percent in Edgecombe County to a group high of 206 percent in Rowan County.

Averaging across these 17 county facilities reveals a slight and negligible overcrowding problem (.03 percent); however pretrial services programs remove an average of 134 defendants from these detention centers. Removing the services of pretrial programs and keeping these defendants in custody would increase the average daily detention population from 386 to 520 and exacerbate overcrowding by a factor greater than 1,000, driving the average daily detention population 35 percent beyond the average rated capacity.

Table 5

Impact of Pretrial Programs on County Detention Facility Populations

County	Avg. Daily Detention Population	Rated Capacity	% Overcrowded	Avg. Daily Pretrial Population	% Overcrowded w/out Pretrial Programs
Brunswick	299	196	52.5%	50	78.1%
Buncombe	513	356	44.1%	263	118%
Cumberland	523	568	0%	93	8.5%
Davie	46	72	0%	20	0%
Edgecombe	289	338	0%	60	3.3%
Forsyth	926	1,016	0%	151	6.0%
Guilford	874	808	8.2%	80	18.1%
Harnett	141	84	67.9%	1	69.0%
Moore	122	110	10.9%	21	30%
New Hanover	561	648	0%	200	17.4%
Orange-Chatham	205	185	10.8%	42	33.5%
Robeson	433	410	5.6%	76	24.1%
Rowan	246	162	51.9%	250	206.2%
Stokes	63	68	0%	5	0%
Surry	148	137	8.0%	35	33.6%
Wake Pretrial Electronic Monitoring	1,166	1,320	0%	64	0%
Wake ReEntry, Inc.	1,166	1,320	0%	852	52.9%
Wilkes	15	90	0%	19	0%
Average	386.5	386.4	.03%	134.2	34.8%

Sources: North Carolina Sentencing and Policy Advisory Commission
North Carolina Department of Health and Human Services, Division of Facility Services

Pretrial Constituents

As part of the study, members of constituent agencies that have the potential to benefit from pretrial programs were asked to rate their local programs on a variety of measures along a five-point Likert scale, ranging from 1 (poor) to 5 (excellent). Responses indicate that pretrial services program staff do provide adequate and complete written reports to court personnel with 50 percent of the responding constituents rating this function as being above average, while another 16.7 percent described these reports as being excellent. The remaining third (33.3 percent) assigned ratings at an average to poor level.

None of the respondents felt that pretrial services performed below average in making recommendations about the defendant's release. Of those respondents who answered this question, 13.9 percent gave pretrial services an average rating, 59.1 percent gave an above-average rating and 27.3 percent gave an excellent rating. Respondents were also asked to assess how these recommendations were received by the courts, i.e. what percentage of their recommendations were adopted. Responses ranged from 20 percent to 98 percent, with a mean of 83 percent of the pretrial services program recommendations being adopted and implemented by court personnel.

Commenting on the extent of supervision provided upon a defendant's release, none of the respondents rated pretrial services poorly. Of the 24 respondents that answered the question, 4.2 percent gave a below-average rating, 33.3 percent gave an average rating, 50 percent gave an above-average rating, and 12.5 percent gave an excellent rating.

In a similar vein, constituents were asked to rate their pretrial services programs on their ability to provide needed services, such as substance abuse counseling, for defendants. Four percent felt that the pretrial service programs did a poor job of assisting defendants in this area, 8 percent

gave the pretrial services a below-average rating, 28 percent gave them an average rating, 28 percent gave them an above-average rating, and 32 percent gave them an excellent rating. The distribution of answers was more varied, but like responses to the previous questions, the majority of the responses fell into the average to excellent range.

Respondents were asked to rate the extent to which pretrial services program staff conduct bi-weekly reviews of the detained jail population in their respective localities. Survey results indicate that a vast majority of the respondents rate pretrial services as doing an average to excellent job in this area. Only 4.2 percent gave pretrial services a poor rating and only 8.3 percent gave a below-average rating; thus 87.5 percent gave a rating of average or better for this critical pretrial program function.

Respondents were asked to delineate both the major strengths and weaknesses of the pretrial services programs in their counties through a series of open-ended questions. The four most common strengths were good supervision of defendants, competence of pretrial staff/responsiveness, reduction of overcrowding of the jail's pretrial population, and substance abuse counseling/ access to services. Conversely, the major weaknesses included a lack of sufficient funding and adequate staff and the unavailability of free services or services in general. Other responses included not enough communication with jail personnel and excessively large caseloads.

Survey respondents were also given the opportunity to rate pretrial services programs on three large process-oriented categories: information gathering and client assessment, monitoring and follow-up of defendants, and general program management. The majority of the survey participants agreed that the area of program management was strong, with only 2 respondents (7.4 percent) noting that improvements were needed in this area. The majority of the respondents said that the general information gathering and assessment process was the function that needed the most improvement (63 percent), with 40.7 percent suggesting that improvements should be made in defendant monitoring and follow-up.

Commenting on the effect of pretrial service or diversion programs on the local judicial process, 74.1 percent of the respondents stated that these programs have a positive effect on the courts and do facilitate or increase the speed at which cases are processed. Only five of the constituents (18.5 percent) felt that these programs exerted no effect on the local judicial process, with none of the respondents suggesting that the programs were deleterious or hindered the speed at which the local judicial system operates. Slightly less than half of the respondents (46.4 percent) stated that pretrial programs significantly reduce the number of trials in their local jurisdictions, while 32.1 percent felt that these programs exert no effect on reducing the number of trials. Only one respondent (3.6 percent) strongly disagreed with the assumption that pretrial programs can reduce the number of trials.

Commenting on the efficacy of pretrial services programs to reduce local detention populations, the respondents validated the data presented in Table 5, with 69 percent strongly agreeing that these programs substantially reduce the number of defendants in the local jail. The remaining nine (31 percent) respondents slightly agreed with this statement; thus all of the responding constituents either agreed or strongly agreed that pretrial programs reduce jail or detention populations and consequently can assist in averting potential overcrowding concerns.

The respondents varied in their perceptions of how much of the detention population would be considered good candidates for participation in pretrial services or diversion programs, with responses ranging from zero, or none of the population, to a high of 88 percent. On average, the responding constituents felt that 32.9 percent of their respective defendants are solid candidates for utilizing the services and receiving the benefits of their county's pretrial services program. This estimated percentage closely parallels the actual 34.8 percent reduction that pretrial programs exert on the local detention centers, suggesting that the current screening processes that are employed by pretrial staff are highly effective and accurate for identifying good candidates for release (Refer to Table 5), or at least that these processes correspond with the judgment of responding constituents.

As part of the survey, members of the local criminal justice systems were asked to assess both immediate and long-term effects of pretrial programs on the defendants' behaviors and attitudes concerning their current criminal case as well as future criminality. More than three-quarters (75.8 percent) of the respondents noted that pretrial release programs are more beneficial for defendants than traditional bail procedures, with seven (24.2 percent) answering that pretrial programs are no different or are not as beneficial as bail.

An overwhelming majority (85.7 percent) of the constituents agreed that pretrial services programs ensure that defendants will appear on their respective court dates, with the remaining respondents being unable to comment on this guarantee or disagreeing with the notion that these programs do ensure that the defendant will appear. Consequently, there is a strong perception that defendants who are under the supervision of pretrial program staff will show up for court, thus reducing the number of failure to appear arrest warrants that must be issued as well as expediting their cases through the judicial process.

The perception that pretrial services programs can assist defendants with rehabilitation more successfully than defendants seeking this assistance by themselves was upheld by the majority of the responding constituents (78.6 percent). Three respondents (10.7 percent) were unsure of this effect, two (7.1 percent) noted that pretrial programs had no effect in this area, with only one (3.6 percent) disagreeing that defendants in pretrial services programs are more likely to achieve rehabilitation.

A comparable percentage of the respondents also agreed that participation in a pretrial services program can reduce the likelihood of re-arrest, with 57.1 percent slightly agreeing and 21.4 percent strongly agreeing that defendants subsequently convicted are less likely to re-offend if they are involved in these programs. Only two (7.2 percent) individuals either disagreed or strongly disagreed with the assumption that pretrial services programs can reduce the rate of criminal acts while the person is actively under pretrial supervision. If this perception is justified, the fear or concern that defendants will engage in criminal conduct while awaiting court appearances for an initial offense may be exaggerated or even unfounded.

The percentage of respondents who either agreed or strongly agreed that pretrial services programs can reduce re-arrest after defendants complete a pretrial program was higher than anticipated, suggesting that not only do pretrial services programs keep defendants from offending while they are under supervision, but they also may deter convicted defendants from committing future acts of criminal behavior. Seventy-one percent either agreed or strongly agreed that participation in a pretrial services program can deter short-term (i.e., less than one year) re-arrest, while 59.2 percent felt that involvement in these programs could prevent long-term future criminality beyond a period of one year. Only two people (7.1 percent) stated that pretrial services programs could not reduce short-term re-arrests, and only one person (3.7) suggested that it had no impact on long-term re-arrests. The remaining respondents were unsure about the relationship between pretrial services program participation and the likelihood of being re-arrested in the future.

Constituents also expressed opinions about the extent to which pretrial programs affect the local community and its members. Twenty-five (86.2 percent) members of the detention and court respondents rated these programs as having a positive impact on the community either slightly (48.3 percent) or significantly (37.9 percent). Expounding on this impact, 34.4 percent noted that pretrial programs are cheaper than detention, thus producing considerable cost savings for taxpayers. Twenty percent of those who completed the constituent survey stated that pretrial services programs keep the defendant in the community and in the household ensuring that the defendant continues to work, which in turn helps keeps the family intact and in a state of financial equilibrium. Three respondents (7.7 percent) suggested that pretrial release serves an important public relations role and improves the community members' perceptions of the criminal justice system.

Survey results indicate that pretrial program staff are actively engaging the community and do

exert an effort to increase community awareness primarily through direct communication at meetings or forums, with 17 (77.3 percent) respondents reporting this activity in their local community. Common techniques for increasing community involvement and awareness included the production and distribution of brochures (45.5 percent) and conducting media interviews (40.9 percent). Newspaper accounts, community representation on program advisory boards, and word of mouth were other means used to promote the programs.

Respondents' perceptions were that these tactics have been moderately successful in increasing the level of community awareness, as 12 constituents (41.3 percent) observed either a slight or significant increase in their respective community members' knowledge of the programs and their intended purposes. Thirty-one percent were uncertain as to changes in awareness levels, while six respondents (20.7 percent) noted that awareness has not changed in their jurisdictions.

Comparing the Perceptions of Pretrial Program Directors and Program Constituents

Table 6 depicts comparative analyses for six common questions that were posed to both the pretrial services program directors and to the pretrial services constituents. The viewpoints of both groups regarding the impact of pretrial programs on the judicial process were close, with their average rank scores not differing significantly. Significantly different viewpoints were found on the three remaining questions, with program directors more strongly believing that their programs are more beneficial than traditional bail, compared to the views of pretrial services constituents. Program directors also held stronger beliefs, as evidenced by their higher rank scores, that pretrial services programs exert a greater impact on reducing jail populations and have a significantly more positive effect on the community. The pretrial services directors estimated that 43 percent of the people in jail make good candidates for pretrial release, contrasted with an estimated 33 percent by constituents, but this difference was not statistically significant.

Table 6

Director and Constituent Perceptions of Pretrial Programs

Question	Mean Director Response	Mean Constituent Response
Pretrial programs more beneficial than bail	4.70	4.21 *
Pretrial programs speed up judicial process	3.63	3.96
Pretrial programs reduce trials	3.39	3.61
Pretrial programs reduce jail populations	4.91	4.69 **
Pretrial programs impact on community	4.96	4.33 ***
What percent of jailed defendants are good candidates for pretrial release?	43.1	32.9

* $t(df=50, 46.8), t = 1.76, p = .042$
 ** $t(df=50, 47.3), t = 2.00, p = .026$
 *** $t(df=48, 32.7), t = 4.60, p = .000$

Discussion and Policy Recommendations

Pretrial services programs offer a safe alternative for minors and defendants charged with first-time non-violent offenses, as well as for members of selected special populations, to remain free in the community pending court appearances. Members of the local detention and judicial systems view the impact of these programs in a positive manner and do believe that they assist in improving the speed at which the courts operate and contribute to lowering detention populations.

Their opinions lend further support to the belief that these programs benefit defendants, noting that respondents favor them over traditional bail, and the programs prevent failure to appear incidents, offer rehabilitation, deter new offenses during the supervision period and even substantially impact rates of arrest for future offenses. Constituents also noted that pretrial services programs can exert a positive effect on the community and its members and that these programs are actively engaging the community as well in an effort to improve awareness.

The constituents who took part in this survey also viewed the operations and processes of their respective pretrial services programs as performing at an above-average level, especially in the areas of providing adequately written and informative reports and in the extent to which pretrial services program staff recommendations are adopted by the courts. The programs also received strongly favorable ratings from constituents for their ability to supervise defendants released into their custody and for offering adequate services to their clientele.

While perceptions do not always mirror reality and can often be clouded or distorted by personal bias, political motives, and a desire to view program appearances in a more positive light, an analysis of the empirical administrative data provided by program respondents does reveal a high degree of efficacy for pretrial diversion programs. Given the cost savings associated with these programs, their ability to significantly reduce detention populations and avert overcrowding, and their successful record of ensuring that defendants comply with all program requirements and attend all relevant court appearances, the following recommendations are offered:

1. Increase the number of pretrial programs across the state.

Current data indicate that there are only 33 programs, offering services to 40 counties, in existence. Given the relatively low average operating budget, in comparison to other programs and detention costs, expanding these programs to more jurisdictions appears prudent. The surveyed pretrial services programs rely heavily on county funding; thus the use of federal grant funds could offset some of these costs and/or be used as seed monies for establishing new programs.

2. Increase the use of pretrial service programs.

Data from the North Carolina Sentencing and Policy Advisory Commission (2007) indicate that 88.8 percent of those programs for which administrative data were provided are currently operating under their program capacities, with an average 48.1 percent vacancy rate. Consequently, local criminal justice policy makers should address this deficiency and develop alternatives for increasing the number of defendants who are eligible or otherwise available for utilizing the services of these programs.

3. Increase the use of research findings on effective practices and evidence based programs.

More research should be conducted to identify effective program practices and existing programs should rely more heavily on these findings for improving effectiveness and efficiency. Existing programs should also consult with national organizations, such as the Pretrial Services Resource Center and the National Association of Pretrial Services Agencies, to identify how their work processes can be improved based on national standards, goals and evidence-based programming. Newly created programs should also be developed around these standards and research findings to enhance the probability of program success and to demonstrate their efficacy to the local community and criminal justice agencies.

4. Increase the use of administrative data to include tracking client re-arrests and outcomes upon release or termination from pretrial services programs.

While the majority of the surveyed programs do an excellent job of collecting programmatic data, as exemplified through their ability to provide success/failure information and average daily costs, only 7 (30.4 percent) of the programs currently compile information on their clientele after they are released from participation. While collecting client outcome data may be burdensome for many programs, especially those with fewer staff members, this data would be extremely beneficial for documenting program efficacy and for justifying continuation and expansion funding.

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Barriers to Effective Program Implementation: Rural School-based Probation

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EVALUATION RESEARCH ENABLES policy analysts and policymakers to identify best practices, to sort out what works from what doesn't work, and to select the best program or policy alternative for solving a social problem. Because process evaluations are intended to examine how programs are implemented, they are particularly useful for identifying barriers to effective program implementation. In this paper we examine the implementation of a School-based Probation Program in a rural county in the Midwest. The study is designed to explore the individual, organizational, and systemic barriers to implementation that inhibited program development and evaluation.

Literature Review

School-based Probation in Context

The practice of bringing probation to the schools is best understood within the context of the multiple needs of youth and the corresponding drive for a multi-agency, collaborative response to problems of juvenile delinquency and crime. The services that work best with juvenile offender populations are services offered by and within a variety of social and justice agencies within the community (Leone, Quinn and Osher 2002). Because youth in trouble or at risk often have multiple needs, Brown, DeJesus, Maxwell and Schiraldi (2000:12) state, “. . . effective youth programs collaborate and form connections with other agencies to strengthen their outcomes and enable them to refer youth offenders to agencies and programs better suited to attend to their other needs.”

Collaborative efforts employed to address juvenile justice issues within school settings have taken three primary forms: law enforcement education programs provided during the school day; school-based initiatives for a greater law enforcement presence in schools; and other collaborations, usually including a broader network of community organizations. The majority of

collaborative efforts employed to address juvenile justice issues in the school environment have been law enforcement education efforts and have only indirectly involved the juvenile court system (Gottfredson, Wilson, and Najka 2002). More recently, school-based probation has been advocated as a program that can increase juvenile accountability, reduce violence within schools, increase success rates with juvenile probationers, and foster better communication between probation departments and schools (Decker 2000; Torbet, Ricci, Brooks and Zawacki 2001). The program provides more intensive supervision of students on probation than can be found within traditional juvenile probation services. Consequently, school-based probation increases public safety because while in school the student does not pose a threat to the public outside of those surroundings (Seyko 2001). Additionally, as school-based probation officers are a visible force in school, many believe that school-based probation might also serve as a deterrent for non-court involved youth (Seyko 2001).

Preliminary research on school-based probation indicates that such programs are effective in several areas. School-based probation programs have been found to increase student attendance, reduce absenteeism, and lower dropout rates (Clouser 1995; Griffin 1999; Metzger 1997; Torbet, Ricci, Brooks and Zawacki 2001). Consequently, academic improvement among juvenile probationers has increased (Clouser 1995; Stephens and Arnette 2000). In several states school-based probation decreased detentions and in-school suspensions among juvenile probationers (Clouser 1995; Griffin 1999). Thus, research indicates that school systems with school-based probation programs may reduce the number of serious violations among juvenile probationers.

Research on Program Implementation

The focus of program evaluation research is slanted heavily toward outcome analysis. The determination of whether or not a program is successful traditionally is based on the impact the program has on the target population. Relatedly, explanations for why a program is successful or unsuccessful tend to focus on factors specific to the targeted program participants. However, program implementation and service delivery are directly relevant to program outcomes. This relevancy is due to the fact that these factors determine the availability of a particular program to the selected participants (Etheridge and Hubbard 2000; Heinrich and Lynn 2001).

Evaluation researchers have suggested that program evaluation research should incorporate public management and organizational theoretical frameworks as part of the methodology for determining program outcomes (Etheridge and Hubbard 2000; Heinrich and Lynn 2002; Mardsen 1998). These theoretical frameworks allow evaluation researchers to examine how program implementation and delivery are affected by factors outside the specific program environment (Mardsen 1998; Mead 1997; Sandfort 2000). These factors are referred to as system, organization, or process variables (Douzenis 1994; Etheridge and Hubbard 2000; Lynn and Heinrich 2001; Mardsen 1998). Research in the field of public management suggests that it is important to consider these implementation and delivery factors in order to enrich the utility of evaluation research.

Research has identified macro-level factors that affect program outcomes beyond the individual outcome differences among program participants (Heinrich and Lynn 2001; Mead 1997). For example, the variability of treatment outcomes across similarly situated community-based substance abuse treatment programs may be a result of variation in the implementation and delivery of the programs as opposed to individual participant factors (D'Aunno, Sutton and Price 1991; Etheridge and Hubbard 2000; Gerstein and Harwood 1990). In addition, Kramer, Laumann and Brunson (2000) found that rural schools found it difficult to maintain a school-based program for children dealing with divorce or death, due to implementation and delivery roadblocks in three structural contexts: community, school, and family. Research on other types of school-based programs has also found that program implementation and delivery in rural areas is particularly affected by disconnect among administration, staff, and participants (Helge 1981). Helge (1981) found in an evaluation of a rural special education programs, that teacher retention and recruitment-resistant attitudes in the administration, as well as travel issues impacted the successful implementation and delivery of the program.

These process factors are significant in evaluating difficulties in program implementation and delivery, but are often difficult to quantify in evaluation research (Heinrich and Lynn 2001). This difficulty is increased when there is no organizing context or model in which evaluators can categorize unobserved factors (Heinrich and Lynn 2001). Therefore, Heinrich and Lynn (2001) suggest that evaluators utilize a multi-level framework to discuss qualitative factors related to program implementation and delivery. We attempt to follow this suggestion by analyzing barriers to the effective implementation and delivery of a rural, School-based Probation Program in the context of individual, organizational, and systemic factors.

Individual Practitioner Barriers

A growing body of literature indicates that despite strategic planning efforts, new correctional initiatives often fail as a result of individual practitioner-related barriers to implementation (Klein and Sorra 1996; Miller, Koons-Witt and Ventura 2004; Porporino 2005; Simpson 2002). Community-based correctional staff may lack the basic knowledge, skills and abilities to effectively implement the correctional initiative. Staff members who lack these skills are not able to carry out the minimum requirements of the job outlined by a new correctional initiative (Liddle et al. 2002; Simpson 2002). The lack of knowledge, skills, and abilities often has multiple causes. Some community-based staff members have never participated in formal pre-service training (Miller, Koons-Witt and Ventura 2004); and consequently are not sure of job expectations. In addition, a significant percentage of staff members having direct contact with offenders hold only a high-school education and lack the credentials to deliver more sophisticated services (Miller, Koons-Witt and Ventura 2004). Others have in fact received some form of training, but the training received was not relevant to the requirements of their employment (Porporino 2005). Staff must be trained, monitored, and evaluated on content relevant to the nature of their job for an intervention to be successful (Farabee, Prendergast, Cartier, Wexler, Knight and Anglin 1999; Liddle et al. 2002; Simpson 2002; Young 2004).

Even when staff have knowledge, skills, and abilities to do the job, implementation barriers may exist due to lack of clarity in goals, burnout, poor supervision by managers, and role conflicts experienced by staff (Lehman, Greener and Simpson 2002; Dansereau and Dees 2002; Young 2004). Effective interventions provide an opportunity for staff to practice intervention strategies, receive feedback from supervisors, and receive positive reinforcement for effectively implementing a new initiative (Andrzejewski, Kirby, Morral, and Iguchi 2001; Simpson 2002; Dansereau and Dees 2002). Such efforts allow for greater communication between line-staff and supervisors as well as providing opportunities to clarify expectations and adjust programmatic issues. Confusion among staff over the scope of their responsibilities compromises their capacity for engaging clients and following implementation plans (Latessa 2004; Lehman, Greener and Simpson 2002). Role conflict also occurs when staff perceive aspects of the new initiative as reflecting the interests of administrators rather than what line-staff perceive to be key needs and requirements for effective programming (Lehman, Greener and Simpson 2002). Staff resistance to change is an inevitable part of the implementation process and often results from inadequate motivation for change, lack of feeling of self-efficacy by staff, or other negative attitudes toward programming (Liddle et al. 2002; Young 2004). The importance of staff attitudes for implementation is documented in a study by Fulton, Stichman, Travis, and Latessa (1997) that indicated that intensive supervision probation officers who had received training on the principles of effective interventions and who held attitudes supportive of rehabilitation favored behavioral change models. Similarly, low levels of motivation for implementing correctional practices have been documented as leading to the failure of new initiatives (Latessa 2004; Lehman, Greener and Simpson 2002). Staff must perceive the changes to have utility and be confident in their abilities to implement the initiatives for success to occur (Liddle et al. 2002; Simpson 2002; Young 2004).

Organizational Barriers

Organizational barriers to implementing correctional initiatives are legion (Liddle et al. 2002; Mears, Kelly and Durden 2001; Simpson 2002; Young 2004). Latessa (2004) has termed such implementation barriers “organizational responsivity,” which can limit full implementation of

evidence-based and effective correctional practices. At the local level, administrators of community-based programs often fail to engage in strategic planning prior to implementing a new initiative, resulting in a failure to address service delivery issues (Mears, Kelly, and Durden 2001; Simpson 2002). As part of the strategic planning process for effective interventions, most correctional agencies determine the staffing configuration, frequency of sessions, length of sessions, programmatic content, and physical location of the program, all of which have been found to impact outcomes (Simpson 2002). For example, locating programs in an area that is inconvenient for clients or holding sessions during times that do not fit with client work or school schedules may result in client “no-shows” and lack of success for the program (Miller, Koons-Witt and Ventura 2004; Lehman, Greener and Simpson 2002). The failure to engage in more than cursory strategic planning for a new initiative can also result in a disjunction between the goals of the program and actual practice.

Another barrier to effective implementation at the organization level is the challenge of recruiting and retaining staff to work in community-based programs, particularly when the program is located in a rural community (Miller, Koons-Witt, and Ventura, 2004). According to Miller, Koons-Witt, and Ventura (2004), corrections has a lengthy history of staff retention problems related to location, low base-rate salaries, and the inability to provide contractual incentives for experienced labor. Losing trained staff can damage staff member morale and feelings of self-efficacy. As those most experienced with the treatment modality leave, inexperienced staff are left without an essential tool for clarifying implementation issues. Moreover, effective implementation also requires strong leaders. The correctional literature on evidence-based practices has revealed the importance of engaged and charismatic leaders (Latessa 2004; Roman and Johnson 2002; Simpson 2002). These leaders are change agents whose presence signals the organization’s commitment to the change process, increases staff buy-in, and ensures greater communication of ideas within and between agencies (Roman and Johnson 2002; Simpson 2002).

In addition, administrators confront the common implementation barrier of finding money to start-up new initiatives and to support existing programmatic structures. Some correctional programs will rush to implement new initiatives simply because federal, state, or local agencies are willing to provide grant funding, only to discover that the program cannot continue support of the initiative once the grant period ends (Brown and Campbell 2005). Relatedly, in light of the recent emphasis on performance measures and efficiency for determining and maintaining funding levels within community-corrections agencies, lack of quality in the data available for monitoring, quality assurance, and evaluation can be a significant barrier to the continued existence of a new initiative (Henderson and Hanley 2006). Unfortunately, problems in data quality among correctional agencies are well documented (Miller, Koons-Witt and Ventura 2004). Without data indicating efficiency, performance, and quality assurance, new initiatives cannot be evaluated and ultimately run the risk of losing funding (Latessa and Holsinger 1998; Parent and Barnett 2004).

Systemic Barriers

Programs are not stand-alone entities; they are embedded within larger criminal justice and social service systems. Consequently, the barriers to successful program implementation are often cross-cutting. For example, competition between agencies over scarce funding streams, difficulties in starting and sustaining interagency collaborations, and lack of support from the courts have been found to significantly impact outcome (Brown and Campbell 2005; Young 2004). When community-based practitioners do not have the power to enforce treatment participation and other programmatic components, clients may be dissuaded from full participation within the program (Miller, Koons-Witt, and Ventura 2004). Furthermore, the inability of correctional agencies to sustain community-based partnerships has been well documented (Byrne 2004; Brown and Campbell 2005; Joplin et al. 2005; Parent and Barnett 2004). Often the inability to sustain community partnerships results from mutual distrust between agencies (Young 2004). For example, according to Roskes and Feldman (1999:1615) mental health agencies are “often viewed (by correctional staff) as soft on crime, uninterested in public

safety, and as making excuses for criminals with mental illness.”

METHODS

Data

This paper draws on a process evaluation of a School-based Probation Program in a rural county with a couple of small towns in the Midwest (Author citation, 2004). A mix of qualitative and quantitative methods was used in the research. Researchers examined numerous program documents (grant proposals, internal reports and reports to the funding agency, and assorted documents such as job descriptions, lists of officers and caseloads, and so on). In-depth interviews, lasting from one to two hours, were conducted with four key administrative personnel in the courts and probation, as well as with five probation officers (three school-based officers and two line officers, explained below) and one former school-based officer. As this was a process evaluation and there was continuous contact over many months with the officers and their supervisors, a number of respondents were interviewed more than once, and the researchers had frequent informal conversations with them.

During the course of the project, researchers did 20 ride-alongs to 10 different schools with school-based probation officers (SBOs) to conduct observations of juvenile contact in schools. Three of the ride-alongs included home visits. Each ride-along lasted approximately 20 to 90 minutes, depending on the location of the schools, the number of students and school officials contacted, and the number of schools visited by the school-based officer. A school visit typically began with a stop at a secretary's or school attendance officer's office, where the SBO often picked up grades or attendance reports and was informed of any problems. Then anywhere from no juveniles (sometimes the probationers were not in school) to a maximum of three probationers were seen individually by the SBO.

The project also included data from a survey of school personnel, although the response rate was poor (9 of 40 potential school respondents identified by SBOs, or 22.5 percent). And, while the original research proposal called for interviews with a sample of juveniles and their parents who would be identified and recruited through home visits with school-based probation officers, these interviews were not conducted. At approximately the time the interviews were to begin, officers stopped doing home visits. Finally, data were collected from probation files on juveniles (which included probation and court data as well as limited school data) as well as probation files on officers (travel log data). For the purposes of this paper we draw primarily on the interview and observation (ride-along) data. We mention the other data collection efforts here because we return to them in the discussion of evaluation.

The School-based Program

During the course of the evaluation from May 2003 through July 2004, the School-based Probation Program was staffed with either two or three school-based officers, who operated out of a satellite office approximately seven miles from the main county probation office. What differentiates the program of School-based Probation discussed here from similar programs in urban areas is that the school-based officers did not have full-time presence in particular schools, nor did they have offices in schools. Instead, because of the rural and small-town nature of the county, 18 schools are covered under a system in which each of the three school-based officers had a juvenile caseload that includes a group of schools. Two officers had caseloads defined by all of the schools in one or the other of two small cities and the third officer had a caseload that included schools for youth with behavioral disorders (called the “BD schools” by the officers) and the county's more rural schools with few probationers. Each juvenile probationer had the same main probation officer (internally called the line officer”), and this officer did not visit schools.

The county School-based Probation Program was funded through a state grant. The program grant proposal, written and funded in the spring of 2001, outlines six goals. The first goal was juvenile recognition of probation monitoring. That is, juvenile probationers would see their

school-based officers regularly in the school setting. The second goal was to improve the relationship between probation and the schools through more and better contact and information exchange between school personnel and school-based officers. The third goal of the program was improved relationships between probation officers and parents. It was hoped that through the School-based Program parents would recognize a team approach to monitoring juvenile probationers.

The fourth goal was more immediate remedial attention to potential violations. The idea was that through more intensive contact with juvenile probationers and school personnel, the school-based officers would be in a better position to recognize when the probationers were at risk of violating probation. The fifth goal was a decrease of 20 percent in juvenile offenses. This goal was based on the presumed deterrent effect of the school-based officer's enhanced monitoring of probationers. The sixth and final goal was improvement in the quality of education, not only for juvenile probationers (who would demonstrate increased attendance, decreased school disciplinary measures, decreased dropout rates, and increases in grade point averages), but also for other students in the school because the school would, presumably, be a safer place.

Barriers to Implementation

Barriers at the Individual Practitioner Level

Document analysis and interviews confirmed that individual practitioner characteristics impacted the implementation of the School-based Probation Program. Effective implementation of school-based correctional programs requires staff competency, staff efficacy, and staff knowledge of local school and community programming. For example, because experienced officers were not attracted to these positions due to lack of job security (explained below), almost all school-based officers were completely new to the job of probation. This meant that a great amount of time was spent in training the SBOs in the basics of probation as well as in the job of the SBO, taking away from time they could have spent in schools. Moreover, the new officers also had to learn the network of referral agencies in the communities. For example, the SBOs generally were not aware that they could call upon truant officers for assistance. As explained by a supervisor, it took nine months to a year to completely train the SBO, who was then eligible to move from the school-based position to a probation officer position with job security. Thus, almost always the School-based Probation Program was staffed by inexperienced probation officers who were unfamiliar with the job, the schools, and communities in which they worked. In addition, because they were generally young men and women, often fresh college graduates, they lacked the interpersonal skills and confidence necessary for working with school personnel in an effective way. Some of the inexperienced SBOs were fearful of carrying out duties associated with their position and lacked confidence in their abilities. SBOs reported feeling afraid to go into certain neighborhoods and consequently, did not make the required home visits for probationers who missed school. Others reported feeling unprepared to handle school and family-related issues in the community.

Interviews with line officers and SBOs reveal the existence of role confusion and some resistance to the implementation of the program. As administrator explained in an interview:

The concept of school based probation involves a team approach to the monitoring of juveniles in the probation system – one officer handles court, family, and out of school matters, while the school based officer makes all contacts with the juvenile during the school day, and works closely with the teachers and school personnel who are best suited to know the most about the daily successes and failures of the student.

Despite having different job responsibilities, both the line officer and SBOs reported blurring of job roles and confusion. When asked whether the staff worked as a team, one line officer replied:

. . . . From the beginning this has been the big question as to who has what responsibilities, where are the lines drawn, how do you share a case, and, I don't think it's defined quite yet.

This line officer expressed frustration with the division of tasks in juvenile supervision and with not knowing exactly when or how to ask school-based officers for their assistance.

The school-based officers also pointed to role confusion, noting that the lines between the two jobs were often blurred, although in their opinion the SBOs were there also to provide assistance to the line officer. As one school-based officer described his relationship with the line officer, it is clear that the line officer, who is technically not in a supervisory position, is the one with overall responsibility for the case. The SBO put it this way:

No, he doesn't supervise us, but in a way it kind of looks like that. It's kind of a weird situation actually. I mean he's . . . I wouldn't do anything very important with a kid as far as trying to get him into a certain program without conferring with him to make sure it would be something he's wanting to do.

In summary, an ongoing difficulty in the program was the distinction between line officer and school-based officer functions. This problem was further exacerbated by the fact that the distinction changed in the summer months when school was not in session and also by the very high turnover rate in school-based officers. This latter factor meant that the relationship between school-based officers and line officer had to be continually explained and worked out with new SBOs.

Through most of the period of the research the juvenile probation staffing configuration in the county office consisted of one line officer and three school-based officers. While the school-based officers were trained probation officers, and while they occasionally performed duties (such as making court appearances) normally handled by the line officer, their job was designed with a focus on working with juveniles in schools on matters related to schooling (attendance, grades, behavior in school). SBOs were to coordinate their work with the line officer to provide an overall team approach to juvenile supervision. The supervisor of the juvenile officers tried to minimize the "line" functions performed by the SBOs and emphasized the differences between the SBO and the line officer jobs. In an interview with the county probation director, this conflict was also mentioned as a significant obstacle in implementing the program. According to the director,

. . . the problem that really sticks out in my mind that we had to overcome was Line staff and the new program people sharing the kids. You know, they were wanting to know where are the boundaries at, what do they do, what do I do, I don't want them superseding something that I've done or said with a kid and vice versa. . . . I just really stressed communication between the two. . . . the School-based officers handle school related issues and the Line staff handles everything else, but there's going to be times where those overlap, you can't help it.

Finally, staff turnover was an enormous problem in the School-based Probation Program. Between April 2001 when the program began and July 2004 when the evaluation concluded, a total of nine different probation officers were employed as SBOs. Excluding the two officers still employed in July 2004, the average tenure of school-based officers was 8.6 months. The exceptional turnover appeared to be connected to the fact that the SBO Program was funded through a grant. As explained by a supervisor:

Veteran probation officers are not easily attracted to the position of School-based Officer because it is a grant position. Under the union contract (the Fraternal Order of Police is the union), positions that are funded through grants are lost when the grant expires and probation officers in these positions are not entitled to bump other, less experienced officers in regular positions. This means that when the positions are lost the persons in these positions are unemployed. Once a new officer has successfully completed his/her probationary employment period of nine months, transfer to another position that becomes open in the (multiple county area) becomes possible. Thus, grant-funded employees will 'bail' to regular positions when they can, generating a relatively high turnover rate, higher than in

other positions.

This school-based officer turnover produced problems working with the schools. The school survey revealed that many school personnel were unfamiliar with the specific goals of the program. School personnel were fairly regularly introducing new SBOs to matters such as how grades were kept, when and how disciplinary reports were filed, whether a particular student's absence was something to be investigated, and so on.

Organizational Barriers to Implementation

Service delivery barriers were identified by school-based and line probation officers as hindering implementation of the School-based Probation Program. The frequency and length of sessions in school, the physical location, and the type of services provided were all reported to negatively impact implementation of the program. First of all, the original proposal requested funding for two school-based probation officers. According to the proposal, "These officers would be responsible for school based intervention with a case load of approximately 90 juveniles in the 18 schools of _____ County. They would be assigned to a new office to be located in the most populous city and would be supported by a secretary in that office." It made great sense to locate a satellite office in that small town because most of the juveniles on probation (83 of 129 probation/supervision cases at the time of the proposal) lived there. However, locating SBOs in the satellite office and the line officer in the central probation office created confusion for probationers. An example of this confusion given by SBOs is that a probationer who would have an office appointment with the line officer would skip the appointment if he saw the SBO in school or in the satellite office.

Secondly, the turnover in SBOs produced practical problems in service delivery. Because it often took a month or more to fill vacant SBO positions, caseloads were often shifted among officers and there were frequent gaps in service. For example, juvenile probationers in X School would become familiar with Y School-based officer, but then she would leave her job and it might be a month or more before they met Z School-based officer. Relatedly, the program initially implemented a pager system so that schools might contact the SBOs if they needed immediate assistance with a juvenile probationer. Only one SBO reported the pager system as working well. In fact, no evidence exists to indicate that the school officials knew of the existence of this system or that it was widely used. The majority of SBOs said the system did not work well and the school-based officers stopped carrying their pagers.

Another significant implementation problem related to the school-based officer job description was the question of what the SBO was to do in the summer months when school was out. A supervisor referred to this as "kind of a flaw in the concept of school-based probation." During the period of the research the SBOs did run a few workshops for probationers during the summer. These workshops focused on educating probationers on things like how to fill out job applications and how to prepare for job interviews. However, the officers couldn't mandate that the probationers attend these workshops and as a rule attendance was poor (around 5 or 6 probationers).

Another service delivery problem was that according to the job description and the grant proposal, the SBO was supposed to be working with parents. Exactly how this was to happen was never clearly articulated. During the school year, the school-based officers generally did not conduct home visits, except when a juvenile probationer was not in school. Then, the SBO was supposed to go to his or her home to try to find out the reason for the absence. However, even though many probationers skipped school or were absent for legitimate reasons, the SBO rarely followed up with a home visit to check on the reason for absenteeism. Moreover, parents generally did not attend office visits with the juvenile probationers and consequently, SBOs were unable to discuss school, family, or other concerns with a custodial parent. Parental contact with SBOs was also limited during the summer months. During the summer, SBOs made infrequent visits to probationer homes where parent contact might have been expected to occur. Thus, SBO contact and involvement with parents was severely restricted during the entirety of the evaluation period.

In addition to barriers related to service delivery, administrators and staff reported the lack of strategic planning, workload disparities, and lack of supervision as contributing to the problems experienced by the program. A review of documents and interviews with key stakeholders indicated that the School-based Probation initiative was developed with cursory local level planning. The grant proposal outlined six goals and suggested some performance indicators. When questioned about the thinking behind these goals, the administrator who wrote the grant proposal admitted frankly that the goals seemed “like plausible measures of success,” but were also “absolutely arbitrary wishes.” He talked about the difficulty of setting measures of success for any probation program that increased surveillance. In his view, increasing the contact between probation officers and juvenile probationers also increased the likelihood of problems being discovered. He also admitted setting the goal of 20 percent for a decrease in offense was selected because the figure sounded “significant.”

Moreover, rather than follow a strategic planning model for implementation, the School-based Probation Program was primarily planned by the first school-based officer hired with little direction from administrators and without supporting documentation. The first school-based officer reported trying to create a model program based on his observations of a school-based probation program in another county. Consequently a major problem mentioned by administrators of the program in interviews was that in designing the School-based Program there was no “how to” manual for performing the job of the school-based officer and that SBOs needed more guidance on how to do their jobs. This problem was noted by the school-based officers as well. It was almost as if they were expected to figure out on their own how to do their jobs—how to work with school personnel, what kinds of questions to ask probationers, what kinds of academic or behavioral goals were reasonable to set for probationers, and so forth, and in doing this ensure successful program implementation. This was too great a task for several of the young, inexperienced officers.

In addition to the organizational impediments related to the failure to engage in strategic planning, disparate workloads created significant impediment to full implementation of the initiative. Through most of the period of the research one line officer performed all of the line responsibilities for all of the juvenile probationers in the county – a caseload of approximately 70 to 90 juveniles at any given time. By contrast, with three SBOs most of the time, both the caseload size and the number of responsibilities were substantially less for the SBOs, who each had specifically school-related duties for about 20 to 30 juveniles in a handful of schools. The disparity in workloads produced friction between the line officer and the SBOs.

The SBOs and the line officer also had difficulties “sharing cases.” A supervisor referred to this as “territorial non-cooperation” on the part of the line officer, who after all, had general responsibility for what happened with the case. As the SBO program was implemented, responsibilities such as paperwork, court appearances, home visits, and so forth, kept shifting back and forth between the line officer and the SBOs, causing some confusion.

From the management perspective, there were other problems with the job performance of the SBOs. The satellite office, which had only opened with the School-based Program, had no full-time supervisory staff; there were simply no funds for on-site staff supervision. The SBOs set their own schedules and were in and out of the satellite office because of school visits. With no on-site supervision for largely inexperienced officers who had small caseloads, a problem of accountability arose. Several of the SBOs exhibited less than professional behaviors by arriving late in the morning, leaving early in the afternoon and not returning to the office, and taking long lunch hours.

Another problem was records management. A number of errors in record keeping, processing of cases, communication with the Line officer, and so on, occurred. Files on juvenile probationers were kept by the line officer in the main county office and by the school-based officers in the satellite office, seven miles away. The way it was explained to researchers by all officers interviewed, the central file was kept in the county office, while the SBOs kept satellite files

containing mostly school-related information, which was then duplicated for the central file. However, research examination of files revealed that exactly what was kept in files varied substantially across schools and probationers. School data (attendance, grades, disciplinary records, etc.) were reported inconsistently by the 18 schools in the county with probationers. Not all school-related information located in the SBO files was duplicated for the line officer's central files. It was never clear whether the information was given to the line officer and simply not filed, or whether there was some problem in providing school information to the line officer. What was clear was that there was a fairly significant gap overall in school-related information on juvenile probationers, which in turn had implications for the evaluation project. According to one SBO:

We do each have a file, but anything that's in my files is in (the line officer's) files. But it's not the other way around. I don't have everything from his file in my file. Ours are smaller because we're focused on school issues and things like that.

Most often grades and attendance reports were found in SBO files. Sometimes the SBOs were given copies of disciplinary reports from schools, but not always. For example, an alternative school in one small town in the county did not give disciplinary reports to SBOs, because in the words of one SBO, "Anytime something happens they just send them home." Not all schools reported grades in the same way, and schools were uneven in supplying data to the SBOs. Schools that were fully automated had a greater ease of reporting grades and attendance than schools that were not automated.

Systemic Barriers to Implementation

The partnership between the local schools and the probation department collapsed within a year of start-up for several reasons. First, the relationship between the schools and probation was never formalized through contractual or binding agreement. The results of this informal arrangement were disparities in data available from schools, lack of knowledge of school officials about the purpose of the program, and a lack of participation by school administrators in the School-based Program. A survey of school personnel revealed that the majority of school officials were not familiar with the objectives of the program nor did they know the SBOs. Moreover, some decided to handle problem juveniles on their own without probation help and primarily supplied grades. Second, the probation department administrators failed to follow through with expressed intentions for involvement of SBOs in the daily routine of the school. The SBOs did not have offices in the schools nor did they have the contacts in the community necessary for making connections with service providers in the community to address probationer needs. The fact that school-based officers were prohibited from ordering any treatment not specifically provided for in the court order limited the ability of officers to intervene in the lives of juveniles when problems (such as mental health, anger management, drug problems, or tutoring) were detected by the officers. This in turn affected the ability of the program to reduce juvenile offenses. The Regional Director, referring specifically to mentoring services for juveniles, explained the problem succinctly:

And being totally candid a lot of our problems stem from us not being able to require the minors on probation to participate in programs. . . I have beat myself up trying to get these kids into services and then I can't do anything. I have no teeth, you know, in it so it's kind of that double-edged sword there that happens. I think this program would be . . . much more effective if we had the backing of the court and we don't.

Conclusions and Implications for Evaluation

Following the suggestion of evaluation researchers that the utility of program evaluation research can be increased by expanding the focus on this research beyond individual outcome variables to include process variables, our research analyzes a school-based probation program in terms of individual, organization, and system barriers to implementation and delivery. The implementation and delivery of the school-based probation program was disastrously affected by individual practitioner, organization, and systemic barriers. The individual practitioner barriers included inexperienced staff, turnover, role confusion, and role conflict. Organization barriers to the

implementation and delivery of this program consisted of the location of the program offices, a lack of communication between SBOs, line officers, supervisors and the school, “territorial non-cooperation” between SBOs and line officers, and workload disparities. These barriers also included inaccurate and incomplete record keeping and a lack of supervision by management. The individual and organization barriers were compounded by the existence of systemic barriers in the form of non-cooperation between the school and probation department and the failure to incorporate treatment services into the program structure. As with other program evaluation research, our research underscores the importance of examining the existence and influence of these types of process factors when completing a program evaluation. In this particular program, these factors paralyzed the effective operation of the program and ultimately signaled the death of the program.

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Warning: Sex Offenders Need to be Supervised in the Community

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MANY HAVE PROBABLY read the seemingly unnecessary instructions that accompany different products. The instructions manual for a hair dryer, for example, states, "Do not use in shower." A packet of peanuts given to airline passengers wisely advises: "Open packet. Eat peanuts." Those purchasing a certain brand of plumbing draining liquid are told, "Do not reuse the bottle to store beverages." If one were to develop an analogous instruction manual for probation or parole officers supervising sex offenders, the contents of the manual might tell probation and parole officers to "Watch sex offenders closely." Such an instruction would likely be received with wonderment about why one would feel the need to state the obvious. Nevertheless, not enough guidance in the form of training has been offered to probation and parole officers supervising sex offenders.

This lack of guidance is particularly troublesome given the recent rash of sex offender legislation mandating various forms of intensive supervision for sex offenders in the community (for exception, visit <http://www.csom.org/>). Laws mandating GPS monitoring for sex offenders, lifetime probation or parole sanctions for convicted sex offenders, and expanded use of polygraphs for sex offenders living in the community have redefined the role of probation and parole officers supervising sex offenders. To make sure that probation and parole officers have the opportunity to receive training tailored to this topic, the American Probation and Parole Association (APPA) recently developed a training curriculum titled *A Sex Offender Community Based Supervision: Case Management Strategies and Tools*. " This curriculum, funded by the Bureau of Justice Assistance (BJA), is designed for probation and parole officers supervising a general or mixed caseload of offenders that may potentially include sex offenders. This article, first provides an overview of the assumptions underlying the curriculum, and, second, briefly describes some of the tools of supervision used to supervise sex offenders in the community. These assumptions include the following:

- The vast majority of sex offenders will be returned to the community.
- Those working with sex offenders must be objective.
- An awareness of sex offender legislation is required to effectively supervise sex offenders.
- Sex offenders are different from other offenders

- Community type influences sex offender supervision.
- The onus for supervision cannot be placed solely on probation and parole officers.
- The goal of supervision should be community safety.
- Officers supervising sex offenders must take care of themselves.
- Technological devices are tools not programs.
- *The vast majority of sex offenders will be returned to the community*
- It is estimated that about 60 percent of the 234,000 convicted sex offenders are under community corrections supervision (Greenfield, 1997). Recent laws have mandated longer probation sentences and parole terms for sex offenders. Arguably, AShort of incarceration, community supervision allows the justice system the best means to maintain control over offenders, monitor their residency, and require them to participate in treatment " (Baerga-Buffler and Johnson, 2006). The sheer number of sex offenders released into the community, and the importance of community supervision of sex offenders, demonstrates the need for adequately preparing probation and parole officers in their roles as sex offender "monitors."
- **Objectivity and sex offender supervision**
- Sex offending is a topic about which the public holds strong opinions. Perhaps more than any other offender group, sex offenders are vilified and viewed with disdain by the public and the media. The degree of stigma for sex offenders is often far higher than it is for types of offenders. This stigma results, in part, from stereotypical views that members of the public have about sex offenders. A number of myths about sex offenses and sex offenders foster misunderstandings about sex offenders and appropriate supervision strategies. According to one expert, AThe appeal of these myths about the offender, the offense, and the victim is that they reduce a very complex behavior to a very simple, single motive. It is frustrating to conceptualize and grasp the many complex, interrelated factors operating in rape and then to find a clear, practical and effective solution to the problem " (Groth, 1979). Myths and stereotypes provide the public with easily understood explanations that consolidate many behaviors into a single definition or term Asex offender " even though such offenses can range from a 17 year-old engaging in consensual sexual activity with a 15 year-old to the far more brutal acts including kidnapping, sodomy, and rape.
- Community corrections officers are not immune to accepting such myths about sex offenders, further requiring appropriate training to prepare officers. It is common to hear individuals from many segments of society making over-generalized comments about sex offenders such as A I could never work with sex offenders, " which seems to be one of the more normal statements. One of the authors recalls a university professor making a similar statement in the classroom, as he said, A I would never interview sex offenders. " Certainly, sex offenders are among the most vilified group of offenders. When supervising sex offenders, the probation or parole officer is not being asked to befriend sex offenders or A be on the side of " sex offenders. Probation or parole officers do not necessarily have to feel sorry for sex offenders or sympathize for them. Rather, what is important is for the officer to objectively assess, develop and manage specific case plans that have the greatest opportunity of preventing future sex crimes. Certainly, by being objective, probation and parole officers will be able to identify the most effective supervision strategies for each sex offender.

An awareness of sex offender legislation is required to effectively supervise sex offenders

Literally hundreds, if not thousands, of sex offender laws have been passed in recent years across the United States (and much of Western Europe as well). States have passed laws stating that offenders (1) cannot be ice cream truck drivers, (2) must take regular polygraphs, (3) cannot live near places in which children reside, and (4) can remain incarcerated even after their sentences have been served (i.e., civil commitment). These laws reflect the disdain that society has for sex offenses and are, in theory, designed to prevent sexual offending.

Sex offender laws are passed faster than laws governing other offenders. Probation and parole officers must be aware of these laws, their assumptions, strengths, and weaknesses to ensure that

new laws are being enforced appropriately. Perhaps the most common laws include (1) civil commitment laws, (2) global positioning satellite (GPS) monitoring laws, (3) Exclusion or inclusion laws, (4) Registry/notification laws, (5) Castration laws, and (6) Polygraph laws (See Table 1).

Civil commitment laws are used to commit sex offenders in institutions beyond their incarceration dates. In many states, a psychological evaluation is performed to determine if an offender is fit for release into the community once their sentence is finished. If it is determined that an offender should not be released C even though they have completed their sentence C such offenders may be incarcerated until they are believed suitable for reentry, which could result in indefinite confinement. *GPS monitoring laws* are mandating that certain sex offenders, usually determined by the characteristics of the offense(s) and criminal history, are to be tracked with GPS devices for long periods of time that typically range between five years and the life of the offender. GPS technology is a tool that officers can use to monitor the whereabouts of an offender in either near-real time or review location data through a passive download within 24 hours. These devices, no doubt, provide community corrections officers with a powerful tool, but the legislation mandating them has tended to overlook many potential drawbacks or unanticipated consequences such as the cost, officer workload, device malfunctioning, and the limitations of the equipment (see DeMichele, Payne, and Button, forthcoming). *Exclusion zones* are laws or policies that stipulate geographic regions that sex offenders are to avoid, which may include playgrounds, daycare facilities, libraries, or schools. These zones vary by jurisdiction and offense type, and officers should check local regulations to determine prohibited areas for sex offenders in their areas. *Registry and notification laws* are intended to inform the public about the location of sex offenders in the community. Federal laws mandate that all states have some form of registry and notification, and community corrections officers should seek to collaborate with law enforcement personnel to ensure the registry information is accurate and updated at correct time intervals. *Chemical castration* allows for the use of drugs to lower offenders = sexual impulses by reducing levels of the masculine hormone testosterone. *Polygraphs* are a tool that should only be used by individuals trained in how to administer them and interrupt polygraph reports. These devices may motivate offenders to be truthful about undetected inappropriate behaviors, and the information gleaned should be shared with other professionals working in a sex offender supervision team (e.g., treatment providers, law enforcement).

Handout A-5 Assumptions, Strengths, and Weaknesses Sex Offender Laws

Laws	Assumptions	Strengths	Weaknesses
Civil Commitment	Keeping offenders away from society by committing them as a danger to society will keep the offender from committing future offenses.	-Clear deterrent value -Displays contempt for behavior	-Cost -Blurs line between mental health & sex offender treatment -Displacement (Crimes in prison)
GPS Monitoring	Monitoring the offender = s whereabouts will protect society from harm. GPS is viewed as another tool officers can use to supervise sex offenders.	-Intensive oversight may deter behavior	-Cost -May be unnecessary for some offenders -Equipment failures -Untested for sex offenders -False sense of security
Exclusion	Keeping sex offenders out of	-Displays contempt	-Most offenses

Zones	certain areas will protect groups judged to be at risk by law makers. These areas include schools, day care centers, parks, playgrounds, libraries, convenient stores, movie theatres, and other areas. Probation officer will need to communicate laws to offenders	for behavior -In theory, policies restrict movement	committed at/near home -Too restrictive -Displacement -Social exclusion -False sense of security -Harder to find jobs -Difficult to get to work -Foster homelessness -Families must move -Harder to track -Results in offenders being concentrated in specific part of community
Registries/ Notification	Notifying the public of the presence of a sex offender will protect those who live near sex offenders. More than 500,000 sex offenders are registered.	-Displays contempt for behavior -Provides database for researchers	-No deterrent value -Possible harm (vigilantes) -Lose friends -Harassment at work -Difficult to implement -One size fits all ends up fitting no one -Impedes reintegration -Increases fear among residents
Chemical Castration	Injecting the hormone medroxyprogesterone acetate (Depo-Provera) will lower the offender's testosterone levels and sexual impulses	-Evidence of success for some offenders	-Medicalizes social control -Question about who should decide use
Polygraphs	Some states require sex offenders convicted of two or more sex offenses to submit to periodic polygraphs. As one component of the containment strategy, some have compared them to drug tests. Seen as a supplemental tool, not a primary tool.	-Deterrent value -Could disclose offending -Can be a probation condition as long as offender is asked about sex offenses -Admissible in revocation hearings	-Questions about validity -Lack of standardization -Over-reliance can be problematic

Source: Adapted from APPA = s Sex Offender Curriculum.

Sex offenders are different from other offenders

The phrase "A sex offender" likely conjures up many images for different individuals. It is important for probation officers to recognize that sex offenders are not a monolithic group. However, sex offenders, as a group, are generally different from many non-sex offenders in several ways. Sex offenders are likely to be more deceitful and manipulative. The harm that victims experience from sexual victimization can be extremely high. The dangers that certain sex offenders pose for society, particularly unsupervised sex offenders, may be significant. Motivations for sexual offending are believed to be different from motivations for other types of offenses as many sex offenders are motivated by gaining power over their victims. For the most part, sex offenders do not act spontaneously, but rather they often conduct extensive planning of their offenses to prevent detection through secrecy and manipulation. Sex offenders routinely deny that they have done anything wrong by arguing that the victim wanted the sexual contact, and they minimize the amount of harm their offenses have on victims (English, Pullen, and Jones, 1997).

Another difference has to do with the degree to which sex offenders and non-sex offenders recidivate. Interestingly, sex offenders in general have lower recidivism rates than other offenders. Despite these lower recidivism rates, sex offenders engender more fear and concern to the public than any other offender group.

Because of the differences between sex offenders and most non-sex offenders and the laws used to govern sex offenders, the way that probation officers will supervise sex offenders is different from the way that probation officers would supervise other offenders. Some important differences include the following:

- Sex offenders are generally sentenced to longer periods of probation than other offenders. Lengthy supervision periods may lead to a personal connection between the officer and offender.
- Sex offenders are highly manipulative. They seek to "befriend" and intentionally "groom" those around them. Sex offenders attempt to manipulate those in supervisory and authority roles (as well as potential victims).
- The diversity of treatment approaches within a probation officer's caseload makes it even more difficult to keep abreast of offender progress and supervision needs.
- Sex offenders are able to conceal their behaviors for extended periods of time. To accurately assess change, agencies must track the offender's internalization of impulse controls and acceptance of treatment over time. Standard probation or parole documentation is often not designed to track treatment information across several years (Tanner and Dileo, 2000).

Recognizing these differences will help officers to understand that different tools and strategies are needed to effectively supervise sex offenders.

Community type influences sex offender supervision.

The complexities of sex offender supervision vary according to different jurisdictions. One of the central community characteristics shaping the sex offender supervision strategies is the difference between rural and urban areas. There is no doubt that urban and rural areas alike experience sexually related offenses, but the access to treatment facilities, polygraphers, and others important to the supervision team differ across these regions. The nature of these differences means that sex offenders, and their supervising probation or parole officer will experience different obstacles. In some rural areas the geographic isolation may make it more difficult to access treatment resources by requiring offenders and officers to travel long distances. Rural

areas, by definition, have much smaller populations that allow for offender and victim information to potentially be disseminated in such a way that sex offenders and their victims may experience higher degrees of stigma compared to urban areas (Carmody, 2006). In some small towns, it is possible that supervising officers may actually know the offenders, their family members, or the victims before the supervision begins.

The point here is not to suggest that supervising sex offenses in urban areas is not difficult. Instead, it is important to recognize that different community characteristics exist for rural and urban sex offenders, their victims, and their supervising officers. Supervisory practices should be tailored to the individual needs of communities. To say it another way, AA continuum of sex offender management and treatment options should be available in each community in the state " (Colorado Sex Offender Management Board, 2000).

The onus for supervision cannot be placed solely on probation and parole officers.

Recent legislation calling for increased supervision of sex offenders after they have served their incarceration sentence implicitly suggests that probation and parole officers are primarily responsible for supervising sex offenders and preventing sexual misconduct by the offenders. Experts, however, note that the most effective way to supervise sex offenders is to utilize a comprehensive approach in which multiple agencies work together to prevent sex offenders from re-offending. The most comprehensive approach, and the one on which the APPA curriculum is based, is referred to the containment model that was developed by English, Pullen, and Jones (1996) more than a decade ago.

The containment strategy uses several different agencies to supervise sex offenders. These include the police, courts, probation, treatment programs, social services, public health agencies, and others. Emphasis is placed on internal control, external control, and polygraph testing. Internal control is the focus of treatment and therapy provided to sex offenders. The goal is for sex offenders to recognize the precursor situations involved in their reabuse cycle, whether this is speaking to children at a park or frequenting zoos or visiting certain Internet websites, and to avoid such places and activities. External control refers to the efforts by criminal justice agencies to exert influence over offenders so that their opportunities and abilities for offending are minimized. This involves an overall community supervision strategy that incorporates many tools such as risk assessments, treatment, GPS, and interagency communications not only structures and monitors offender behaviors, but it also provides officers (and others in the supervision team) with a realistic idea of where on a reabuse cycle particular offenders are located. With regard to polygraphs, the containment model calls for polygraphs by approved polygraphers to provide further data about how offenders are adhering to their conditions of probation (English et al., 1997).

Certainly, no one tool or no one strategy will work to prevent all future sexually related offenses. A builder does not build a house with a hammer alone, but rather they use several tools and many workers collaborating with each other. The containment model may vary among jurisdictions and offense type but such a strategy for many sex offenders typically includes the following: GPS tracking, home and work visits by officers, mandatory treatment, development and adherence to a relapse prevention plan, special curfew conditions, no out of state travel, and polygraphs (Hallet, 2006). The goals of the containment model are to prevent future abuse and protect the community through an integrated, multi-agency approach that includes treatment, surveillance, and enforcement. Officials from various agencies will need to work together to supervise effectively and treat sex offenders.

It has been said that probation and parole officers serve as the sex offender =s Aexternal conscience " (Jenuwine et al., 2002). What this means is that probation/parole officers, as one source of external control in the containment strategy, will work closely with sex offenders in an effort to make sure that offenders abide by the conditions of their supervision. To serve as the offender =s external conscience, officers must make sure that they are able to communicate with various parties involved in the supervisory network. They must also work to ensure that others in the supervisory network agree on certain principles about managing sex offenders in the

community. According to the Colorado Sex Offender Management Board, Adequately supervising sex offenders requires that all involved in supervision agree on the following principles:

Sexual offending is a behavioral disorder which cannot be cured " but must be treated

Many sex offenders present unique dangers to the community

Community safety is paramount.

Assessment and evaluation of sex offenders is an on-going process. Risk levels can change.

Assignment to community supervision is a privilege, and sex offenders must be completely accountable for their behaviors.

Sex offenders must waive confidentiality for evaluation, treatment, supervision, and case management purposes.

Victims have a right to safety and self-determination.

When a child is sexually abused within the family, the child's individual need for safety, protection, developmental growth and psychological well-being outweighs any parental or family interests.

A continuum of sex offender management and treatment options should be available in each community in the state.

Standards and guidelines for working with sex offenders will be more effective if all parties apply the same guidelines and work together.

The management of sex offenders requires a coordinated team response (Colorado Sex Offender Management Board, 2000).

Participating in this collaborative supervisory network will provide probation and parole officers the support needed to effectively supervise sex offenders.

The goal of supervision should be community safety.

Another assumption of APPA =s sex offender community supervision training curriculum, and the containment strategy more generally, is that the goal of supervision must be community safety. As with any type of collaborative effort, for the supervision to be effective, all parties participating in the containment approach must agree that community safety is the ideal towards which their efforts should be directed. Indeed, experts agree that Acommunity safety should be the primary goal of intervention with sex offenders. Community safety is enhanced when treatment providers and probation officers collaborate " (McGrath et al., 2002). The task at hand is for probation and parole officers to use the tools and strategies available to them to promote community safety.

Officers supervising sex offenders must take care of themselves.

All too often when working with sex offenders, community corrections officers suffer from psychological trauma and stress from being heavily engaged with specifics of sex offenders = motivations, the nature of their crimes, opportunity structures, and offense characteristics. It is important, however, that all probation officers recognize their role in preventing sexual offenses, and they do so in a way that maintains their own mental health. All probation officers are role models for members of the public and the offenders they supervise. Probation officers can help make the system work effectively for offenders and victims, and they have a pivotal role in making sure that treatment works. Probation officers are involved in the entire spectrum of sexual assault interventions. From presentence investigations to supervising offenders and helping them make the transition from prison to the community, probation officers are a primary player in the

sex offender supervisory network. They also can be involved in educating the public about sex offenses, developing support systems, and training various professionals about sex offenses (Minnesota Department of Health, 2006).

Of course, working with sex offenders can be very trying. No one is asking officers to Alike " sex offenders or Abe in favor " of them so to speak. But it is important to recognize that the officer =s attitudes about sex offenders will influence their supervision inasmuch as offenders recognize negative attitudes. Using materials adapted from Thomas Thompson of the Ramsey County Community Corrections department, the Minnesota Department of Health incorporates recommendations for probation officers working with sex offenders in a curriculum titled A Place to Start: A Resource Kit for Preventing Sexual Violence. Offenders can tell when officers have negative attitudes about them. These negative attitudes can increase resentment and anger among probationers/parolees. Such a relationship may foster manipulation on the part of offenders, who are already manipulative to begin with. On the other hand, displaying positive values towards sex offenders can aide in the supervision process. Offenders will be less likely to be secretive and manipulative, and when officers serve as a positive role model, the likelihood that the officers = behaviors will carry over to those with whom the offender interacts increases (Minnesota Department of Health, 2006).

Maintaining a positive attitude with this group of offenders is no simple task. Just as important is that probation and parole officials take care of themselves. According to Thompson, officers must set boundaries, have realistic expectations, acquire training, organize and prioritize, recognize their limitations, diversify their work, explore their own sexuality, and seek therapy for themselves as necessary (Minnesota Department of Health, 2006). As well, officers must turn to their colleagues for support. One expert advises:

Officers must acknowledge their feelings about sex offenders and overcome any personal distaste for the bizarre and predatory quality of the sexual behavior. They must learn to separate the offender from the offending behavior so they can discuss the intimate details of the offender =s sexual desires and conduct. If the offender is not seen as a person, establishing the level of communication necessary for supervision will be difficult YEven experienced officers find working with this offender population draining due to the frequent contact and constant vigilance required. Staffing cases is one way to share the responsibility for investigating and supervising sex offenders and prevent officer burnout. In some cases, transferring the case to another officer may be an appropriate decision (Orlando, 1998, p. 18).

In turning to their colleagues for support, probation and parole officers must remember that they are not alone in their efforts to supervise sex offenders.

While probation and parole officers are not solely responsible for preventing sex offenses, their involvement can be pivotal in preventing sex offenses. Recognizing the importance of preventing future sex offenses may make it easier to work with this group of offenders. Several signs indicate that an officer has made a difference, such as the following:

- _ People who commit sex crimes receive effective treatment
- _ Offenders are paying restitution
- _ The public respects your role in preventing further violence
- _ Fewer sex offenders repeat their crimes
- _ The number of violations by released offenders decreases

(Minnesota Department of Health, 2006).

Tools of Supervision

There are several tools that can and should be used to effectively supervision sex offenders in the community. Few agencies will use all of the tools suggested, for many reasons, which is fine That is, while the containment model is the overall strategy that is sought when supervision offenders, there are many tools that officers can use to most effectively supervise sex offenders

in the community. The APPA curriculum identified four general tools that officers should use when supervising sex offenders: (1) risk assessment, (2) accountability, (3) communication, and (4) treatment.

These tools are used together to enhance the supervision of sex offenders. Risk assessment is explained as more than an actuarial tool, but one that combines professional judgment by officers through an override and throughout the supervision period. Professional assessment is bolstered with the use of a more standardized assessment tool, and, in fact, there should be little variation regarding the suggestion of these two forms of assessment: officer judgments and actuarial tool. An actuarial tool provides many benefits, including: objectivity, legal support, document progress, structure visits.

Community supervision is predicated on the notion that individuals can learn pro-social behavior, but they may need external control in their lives for certain periods of time. Essential to any community supervision strategy is holding offenders accountable for the past and current behavior in order to steer future behavior. Officers must utilize a continuum of response according to the level of non-compliance, severity of offense, risk to others, and recognizing how each behavior fits into a pattern. Using a continuum of response allows officers to apply both positive (e.g., verbal or written, consider altering some conditions) and negative (e.g., verbal or written, increased reporting). There are specific tools that can be incorporated into any sex offender supervision plan such as location tracking with GPS, registration and notification, computer forensics, drug testing, and supervised employment.

One of the most effective tools available to community corrections officers is their ability to communicate with offenders, victims, and the social networks of victims and offenders. Establishing strong lines of communication with any offender is difficult, and some may find open communication with a sex offender especially challenging. The purpose for communicating with sex offenders is to allow them to understand the conditions of their supervision and provide the external control necessary which varies among individual offenders to structure and steer their lifestyle in a pro-social way. There are several forms of communication necessary for supervising sex offenders, including: inter- and intra-agency communication, communicating with victims, communicating with offenders, and communicating with collateral contacts. It is important that officers develop set practices regarding communication strategies by establishing regular supervision team meetings, establishing strict boundaries when communicating with sex offenders through professionalism and recognizing any manipulative or deceptive attempts by sex offenders. Some specific things officers should look include: distortions (lies, exaggerations), rationalizations (pre-crime mental justifications, statements to reduce psychological guilt), and excuses (post-crime justifications).

Treatment is an essential tool when supervising sex offenders. Treatment services can be used to estimate offender performance, structure an offender's time, and contribute to pro-social attitudes and behaviors. Often it seems that treatment is misperceived as an attempt to fix or cure offenders. In actuality, however, treatment is not going to fix or cure anyone, but it does offer community corrections officers another tool to use to provide external control over an offender's life. Treatment services attempt to provide the bridge between external and internal controls. That is, it is hoped that treatment services can contribute to an offender developing internal controls over his/her urges to commit a new crime. As sex offenders tend not to attack spontaneously or randomly, but often go through extensive planning, this suggests that if offenders develop new cognitive filters against sexual offending they might be able to control such impulses.

Concluding Remarks

The main assumption underlying APPA's training curriculum for supervising sex offenders in the community is that probation and parole officers can help to improve community safety as long as they are appropriately prepared for the task. With longer supervisory periods and increased conditions of supervision for sex offenders, it is important that all officers are aware of the issues that may arise when working with this offender population. Policy changes accompanying technological advancements and social disdain for sex offenders requires that probation and

parole officers play a primary role in efforts to prevent sexual assaults. Their prevention efforts are particularly directed towards keeping convicted sex offenders from re-offending. Recall the A "obvious instructions and warnings" outlined in the beginning of this article. Perhaps another obvious warning is needed: "Without adequate supervision from probation and parole officers, sex offenders are likely to re-offend."

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American Criminal Justice Philosophy Revisited

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NEARLY A DECADE AGO, I coauthored an article that appeared here in *Federal Probation*. In that article I commented on the pendulum effect observable within the criminal justice system with regard to the popularity and application of various operational ideologies. The observations appearing in that article appear to have resonated with its readers since it was frequently reprinted and became the introductory article in *Annual Editions: Corrections* (2001/02). Within that article I observed the vacillation that has historically occurred between enforcement and service ideologies, and between punishment and reform. Vacillations of this nature are common (Adams, Flanagan & Marquart, 1998). The slow but persistent swing of my hypothetical pendulum suggested that the complimentary ideologies of enforcement and punishment have recently been emphasized to the near exclusion of service and reform. While vacillations between opposing ideologies likely result from complex and interrelated factors, with each ideological rebirth (or swing of the pendulum) the potential exists for these philosophies and their respective programs to become dissociated from their historical progeny. This increases the probability that officials will operate without an appreciation of their profession's history--an appreciation that is necessary if the system is to achieve a greater level of effectiveness (Adams, Flanagan & Marquart, 1998). Without an appreciation of history, a disjunction may occur between ideology and its implementation. A disjunction of this nature can have a negative impact upon staff, clientele, and even the stability of the system itself (Rynne, Harding & Wortley, 2008).

Two questions have guided this manuscript. The first asks, "Are current movements that embrace service and reform ideologies really contemporary innovations (as they may be perceived) or a repackaging of previous approaches?" The second asks, "What can be learned from the recent terrorist attacks?" In essence, "does innovation still exist within the criminal justice system, and what can be learned from the events of September 11, 2001?" To address these questions, let us begin by reviewing the history of policing.

Policing

While the impact of European ideals on early American jurisprudence is evident (Mason & Leach, 1959), colonial practices depended on citizen participation to a greater extent than did traditional approaches (Peak, 2009). Colonists desired autonomy, were fearful of a strong authoritarian government, and wanted to create a system that would embody their unique beliefs about justice (Mason & Leach, 1959). Colonists recognized that by creating a system dependent on citizen involvement, justice initiatives would remain responsive to the needs of both the offender and community (Chitwood, 1961). Citizens were responsible for identifying, apprehending, sentencing, and punishing law violators. Citizens participated in these activities for

their mutual preservation and the advancement of their collective interests (Mason & Leach, 1959). Peak refers to this approach as the citizen-participation model since the citizenry policed itself (2009). Friedman too notes the prevalence of the citizen-participant in early justice processes (1993). An example of this approach includes the use of the “frankpledge.” Frankpledges were verbal agreements made among the males of a particular community to prosecute those suspected of criminal activity. Each male pledged to remain law-abiding and compelled all others to do the same (Peak, 2009). Citizen involvement in the identification and prosecution of the lawbreaker was viewed as one’s civic duty (Friedman, 1993).

As America grew and its complexity increased, the need for a more formalized approach to policing became necessary. Nightwatch systems emerged to address concerns about crime and disorder. Sentries, operating under this approach, were responsible for patrolling their communities at night when the likelihood for crime was greatest. As volunteers, sentries sought no compensation for their services. Instead, they acted out of civic duty and a desire to promote the well-being of their communities (Peak, 2009). New York City began experimenting with this approach as early as 1684 (Carter & Radelet, 1999; Lyman, 1999). Other cities, including Boston, Chicago, Philadelphia and Milwaukee, also adopted this approach. Each of these cities eventually added daytime sentries. For example, Philadelphia added daytime sentries in 1833, with Boston consolidating their nighttime and daytime patrols in 1854 (Adler, Mueller & Laufer, 2006). The consolidation of these patrols served as the basis of the professional police force. Like their predecessors, professional officers also remained active in promoting the overall health of their communities. A service orientation remained the “modus operandi” of policing until the 1930s (Peak, 2009).

It was during the 1930s that policing in America began to change. Most of this change resulted from the Federal Bureau of Investigation’s campaign to professionalize policing by promoting a strict law enforcement orientation. Police departments nationwide followed the example set by the Bureau. This movement downplayed the delivery of services while promoting the image of the police as crime fighters. The Bureau also advanced the use of technology (Peak, 2009). Technological advancements, especially in transportation and communication, decreased police and citizen interaction and isolated officers from the public (Friedman, 1993). With the increased use of motorized transportation, fewer officers were walking the beat. This fundamentally changed the nature of citizen-police contact. Instead of friendly greetings and intimate exchanges, contact with the citizenry was largely the result of an investigation or arrest. Similarly, with the growing popularity of the radio and telephone, officers acquired information directly from dispatch. This too had an isolating effect.

The adoption of a strict law enforcement ideology lent itself to an increased reliance by the police on paramilitary structuring and an interest in firepower and force (Friedman, 1993). Specialized tactical units were formed to showcase this newfound might. In fact, J. Edgar Hoover (Director of the Federal Bureau of Investigation from 1924 to 1972) acknowledged the pride of having a “tightly knit, tightly controlled and highly mobile and hard-hitting” police contingent (Foreword to Whitehead, 1956: pp. ii). Operational secrecy and an unwavering obedience to an emerging “code of conduct” became valued. This code established the idea of a professional brotherhood. The notion of a brotherhood and the “thin blue line” began to characterize the isolation and the growing adversarial nature of policing (Peak, 2009). In return, society began to view the police more apprehensively. This apprehension turned to mistrust and a pervasive anti-government sentiment (Adams, Flanagan & Marquart, 1998). Policing was being transformed from a proactive, personalized activity to one that was rigid, formalized, and impersonal. Remember Joe Friday? This popular television character epitomized the professional officer. His proclamation of “just the facts, ma’am” clearly reflects the extent to which policing was becoming a cold and sterile pursuit. According to Walker (1980) this approach persisted through the 1970s. Yet anecdotal accounts suggest that even during an era characterized by police professionalism, the delivery of services remained a citizen expectation.

The 1970s mark a pivotal era in policing. A dissatisfied public began to demand that the police take a more proactive and personal approach. These demands gained momentum and were a direct result of the social movements of the sixties. In response, police officials began to provide

a variety of services. The slogan, "To Protect and Serve" gained prominence. Citizen dissatisfaction ultimately resulted in community-oriented policing initiatives. These initiatives acknowledged the importance of the citizen, and cultivated goodwill by providing needed services. The public welcomed this change as evidenced in the ongoing popularity of community policing. By 1997, there were 21,000 community-policing officers employed at the state and local levels. By 1999, this number had increased to 113,000 (Hickman & Reaves, 2001).

Corrections

Shifts in the popularity of various correctional ideologies have mirrored those that have occurred in policing. To establish a basis for this observation it is necessary to understand that the early European prison, popularized during the 16th century, was an attempt to quell public concerns about crime and disorder (Friedman, 1993). While treatment within these prisons could be brutal by today's standards, a reform ideology was nonetheless present (Friedman, 1993). The pursuit of offender reform was fueled by the puritanical principles of forgiveness and salvation (Blakely, 2007). Officials of these prisons sought offender reform through training and education (Rothman, 1998). According to Schmallegger and Smykla (2007), during four of the nine stages of prison development, officials openly embraced inmate reform as their primary objective. In several of the remaining stages, inmate reform was a secondary objective. The value of offender reform is reflected in many of the philosophical statements of that era (Walker, 1980). Writings attesting to the value of reform were common throughout the prison's early evolution (Friedman, 1993). Reform as a correctional objective was officially endorsed by a group of colonial leaders that met at the home of Benjamin Franklin. While early America imported traditional European sanctions, colonial penalties were generally less harsh (Chitwood, 1961; Friedman, 1993). First-time offenders often received light punishments (Friedman, 1993). This leniency suggests a belief in offender reform. Had colonists not valued reform, their punishments would have been much harsher.

While penologists have long recognized rehabilitation as a correctional objective, its modern pursuit remains contentious. This is partly due to a recent police posturing that valued enforcement over service. In fact, reform-oriented programs have until recently been considered by many corrections officials to be nonessential luxuries (Cullen, 2007; Adams, Flanagan & Marquart, 1998) in much the same way that police have considered the provision of services unnecessary. As gatekeepers of the criminal justice system, the police often act in ways that produce a ripple effect system-wide. For example, an aggressive law enforcement stance contributed to a massive increase in prison admissions. Between 1970 and 1995, the number of inmates housed in state and federal prisons more than quintupled. In fact, between 1970 and 2000, the number of inmates increased by more than 500 percent (King, Mauer & Young, 2005). Conditions produced by overcrowding encouraged administrators to disregard offender reform and instead focus their efforts on maintaining facility control. To manage the exploding inmate population, efforts at rehabilitation became secondary to the orderly operation of the prison (Blakely, 2007).

While prison crowding contributed to a decreased interest in rehabilitation, it also placed a great deal of stress on inmates. Crowding intensified competition among inmates for scarce institutional resources (Blakely, 2007). Riots, including those at Attica and the Penitentiary of New Mexico, reveal just how intense this competition became. Post-riot studies identified overcrowding as a leading contributory factor of these riots. In their longitudinal study, Montgomery and Crews (1998) identified a total of 1,334 riots that had occurred between 1900 and 1995. Of that number, 776 (or almost 60%) occurred during the 1970s and 1980s (the era in which reform was being de-emphasized). These riots further convinced officials that a strict model of incapacitation, devoid of treatment, was appropriate. Prison officials postulated that by reducing "nonessential" programs and by enhancing the security apparatus, prisons could diminish the likelihood of similar riots.

The actions of prison officials nationwide were further legitimized when scholars offered their impressions about offender reform (Cullen, 2007). For example, both James Q. Wilson and David Fogel challenged rehabilitation as a correctional pursuit. Likewise, Robert Martinson

proclaimed rehabilitation unattainable in his now-famous “nothing works” report. With rehabilitation being openly challenged by prominent scholars, incarceration without recreational, educational, and vocational programming became common. Known as inmate-warehousing and no-frills incarceration (Adams, Flanagan & Marquart, 1998), this style of imprisonment offered inmates few opportunities for productive activities. According to Tony Joyce (himself an inmate), in the absence of a reform ideology, prisoners linger in a state of agonizing limbo (Schmallegger and Smykla, 2007). Joyce suggests that warehousing does little to reform inmates and contributes to recidivism. Cullen too notes that there is growing evidence that this form of imprisonment leads to elevated re-offending rates (2007). A recent study suggests that 31 percent of all “warehoused” inmates will return to prison within 3 years of their release. However, only 21 percent of the offender population that participates in reform-oriented programs will return (Schmallegger & Smykla, 2007; Adams, Flanagan & Marquart, 1998). Even the Bureau of Justice Statistics reports that inmates participating in treatment programs are less likely to recidivate (Harlow, 2002). In spite of this finding, warehousing has steadily gained momentum – yet the correctional system has not totally abandoned a reform ideology. In fact, treatment, rehabilitation, and reintegration remain dominant themes in the mission statements of most correctional departments (Gaes et al., 2004). The word “corrections,” which gained prominence during the 1970s and 1980s, suggests a reform ideology. Even when reform was under attack, the public clearly supported programs designed to promote rehabilitation (Cullen, 2007). A refusal by the correctional system to totally abandon reform ideology is evident even now. Prison programs that promote reform are again becoming popular (Schmallegger & Smykla, 2007). Similarly, the growing use of community supervision also attests to the support being given this objective. At the nucleus of these initiatives is a belief in the “reformability” of the lawbreaker.

Discussion

After reviewing the histories of policing and corrections, we can now determine whether recent movements embracing service and reform ideologies are contemporary innovations (as they may be perceived) or whether they are merely a repackaging of earlier approaches. While it may appear unnecessary to make this determination, to do so will allow these movements to be placed within their proper historical contexts.

When comparing historic and modern criminal justice initiatives, it becomes obvious that original approaches were based on direct citizen involvement and the delivery of services to citizens and offenders alike. The recent advent of community policing clearly acknowledges the value of these earlier approaches and is an attempt by the police to counter the strict law enforcement orientation previously adopted. Similarly, correctional officials are also becoming cognizant of traditional approaches. Correctional literature increasingly acknowledges that 95 percent of all inmates will eventually return to society (Hughes & Wilson, 2002). This fact has motivated officials to pursue offender reform as a way to promote public safety. The increasing quality and quantity of correctional treatment is a direct result of this acknowledgement (Schmallegger & Smykla, 2007; Rynne, Harding & Wortley, 2008).

These observations suggest that the criminal justice system is hesitant to completely abandoned traditional service and reform ideologies. This hesitancy is reflected within the literature, where countless descriptions of respective programs and their assessments appear. Literature also serves as a conduit for futurists to address the anticipated effect of innovation and technology on justice initiatives that have yet to be adopted. A review of the literature reveals that traditional service and reform ideologies readily lend themselves to modern application. Thus, innovative programs of the past are perhaps inevitably linked to those of the present and future. Contemporary practices appear to be as innovative as those of a more historic nature.

Before addressing the effects of the terror attacks on the criminal justice system, a few additional comments are necessary. First, I chose September 11, 2001 as a reference point since it is universally recognized. This date permits observations to be made about the popularity of criminal justice ideologies on a “before and after” basis. In essence, it allows the effects of the largest mass murder event in our nation’s history to be isolated. No other event provides this opportunity. Second, it must also be understood that prior to these attacks, police and corrections

officials were beginning to re-embrace service and reform philosophies. While the swing of the pendulum was already being altered by a renewed interest in these ideologies, it appears that the September 11 attacks reinvigorated these efforts. In essence, these attacks may have helped popularize these ideologies. While one might reasonably expect crimes of this magnitude to produce a backlash against these philosophies (after all, applying service and reform philosophies is often perceived as being “soft” on crime), in reality this did not occur. Yes, get-tough initiatives may be a common reaction to crime but such a reaction did not occur following these events. While the precise reasons for this are unknown, speculation suggests that events that shock our collective sensibilities may fuel an interest in humanitarian acts. Following September 11, the nation did in fact witness an increase in the number of citizens volunteering with social service agencies, pursuing public sector employment, and even donating blood (Glynn, 2003). Public service messages were also frequently aired urging citizens to become involved in their local communities. These messages meshed neatly with existing service and reform philosophies. And as Dutta-Bergman suggests, communications of this nature can mobilize individuals toward charitable pursuits (2006). Similarly, Lafree and Hendrickson (2007) note that events of national significance often rekindle society’s interest in serving the needy and marginalized.

To determine the merits of this observation, consider that for each year between 2000 and 2004, local and state police agencies added fewer officers to their ranks than in previous years (Reaves, 2007). Furthermore, the percentage of the population targeted by the police for contact has remained constant since the mid-nineties (Langan, et al., 2001; Durose, Schmitt & Langan, 2005). These observations suggest that a mobilization of police power (at the local and state levels) did not occur in the years following these attacks nor was there an increase in the level of police-initiated contact. In fact, the percentage of those individuals stopped and arrested by police decreased slightly from 1999 to 2005 (Langan et al., 2001; Durose, Smith & Langan, 2007). These findings fail to support the contention that the police have become more enforcement-oriented since the September 11 attacks.

Similar observations can also be made about corrections. I will limit my consideration to imprisonment since it is the most punitive sanction available (excluding execution). This will provide a rigorous test of the effects of the recent terror attacks. During 2001, prison populations increased at their most sluggish pace since 1972. In fact, during the last six months of 2001, state prison populations declined by nearly 3,500 inmates (Harrison & Beck, 2002). This trend has continued, resulting in a prisoner population growth rate that is significantly smaller than that experienced in previous years. The annual rate of incarceration during 2005 was half the average annual growth rate experienced since 1995 (Harrison & Beck, 2006). Furthermore, 90 percent of all prisons currently offer inmates access to therapeutic programs (Harlow, 2003). Simply put, the popularity of incarceration is decreasing while the prevalence of reform-oriented programs is increasing. Similarly, the nation’s parole population grew by 1 percent in 2001 (Glaze, 2002). However, during 2002, the nation’s parole population grew by nearly 3 percent (Glaze, 2003). This figure has remained stable (Glaze & Palla, 2005) and represents an increased use of parole that is nearly double the average annual growth rate since 1995 (Glaze, 2003). These figures do not indicate an increased interest in punitive measures following the September 11 attacks.

While these attacks had obvious military significance, they were also crimes (Lafree & Hendrickson, 2007). As crimes, these events culminated in the deaths of nearly 3,000 individuals. Following these attacks it became common for citizens to express concerns about the existing infrastructure’s ability to provide for their safety. Immediately, the American criminal justice system became the focus of national and international attention. This renewed attention led me to solicit information from practitioners and scholars alike about what may be learned from these events. As part of an ongoing study that will conclude in 2011, I have conducted nearly 100 open-ended interviews on such questions as the system’s clientele, the system’s reaction to information, and the benefits of placing events in their proper historical contexts. Conversations suggest that:

- the system should remain attentive to its clientele regardless of whether they are citizens or offenders;
- responses to criminal events should be controlled, measured and deliberate (as is reflected

in the ongoing debate about the effectiveness and costs of current anti-terror and crime-reduction strategies); and

- actions of the criminal justice system must be undertaken with a concern for the future, based on an evaluation of past practices. It is only through an appreciation of history that risks can be properly assessed, sound decisions made, and contemporary events understood.

In summary, these are recommendations that the criminal justice system be attentive to the needs of citizens and offenders alike. According to respondents, this is essential if the system is to effectively promote community safety. A corollary also suggested by respondents is that the system's reaction to crime be balanced. In essence, law enforcement must be tempered by a service orientation, and punishment must be tempered by treatment. Furthermore, a controlled, measured, and deliberate response requires a thorough appreciation and understanding of past practices. The past, present and future are intimately connected. For criminal justice initiatives to reach their optimal effectiveness, officials must identify and imitate those earlier approaches that proved promising. The caveat that "we must learn from our mistakes and build upon our successes" warrants repeating. The optimism expressed during these conversations indicates that our system is resilient, responsive, and is able to protect our way of life. But respondents also suggested that in light of low crime rates and slowing prison admissions, a reevaluation of our system's programs, priorities, and guiding ideologies appears appropriate.

Conclusion

A review of criminal justice initiatives, both past and present, reveals community policing and the pursuit of offender reform as historic practices. While service and reform ideologies were established early in the system's history, their continued application remains a testament to their value. Furthermore, for any set of ideologies to gain and lose momentum or be emphasized to the near exclusion of others is an indicator of systemic-imbalance. The literature is full of statements attesting to the recurrent imbalance of the system and the need for equilibrium. A state of equilibrium requires service and reform ideologies to be valued to the same degree as enforcement and punishment. The original designers of the criminal justice system desired balance and moderation (Cullen, 2007) and viewed such a state as being achievable (Friedman, 1993). The future will ultimately reveal whether the current state of equilibrium can be maintained – but judging from past vacillations in the pendulum's swing, such a state is probably temporary.

It is also obvious that the correctional system has historically taken its operational cues from the police. While a substantial delay occurred between the adoption of a strict law enforcement orientation and a de-emphasis on offender reform, it nonetheless appears that the police (as gatekeepers) largely determine the manner by which the system operates. To keep the system in balance, those ideologies that guide policing must remain in equilibrium.

The September 11 attacks continue to serve as the impetus for the assessment and improvement of the criminal justice system. While these attacks appear to have produced an increased interest in service and reform ideologies, only additional research can explain this apparent association and the probable effects of these events on future criminal justice processes.

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Probation Intake: Gatekeeper to the Family Court

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ONE OF THE UNIQUE features of the Family Court is the preliminary procedure commonly known as probation intake. Generally unused in the criminal court, the probation intake system is designed to screen inappropriate cases out of the formal court process, and is the first contact the juvenile usually has with the juvenile term of the family court. Virtually all juvenile cases in which an application is made for a court petition are first seen by an intake officer, who is usually a probation officer. "The evaluation is often referred to as intake screening because it occurs at the entry point of the juvenile court and its primary function is to determine who is referred to the court for a hearing by the filing of a petition and who is screened out of the court system" (Binder, A.,G. Geis & D.D. Bruce Jr., 2001:257).

Subject to jurisdictional limitations that vary widely from state to state, the intake officer possesses the discretion to divert those cases from the court that do not require judicial intervention or lack the jurisdictional requirements for court action. In effect then, the intake officer serves in the critical role of gatekeeper of the juvenile court.

(Besharov, D.J., 1974:157) notes that "intake ... is a court related process which diverts from the juvenile court those cases which are considered inappropriate or better handled elsewhere. Its predominant purpose is to stand between the complainant and the court to prevent the initiation of unnecessary proceedings."

Trivial offenses are most likely to be dismissed or handled informally, especially when the juvenile does not have a prior record. Many of the diverted cases are referred to social service or health providers in the community. Some are given a warning, and no referral is made. A second function of the intake officer is to provide short-term counseling or oversight for those cases not referred to court, but in need of social work assistance. This is viewed as informal probation. The role of the intake officer in the juvenile court, therefore, is to decide, within limitations, whether the case should:

1. Have a petition drawn and referred to court for a hearing; or,
2. Be adjusted and, therefore, diverted from the court, with no legal action taken. This might include a referral for counseling or other social services; or,
3. Be held open for a period of short-term
4. counseling or oversight (informal probation); or,
5. The intake officer might recommend that a petition be drawn with a referral for detention.

Complaints may enter the intake system from a wide variety of sources, including law enforcement, parents, schools, and others. The two most common categories of cases in the

juvenile term are juvenile delinquents and status offenders (also known as persons in need of supervision). The name of the status offender varies according to the state. In New York it is a PINS (Person in Need of Supervision), with variations in other states such as JINS (Juvenile in Need of Supervision), CHINS (Child in Need of Supervision), MINS (Minor in Need of Supervision) or similar titles.

Some states may have other categories of cases, but their numbers are far fewer. For example, New York State also has the category of the "Designated Felony Offender," which relates to more serious cases. Moreover, these cases require prosecutorial or prosecutorial/judicial approval for an adjustment.

The Probation Intake Interview

The interview/investigation is conducted by a probation officer and the parties present usually are the complainant, the respondent, and the youth's parents. An attorney may be present, but this is rare (Family Court Rules of the State of New York, Section 205, 22(a)). In an allegation of juvenile delinquency, a police officer also usually appears.

If the probation officer refers a case to the prosecutor for a petition and the prosecutor finds that the court does not possess jurisdiction or that there is no legal basis for the action, he/she may reject the petition. (Although the content of this article is limited to the juvenile court, it should be noted that intake programs are also maintained in other parts of the Family Court, including the Support Term and Family Offenses Proceedings.) At the conclusion of the intake interview, the probation officer prepares a brief report to assist the court in determining what action to take. The intake report, which contains statements made in the intake process, is confidential and may not be opened until a finding is made. This is similar to the limitations on the court. Unlike the presentence investigation report, which is prepared after conviction to assist the judge in sentencing, the intake report includes no field or collateral visits, and few sources of investigation. The only contacts are usually by telephone.

A Historical Overview of the Intake Procedure

The intake procedure, although informal in the early years of the Family Court, played a significant role in controlling the nature and number of cases appearing before the judiciary. Moreover from the beginning many recognized its value and heaped praise upon its contribution. Without the caseload controls imposed by the intake process, some juvenile courts might be so inundated with cases as to grind to a halt.

One of the strongest and earliest advocates of the Cook County Juvenile Court was Judge Julien W. Mack (1925:317),

who stated that:

It is the last thing to do with the wayward child to bring him into any court. The wise probation officer will save him from the court ... Of course in the end some will have to be brought into court. That court is successful in its work that has the least number of cases.

Mangold, G.B. (1936:371), another early advocate of the intake process, concluded that:

Many cases are everywhere settled out of court. In some cities the character of the law allows complaints on flimsy and unwarranted charges, but on investigation many of these grievances are settled amicably without judicial intervention.

Over the years many others have supported the intake process by demonstrating the removal of inappropriate cases from the court. (Gregory, I.L., 1906:587); New York State Probation Commission (1928); Williamson, M. (1935: 14-15). Judge W. Waalkes, for example, wrote in a journal article that:

Intake is a permissive tool of potentially great value to the juvenile court. It is unique because it

permits the court to screen its own cases... It can cull out cases which should not be dignified with further court process. It can save the court from subsequent time consuming procedures to dismiss a case....It provides machinery for referral of cases to other agencies when appropriate and beneficial to the child: (April 1974:123).

In numerous jurisdictions during many of the early years of the juvenile court, the intake officers possessed great powers in the decision-making process. These powers were due, at least in part, to the numerous options they might exercise, including warnings, diversion, community service referrals, informal probation, and the possibility of recommending the filing of a court petition (Bartol, C.R. & A.M. Bartol, 1998:310).

Advocacy of the Juvenile Court Intake System .

As the years passed, the probation intake process gained increasing recognition as an integral factor contributing to the success of the juvenile court. Among those pronouncing the intake process a success were The Directors of the Columbia Law Review Association 1979:275-6; McCarthy and McCarthy, 1991:338; Task Force Report on Juvenile Delinquency, 1967; Siegel, L. & L. Senna, 1997; Champin, D.J. 1998:150 & 510.

The promise of a formalized intake process, gradually enacted into the law in many states, offered great promise to advocates of the juvenile justice system. Probably the most influential support for intake programs came from the prestigious Task Force on Juvenile Delinquency, (1967:96-7), which reported that: "If there is a defensible philosophy for the juvenile court it is one of judicious nonintervention."

Over the years, many scholars praised the intake system. The members of The President's Commission on Law Enforcement and Administration (1967) strongly supported the concept of diversion of the juvenile, when appropriate, and recommended that the ... "formal sanctioning system and pronouncement of delinquency should be used only as a last resort. In place of the formal system, dispositional alternatives to adjudication must be developed for dealing with juveniles".

In about as strong a statement favoring intake as could be made, The Directors of the Columbia Law Review Association (1969:275-6); held that "another advantage of intake was that they believed that the probation intake staff was better able to screen inappropriate cases out to the court system than was the judiciary"

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Despite strong early advocacy for the intake procedure, it has also developed a negative body of criticism over the years. Watkins (1998:132) warns that this form of "warn and release" worked reasonably well until the 1960s, when it began breaking down because of the more recent social disintegration in society. He cites the many homes with single parents, drug use, school dropouts, voluntary unemployment, and other negative forces (Oct.1976:396-7).

A common criticism is the absence of formal guidelines for objective decision making. Frequently, in borderline serious cases an officer's decision is based on his personal value system. Some officers are unusually punitive toward certain types of negative juvenile acts, while others might harbor innate prejudices against certain respondents because of their race, religion, dress, personality, or economic status. In addition, faulty decision-making might flow from a lack of training or experience. Critics noted that at each decision points (especially juvenile intake) a set of highly subjective factors can come into play. Non-legal factors such as the juvenile's ties to family, school, and community influence whether an arrest is made; whether diversion occurs; and the nature of the placement ordered. This decision-making process has been criticized because it can lead to erroneous, inequitable, and inconsistent decisions (The Juvenile Court: Analysis and Recommendations, The Future of Children: Vol. 6, No. 3, Winter 1996).

Similarly, Kobetz and Bossarge (1973:245) recommend that "state legislatures establish legal

non-discriminatory written guidelines to govern pre-judicial intake." They note that even "Where those guidelines do exist, their relevance and justice is open to question." Pabon (1978:28) argues that statutory regulations do not provide officers with operating guidelines to assist in decision making. This lack of specificity contributes to broad and excessive discretion on the part of the intake officer, resulting in judgments based on the personal inclinations and values of a specific officer.

Rubin (1980:226) sums up this position in these words: "Both intake norms and intake procedures have come under increasing attack as being subjective, irregularly and unequally administered, and as subversive of legal protections.

Additional Criticisms of the Intake Process

Other authors have been critical of the actual practices in the intake process. Prescott (1981:88) expressed concern for juveniles who committed minor acts, but were diverted from the court without any help because the limited resources of the system were directed only to the most serious cases.

Silberman (1978:333) often found intake programs that were unable to fulfill their mission. Many programs "did not add up to very much." Often programs rated as "exemplary" and claiming to provide intensive counseling failed to deliver as promised.

An inherent difficulty encountered in the intake process is the problematic nature of the cases brought before the intake officer. Many are insoluble, at least within the abilities and limitations of the juvenile justice system. In many instances the family is extremely dysfunctional, the youngster belongs to a gang, and/or the juvenile suffers from severe emotional illness, retardation, or developmental disabilities. Many of these cases are referred to the court as a last resort. Prescott (1981:88) termed the counseling function of intake as "but another of the system's dismal inadequacies." He noted that an initial hour-long interview will be followed by fifteen-minute sessions once a week, then once a month, if ever." Furthermore, he found that although probation referred many to community agencies, the quality of work of the agency was generally unknown to the probation officer.

Prescott further believed that many cases are so minor or trivial in nature that they could easily be remedied outside of the court. For example, a dispute over a broken window could be settled for ten dollars, but because of emotional overtones, it might take some hundreds of dollars of court time. "It is also believed that intake dispositions are often determined by the prior record rather than by the seriousness of the offense or the social background of the child. This practice departs from the philosophy of *parens patriae*": (Siegel, L.J., B.C. Walsh, & J.J. Senna, 2003:427, Watkins, J.C., Jr., 1998:131).

New York State Practice

In New York State the rules of the court govern the

procedures under which "...the probation service may confer with any person seeking to have a petition filed, the potential respondent and other interested persons concerning the advisability of requesting a petition be filed" (Family Court Act, Section 308.1(1).

In the early years of the intake service in New York, there were few statutory restrictions on the officer's right to adjust a case. Of course, it was assumed that in all but the most unusual cases an officer would not adjust a serious or violent criminal act.

Over time, the intake officer's powers were statutorily limited. Today, the statute bars the probation service from adjusting "... a case in which the child has allegedly committed a designated felony act unless it has received the written approval of the court and or the prosecutor" (F.C.A., Sec. 308. 1(3)).

Further limitations on the officer's adjustment powers are set forth in F.C.A., Sec. 308.1(4).

Among these are age. (It should also be noted that the age limitations varies among states.) In New York a juvenile delinquent is defined as "a person over seven and less than sixteen years of age at the time the act was committed. If a child is charged with being a status offender, there is no minimum age and a maximum age of less than eighteen years of age (F.C.A., Sec. 301.2(1)).

The Family Court Act further provides that the intake service cannot deny "any person who wishes to request that a petition be filed from having access to the appropriate presentment agency for that purpose" (F.C.A., Sec. 308.1(8)). This section serves as a check on the intake service so as to prevent an inappropriate diversion or to insure that a person is not improperly denied court services. However, it does not guarantee a person the right to file a petition, but only the right to have the application reviewed by the presentment agency. Should the presentment agency deny access to the court, that decision is controlling.

The statute also contains protections for the parties to the action, through limitations on the intake officer. For example, the statute provides that "The probation service may not be authorized under this section to compel any person to appear at any conference, produce any papers, or visit any place" (F.C.A, Sec. 308.1(11)). The rules of the court further provide that efforts at adjustment "... may not extend for a period of more than two months without leave of the court which may extend the period for an additional two months" (F.C.A., Sec. 308.1(9)). This is designed to protect the juvenile from indefinite informal probation.

In some cases children are detained prior to the filing of a petition. This does not preclude the intake officer from adjusting the case and "upon adjusting such a case the probation service shall notify the detention facility to release the child" (F.C.A., Sec. 308.1(5)).

At approximately the same time, statutes were being revised in some jurisdictions to restrict some elements of the intake officer's discretion while increasing the powers of the prosecutors. In terms of power and control, the decision-making process would soon become radically different from that which operated in the early years of the intake process.

The Decline of the Intake Officer's Role

In recent years, in many states, the role of the intake officer has significantly declined, with a corresponding growth in the power of the prosecutor. As noted by Lotz, R. (2005:291): "Traditionally, the role of the intake officer has been handled by a probation officer, and this still holds true in many jurisdictions. But in other systems, the prosecutor handles the decisions of intake or at least oversees the choices."

This is partially due to the due process revolution in the juvenile court. The United States Supreme Court juvenile cases in the 1960s -1970s gave juveniles many of the same rights as adults in the criminal court. This reconstructed the court into a more formal and adversarial forum, and narrowed the disparity between the juvenile and criminal courts. In addition, many juvenile courts have moved from a rehabilitation model to a crime control model. Moreover, many new laws have had a strong impact in the sentencing for serious or violent juvenile crimes. Retribution has often replaced rehabilitation as the primary court goal.

As early as 1980, Rubin, H.T. (1980:226) stated that:

"In a growing number of states, the probation department's dominance of the intake function is yielding to the prosecutor... It may now be suggested that the prosecutor is becoming the most powerful functionary in the juvenile court process."

The traditional role of the juvenile intake officer has been under fierce attack from both Juvenile and Family Court Judges, with an assist from the National District Attorney's Office. In publishing guidelines for what a model juvenile court should look like, both organizations have bluntly stated that it is the prosecutor's office that should play the role of case initiator. Indeed, in cases in which the prosecutor's office does not directly screen cases, the office should nevertheless have the power to veto decisions to proceed or to override a decision not to. (National Council of Juvenile and Family Court Judges: Guidelines, 2005:66). With the growth

of prosecutorial control of intake in many jurisdictions, it would appear that prosecuting attorneys have supplanted or supplemented the probation officers and are playing a larger role earlier in the intake process (Champion & Mays,1991; Lotz, R.,2005:292; Siegel, L.J., B.C. Welsh, & J.J. Senna, 2003:428-429).

More punitive legislation has also been passed elsewhere. An April 1980 report of the United States Department of Justice: Office of Juvenile Justice and Delinquency Prevention (72-73) wrote that:

State policy makers have felt compelled to deal with the serious delinquent by major changes in their juvenile law like those of California , Florida , New York , Colorado , Delaware , and Washington The relevant procedures in these States are designed either to treat serious juvenile offenders as adults or to put some kind of mandatory/determinate sentencing scheme within the juvenile justice system.

In 1976 and 1978, the State of New York similarly made major changes to the punitive aspects of its Family Court Act.

Pabon, 1978:32 strongly supports the reduced role of probation in the intake system. He suggests the creation of a Juvenile Case Assessment Unit, "Staffed by specially trained assistant prosecuting attorneys," who would determine whether there was a legally sufficient case and whether it should be prosecuted. He advocates that probation be limited to the performance of social service functions and referrals with respect to cases sent to probation for adjustment by the juvenile case assessment unit after screening. Similarly, Silberman, 1978:331 f.n., reports finding "some sentiment in favor of taking the screening function away from probation departments and assigning it to an independent agency, located in the executive rather than judicial branch of government."

While the number of cases diverted by the intake process varies from jurisdiction to jurisdiction, the adjustment rate has traditionally been approximately 50 percent over the years (Lash, Sigal & Dudzinski:1980). This rate continued until the early 1990s (Snyder & Sickmund, 1995:131); In 1991, on a nationwide basis, of 1,338,200 cases, 50 percent (664,700) were petitioned while 50 percent (673,500) were non-petitioned (Clement, M.J. 2002:135). But in the years since 1991, the national percentage of cases adjusted at intake has declined from 50 percent to 44 percent (Office of Juvenile Justice and Delinquency Prevention). The decline in the national diversion and the resultant increase in the number of cases forwarded for prosecution are not surprising given the get-tough movement of the past few decades.

The New York City intake adjustment rate was consistent with the nationwide percentage of 50 percent over many years. But in the 1980s and 1990s the adjustment rate in New York City rapidly and markedly declined. In 1983, when the national diversion rate at intake was 47 percent, New York City was diverting only 31 percent of its juvenile cases. By 1996, the New York City diversion rate was only 13 percent, compared to the national average of 44 percent.

A Nationwide Increase in the Number of Petitioned Cases

One of the major changes in the juvenile term of the family courts has been the increased numbers of cases. Family courts handled 1.6 million delinquency cases in 2002 - up from 1.1 million in 1985. Moreover, Juvenile Courts handled four times as many delinquency cases in 2002 as in 1960. Courts were asked to respond not only to more cases but also to a different type of caseload - one with more person offenses and drug cases. In recent years juvenile court cases have decreased in most offense categories (Juvenile Offenders and Victims: 2006 National Report: 158).

Nationwide among intake proceedings, the cases in which delinquency petitions were drawn rose by 80 percent from 1985 to 2002.

[B]etween 1985 and 1992 delinquency cases were more likely to be handled without the filing of a petition but beginning in 1993, the reverse was true. By 2002, 934,900 (58 percent) of the

delinquency cases on a nationwide basis were petitioned whereas 680,550 (42 percent) were not petitioned (Juvenile Offenders and Victims: 2006 National Report: 177).

According to the report:

The use of formal handling has increased. In 1985, juvenile courts formally processed 45% of delinquency cases. By 2002, that proportion had increased to 58%. ...The number of petitioned delinquency cases increased 96% between 1985 and the peak in 1997 then declined 8% by 2002. (Juvenile Offenders and Victims: 2006 National Report:171).

A similar result was disclosed when we chose the Juvenile Terms of the Family Courts of the State of New York and examined the petition/non-petition delinquency rates in 6 of the counties with the largest population and 6 of the counties with the smallest population. The upper age of delinquency was 15. The 12 counties are listed below:

N.Y. STATE COUNTIES WITH THE LARGEST POPULATIONS

COUNTY DELINQUENCY PETITION NON-PETITION

Bronx 1,457 321

Kings 1,778 655

Nassau 722 433

New York 1,125 220

Queens 1,461 311

Suffolk 967 349

N.Y. STATE COUNTIES WITH THE SMALLEST POPULATIONS

COUNTY DELINQUENCY PETITIONS NON-PETITIONS

Schuyler 12 14

Lewis 18 25

Schoharie 8 26

Seneca 62 25

Essex 25 15

Orleans 30 37

(Easy Access to State and County Juvenile Court Case

Counts: 12/16/07 :1).

It should be noted that since 1991, delinquency cases nationwide were more likely to be handled formally, with the filing of a petition for adjudication, than informally. In 2004, juvenile courts petitioned nearly 6 of 10 delinquency cases. Between 1985 and 2004, the use of formal processing increased in all general offense categories. The increase in the number of petitioned cases may be due, at least in part, to greater prosecutorial control in many courts. As a general rule, prosecutors are more likely to lean to court involvement than probation officers, many of whom are (or at least have been) social work oriented.

Another factor contributing to an increase in the number of delinquency cases referred for petitions may be the change in many caseloads towards more person offenses and drug cases.

From 1985 to 2002, drug offense cases went from the least likely to the most likely to be petitioned. The least likely to be petitioned for formal handling by 2002 were property offense cases (Juvenile Offenders and Victims: 2006 National Report:171-172).

Also serving to drive up the number of petitioned delinquency cases was a tightening of the juvenile laws in many states. "From 1992 through 1997, statutes requiring mandatory minimum periods of incarceration for certain violent or serious offenders were added or modified in 16 States" (1999 National Report Series, Juvenile Justice Bulletin: Juvenile Justice: A Century of Change; December 1999:8-9). The deflation of discretion has generally been due to the belief that juvenile crime has both increased and become more serious. This is illustrated by the fact that "From 1992-1997, 44 states and the District of Columbia passed laws making it easier for juveniles to be tried as adults" (Clement, M.J., 2002: 141).

In certain jurisdictions the decision makers may be conservative and punitive, whereas in other jurisdictions within the same state the decision makers may be liberal and altruistic. The tone is often set, especially in the smaller counties, by the judiciary, political leaders, departmental heads and superior officers. These factors often lead to substantial variations among counties in the same state—a reality demonstrated by the statistical charts above. The increase in petitioned juvenile cases and the trend of prosecutorial staff to increase their intake powers at the expense of the probation officers began in the 1980s. Supporting the trend has been an increase of juvenile crime and also more serious juvenile crime. Many groups, including prosecutorial organizations and members of the judiciary, now support the removal of intake probation officer decision-making powers in delinquency cases. This role would instead be carried out by the prosecutorial staff. The probation officer's role would then be limited to status offender and other non-delinquency cases. Included would be an increased social worker role of report writing, counseling, and referral to community services.

These changes may or may not occur. Only time will tell.

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Looking At The Law

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A Guide to Statutory Retroactivity in the Revocation Context

This article discusses principles that determine which version of a punitive statute applies to a specific offender in the context of probation or supervised release revocation proceedings. Those precepts are constitutional (the *Ex Post Facto* Clause), jurisprudential (the presumption against retroactivity [i](#)), and statutory (the federal savings statute). This article demonstrates that applying these principles enables officers to select the correct version of a revocation provision and accurately determine whether a substantive statute may be invoked as a potential basis for revoking a particular offender's term of supervision.

I. The *Ex Post Facto* Clause and the Presumption Against Retroactivity

The *Ex Post Facto* Clause generally prohibits legislators from altering or creating criminal consequences for an action taken prior to legislative action. [ii](#) Current understanding of the *Ex Post Facto* Clause is based on the Supreme Court's initial interpretation of the provision in *Calder v. Bull* [iii](#). In *Calder*, the Court identified four types of *ex post facto* laws: 1) a law that "makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action"; 2) a law that "aggravates a crime, or makes it greater than it was, when committed"; 3) a law that "changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed"; and 4) a law that "alters the legal rules of evidence, and receives less, or different testimony, than the law required at the time of the commission of the offense, in order to convict the offender." [iv](#)

Revocation sanctions for violating post-conviction conditions of supervision fall within the third type of *ex post facto* laws described in *Calder*. To prevail on this type of *ex post facto* claim, an offender has to satisfy a two-part test. First, the offender must establish that the challenged law operates retroactively, that is, it applies to conduct completed before its enactment. Second, the offender must establish that the challenged law increases the penalty from whatever the law provided when the offense of conviction was committed. [v](#) Counsel and courts often apply the two-part *ex post facto* test to a new revocation provision without first examining the legislation for evidence that Congress intended the provision to be applied retroactively. Forgoing this step can lead to the inaccurate conclusion that a new revocation provision applies to all future revocation proceedings if it appears no more punitive than the predecessor statute.

The revocation sentence under review by the Supreme Court in *Johnson v. United States* [vi](#) illustrates this problem. In *Johnson*, the Supreme Court considered whether legislation adding a new revocation sanction to 18 U.S.C. § 3583 could be applied to an offender whose offense of

conviction had preceded enactment of the provision but whose violation of a condition of supervised release occurred after enactment. The new revocation sanction was created by the Violent Crime Control and Law Enforcement Act of 1994 (“VCCA”), [vii](#) was enacted on September 13, 1994, and codified as a new subsection (h) of 18 U.S.C. § 3583. Section 3583(h) specifically authorized courts to impose a term of supervised release to follow a revocation sentence of imprisonment. Congress had not specified an effective date for the new provision, which meant that the law took effect on the date of its enactment and could only be applied to offenders who committed their offenses on or after the date the President signed the bill into law. [viii](#) Petitioner Cornell Johnson, who committed his offense of conviction in October 1993, had violated one of his conditions of supervised release several months after the VCCA’s enactment.

Before the Supreme Court’s decision in *Johnson*, circuit courts had disagreed whether § 3583(h) could be applied to offenders like Johnson who committed their offenses prior to September 13, 1994. Resolution of this issue depended upon whether revocation of supervised release was characterized as punishment for a post-enactment violation or as conditional punishment imposed at sentencing. The Sixth Circuit precedent on review before the Supreme Court characterized revocation as punishment for a new “offense.” Under such precedent, applying § 3583(h) to a violation that occurred post-enactment would not be a “retroactive” application of the new law, but punishment for an offense that had occurred after the law was enacted. [ix](#) Other circuits disagreed with the Sixth Circuit and held that applying § 3583(h) retroactively would disadvantage offenders in violation of the *Ex Post Facto* Clause by increasing the revocation penalty that was an inherent part of a pre-enactment sentence. [x](#)

In *Johnson*, the Court rejected the Sixth Circuit’s analysis, and held that the prudential rule proscribing retroactive application of new laws precluded the retroactive application of §3583(h). [xi](#) In addition, the Court held that reimposition of supervised release was implicitly authorized under § 3583(e)(3) for offenses committed *before* enactment of § 3583(h). [xii](#) The Court found that characterizing supervised release violations as new offenses, as the Sixth Circuit did, avoided the retroactivity element of an *ex post facto* claim, but invited claims that the Double Jeopardy Clause would be violated if a crime was punished by revocation *and* a separate criminal prosecution. [xiii](#) The Court held that revocation sanctions were part of the sentence for the original offense, thereby averting potential conflict with the Double Jeopardy Clause while limiting revocation sanctions to those available at sentencing.

Once the *Johnson* Court determined that imposing a revocation sanction created by post-offense legislation would result in retroactive application, it only had to determine that the new law increased the revocation penalty to find an *ex post facto* violation. Instead of proceeding to the “increased punishment” prong of the *ex post facto* test, however, the Court relied upon the judicial presumption that, unless otherwise stated, Congress intends that statutes operate prospectively. [xiv](#) The Court observed that this presumption is particularly strong when criminal laws are under consideration and the *Ex Post Facto* Clause is implicated. [xv](#)

The *Johnson* Court, while relying upon the presumption against retroactivity, did not describe its contours and limitations. Supreme Court cases decided before *Johnson*, most notably *Landgraf v. USI Film Products*, [xvi](#) made it clear that “(e)lementary considerations of fairness dictate that individuals should have an opportunity to know what the law is and to conform their conduct accordingly.” [xvii](#) To implement these basic considerations of fairness, the presumption against retroactivity applies to “every statute, which takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to transactions or considerations already past.” [xviii](#) In *Lynce v. Mathis*, [xix](#) the Court stated that the specific prohibition against *ex post facto* laws was “only *one* aspect of the broader constitutional protection against arbitrary changes in the law.” [xx](#) The Court in *Johnson* held that this presumption against retroactive effect can only be overcome by a “clear statement” from Congress that it intended the law to have retroactive effect. [xxi](#)

The presumption applies if “the new provision attaches new legal consequences to events

completed before its enactment.” ^{xxii} It generally does not apply, however, if the legislation is primarily prospective in nature (such as laws authorizing or negating the availability of injunctive relief), ^{xxiii} if it creates or ousts jurisdiction, ^{xxiv} or if it alters procedural rules. ^{xxv} Nonetheless, the presumption may apply even to these exceptions if giving retroactive effect would affect substantive rights or the “primary” conduct of litigation. ^{xxvi} Given that even the exceptions to the presumption against retroactivity are subject to exceptions, the Court engaged in understatement when it observed that “deciding when a statute operates ‘retroactively’ is not always a simple or mechanical task.” ^{xxvii} Fortunately, legislation amending revocation provisions will generally affect substantive rights and therefore have only prospective effect, or it will alter procedure and generally will apply to all offenders.

As clarified by *Johnson*, the general rule in the revocation context is this: absent specific direction from Congress regarding a law’s effective date, a new statute that creates or increases a penalty is assumed to only apply prospectively; that is, to offenders whose offenses were committed on or after the date of enactment. ^{xxviii} Because revocation sanctions are deemed to be a component of the original sentence, and the sentence must be one that applied when the offense was committed, revocation sanctions also are limited to those that applied when the offender committed the offense. If a statute alters existing procedures but will neither affect an offender’s sentencing exposure nor influence the court’s decision about the propriety of a revocation sanction, it is not subject to the presumption against retroactivity. If Congress specifies that a revocation sanction is to apply retroactively, the presumption against retroactivity does not apply. Instead, a court considering the propriety of applying the statute retroactively would have to determine if such application violates the *Ex Post Facto* Clause by increasing the revocation penalty from whatever the law provided when the offense of conviction was committed.

II. The Federal Savings Statute: 1 U.S.C. § 109

While the *Ex Post Facto* Clause prohibits the retroactive application of a new punitive statute that disadvantages a wrongdoer, no constitutional provision limits the retroactive enforcement of legislation that ameliorates a pre-existing provision. Does this mean that a defendant may benefit from legislation that *decreases* or repeals a sentencing provision that he was subject to when he committed his offense? ^{xxix} Under common law, the answer would have depended on whether the new legislation replaced the entire statute setting forth the offense and its penalty or only lowered the prior penalty. The repeal of an entire criminal statute or re-enactment by amendment when the new statute increased a penalty or broadened the scope of prohibited conduct precluded a prosecutor from charging or convicting a defendant under *either* statute. Conviction and sentencing under the former statute was precluded by the doctrine of abatement. ^{xxx} Conviction and sentencing under the newly-enacted statute would be unconstitutional because it would be an *ex post facto* law if applied to a defendant who had violated the former law. ^{xxxi} If a statutory amendment simply reduced punishment, however, courts generally held that an offender who violated the version of the statute with the more onerous penalty could receive the more lenient punishment set forth in the amending legislation. ^{xxxii} The common law abatement rule was designed to implement presumed legislative intent when Congress had failed to specify whether it intended to repeal or preserve a prior criminal law with regard to defendants who had violated it before its amendment.

Whether a new criminal sanction is more lenient than its predecessor, and therefore may be applied retroactively, may be difficult to determine, however. For example, which hypothetical statutory maximum sentencing provision is more lenient – one calling for no more than 10 years imprisonment with no supervised release to follow or one providing for a maximum of 10 years *combined* imprisonment and supervised release? What if the potential maximum revocation sentence for the latter provision was an additional five years imprisonment with an additional term of supervised release? To avoid such questionable weighing of penalties and foreclose fortuitous escapes from prosecution due to technical abatements of amended or repealed statutes, Congress and most state legislatures abolished the common law presumption by enacting general savings statutes specifying that amendments to a civil or criminal statute *do not* extinguish penalties, rights, or liabilities accrued or incurred under the original law. ^{xxxiii} The federal

savings statute (“savings statute”) states that,

The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.

1 U.S.C. § 109. While the savings statute provides that it applies to the “repeal of any statute,” courts have uniformly interpreted this language to mean that the statute applies to statutory amendments as well as repeals. [xxxiv](#)

The plain language of the federal savings statute requires that when an individual is subject to a harsh penalty or liability under *any* statute that is either effectively repealed by an ameliorative amendment or eliminated entirely, courts must apply the harsher repealed or amended version to offenses that occurred prior to repeal or amendment. The only exception to this rule is if Congress directs that the more lenient provision applies to pre-enactment offenses. The Supreme Court in *Johnson* held (as did most circuit courts prior to *Johnson*) that revocation sanctions are those that were in effect when an offender committed his original offense. The savings statute and presumption against retroactivity applied in *Johnson* require that courts rely upon the supervised release sanctions that were part of the punishment when the original offense was committed, regardless of subsequent ameliorative amendment to revocation provisions. [xxxv](#)

III. Applying the *Ex Post Facto* Clause, the Presumption Against Retroactivity, and the Savings Statute in the Revocation Context

A. 1994 Amendments to Mandatory Revocation Provisions

Prior to the VCCA’s September 13, 1994, enactment, 18 U.S.C. §§ 3565(a) and 3583(g) required mandatory revocation of a term of probation or supervised release when an offender violated a condition of supervision by possessing a controlled substance. [xxxvi](#) Several circuit courts interpreted §§ 3565(a) and 3583(g) to require a finding of possession and mandatory revocation after a positive urine test. [xxxvii](#) VCCA sections 110505 and 110506 removed the mandatory minimum term of imprisonment (one-third the sentence of probation or supervised release after revocation), and simply required the court to impose a sentence that included a “term of imprisonment.” [xxxviii](#)

In addition, VCCA section 20414 amended § 3563(a) to require the court, acting in accordance with the Sentencing Guidelines, to consider exempting an offender who fails a drug test from the § 3565(b) mandatory revocation provisions:

The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3565(b), when considering any action against a defendant who fails a drug test administered in accordance with paragraph (4). [xxxix](#)

A similar amendment was made to section 3583(d) with respect to the 3583(g) mandatory revocation provision for supervised release. [xl](#)

Taken together, the new VCCA provisions regarding drug testing and revocation required a court to revoke and impose a sentence of imprisonment when an offender was found to have illegally *possessed* a controlled substance. A positive drug test, however, required a court to consider options other than imprisonment (unless possession and not merely a positive drug test was established). Although the amended versions of §§ 3565(b) and 3583(g) still required a district court to revoke probation or supervised release and impose a term of imprisonment once possession was proven, they gave the court discretion as to length of the imprisonment for probation and supervised release revocations, [xli](#) and they authorized a court to forego imprisonment for a positive drug test if appropriate drug treatment services are available. [xlii](#) These statutory amendments were incorporated [into](#) the relevant section of the United States

Sentencing Guidelines (“guidelines”) in 1995. [xliii](#)

Following enactment of the VCCA amendments, the Office of General Counsel (“OGC”) advised that courts could apply the more lenient post-VCCA versions of §§ 3565(b) and 3583(g) to offenders who had been sentenced before the VCCA’s September 13, 1994, effective date. OGC acknowledged that this advice was in tension with the plain language in the savings statute that “[t]he repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.” [xliv](#) OGC advocated that courts view the savings statute as applying only to the sentence for an offense, but not to the §§ 3563, 3565, and 3583 provisions governing the revocation of supervised release. [xlv](#)

OGC’s opinion that the savings statute applied to the sentence imposed for the offense but not to revocation sanctions may have been a tenable position prior to the Supreme Court’s holding in *Johnson*. However, after *Johnson* established that the presumption against retroactivity and the *Ex Post Facto* Clause required that courts apply the revocation provisions that were in effect when an offense occurred, the argument that the savings statute did not apply to revocation provisions became insupportable. The plain language of the savings statute and the Court’s holding in *Johnson* that revocation penalties are those that were in effect when the offense was committed resolved any doubts concerning which version of §§ 3563, 3565, and 3583 applies upon revocation. When an individual incurs a penalty or liability under *any* statute that subsequently is repealed or amended by ameliorative legislation, courts must continue to impose the harsher version of the statute unless Congress had expressly stated that the recent lenient legislation should be applied retroactively. Because the VCCA did not provide for retroactive application of its ameliorative provisions, the better view is that the savings statute limits their application to offenders who committed their offenses after its effective date.

The Second Circuit is the only circuit court to directly address the propriety of retroactively applying one of the VCCA amendments based upon the Supreme Court’s holding in *Johnson* and the savings statute. In its 2003 decision in *United States v. Smith*, [xlvi](#) the Second Circuit held that the Supreme Court’s holding in *Johnson* and the plain language of the savings statute precluded retroactive application of the VCCA’s ameliorative amendment to § 3583(g). The defendant in *Smith* had contended that the district court erred when revoking his term of supervised release by relying upon the pre-VCCA version of § 3583(g) that applied when he committed his offense rather than the more lenient post-VCCA version of § 3583(g) in effect when his supervision was revoked. The Second Circuit held that the fundamental “message of *Johnson*” was that “supervised release sanctions are part of the punishment for the original offense, and that the sanctions of the original offense remain applicable, despite subsequent amendment.” [xlvii](#) In addition, the *Smith* panel held that the savings statute preserved the original penalties in effect when the offender had committed his offense, including those relating to supervised release. Finally, the Second Circuit held that the version of the sentencing guidelines in effect at the time of Smith’s revocation, which indirectly supported Smith’s argument, conflicted with the pre-VCCA version of § 3583(g). Because sentencing guidelines are the equivalent of legislative rules adopted by federal agencies, and statutes always trump conflicting rules, the pre-VCCA version of § 3583(g) prevailed over the conflicting guidelines. [xlviii](#)

B. 2002 Amendments to Mandatory Revocation Provisions and the Enactment of Juvenile Supervised Release

In November 2002, section 2103 of the 21st Century Department of Justice Appropriations Authorization Act (“the DOJ Authorization Act”) [xlix](#) once again amended §§ 3565(b) and 3583(g) to establish a fourth basis for mandatory revocation of probation or supervised release. The DOJ Authorization Act required revocation if an offender “as a part of drug testing, tests positive for illegal controlled substances more than 3 times over the course of 1 year.” [l](#) OGC analyzed the DOJ Authorization Act in a January 15, 2003, memorandum that recommended that

officers count any positive drug test after November 2, 2002 (the effective date of the Act), towards the four or more positive tests mandating revocation regardless of whether the offender had committed his offense before or after the DOJ Authorization Act's effective date. This advice was not unqualified, however. The memorandum cautioned that "Chiefs may wish to consult with their courts regarding the reporting of the first three positive drug tests." ^{li}

The rationale provided for this advice was that applying §§ 3565(b)(4) and 3583(g)(4) retroactively would not disadvantage offenders. Rather, application of these provisions arguably would ameliorate the harsher pre-existing mandatory revocation provisions in 18 U.S.C.

§§ 3565(b)(1) and 3583(g)(1) for "drug possession." ^{lii} The pre-existing "drug possession" revocation provisions of §§ 3565(b)(1) and 3583(g)(1) were characterized as harsher than the DOJ Authorization Act's "more than three positive drug tests" provisions of 18 U.S.C. §§ 3565(b)(4) and 3583(g)(4), because the latter provisions allowed a court to consider drug treatment in lieu of revocation even after four or more failed drug tests. Likewise, the pre-DOJ Authorization Act versions of §§ 3565(b) and 3584(d) placed offenders at risk of revocation for even one positive drug test. The memorandum opined that, because there was no similar treatment alternative to revocation for offenders who "possess" drugs, a court would not run afoul of the *Ex Post Facto* Clause if it applied the amendments to offenders who committed their offenses before November 2, 2002 ("pre-DOJ Authorization Act offenders").

While the January 15, 2003, OGC memorandum may have correctly determined that retroactive application would not violate the *Ex Post Facto* Clause, it conflicted with the Supreme Court's mandate that "congressional enactments and administrative rules will not be construed to have retroactive effect unless their language requires this result." ^{liii} Because nothing in the DOJ Authorization Act overcomes this presumption of prospective effect, OGC revised the memorandum in November 2005 ^{liv} to counsel that §§ 3565(b)(4) and 3583(g)(4) should not be applied retroactively to pre-DOJ Authorization Act offenders. Rather, those provisions should only be applied to offenders who committed their crimes after November 2, 2002.

OGC expressed a similar view in 2005 regarding the non-retroactivity of Section 12301 of the DOJ Authorization Act, which amended 18 U.S.C. § 5037 to authorize a term of supervised release for juveniles. ^{lv} OGC's 2005 revised advice was consistent with the Eighth Circuit's 2004 retroactivity analysis in *United States v. J.W.T.* ^{lvi} In *J.W.T.*, the Eighth Circuit reviewed a district judge's determination that the juvenile supervised release provision created by the DOJ Authorization Act could be applied retroactively even if the underlying act of delinquency occurred before November 2, 2002. As an initial matter, the Eighth Circuit considered the threshold requirement of clear congressional intent that courts apply the statute retrospectively. The Eighth Circuit held that, because there was no evidence that Congress intended the law to apply retroactively, the presumption against retroactivity precluded courts from applying the amended statute to a juvenile whose delinquent act had occurred before enactment. The court's reasoning was straightforward: there is a presumption that legislation should not be applied retroactively absent an express indication to the contrary by Congress; such a statement was absent regarding juvenile supervised release; therefore, the November 2002 amendments to § 5037 could only be applied prospectively. The Eighth Circuit invoked the Supreme Court's holding in *Johnson* that a term of supervised release must be considered as part of the penalty for the original criminal act (or, in this context, the act of juvenile delinquency). ^{lvii}

As in *Johnson* and *J.W.T.*, nothing in the DOJ Authorization Act amendments to §§ 3565(b) and 3583(g) countered the presumption against retroactive application of new legislation to those who committed their offenses prior to enactment. Even if the amendments to §§ 3565(b), 3583(g), and 5037 could be deemed ameliorative, the savings statute, 1 U.S.C. § 109, would preclude offenders from benefitting from more lenient laws passed after they had committed their offenses. ^{lviii}

C. Violations of 18 U.S.C. § 2250 as a Basis for Revocation

Section 141 of the "Sex Offender Registration and Notification Act" ("SORNA"), which is Title ^l

I of the “Adam Walsh Child Protection and Safety Act of 2006” (“Adam Walsh Act”), ^{lix} created 18 U.S.C. § 2250, ^{lx} a new federal crime of failing to register in accordance with SORNA. Violations of § 2250 are increasingly relied upon as a basis for revoking supervised release. Because SORNA did not specify effective dates for most of its sex offender registration requirements or the new federal crime of failure to register, § 2250 took effect on July 27, 2006, the date of its enactment. Nonetheless, district courts have disagreed about whether application of 18 U.S.C. § 2250 violates the *Ex Post Facto* Clause when one or more (but not all) elements of the offense occurred prior to its date of enactment. Officers must resolve the retroactivity issue whenever a basis for revocation is a § 2250 violation involving an offender who committed the sex offense that requires registration prior to July 27, 2006.

Determining whether application of § 2250 violates the *Ex Post Facto* Clause is complicated because the statute is violated only if an offender was required to register under SORNA by virtue of 1) a conviction under federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States (collectively “a federal sex offense conviction”) and the offender knowingly failed to register or update a prior registration; or 2) a conviction under state law and the offender “travels” in interstate or foreign commerce or enters or leaves, or resides in, Indian country and knowingly failed to register or update a prior registration. 42 U.S.C. § 16913(d) authorized the Attorney General to specify the applicability of SORNA to sex offenders who had been convicted of a sex offense before July 27, 2006, and who were unable to comply ^{lxi} with initial registration requirements. On February 28, 2007, the Attorney General issued an interim rule “specify[ing] that the requirements of [SORNA] apply to sex offenders convicted . . . before the enactment of [SORNA].” ^{lxiii}

The interim rule prompted offenders with pre-enactment state sex offense convictions to raise *ex post facto* challenges to § 2250 if they had traveled in interstate commerce and/or failed to register or update a registration after the enactment of SORNA but before the February 28, 2007, interim rule that purported to clarify their registration obligations. Many district courts found *ex post facto* violations where an offender had been convicted of a sex offense prior to SORNA’s July 27, 2006, enactment but was charged with violating § 2250 by failing to register or update a registration *prior* to issuance of the February 28, 2007, interim rule that established the registration obligation. ^{lxiii} Other district courts have dismissed indictments for *ex post facto* violations when the offender’s interstate travel occurred before SORNA’s July 27, 2006, enactment even though the alleged failure to register or update a registration occurred both before *and* after February 28, 2007. ^{lxiv} The latter category of cases found violations on the grounds that a § 2250 violation is not a “continuing violation,” like conspiracy. Instead, the crime is deemed to be complete as soon as the obligation to register ripened after interstate commerce from one jurisdiction to another. ^{lxv}

A significant number of district courts concluded that § 2250 was effective upon its July 26, 2007, enactment as to all those convicted of sex offenses after that date who failed to register as required by SORNA, but it did not apply to those with pre-SORNA convictions until the Attorney General eventually issued the interim rule on February 28, 2007. Until binding circuit court precedent clarifies the retroactivity issue, officers should invoke a violation of § 2250 as a basis for revocation of supervision with caution. To avoid *ex post facto* problems when petitioning to revoke based on an apparent § 2250 violation, ^{lxvi} officers may petition to revoke offenders who qualify as sex offenders under SORNA because of a *post*-July 26, 2007, federal sex offense conviction if the offender failed to register or update a registration after July 26, 2007. If the qualifying federal sex offense conviction was *prior to* July 26, 2007, a petition may be premised on a failure to register or update a registration after the Attorney General had issued the interim rule on February 28, 2007. Officers may petition to revoke offenders who qualify as sex offenders under SORNA because of a *post*-July 26, 2007, *State* sex offense conviction if the offender thereafter traveled in interstate commerce (as defined in § 2250(a)(2)(B)), and failed to register or update a registration. If a State sex offense conviction was *prior to* July 26, 2007, a

petition will likely survive challenge if the requisite interstate travel and failure to register or update a registration occurred after the Attorney General issued the interim rule on February 28, 2007.

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The articles and reviews that appear in *Federal Probation* express the points of view of the persons who wrote them and not necessarily the points of view of the agencies and organizations with which these persons are affiliated. Moreover, *Federal Probation's* publication of the articles and review is not to be taken as an endorsement of the material by the editors, the Administrative Office of the U.S. Courts, or the Federal Probation and Pretrial Services System.

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Juvenile Focus

Alvin W. Cohn, D.Crim.
Administration Of Justice Services, Inc.

Technical Assistance

Free technical assistance is available to state and local agencies on issues related to evaluating, selecting, and procuring electronic monitoring technology as well as implementing, operating and evaluating an electronic monitoring program. Please contact George Drake at gbdrake@comcast.net [mailto:gbdrake@comcast.net] for further information.

Trafficking of Children

The U.S. Department of Education's [Office of Safe and Drug-Free Schools](#) has published "[Human Trafficking of Children in the United States](#)." The fact sheet describes the nature and extent of such trafficking and how it affects our schools. Information and resources related to identifying victims of human trafficking are also provided. See <http://www.ed.gov/about/offices/list/osdfs/factsheet.html>.

Youth Court

A record 1,255 youth courts across the United States annually involve more than 115,000 youth volunteers in the sentencing and disposition of more than 120,000 youth offenders. With funding from the [Office of Juvenile Justice and Delinquency Prevention](#), the [National Highway Traffic Safety Administration](#), and the [Office of Safe and Drug-Free Schools](#), the [National Association of Youth Courts, Inc.](#) has published the [National Youth Court Month 2007 Planning and Action Guide](#). The Guide is designed to assist communities in observing the annual National Youth Court Month. See <http://www.youthcourt.net>.

Child Pornography and Molesting

A recent study of convicted Internet offenders suggests that the link between viewing child pornography and molesting may be as high as 85 percent. The study focused on 155 male inmates voluntarily being treated in a federal prison. The offenders, convicted of viewing child pornography, reported committing acts of sexual abuse against children, including inappropriate touching and rape. Debate over how the findings should be presented is occurring among psychologists, law enforcement officers and prison officials. See New York Times, *Debate on Child Pornography's Link to Molesting* by Julian Sher and Benedict Carey, Published July 19, 2007 <http://www.nytimes.com/2007/07/19/us/19sex.html?ex=1188446400&en=35605d51e17d3b76&ei=5070>

Mentoring Awards

The U.S. Department of Education's [Office of Safe and Drug-Free Schools](#) has announced its [FY](#)

[2007 Mentoring Program Grant Awards](#) to local educational agencies, nonprofit community-based organizations, and partnerships between the two, to promote school-based mentoring programs. The programs will serve children with the greatest need in grades 4 through 8 who reside in rural or high crime areas or troubled environments, or who attend schools with violence problems. Among their goals are reducing levels of juvenile delinquency and involvement in gangs. See http://www.ed.gov/programs/dvpm_enting/184b07awards.pdf.

Disproportionate Minority Contact

With funding from OJJDP, the [Program of Research on the Causes and Correlates of Delinquency](#) has issued the report "[Disproportionate Minority Contact in the Justice System: A Study of Differential Minority Arrest/Referral to Court in Three Cities](#)." The report draws on information from delinquency studies in Pittsburgh, PA, Rochester, NY, and Seattle, WA, to examine disproportionate minority contact and factors that might affect it at the police contact/court referral level. See <http://www.ncjrs.gov/pdffiles1/ojjdp/grants/219743.pdf>.

[Adolescents, Neighborhoods, and Violence](#)

This report describes four **scientific** studies that analyzed data from the Project on Human Development in Chicago Neighborhoods, which for almost a decade has been contributing valuable knowledge about the interplay between crime, violence, children, and neighborhoods. The researchers' innovative, multilevel design produced a longitudinal study that is helping social scientists understand factors that contribute to adolescent violence. Some findings include:

- Youth were less violent if they lived in neighborhoods where residents held shared values, had parents who were married, and were immigrants.
- Children who were exposed to gun violence were more likely to commit violence.
- Race and ethnicity are not factors that contribute to violent behavior.

FACJJ Annual Report

The [Federal Advisory Committee on Juvenile Justice](#) (FACJJ) has issued its [2007 Annual Report](#). Established under the Juvenile Justice and Delinquency Prevention (JJDP) Act, the role of FACJJ is to advise the President and Congress on matters related to juvenile justice and delinquency prevention, to advise the Administrator of the Office of Juvenile Justice and Delinquency Prevention on the work of OJJDP, and to evaluate the progress and accomplishments of juvenile justice activities and projects. The report outlines concerns and issues identified by FACJJ members and their State Advisory Groups. It contains 15 recommendations that illustrate why juvenile justice should remain a national priority and highlights the importance of reauthorizing the JJDP Act. See <http://www.facjj.org/annualreports/ccFACJJ%20Report%20508.pdf>.

Project Safe Neighborhoods

The Department of Justice highlighted the [significant accomplishments](#) of federal, state and local officials in combating gang violence and reducing gun crime through [Project Safe Neighborhoods](#) (PSN) before more than 1,000 members of PSN task forces from across the nation recently. The Department of Justice announced the release of over \$50 million in grants to support PSN and anti-gang efforts and unveiled a new public service campaign aimed at educating youth about the impact of gun crime and gang violence. The PSN task forces are a cooperative effort between federal, state and local law enforcement agencies and prosecutors, along with research and media outreach partners, and community leaders. Since 2001, the Administration has committed approximately \$2 billion to hire more than 200 federal prosecutors to prosecute gun crime, make grants available to hire more than 550 new state and local gun crime prosecutors, train nearly 33,000 individuals in training events across the nation, and promote other strategies to reduce gun violence in our communities. The rate of violent crime remains at a historic low.

Fact Sheets Describe Delinquency

OJJDP has published the following 2-page fact sheets that draw on data from the OJJDP report "[Juvenile Court Statistics 2003–2004](#)."

- "[Delinquency Cases in Juvenile Courts, 2004](#)" provides statistics on delinquency cases in U.S. juvenile courts between 1995 and 2004.
- "[Petitioned Status Offense Cases in Juvenile Courts, 2004](#)" reports on status offense cases processed in juvenile courts between 1995 and 2004.
- "[Drug Offense Cases in Juvenile Courts, 1985–2004](#)" offers data on drug offense cases handled in juvenile courts between 1985 and 2004. See "Delinquency Cases in Juvenile Courts, 2004" is available at <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=243259>.
- "Petitioned Status Offense Cases in Juvenile Courts, 2004" is available at <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=243260>.
- "Drug Offense Cases in Juvenile Courts, 1985–2004" is available at <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=243261>.
- The OJJDP report "Juvenile Court Statistics 2003–2004" is available at <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=240291>.

Anti-Crime Funding

[Office of Justice Programs](#), [Bureau of Justice Assistance](#) announced that the Department of Justice has provided over \$50 million in anti-crime funding this year through PSN. Over \$20 million of the awards are aimed at reducing gun crime, and over \$30 million have been awarded to combat gang violence and increase gang prevention efforts. The grants, administered by the Office of Justice Programs, Bureau of Justice Assistance, support a comprehensive approach to fight gang violence and gun crime in America.

The U.S. Attorneys for the 94 federal judicial districts across the country, working with local law enforcement and other officials, tailor their PSN strategy to fit the districts' unique violent crime problems. Violent gang members and criminals who use guns are prosecuted under federal, state or local laws, depending on which jurisdiction can provide the most appropriate punishment. Each district engages in deterrence and prevention efforts through community outreach and media campaigns, and ensures that law enforcement and prosecutors have the training necessary to make the program work.

A reference for the PSN grant awards is located on <http://www.ojp.usdoj.gov/BJA>. Additional information about PSN and its local programs is available on the PSN Web site at <http://www.psn.gov>. The Department's FY 2008 budget request includes \$200 million for Violent Crime Reduction Partnership grants and over \$13 million for other violent-crime-related enhancements that will support the Project Safe Neighborhoods program and increase the prosecution of gangs and violent criminals.

Ad Council

The Department of Justice has prepared new PSN public service announcements, created in partnership with the Ad Council. The 30- and 60-second television spots, titled "Babies," are intended to educate youth about the perils of gun crime and its devastating family impact. The radio spots provide a glimpse into the reality of gun crime and its consequences through interviews with individuals convicted of gun crimes and their family members. The public service announcements will be distributed to English- and Spanish-language television and radio stations nationwide and begin airing in late September. See DOJ's fact sheet "Project Safe Neighborhoods: America's Network Against Gun Violence" at http://www.usdoj.gov/opa/pr/2007/September/07_ag_723.html.

For more information about DOJ's Comprehensive Anti-Gang Initiative, visit <http://ojjdp.ncjrs.gov/programs/antigang/>.

Safe Schools/Healthy Students

The National Center for Mental Health Promotion and Youth Violence Prevention has published [Developing Safe Schools Partnerships: Spotlight on Juvenile Justice](#). The information provided in this 2-page fact sheet draws on the experience of the Safe Schools/Healthy Students Initiative, a collaborative effort of the U.S. Departments of Justice, Education, and Health and Human Services. Among the resources cited for developing effective juvenile justice-school relations is the Office of Juvenile Justice and Delinquency Prevention's [Model Programs Guide](#), an online portal to scientifically tested and proven programs that address a range of issues across the juvenile justice spectrum. See "Developing Safe School Partnerships: Spotlight on Juvenile Justice" and related juvenile justice resources are available at <http://www.promoteprevent.org/Resources/briefs/juvenile%20justice%20resources.html>

Juvenile Drug Court Awards

O JJDP has announced awards under its [Juvenile Drug Courts/Reclaiming Futures Program](#), a partnership with the U.S. Department of Health and Human Services' [Center for Substance Abuse Treatment](#) and the [Robert Wood Johnson Foundation](#). OJJDP will provide \$1.275 million to Greene County, MO, Hocking County, OH, and the New York State Unified Court System to implement a juvenile drug court program applying the [Reclaiming Futures model](#). The successful applicants addressed the guidelines described in the Bureau of Justice Assistance monograph "[Juvenile Drug Courts: Strategies in Practice](#)." Each grantee will receive between \$420,000 to \$425,000 for a 4-year period, beginning October 1, 2007. CSAT will deliver \$200,000 in technical assistance in the first year of the project, and the Robert Wood Johnson Foundation will provide up to \$1 million in technical assistance throughout the 4 years. The program will be evaluated. The Reclaiming Futures model embodies three essential elements: designing a system of care that coordinates services, involving the community in creating new opportunities, and improving treatment services for drug and alcohol use. See <http://ojjdp.ncjrs.gov/programs/Pr ogSummary.asp?pi=44>. For more information about the Reclaiming Futures model, visit <http://www.reclaimingfutures.org>.

Bullies

As a growing number of states pass laws against bullying, new research finds that bullies and their victims are more likely than other children to be victims of crime outside of school. "They're often victimized in the community," says Melissa Holt, research professor at the University of New Hampshire's Crimes Against Children Research Center, co-author of a new study on bullying. The kids in the study at greatest risk are those who are both bullies and victims of bullies, Holt says. Of those, 84 percent had been victims of a crime, including burglary and assault, and 32 percent had been sexually abused. The study was based on interviews with 689 fifth-graders in 2005 in an unidentified urban, low-income school district in Massachusetts. Holt says the area's overall crime rate is higher than average, but she believes that the pattern of victimization would hold in most places. The study found that 70 percent of bullies and 66 percent of bullying victims were crime victims, compared with 43 percent of kids who were neither bullies nor victims.

Holt says bullies may be less apt to walk away from fights, and therefore more likely to be assaulted, and more likely to associate with aggressive kids who would commit crimes against them. A shy or insecure child is vulnerable in and out of school, she says. The research comes as more states adopt laws that prohibit bullying and set up prevention programs. At least nine states this year have passed such a law or expanded an existing one to address the problem of Internet bullying, says Lamar Bailey, research analyst at the National Conference of State Legislatures. Thirty-two states have passed anti-bullying laws, almost all since the 1999 mass shooting at Columbine High School. The two shooters, who killed 12 other students and a teacher before committing suicide, reportedly had been harassed at school. "A lot of school shootings have a tie back to bullying," says Julie Hertzog, bullying prevention coordinator at PACER Center, an advocacy group for children with disabilities. Her group, with support from the National PTA and other education groups, designated next week as National Bullying Prevention Awareness Week.

"Bullying and suicide are connected," says Brenda High, founder of Bully Police USA, a group pushing anti-bullying laws. Her son Jared, who she says was beaten at school, committed suicide in 1998 at age 13. In Holt's study, nearly half of those who said they were victims of bullying were referred to school counselors because of thoughts about suicide.

About 20 percent of students are bullied at some time, whether it's teasing, name-calling or hitting, Hertzog says. She says the most vulnerable are those who react by crying, getting mad or fighting back or who are socially isolated.

"Simply having even one good friend can really help prevent bullying," says Susan Limber, professor at the Institute on Family and Neighborhood Life at Clemson University. "There's safety in numbers." Bullying has long been a problem in schools, but what has changed is the culture, says Matthew Masiello, a pediatrician who is vice president of Conemaugh Health System in Jonestown, Pa. "We live in a society that exposes kids to more and more violence," he says. Masiello says children who are bullied do worse in school, have lower self-esteem and are more likely to be absent and to drop out.

OAS Report Presents "A Day in the Life of American Adolescents"

According to a recent report published by the [Office of Applied Studies](#) in the U.S. Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, in 2006, one third of U.S. youth aged 12 to 17 drank alcohol and one fifth used an illicit drug in the past year. A recent issue of [The OAS Report](#) draws on the 2006 National Survey on Drug Use and Health and other data to describe "[A Day in the Life of American Adolescents: Substance Abuse Facts](#)." See <http://oas.samhsa.gov/2k7/youthFacts/youth.cfm>.

ICAC Task Forces

The Department of Justice announced that 13 new state and local law enforcement agencies will receive more than \$3 million to form Internet Crimes Against Children (ICAC) task forces in their regions. The funding marks the presence of ICAC task forces in all 50 states, and will support a seamless network making communities and children safer nationwide. New ICAC grantees include law enforcement agencies in Alaska, California, Delaware, Florida, Idaho, Maine, Mississippi, Montana, North Dakota, Rhode Island, South Dakota, Vermont and West Virginia. The grants were awarded by the Justice Department's Office of Justice Programs under the ICAC Task Force program. With the new grants, there will be a total of 59 ICAC task forces nationwide. "As long as our children use the Internet, there will unfortunately be predators who seek to exploit them," said Acting Attorney General Peter Keisler. "While it is significant that our Internet Crimes Against Children task forces have made over 10,000 arrests since their inception nine years ago, it is even more important that we continue to give these task forces the funds they need, and increase the pressure on child predators from law enforcement."

In fiscal year 2007, OJJDP awarded approximately \$17 million to fund ICAC task forces, including the new task forces announced today. The task forces have played a critical role in stopping Internet criminal activity targeting children. In fiscal year 2006 alone, ICAC investigations led to more than 2,040 arrests and more than 9,600 forensic examinations. Between October 1, 2006, and August 31, 2007, ICAC task forces have received more than 18,000 complaints of technology-facilitated child sexual exploitation; which includes the possession, distribution, and creation of child pornography, as well as attempts by individuals to lure and travel to meet children for sexual encounters. Investigations initiated from complaints have led to more than 2,062 arrests, forensic examinations of more than 9,100 computers, more than 4,700 case referrals to non-ICAC law enforcement agencies, and provision of training for more than 25,000 law enforcement officers and prosecutors.

The [ICAC Task Force Program](#) is the foundation of the Department's [Project Safe Childhood](#) initiative. Project Safe Childhood's goal is to investigate and prosecute crimes against children facilitated through the Internet or other electronic media and communication devices. Project Safe Childhood is implemented through a partnership of U.S. Attorneys; ICAC Task Forces; federal

partners, including the FBI, U.S. Postal Inspection Service, Immigration and Customs Enforcement and the U.S. Marshals Service; advocacy organizations such as the National Center for Missing and Exploited Children; and other state and local law enforcement officials in each U.S. Attorney's district. Other aspects of the program include increased federal involvement in child pornography and enticement cases; training of federal, state, and local law enforcement on investigating and prosecuting computer-facilitated crimes against children; and community awareness and educational programs. See

http://www.usdoj.gov/opa/pr/2007/October/07_ojp_061.html. See

<http://ojjdp.ncjrs.gov/programs/ProgSummary.asp?pi=3>.

Juvenile Court Cases

OJJDP has published "[Juvenile Court Statistics 2003–2004](#)." Prepared by the [National Center for Juvenile Justice](#), this 160-page report draws on data from more than 2,000 courts with jurisdiction over 75 percent of the juvenile population in 2004 to describe more than 1.6 million delinquency cases. The report reviews trends since 1985 and provides county and state data for 2003 and 2004. See <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=240291>.

Drug Use

This Short Report, [The OAS Report: A Day in the Life of American Adolescents: Substance Use Facts](#), is based on SAMHSA's [National Survey on Drug Use and Health \(NSDUH\)](#). The NSDUH is conducted by the [Office of Applied Studies \(OAS\)](#) in the Substance Abuse and Mental Health Services Administration (SAMHSA). SAMHSA's survey (NSDUH) is the primary source of information on the prevalence, patterns, and consequences of drug and alcohol use and abuse in the general U.S. civilian non-institutionalized population, age 12 and older. [SAMHSA's National Survey on Drug Use & Health also provides estimates for drug use by State](#).

- Facts about substance use among youth aged 12 to 17 are based on data from SAMHSA's 2006 National Survey on Drug Use & Health (NSDUH) and SAMHSA's 2005 Treatment Episode Data Set (TEDS), and for clients under the age of 18 from SAMHSA's 2005 National Survey of Substance Abuse Treatment Services (N-SSATS). Data are presented on first substance use, past year substance use, receipt of substance use treatment, and source of substance use treatment referrals "on an average day."
- On an average day in 2006, youth used the following substances for the first time: 7,970 drank alcohol for the first time, 4,348 used an illicit drug for the first time, 4,082 smoked cigarettes for the first time, 3,577 used marijuana for the first time, and 2,517 used pain relievers non-medically for the first time.
- Youth who used alcohol in the past month drank an average of 4.7 drinks per day on the days they drank and those who smoked cigarettes in the past month smoked an average of 4.6 cigarettes per day on the days they smoked.
- On an average day in 2005, the number of youth admissions to substance abuse treatment were referred by the following sources: 189 by the criminal justice system; 66 by self-referral or referral from other individuals; 43 by schools; 37 by community organizations; 22 by alcohol or drug treatment providers; and 18 by other health providers.
- On an average day in 2005, active substance abuse treatment clients under the age of 18 received the following types of substance abuse treatment: 76,240 were clients in outpatient treatment; 10,313 were clients in non-hospital residential treatment; and 1,058 were clients in hospital inpatient treatment. See also

[Reports on youth](#)

[Reports on drugs](#)

[Other topics](#)

SAMHSA has developed a new **Web page** to assist the public in identifying evidence-based programs and practices that can prevent and/or treat mental and substance use disorders. [A Guide to Evidence-Based Practices on the Web](#) features 37 web sites that contain information about specific evidence-based interventions or provide comprehensive reviews of research findings.

Amber Alert

All 50 states now have statewide AMBER Alert plans, creating a network of systems nationwide to aid in the recovery of abducted children.

- A secondary distribution effort undertaken in partnership with wireless companies, online service providers, and other private and public entities enables AMBER Alerts to be sent directly to the public.
- Tribal nations are working to develop their own plans tailored to their specific needs so that children in Indian country may benefit from AMBER Alert.
- More than 90 percent of the 370 AMBER Alert recoveries have occurred since AMBER Alert became a nationally coordinated effort in 2002.
- Anecdotal evidence demonstrates that perpetrators are well aware of the power of AMBER Alert, and in many cases have released an abducted child upon hearing the alert.

Educational Data

The Common Core of Data (CCD) is an annual universe collection of public elementary and secondary education data that is administered by the National Center for Education Statistics (NCES) and its data collection agent, the U.S. Census Bureau. Data for the CCD surveys are provided by state education agencies (SEAs). This report presents findings on the numbers and rates of public school students who dropped out of school in school years 2002–03, 2003–04, and 2004–05, using data from the *CCD State-Level Public-Use Data File on Public School Dropouts* for these years. The report also used the *Local Education Agency-Level Public-Use Data File on Public School Dropouts: School Year 2004–05*, and the *NCES Common Core of Data Local Education Agency Universe Survey Dropout and Completion Restricted-Use Data File: School Year 2004–05*.

The CCD provides an event dropout number and rate. An event dropout number represents the number of students dropping out in a single year, while the event dropout rate represents the percentage that drop out in a single year. According to the CCD definition, a dropout is an individual who

1. was enrolled in school at some time during the previous school year;
2. was not enrolled at the beginning of the current school year;
3. has not graduated from high school or completed a state- or district-approved education program; and
4. does not meet any of the following exclusionary conditions: transfer to another public school district, private school, or state- or district-approved education program; temporary absence due to suspension or school-approved illness; or death.

While tables include data for all of the CCD respondents, the discussion in the text is limited to the 46 states that reported data for 80 percent or more of their students. The CCD collects data from the universe of local education agencies. Because the CCD is not based on a sample of agencies, no statistical tests of the data are required. More information about the survey content and methodology can be found in [appendix A](#). [Appendix B](#) is a glossary of key CCD terms used in this report. More information about CCD surveys and products is available at <http://nces.ed.gov/ccd>.

Commercial Exploitation of Children

The Office of Justice Programs' [National Institute of Justice](#) (NIJ) has released "[Commercial Sexual Exploitation of Children: What Do We Know and What Do We Do About It?](#)" The summary reviews research into the organization of the commercial sexual exploitation of

children, its effects on victims, and measures to prevent its occurrence. "Commercial Sexual Exploitation of Children: What Do We Know and What Do We Do About It?" is available online at <http://ojp.usdoj.gov/nij/pubs-sum/215733.htm>. Print copies may be ordered online at <http://www.ncjrs.gov/App/shoppingcart/ShopCart.aspx?item=NCJ%20215733>.

High School Dropout Data

The U.S. Department of Education's [National Center for Education Statistics](#) has released the report "[Numbers and Rates of Public High School Dropouts: School Year 2004–05](#)." The report draws on diverse sources to provide data on the numbers and rates of public school students who dropped out of high school in school years 2002–03, 2003–04, and 2004–05, and includes dropout rates by state, region, school district size, and several student characteristics. See <http://nces.ed.gov/pubs2008/hsdropouts/>.

Abducted Children

Written by siblings of abducted children, OJJDP's "[What About Me? Coping With the Abduction of a Brother or Sister](#)" provides information to help children of all ages when a brother or sister has been kidnapped. In child-friendly language, the guide offers such children insights into what they might expect to feel following the abduction, related events that may ensue, and steps that they may take to cope with their feelings. See "What About Me? Coping With the Abduction of a Brother or Sister" (NCJ 217714) may be ordered at <http://www.ncjrs.gov/App/Publications/AlphaList.aspx>. For quick access, search by document number. The print copy is accompanied by a DVD that features informative interviews with several of the guide's authors. The guide is also available online at <http://ojjdp.ncjrs.gov/publications/PubAbstract.asp?pubi=239397>.

Crime in Schools and Colleges

The FBI has released a study: "[Crime in Schools and Colleges: A Study of Offenders and Arrestees Reported via National Incident-Based Reporting System Data](#)." Data on crime in schools and colleges and the characteristics of those who commit these offenses can help inform the development of theories and applications to combat such crimes. This study examines characteristics of participants in criminal incidents at schools and colleges from 2000 through 2004 as reported to the FBI by law enforcement agencies. See "Crime in Schools and Colleges" is available online at <http://www.fbi.gov/ucr/schoolviolence/2007/index.html>

Crime Rates Stable

The [Bureau of Justice Statistics](#) (BJS) reports that violent and property crime rates at the nation's schools during 2005 (57 with such crimes per 1,000 students age 12 or older) were statistically unchanged from the 2004 rate of 55 victimizations per 1,000 students, according to a new report by the Justice Department's Bureau of Justice Statistics (BJS) and the Department of Education's National Center for Education Statistics. The crimes measured are rape, sexual assault, robbery, aggravated assault, simple assault and theft.

During 2005, older students (ages 15 to 18) were less likely than younger students (ages 12 to 14) to be victims of crime at school, but older students were more likely than younger students to be victims of crime away from school. From July 1, 2005, through June 30, 2006, there were 14 school-associated homicides involving school-aged children. Other BJS data show that youths are over 50 times more likely to be murdered away from school than at school. The rates for other serious violent victimizations were lower at school than away from school for every survey year from 1992 through 2005. Serious violent victimizations include rape, sexual assault, robbery and aggravated assault.

In 2005 nearly all (99 percent) students ages 12 to 18 observed at least one of selected security measures at their school. The percentage of students who observed the use of security cameras at their school increased from 39 percent in 2001 to 58 percent in 2005. During 2005 an estimated 90 percent of students reported observing school staff or other adult supervision in the hallway,

and 68 percent of students reported the presence of security guards and/or assigned police officers at their school.

Fewer students are avoiding places in school because of fear for their safety. Between 1995 and 2005 the percentage of students who reported avoiding one or more places in school declined from 9 percent to four percent. Among students in grades 9 through 12, an estimated 43 percent reported drinking alcohol anywhere and four percent reported drinking at school during the 30 days prior to the 2005 survey. There were no detectable differences in percentages across grade levels in the likelihood of drinking on school property, but students in higher grades were more likely than students in lower grades to report drinking alcohol anywhere. In 2005, 25 percent of students reported that someone had offered, sold, or given them illegal drugs on school property in the 12 months prior to the survey.

Between 1993 and 2005, the percentage of students in grades 9 through 12 who reported carrying a weapon to school in the preceding 30 days declined from 12 percent to six percent. In 2005, 24 percent of students reported gangs at their schools, compared to 21 percent of students in 2003. Twenty-eight percent of students ages 12 to 18 reported being bullied at school during the last 6 months. Of those students who reported being bullied, 24 percent reported that they had sustained an injury as a result of the incident.

The report "Indicators of School Crime and Safety: 2007" (NCJ-219553) was written by BJS statistician Wendy Lin-Kelly; Rachel Dinkes, of the Education Statistics Services Institute in the American Institutes for Research; Emily Forrest Cataldi, of MPR Associates, Inc.; and Thomas D. Snyder, Project Officer of the National Center of Education Statistics. The report can be found at www.ojp.usdoj.gov/bjs/abstract/iscs07.htm. See also www.ojp.usdoj.gov/bjs.

Drug Abuse Research

The [National Institute on Drug Abuse](http://www.nida.nih.gov) (NIDA) has launched a [Web site](http://www.nnp.drugabuse.gov/) to serve researchers, practitioners, and policymakers. The NIDA Networking Project site facilitates information sharing and research collaboration among those concerned with drug abuse through access to locations, people, expertise, and resources from NIDA's research networks. See <http://nnp.drugabuse.gov/>.

Juvenile Court Case Counts

(EZACO) gives users quick access to state and county juvenile court case counts for delinquency, status offense, and dependency cases. Data are from 1997 to 2004. Click on the [Access Case Counts](#) tab to get state and county data. The [Data & Methods](#) section summarizes the data collection effort conducted by the [National Juvenile Court Data Archive](#) that makes this application possible.

Other Easy Access applications are available!

Easy Access is a family of web-based data analysis tools developed for OJJDP by the [National Center for Juvenile Justice](#) (NCJJ) to provide access to recent, detailed information on juvenile crime and the juvenile justice system. Together, the Easy Access applications provide information on national, state, and county population counts, as well as information on homicide victims and offenders, juvenile court case processing, and juvenile offenders in residential placement facilities. Visit the [Data Analysis Tools](#) section of OJJDP's [Statistical Briefing Book](#) for a complete list of these applications.

Maintained by: National Center for Juvenile Justice, the research division of the National Council of Juvenile and Family Court Judges

Commercial Sexual Exploitation of Children

It is estimated that 10 to 15 percent of children living on the streets in the United States are trafficked for sexual purposes. Little reliable data exists regarding commercial sexual exploitation

of children. The limited data we have shows that it occurs in several ways: At least half occurs at a local level exploitation of one child by one or several adults; 25 percent occurs through citywide or small regional networks; 15 percent occurs through well-financed, large regional or national networks with adults recruiting, indoctrinating, and moving children; and, 10 percent is international trafficking children for the pornography or sex tourism industries.

This report looks at the current state of the research regarding the roles of people who are engaged in commercial sexual exploitation of children. It also discusses prevention, interdiction, and prosecution programs aimed at this crime.

The Center for Juvenile Justice Reform

Located at Georgetown University's Public Policy Institute, the Center for Juvenile Justice Reform (CJJR) has introduced a website (<http://cjjr.georgetown.edu>) that will serve as a resource for practitioners and advocates from juvenile justice and related fields as well as providing educational materials to the public. The Center staff will compile comprehensive lists of research sources relating to critical areas in the juvenile justice field, as well as provide links to related professional and academic organizations at <http://cjjr.georgetown.edu/links.html>.

School Crime and Safety: 2007

This report presents data on crime and safety at school from the perspectives of students, teachers, principals, and the general population. A joint effort by the Bureau of Justice Statistics and the National Center for Education Statistics, this annual report examines crime occurring in school as well as on the way to and from school. It also provides the most current detailed statistical information on the nature of crime in schools and school environments, and responses to violence and crime at school.

Information was gathered from an array of sources including:

- National Crime Victimization Survey (NCVS) (1992-2005)
- School Crime Supplement to the National Crime Victimization Survey (1995, 1991, 2001, 2003, and 2005)
- Youth Risk Behavior Survey (1993, 1995, 1997, 1999, 2001, 2003, and 2005)
- School Survey on Crime and Safety (1999-2000, 2003-04, and 2005-06)
- School and Staffing Survey (1993-94, 1999-2000, and 2003-04)

Highlights include the following:

- From July 1, 2005, through June 30, 2006, there were 35 school-associated violent deaths in elementary and secondary schools in the United States.
- In 2005-06, 78 percent of schools experienced one or more violent incidents of crime, 17 percent experienced one or more serious violent incidents, 46 percent experienced one or more thefts, and 68 percent experienced another type of crime.
- In 2005, approximately 6 percent of students ages 12-18 reported that they avoided school activities or one or more places in school because they thought someone might attack or harm them.

School Crime and Safety: 2007 is available on BJS website at:

<http://www.ojp.usdoj.gov/bjs/abstract/iscs07.htm>.

Capital Punishment, 2006

This report presents characteristics of persons under sentence of death on December 31, 2006, and of persons executed in 2006 from the [NPS-8 data collection](#). Tables present state-by-state information on the movement of prisoners into and out of death sentence status during **2006**, status of capital statutes, and methods of execution. Numerical tables also summarize data on offenders' gender, race, Hispanic origin, age at time of arrest for capital offense, legal status at time of capital offense, and time between imposition of death sentence and execution.

The tables are based on those presented in [Capital Punishment, 2005](#) with the following change: table 3, which reported information on minimum age authorized for capital punishment, has been discontinued and replaced with a table summarizing federal laws providing for the death penalty (formerly Appendix Table 1). See <http://www.ojp.usdoj.gov/bjs/pub/html/cp/2006/cp06st.htm>.

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Your Bookshelf on Review

The Wisdom of a Corrections Leader

Don Evans: The Musings of a Community Corrections Legend. Edited by the staff of the American Probation and Parole Association. Lexington, Kentucky: American Probation and Parole Association, 2008, 383 pp., \$40.00 (leather), \$14.00 (paper).

Reviewed by Dan Richard Beto, Editor, *Executive Exchange*, Huntsville, Texas

Perhaps no person has had a greater impact on correctional organizations than Donald G. Evans, President of the Board of the Canadian Training Institute in Toronto, Ontario, who has served as President of the American Probation and Parole Association and the International Community Corrections Association. Moreover, he has served on various boards and committees of the American Correctional Association, National Association of Probation Executives, and a host of other criminal justice organizations. He has also traveled the world to study other justice systems and to participate in international corrections conferences.

In addition to his involvement in professional organizations, Don has recorded an impressive history of government service in Canada that spans four decades. As a result of his career in criminal justice, coupled with his unquenchable thirst for knowledge and a commitment to disseminating what he has learned, Don has contributed prolifically to criminal justice literature. From 1982 to the present, Don has published over 150 articles and book reviews in journals peculiar to the criminal justice profession. His scholarship has appeared in such publications as *Executive Exchange*, *Corrections Today*, *Correctional Options*, *Perspectives*, *Journal of Community Corrections*, *The Police Governor*, *Corrections Management Quarterly*, *CEP Bulletin*, *Texas Probation*, *The Volunteer Newsletter*, *Coast to Coast*, and the *Canadian Journal of Sociology*.

This year the American Probation and Parole Association, with the assistance of the National Association of Probation Executives, American Correctional Association, and the International Community Corrections Association, published a collection of most of Don's writings. In the book's foreword, Carl Wicklund, Executive Director of the American Probation and Parole Association, writes:

This collection of articles, interviews, and essays written by Don Evans was created to honor and record his role in the development of a variety of community corrections practices and policies that serves as a lasting legacy of a respected and valued professional.

Canadian Don Evans has served as a leader, historian, sounding board, arbitrator, confidant, mentor, voice of reason, ambassador, harbinger, keynote presenter, scribe and a number of other roles for myriad permanent and ad hoc groups concerned with community corrections in the United States, Canada and throughout the world. He is internationally recognized for his insights, knowledge, worldview

and forward thinking that have been presented through his speeches, training programs, consultations and writings. Most people who have paid attention to the evolution of community corrections over the past thirty plus years know of Don Evans or have read some pieces he has written on a subject related to community corrections.

The book is divided into a number of sections: book reviews; criminal justice collaborations; specific issues; offender supervision; reentry; substance abuse; what works; youth violence; and the American Probation and Parole Association. Information on successful correctional practices and initiatives, a historical perspective of trends in the criminal justice system, and insights in leadership may be found in this volume.

Carl Wicklund and the staff at the American Probation and Parole Association are to be commended for producing this lasting tribute to a wise correctional leader. Likewise, we are indebted to Don Evans for his willingness to share his wisdom and experiences with us. *Don Evans: The Musings of a Community Corrections Legend* is an excellent resource that should be in the personal libraries of all serious corrections practitioners.

As a closing thought, because Don remains active and continues to contribute to the scholarship of the corrections profession, APPA would be well advised to plan for a Volume II.

Dan Richard Beto is Editor, *Executive Exchange*, National Association of Probation Executives, Huntsville, Texas.

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Community Safety and Crime Prevention

Crime Prevention in America.

By Dean John Champion. Pearson Prentice Hall, Upper Saddle River, New Jersey, 2007, 543 pp., \$71.20 paper.

Reviewed by Donald G. Evans
Toronto, Ontario

Public fear of crime, whether real or imagined, continues as a major subject of public discourse and informs political responses to crime. One positive result of this trend has been the emphasis placed on the prevention of crime and efforts at improved security measures in all aspects of urban life. At the same time, an interest has developed in evidence-based policy making and this is driving both the academic and practitioner communities to evaluate programs contributing to crime prevention.

Dean John Champion from Texas A & M International University in Laredo has compiled a very interesting and useful collection of articles dealing with crime prevention. His book is divided into six sections, covering the history of crime prevention, law enforcement, courts, corrections, and juvenile justice efforts related to the prevention of crime and delinquency. The last section of the book is comprised of a number of evaluations of prevention programs. This is a large volume of 51 chapters and well over half of the chapters are devoted to the critical area of program evaluations and the policy implications for future programming.

The author opens each section with an informative introduction that assists the reader to contextually place the articles that follow. The author's contribution on the history of crime prevention in the United States is a concise and careful overview that is a worthwhile read for any one new to this topic. In the section on law enforcement efforts, the article by Byrne and Hummer on the role of police in reentry partnerships provides a good examination of this issue. Among the articles in the court section, the article on listening to victims is a thought-provoking critique of restorative justice policy and practice.

Two articles in the correctional section caught my attention. The first discusses understanding

and responding to the needs of parole violators. This is a subject that demands more examination, especially with the expected increase in the use of parole in some jurisdictions. The second article deals with offender resistance in counselling and is a useful and practical introduction to engaging offenders in therapeutic efforts. The article on what works in juvenile justice outcome measurement in the section on delinquency prevention is another article worthy of a close and careful reading.

The last section, dealing with program evaluations, is the largest in the book and covers a greater number of program areas. Champion's book provides plenty of material that can be used in classroom settings and in the various agencies that cover the justice field. Among the program evaluations contained here are evaluations of electronic monitoring, problem-solving probation, and the effectiveness of parole. Two other good pieces worth reading are Byrne and Taxman's examination of targeting for reentry and Cullen, Eck, and Lowenkamp's discussion of environmental corrections as a paradigm for effective probation supervision.

I believe this book will be very useful in either a college classroom or agency staff training setting for three reasons. First, the book is exhaustive, covering every facet of the criminal justice system. Second, the introductory preface to each section and the questions for review and discussion that follow each article serve as springboards for further examination. And finally, the majority of the articles have been culled from the journals and newsletters of practitioner associations or organizations, such as *Federal Probation*, *Corrections Today*, and *Perspectives*. Champion has done a service to corrections professions by gathering together this collection and making the articles available to a larger audience than the authors could ever hope to have reached.

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Timely Intervention

Social Work in Juvenile and Criminal Justice Settings (3rd edition). Edited by Albert R. Roberts and David W. Springer; forward by Dean Barbara W. White. Charles C. Thomas Publisher, 2007; 438 pages (\$69.95).

Reviewed by Kenneth Hardin, Student in the Department of Political Science and Criminal Justice, University of South Alabama.

Social Work in Juvenile and Criminal Justice Settings explores historical and contemporary efforts by social workers to provide services to criminal justice clientele. Many authors (approximately 40 contribute to this collection) outline the benefits of counseling and therapeutic programming for the offender – especially the young offender. The subject of crisis intervention for the crime victim is also presented. The book furnishes a broad overview of the social work profession and encompasses the role that it plays in law enforcement, judicial, and correctional processes. This book is divided into six sections, among which are: *Evolving Trends, Policies, and Practices*, *Juvenile Justice Policies and Practices*, and *Probation, Parole, and Court Settings*. Overall, there are thirty-one chapters.

Generally, chapters emphasize the importance of early intervention and treatment. The reader will quickly learn that one reward for timely intervention is crime prevention. Prevention reduces the personal costs associated with victimization as well as the financial costs associated with investigating, apprehending, prosecuting and punishing the offender. For each offender that is successfully treated and reformed, society is spared untold loss.

Evidence strongly links poor attendance and a failure to complete treatment with recidivism. This work also discusses the lack of attention given to the mental health of the juvenile offender, as well as the effects associated with programs that might best be described as understaffed and under-funded. The authors also observe that current get-tough initiatives aimed at the adult offender are becoming increasingly popular when dealing with the delinquent.

The authors present many actual cases of offenders. These cases reveal the intricacies of criminality and the difficulty of addressing underlying causes. Concerns are raised about the hesitancy of the government to adopt a reform orientation, with some authors arguing that this lack of interest may perpetuate criminality. Much of the coverage concerning policy and offender-reform is found in the chapter titled “Correctional Policies: Evolving Trends,” where policy is considered within the larger framework of rehabilitation.

Interestingly, the case of Michael Purcell is offered as evidence of this official hesitancy. Purcell, a 37-year-old felon on school-furlough, was attending the University of Alaska-Anchorage. By all accounts he was a model student. However, when he sought entry into the social work program, he was refused, based upon his criminal record. Purcell’s experience illustrates the common practice of excluding felons from programs that might be personally and socially beneficial. This case and others like it depict problems associated with offender reform, offender reintegration, and the lasting stigma attached to formalized criminal justice processing.

Another issue addressed in this book is the relationship between courts and minors. It is alleged that the practice of *parens patriae* is occasionally ignored or misunderstood by some officials. Carolyn Needleman, author of the chapter on “Conflicting Philosophies of Juvenile Justice,” attributes this problem not only to a lack of understanding by some officials, but also to the detrimental effects of exceedingly large dockets. Another interesting topic included in this book is the Nurturing Practice Model (NPM) of treatment. Described in Chapter 16, this model helps parents and troubled youth develop a renewed sense of direction and self worth, countering the effects of harsh sentencing on youthful offenders. This chapter suggests that while harsh punishments have their place when dealing with young offenders, reform should continue to be the goal of the juvenile justice professional. By retaining a reform orientation, these professionals may be sparing youthful offenders future entry into the adult system. Again, early intervention is touted as the preferred method of dealing with the juvenile offender whenever possible.

As one of the most comprehensive books of its kind, this collection is likely to remain required reading for those interested in the social sciences. It is organized and written in a manner that readily lends itself to undergraduate and graduate coursework. Exceeding 400 information-packed pages, it can also serve as a valuable reference tool for the criminal justice professional. The reader will not be disappointed in the amount of information contained therein. I heartily recommend this collection as a well-rounded presentation of the spectrum of social work efforts within the criminal justice setting.

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The Influence of Social Distance on Community Corrections Officer Perceptions of Offender Reentry Needs

^{1.} Please direct all correspondence to Jacqueline Helfgott, Criminal Justice Department, Seattle University, 901 12th Ave., P.O. Box 222000, Seattle, WA 98122-1090, jhelfgot@seattleu.edu. This research was made possible due to a grant award from the College of Arts and Sciences at Seattle University. This research was presented at the Western Society of Criminology Annual Meeting in Seattle, Washington, February, 2006.

We are grateful to Mac Pevey and Keven Bovenkamp from the Washington State Department of Corrections and Bill Corn and Tim McTighe from United States Probation and Pretrial Services for their support, assistance, and for making the study possible.

Special thanks to our research assistant Tania Reyes who was instrumental in collecting the data for this investigation.

^{2.} Helfgott (1997) suggested that if prisons are ecologically constructed so that prisoners have opportunities to make meaningful choices to live constructively while incarcerated, communities must also provide opportunities and niches to enable ex-offenders to reintegrate successfully into society upon release

^{3.} While this value is below the often cited .70 level recommended by Nunnally (1978) and others (e.g., Carmines & Zeller, 1979), Devellis (1991) indicates that alpha coefficients between .65 to .70 are minimally acceptable.

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"Looking at the Law"

A Guide to Statutory Retroactivity in the Revocation Context

^{i.} A "retroactive statute" is a new "law [that] changes the legal consequences of acts completed before its effective date." *Weaver v. Graham*, 450 U.S. 24, 31 (1981); see also *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 (1994) ("[a] court must ask whether the new provision attaches new legal consequences to events completed before its enactment"); Charles B. Hochman, *The Supreme Court and the Constitutionality of Retroactive Legislation*, 73 Harv. L. Rev. 692, 692 (1960) ("A retroactive statute is one which gives to preenactment conduct a different legal effect from that which it would have had without the passage of the statute.") (footnote omitted).

^{ii.}

□ See Art. I, § 9, cl. 3 (“No Bill of Attainder or ex post facto Law shall be passed.”) & Art. I, § 10, cl. 1 (“No state . . . shall pass any ex post facto law, or law impairing the obligation of contracts.”).

iii. 3 U.S. (3 Dall.) 386 (1798).

iv. *Id.* at 390 (emphasis omitted).

v. See *Johnson v. United States*, 529 U.S. 694, 699 (2000); *California Dep’t of Corrs. v. Morales*, 514 U.S. 499, 506-07, n.3 (1995).

vi. 529 U.S. 694 (2000).

vii. Pub. L. No. 103-322, §110505, 180 Stat. 1796, 2016-17 (1994).

viii. *Johnson*, 529 U.S. at 701-02; *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991).

ix. See, e.g., *United States v. Abbington*, 144 F.3d 1003, 1005 (6 th Cir. 1998); *United States v. Page*, 131 F.3d 1173, 1175-76 (6 th Cir. 1997).

x. See, e.g., *United States v. Lominac*, 144 F.3d 308, 315 n.9 (4 th Cir. 1998); *United States v. Dozier*, 119 F.3d 239, 242 n.2 (3d Cir. 1997); *United States v. Collins*, 118 F.3d 1394, 1397 (9th Cir. 1997). Prior to the VCCA’s enactment, two circuit’s presciently had held that § 3583(e) potentially could serve as a basis for reimposing a further term of supervised release after revocation. See, e.g., *United States v. O’Neil*, 11 F.3d 292, 301 (1 st Cir. 1993); *United States v. Schrader*, 973 F.2d 623, 624-35 (8 th Cir. 1992). The majority of the circuits had held that there was no pre-VCCA authority to reimpose a term of supervised release after revocation. See, e.g., *United States v. Malesic*, 18 F.3d 205, 205-06 (3d Cir. 1994); *United States v. Truss*, 4 F.3d 437, 439 (6th Cir. 1993); *United States v. Tatum*, 998 F.2d 893, 895-96 (11th Cir. 1993); *United States v. Rockwell*, 984 F.2d 1112, 1116-17 (10th Cir. 1993); *United States v. McGee*, 981 F.2d 271, 274-76 (7th Cir. 1992); *United States v. Koehler*, 973 F.2d 132, 134-36 (2d Cir. 1992); *United States v. Cooper*, 962 F.2d 339, 341-42 (4th Cir. 1992); *United States v. Holmes*, 954 F.2d 270, 272-73 (5th Cir. 1992); *United States v. Behnezhad*, 907 F.2d 896, 898-99 (9th Cir. 1990). Subsection (h) was Congress’s response to the Sentencing Commission’s written request that Congress amend the Sentencing Reform Act “to grant sentencing judges the power the majority courts wish they had and the minority courts have found them to have already.” *Malesic*, 18 F.3d at 206 & n.2.

xi. *Johnson*, 529 U.S. at 702.

xii. *Id.* at 713.

xiii. *Id.* at 700.

xiv. “[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and embodies a legal doctrine centuries older than our Republic.” *Landgraf*, 511 U.S. at 265; see also *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 311-12 (1994) (“The principle that statutes operate only prospectively, while judicial decisions operate retrospectively, is familiar to every law student.”).

xv. *Johnson*, 529 U.S. at 701-02 (“The *Ex Post Facto* Clause raises to the constitutional level one of the most basic presumptions of our law: legislation, especially of the criminal sort, is not to be applied retroactively. . . . Quite independent of the question whether the *Ex Post Facto* Clause bars retroactive application of § 3583(h), then, there is the question whether Congress intended such application. Absent a clear statement of that intent, we do not give retroactive effect to statutes burdening private interests.”) (emphasis added).

xvi. 511 U.S. 244 (1994); see also *Lynce v. Mathis*, 519 U.S. 891, 895 (1997) (“The presumption against the retroactive application of new laws is an essential thread in the mantle

of protection that the law affords the individual citizen.”).

^{xvii.} *Landgraf*, 511 U.S. at 265.

^{xviii.} *Id.* at 268-69 (quoting *Society for Propagation of the Gospel v. Wheeler*, 22 F. Cas. (C.C.D.N.H.) (No. 13,156) 756, 767 (1814) (interpreting ban on retrospective legislation in the New Hampshire Constitution)).

^{xix.} 519 U.S. 433 (1997).

^{xx.} *Id.* at 439-40 (emphasis added).

^{xxi.} *Johnson*, 529 U.S. at 701 (citing *Landgraf*, 511 U.S. at 270).

^{xxii.} *Landgraf*, 511 U.S. at 269.

^{xxiii.} *Id.* at 273-74.

^{xxiv.} *Landgraf*, 511 U.S. at 274.

^{xxv.} *Id.* at 275.

^{xxvi.} *Id.*

^{xxvii.} *Id.* at 268.

^{xxviii.} *Johnson*, 529 U.S. at 702; *see also Lynce*, 519 U.S. at 895; *Landgraf*, 511 U.S. at 265.

^{xix.} The concerns about fairness, settled expectations, and an *ex post facto* increase in punishment that underlie the presumption against retroactivity (as discussed in *Landgraf*, 511 U.S. at 265) would be absent or greatly diminished if the retroactive application of a more lenient sanction was at issue. The presumption against retroactivity would likely to be correspondingly weaker, and the inclination to revert to the common law practice of imposing the recent legislation with a more lenient sanction (discussed *infra*) greater.

^{xxx.} The Supreme Court described the “universal common-law rule” of abatement as follows:

[W]hen the legislature repeals a criminal statute or otherwise removes the State’s condemnation from conduct that was formerly deemed criminal, this action requires the dismissal of a pending criminal proceeding charging such conduct. The rule applies to any such proceeding, which, at the time of the supervening legislation, has not yet reached final disposition in the highest court authorized to review it.

Bell v. Maryland, 378 U.S. 226, 230 (1964).

^{xxxi.} *See United States v. Tynen*, 78 U.S. (11 Wall.) 88, 20 L.Ed. 153 (1871) (dismissing indictment because of subsequent congressional repeal of criminal enactment); *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801) (penalties should be abated if law amended before final judgment); *see also Bradley v. United States*, 410 U.S. 605, 611 (1973) (Repeal of a criminal statute resulted in the abatement of “all prosecutions which had not reached final disposition in the highest court authorized to review them.”); *United States v. Chambers*, 291 U.S. 217, 223-24 (1934) (prosecution for violation of National Prohibition Act cannot continue with repeal of Eighteenth Amendment by ratification of the Twenty-First Amendment.).

^{xxxii.} *Payne v. State*, 688 N.E.2d 164, 165 (Ind. 1997) (“when the legislature enacts an ameliorative amendment without including a specific savings clause,” defendant can be sentenced under the more lenient version of the statute); *Sekt v. Justice’s Ct.*, 26 Cal 2d 297, 159 P.2d 17 21-22 (Cal. 1945) (“Where the later statute reduces the punishment the cases quite uniformly hold that the offender may be punished under the new law, and that the repeal by amendment of the old punishment does not operate to free the offender from all punishment.”); *Lindsey v. State*,

65 Miss. 542, 5 So. 99, 100 (Miss. 1888) (where an amendment clearly mitigates punishment, the more lenient provision can be applied retroactively; if the relative severity of the old and new law is ambiguous, abatement requires dismissal of pending charges and *ex post facto* concerns preclude punishment under the amended statute).

[xxxiii.](#) Congress enacted its first general savings provision in 1871 “to obviate mere technical abatement.” *Hamm v. City of Rock Hill*, 379 U.S. 306, 314 (1964); *see also Warden v. Marrero*, 417 F.2d 653, 660 (1974).

[xxxiv.](#) *See, e.g., Warden v. Marrero*, 417 U.S. 653, 660 (1974) (general savings clause applies to repeals followed by reenactments); *Fujitsu Ltd. v. Federal Exp. Corp.*, 247 F.3d 423, 432 (2d Cir. 2001); *Martin v. United States*, 989 F.2d 271, 274 (8th Cir. 1993); *United States v. Stillwell*, 854 F.2d 1045, 1048 (7th Cir. 1988); *United States v. Breier*, 813 F.2d 212, 215 (9th Cir. 1987); *United States v. Mechem*, 509 F.2d 1193, 1194 n.3 (10th Cir. 1975).

[xxxv.](#) *See United States v. Smith*, 354 F.3d 171, 173 (2d Cir. 2003) (“[I]t is the law at the time of the offense, including those provisions relating to supervised release, that governs. Second, the federal ‘saving statute’ preserves the original penalties in effect when Smith committed the offense, including those relating to supervised release.”).

[xxxvi.](#) *See* 18 U.S.C. § 3565(a) (1993) (“[I]f a defendant is found by the court to be in possession of a controlled substance . . . the court shall revoke the sentence of probation and sentence the defendant to not less than one-third the original sentence.”); *Id.* § 3583(g) (1993) (“If the defendant is found by the court to be in the possession of a controlled substance, the court shall terminate the term of supervised release and require the defendant to serve in prison not less than one-third of the term of supervised release.”).

[xxxvii.](#) *See, e.g., United States v. Hancox*, 49 F.3d 223, 225 (6th Cir. 1995) (collecting cases); *United States v. Baclaan*, 948 F.2d 628, 630 (9th Cir. 1991) (upholding the district court's finding of possession based on four positive drug tests and the defendant's admission of use); *United States v. Dow*, 990 F.2d 22, 24 (1st Cir. 1993) (upholding the district court's finding of possession based on eleven positive drug tests).

[xxxviii.](#) 18 U.S.C. § 3565(b) (the VCCA also moved the mandatory revocation provision for controlled substance possession to subsection (b)); *Id.* § 3583(g).

[xxxix.](#) *Id.* § 3563(a).

[xl.](#) *Id.* § 3583(d) (“The court shall consider whether the availability of appropriate substance abuse treatment programs, or an individual's current or past participation in such programs, warrants an exception in accordance with United States Sentencing Commission guidelines from the rule of section 3583(g) when considering any action against a defendant who fails a drug test.”)

[xli.](#) *Id.* § 3583(e)(3).

[xlii.](#) Section 3583(g), as amended by the VCCA, provided:

Mandatory revocation for possession of controlled substance or firearm or for refusal to comply with drug testing. -- If the defendant --

1. possesses a controlled substance in violation of the condition set forth in subsection (d);
2. possesses a firearm, as such term is defined in section 921 of this title, in violation of Federal law, or otherwise violates a condition of supervised release prohibiting the defendant from possessing a firearm; or
3. refuses to comply with drug testing imposed as a condition of supervised release;

the court shall revoke the term of supervised release and require the defendant to serve a term of imprisonment not to exceed the maximum term of imprisonment authorized under subsection

(e)(3).

18 U.S.C. § 3583(g) (1994); *see also id.* § 3583(d).

^{xliii.} See U.S. Sentencing Guidelines Manual app. C, amend. 533, at 361-62 (1997).

^{xliv.} 1 U.S.C. § 109.

^{xliv.} A May 3, 1996, letter from OGC Assistant General Counsel David Adair to Chief Probation Officer David Miller regarding the effect of the savings statute on the VCCA ameliorative provisions stated:

The savings [statute] prevents a change in the law that results in a lighter punishment for an offense from applying to offenders who commit their offense prior to the change, unless Congress expressly provides for retroactive application.

The application of the savings [statute] to the drug testing and revocation provisions is unclear. But the savings [statute] has generally been applied only to the sentence for the offense; it has not been extended to the court's authority to sanction the offender for violation of release conditions. Until it has, I think the better policy is to apply these more favorable provisions immediately.

Letter from David Adair, May 3, 1996, to David Miller, Chief Probation Officer (May 3, 1996) (on file with the Office of General Counsel). Mr Adair reiterated this advice in a December 2000 *Federal Probation* article entitled *Revocation Sentences: A Practical Guide*, 54 Fed. Prob. 67, 69 (2000). In the article, Mr. Adair acknowledged that the Fourth Circuit in *United States v. Schaeffer*, 120 F.3d 505, 508-09 (4th Cir. 1997), disagreed with this view when it held that the originally applicable guideline range was binding in a revocation that occurred after the VCCA's effective date. Nonetheless, the letter stated that “[d]espite this holding, officers are still advised to recommend consideration of the treatment options . . . for pre-VCCA offenders unless and until there is more explicit authority to the contrary.” *Revocation Sentences*, 54 Fed. Prob. at 69.

^{xlvi.} 354 F.3d 171 (2d Cir. 2003).

^{xlvii.} *Id.* at 174. The Second Circuit had previously relied upon *Johnson* and refused to apply retroactively the amended version of § 3583(d) and (g) in *United States v. Wirth*, 250 F.3d 165 (2d Cir. 2001). In *Wirth*, the defendant's underlying offenses were committed in 1990 and 1991, but his supervised release violations did not occur until after the 1994 amendments became effective. Relying on *Johnson*'s holding that the law relating to supervised release in effect at the time of the initial offense governs a defendant's sentencing, the Second Circuit held that *Wirth*'s supervised release violation was governed by the pre-VCCA version of § 3583(g). *Id.* at 169-70.

^{xlvii.} *Smith*, 354 F.3d at 175.

^{xlix.} Pub. L. No. 107-273, 116 Stat. 1758 (November 2, 2002).

^{l.} 18 U.S.C. §§ 3565(b)(4) & 3583(g)(4). The other three bases for mandatory revocation are 1) possession of a controlled substance, 2) possession of a firearm in violation of federal law or a condition of probation or supervised release; and 3) refusal to comply with a drug testing condition. *Id.* §§ 3565(b)(1) - (3) & 3583(g)(1) - (3).

^{li.} Memorandum from John M. Hughes with attached OGC Analysis of DOJ Authorization Act to Chief Pretrial Services and Probation Officers (January 15, 2003) (on file with author).

^{lii.} Whether the §§ 3565(b)(4) and 3583(g)(4) positive drug test provisions are more lenient than the §§ 3565(b)(1) and 3583(g)(1) “drug possession” provisions is open to question. Prior to November 2002, the First, Third, Eighth, Ninth, and Eleventh Circuits held that positive drug tests were simply circumstantial evidence of drug possession; therefore, a positive drug test did not require a finding of drug possession and mandatory revocation under §§ 3565(b)(1) or

3583(g)(1). *See United States v. Pierce*, 132 F.3d 1207, 1208 (8th Cir. 1997) (district court had discretion whether to find possession based on a failed drug test); *United States v. Almand*, 992 F.2d 316, 318 (11th Cir. 1993) (upholding district court's "exercise [of] its factfinding power" in finding possession based on four positive drug tests, while noting that "there is no indication that the district court believed it was required to equate use with possession"); *United States v. Dow*, 990 F.2d 22, 24 (1st Cir. 1993) (upholding the district court's finding of possession based on eleven positive drug tests); *United States v. Baclaan*, 948 F.2d 628, 630 (9th Cir. 1991) (upholding the district court's finding of possession based on four positive drug tests and the defendant's admission of use); *United States v. Blackston*, 940 F.2d 877, 891 (3d Cir. 1991) (evidence of drug use is circumstantial evidence of possession and upholding the district court's finding of possession based on three positive drug tests and the defendant's admission of use). A persuasive argument could be made that Congress created the §§ 3565(b)(4) and 3583(g)(4) mandatory revocation provisions for three or more positive drug tests in a year to require *more punitive* treatment in the circuits that treated a positive drug test as merely *evidence* of drug possession. Under that interpretation, the *Ex Post Facto* Clause would bar retroactive application of §§ 3565(b)(4) and 3583(g)(4), even if the Act had specified that courts must apply the provisions retroactively.

^{lii} *Landgraf*, 511 U.S. at 272 (quoting *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988)); *see also Johnson*, 529 U.S. at 701 ("Quite independent of the question whether the *Ex Post Facto* Clause bars retroactive application of § 3583(h), then, there is the question whether Congress intended such application. Absent a clear statement of that intent, we do not give retroactive effect to statutes burdening private interests.").

^{liv} Revised Memorandum from John M. Hughes with attached OGC Analysis of DOJ Authorization Act to Chief Pretrial Services and Probation Officers (January 15, 2003) (on file with author, and available at http://jnet.ao.dcn/img/assets/5005/21st_CentReaut_rev.pdf).

^{lv} *See* Letter from Joe Gergits, Assistant General Counsel, to Karl Acosta, Probation Officer (November 1, 2005) (on file with the author).

^{lvi} 368 F.3d 994 (8 th Cir. 2004).

^{lvii} *Id.* at 995.

^{lviii} *See Smith*, 354 F.3d 171, 174-75 (Section 109 requires courts to apply pre-1994 law governing supervised release violations to defendants whose offenses occurred before 18 U.S.C. § 3583 was amended); *United States v. Schaefer*, 120 F.3d 505, 507-08 (4 th Cir. 1997) (same); *see also Wirth*, 250 F.3d at 169-70 (Because the offense was committed prior to the 1994 amendment to § 3583 that created the "drug treatment exception" to mandatory revocation for a positive drug test, the district court was precluded from applying the exception and was obliged to impose a mandatory revocation sentence of one-third the period of supervised release).

^{lix} Pub. L. No. 109-248, 120 Stat 587 (July 27, 2006).

^{lx} Section 2250 provides:

(a) In general.--Whoever--

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or

(B) *travels* in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) Affirmative defense.--In a prosecution for a violation under subsection (a), it is an affirmative defense that--

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

18 U.S.C. § 2250(a)-(b) (emphasis added).

^{lxii} 28 C.F.R. § 72.1-3. On May 30, 2007, the Attorney General issued further guidelines for the interpretation and implementation of SORNA that reiterated that SORNA applies to offenders convicted prior to a jurisdiction's implementation of sex offender registration requirements. 92 F.R. 30210-01, ¶C, 2007 WL 1540140.

^{lxiii} See, e.g., *United States v. Smith*, 528 F. Supp.2d 615, 619 (S.D. W. Va. 2007); *United States v. Gill*, 520 F. Supp.2d 1341, 1349 (D. Utah 2007); *United States v. Kapp*, 487 F. Supp.2d 536, 543 (M.D. Pa. 2007); *United States v. Heriot*, Cr. No. 3:07-323, 2007 WL 2199516, at *2 (D.S.C. July 27, 2007), *United States v. Muzio*, No. 4:07CR179 CDP, 2007 WL 2159462, at *6-7 (E.D. Mo. July 26, 2007), and *United States v. Cole*, No. 07-cr-30062-DRH, 2007 WL 2714111, at *3 (S.D. Ill. Sept. 17, 2007).

^{lxiii} See, e.g., *United States v. Deese*, No. CR-07-167-L, 2007 WL 2778362 (W.D. Okla. Sept. 21, 2007); *United States v. Sallee*, No. CR-07- 152-L, 2007 WL 3283739 (W.D. Okla. Aug. 13, 2007).

^{lxiv} *United States v. Smith*, 481 F. Supp.2d 846, 852 (E.D. Mich. 2007) (state law obliged the offender to register within 10 days; § 2250 is not a continuing offense where an individual can be prosecuted separately for each day he fails to register after the 10th day).

^{lxv} This advice is offered in the absence of binding precedent at the time this article was written. Needless to say, officers should ignore this advice and comply with any subsequent binding circuit court precedent or contrary ruling by a district judge with jurisdiction over a case.

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