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SECOND CHANCE: ESTABLISHING A REENTRY PROGRAM IN THE NORTHERN DISTRICT OF ILLINOIS

BY HON. JOAN GOTTSCHALL AND MOLLY ARMOUR*

After two years of planning, on April 1, 2010, the Northern District of Illinois launched its first reentry program—the James B. Moran Second Chance Program. This article is intended to shed light on the process of establishing this program, which has as its goals the effective integration of former federal prisoners into our communities and the reduction of recidivism.

The rate of imprisonment in the United States is extremely high. Our nation's prisons and jails confine approximately 2.3 million people, or nearly one out of every 100 Americans.¹ This substantial rate of incarceration affects not just individual pris-

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¹ Lauren E. Glaze, *Correctional Populations in the United States, 2009*, BUREAU OF JUSTICE STATISTICS 1-2 (Dec. 2010), <http://bjs.ojp.usdoj.gov/content/pub/pdf/cpus09.pdf>. In 2009, there were 7,225,800 people under correctional supervision, representing “about 3.1% of adults in the U.S. resident population, or 1 in every 32 adults.” *Id.* Over five million of these people are being supervised in the community. *Id.* at 2.

oners, but also their families and communities.² Nearly two million American children have a parent behind bars.³

And, each year, approximately 700,000 people leave prison and return to their communities.⁴ Many do so with hopes and dreams for a productive, law-abiding life. Yet, releasees face real obstacles which too often frustrate these hopes. Frequently, former offenders return to the community poorly educated, with substance abuse or mental health problems, and lacking positive support systems, access to housing⁵ or savings.⁶ These impediments to successful reentry are further hampered by the nega-

² See generally Marcia Fersten et al., *From Prison to Home: The Effect of Incarceration on Children, Families, and Communities* (Jan. 2002), <http://aspe.hhs.gov/hsp/prison2home02/conf-sum/report.pdf> (conference report prepared for Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, Substance Abuse and Mental Health Services Administration, surveying the impact of incarceration on families and communities).

³ Lauren E. Glaze & Laura M. Maruschak, *Parents in Prison and Their Minor Children*, BUREAU OF JUSTICE STATISTICS 1-2 (2008, revised 2010), <http://www.bjs.gov/content/pub/pdf/pptmc.pdf>. These numbers have increased, year after year. See *id.*; Christopher J. Mumola, *Incarcerated Parents and their Children*, BUREAU OF JUSTICE STATISTICS, 1 (Aug. 2000), <http://bjs.ojp.usdoj.gov/content/pub/pdf/iptc.pdf>.

⁴ William J. Sabol, Heather C. West & Matthew Cooper, *Prisoners in 2008*, BUREAU OF JUSTICE STATISTICS 3 (Dec. 2009), <http://bjs.ojp.usdoj.gov/content/pub/pdf/p08.pdf>. “Re-entry is the process of transition that these individuals, who are predominantly male and disproportionately nonwhite, make from prison or jail to the community.” COUNCIL OF STATE GOV’TS, REPORT OF THE RE-ENTRY POLICY COUNCIL: CHARTING THE SAFE AND SUCCESSFUL RETURN OF PRISONERS TO THE COMMUNITY xviii (2004), <http://reentrypolicy.org/publications/1694;file>. See also Sabol et al., *supra* at 2.

⁵ Sen. Claire McCaskill, *Next Steps in Breaking the Cycle of Reoffending: A Call for Reentry Courts*, 20 FED. SENT’G REP. 308, 308 (2008) (“[M]any ex-inmates cannot find safe, stable housing arrangements. In major urban areas, 30 to 50 percent of parolees are homeless.”).

⁶ Joan Petersilla, *Prisoner Reentry: Public Safety and Reintegration Challenges*, 81 PRISON JOURNAL 360, 364-65 (2001); Joan Petersilla, *When Prisoners Return to the Community: Political, Economic, and Social Consequences*, U.S. DEPARTMENT OF JUSTICE (Nov. 2000), <https://www.ncjrs.gov/pdffiles1/nij/184253.pdf> [hereinafter Petersilla, *When Prisoners Return to the Community*] (from Executive Sessions on Sentencing and Corrections, No. 9)

tive effect that a criminal record has on employment prospects.⁷ Moreover, many releasees lack access to resources and information to help address these issues. Of those released to supervision, two-thirds will be rearrested within three years.⁸ Senator Claire McCaskill, a strong advocate for reentry support, has noted that alarming numbers of former offenders suffer from addiction.⁹ Indeed, “[f]ifty-three percent of State and 45% of Federal prisoners met the DSM-IV criteria for drug dependence or abuse,” yet only 15% of State prisoners and 17% of federal prisoners received treatment while imprisoned.¹⁰ In short, “the United States is in the midst of a reentry crisis.”¹¹

Over a decade ago, Attorney General Janet Reno began supporting the development of systematic reentry initiatives in an empty field.¹² While family and community members have long known about the vast need for reentry services, there is now a growing popular and institutional recognition that releasees’

⁷ Harry Holzer, Steven Rafael & Michael Stoll, *Employment Barriers Facing Ex-Offenders*, THE URBAN INSTITUTE REENTRY ROUNDTABLE DISCUSSION PAPER 2-4 (2003), http://www.urban.org/uploadedPDF/410855_holzer.pdf (updated Sept. 12, 2011). Employment prospects are further impeded by many former offenders’ lack of drivers’ licenses and the accumulation, before they were incarcerated, of many convictions and substantial fines for driving without a license and (especially for former substance abusers) for driving under the influence.

⁸ Petersilla, *When Prisoners Return to the Community*, *supra* note 6, at 3. On average, 40% of releasees return to prison within that time period. *The Revolving Door of America’s Prisons*, PEW CENTER ON THE STATES, STATE OF RECIDIVISM 1-2 (2011), http://www.pewcenteronthestates.org/uploadedFiles/Pew_State_of_Recidivism.pdf [hereinafter PEW CENTER, STATE OF RECIDIVISM] (analyzing the cost of recidivism in the states).

⁹ McCaskill, *supra* note 5, at 308.

¹⁰ Christopher J. Mumola & Jennifer C. Karberg, *State and Federal Prisoners, 2004*, BUREAU OF JUSTICE STATISTICS 1 (Oct. 2006, updated Jan. 2007), <http://bjs.ojp.usdoj.gov/content/pub/pdf/dudsf04.pdf>.

¹¹ McCaskill, *supra* note 9, at 308.

¹² Jeremy Travis, *Reflections on the Reentry Movement*, 20 FED. SENT’G. REP. 84, 84 (2007). See also Janet Reno, U.S. Attorney General, Remarks on Reentry Court Initiative before the John Jay College of Criminal Justice (Feb. 10, 2000), available at <http://www.usdoj.gov/ag/speeches/2000/doc2.htm> (updated Sept. 12, 2011).

chances for successful reintegration and continued law-abiding behavior require more intensive intervention than we have provided in the past. In 2008, former President George W. Bush signed into law the Second Chance Act, a bipartisan effort which was intended to help break the recidivism cycle by fostering and funding transitional and skill-building programs for offenders returning to the community.¹³ President Barack Obama and Attorney General Eric Holder have repeatedly emphasized the importance of reentry programs in reducing recidivism and successfully reintegrating former prisoners into the job market and the community.¹⁴ In an April 2011 address to Department of Justice employees, Attorney General Holder framed support for reentry initiatives as an “economic imperative” and a “moral obligation” and prioritized funding for reentry research.¹⁵ The Obama administration proposed \$187 million for reentry and jail diversion programs for 2012, an increase over the previous year.¹⁶ In Congress, a bipartisan team of Senators recently in-

¹³ Second Chance Act of 2008, Pub. L. No. 110-99, 122 Stat. 657 (2008). Second Chance was championed by both parties and was developed primarily by Representative Danny Davis, a Democrat from Chicago, and then-Representative, now-Senator Robert Portman, a Republican from Ohio. Editorial, *The Price of Prisons*, N.Y. TIMES, June 26, 2004, available at <http://www.nytimes.com/2004/06/26/opinion/the-price-of-prisons.html>.

¹⁴ In early 2011, Attorney General Holder convened a cabinet-level Reentry Council, which aimed “to make communities safer by reducing recidivism and victimization; to assist those returning from prison and jail in becoming productive, tax paying citizens; and to save taxpayer dollars by lowering the direct and collateral costs of incarceration.” Press Release, Dep’t of Public Affairs, Dep’t of Justice, Attorney General Eric Holder Convenes Inaugural Cabinet-Level Reentry Council: Interagency Meeting Focuses on Reducing Recidivism, Saving Taxpayer Dollars, Making Communities Safer (Jan. 5, 2011), available at <http://www.justice.gov/opa/pr/2011/January/11-ag-010.html>.

¹⁵ Press Release, Dep’t of Justice, Attorney General Eric Holder Speaks About the Department of Justice’s Priorities and Mission (Apr. 25, 2011), available at <http://www.justice.gov/iso/opa/ag/speeches/2011/ag-speech-110425.html>.

¹⁶ OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF U.S. GOVERNMENT FISCAL YEAR 2012 107 (2011), available at http://www.whitehouse.gov/files/documents/budget_2012.pdf ; OFFICE OF MANAGEMENT AND BUDGET, BUDGET OF U.S. GOVERNMENT FISCAL YEAR 2011 97 (2010) [hereinafter

roduced the Second Chance Reauthorization Act of 2011, intended to resurrect the Second Chance Act, which expired in 2010.¹⁷ Similarly, in the judicial branch, there has been a sea change in how courts handle prisoner reentry into society.

I. HISTORY AND DEVELOPMENT OF REENTRY PROGRAMS

Reentry programs have been established in both the state and federal criminal justice systems to address the needs of returning former prisoners. These programs have their genesis in state drug courts and other problem-solving courts, which came into prominence in the 1990s.¹⁸ Generally speaking, drug courts at-

OMB, FISCAL YEAR] (requesting \$144 million for reentry resources). In the present economic climate, Congress may appropriate far less.

¹⁷ Second Chance Reauthorization Act of 2011, S. 1231, 112th Cong. (2011). The Second Chance Reauthorization Act of 2011 (SCRA) was introduced by Senator Patrick Leahy (D-Vermont)—who was an original sponsor of the Second Chance Act—and was co-sponsored by Senator Richard Blumenthal (D-Connecticut); Senator Richard Durbin (D-Illinois), Senator Al Franken (D-Minnesota), and Senator Rob Portman (R-Ohio). SCRA was approved by the Judiciary Committee on July 21, 2011 and reported to the floor. *See id.*

The SCRA would shift much of the funding from reentry research to actual implementation of reentry services, while lowering funding to existing appropriation levels. *See* S. 1231, 112th Cong. (2011); Press Release, Office of Senator Patrick Leahy, Leahy, Portman Introduce Bill to Help States Keep Ex-Offenders From Returning to Crime (June 20, 2011), *available at* http://leahy.senate.gov/press/press_releases/release/?id=92818a73-a890-415a-b28d-b10d24b50a04

¹⁸ “The drug court movement began in 1989 with the establishment of the first drug court in Dade County, Florida. This model defined a new, hands-on role for the court in managing the processing and treatment of offenders who were in the criminal justice system for substance use or abuse issues (Egbert, Church and Byrnes, 2006).” Amy Farrell, *Evaluation of the Court Assisted Recovery Effort (C.A.R.E.) Program*, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS 1, Nov. 23, 2009 [hereinafter Farrell, *C.A.R.E. Evaluation*]. Drug court programs evolved “as a local response to increasing numbers of drug-related cases and expanding jail and prison populations. These programs are designed to use a court’s authority to reduce crime by changing defendants’ substance abuse behavior. Under this concept, in exchange for the possibility of dismissed charges or reduced

tempt to reduce crime and substance abuse by closely monitoring releasees' compliance with drug and alcohol abstinence protocols, by setting concrete performance benchmarks and by quickly responding to successes and failures.¹⁹ A core principal is the ongoing and active participation of judges in tracking participants' progress—in regularly meeting with participants, and praising or sanctioning them.²⁰ Offenders are encouraged to participate in such programs by the promise that if they comply with treatment requirements and achieve sobriety, they can avoid jail or shorten their sentence.²¹ Research has shown lower recidivism rates for drug court participants.²²

The demonstrable success of these drug courts prompted the development of state reentry programs, which incorporated similar principles²³ but aimed at reintegrating prisoners into society

sentences, defendants are diverted to drug court programs in which they agree to participate in judicially monitored substance abuse treatment.” *Adult Drug Courts: Evidence Indicates Recidivism Reductions and Mixed Results for Other Outcomes*, GOV'T ACCOUNTABILITY OFFICE 1 (2005), <http://www.gao.gov/new.items/d05219.pdf> [hereinafter GAO Report] (letter to ranking House and Senate U.S. Judiciary Committee members).

¹⁹ *Defining Drug Courts: The Key Components*, BUREAU OF JUSTICE ASSISTANCE 13-14 (1997, reprinted 2008) [hereinafter *Defining Drug Courts*] (in association with the National Association of Drug Court Professionals).

²⁰ *Id.* at 15.

²¹ Shannon M. Carey, Michael W. Finigan & Kimberly Pukstas, *Exploring the Key Components of Drug Courts: A Comparative Study of 18 Adult Drug Courts on Practices, Outcomes, and Costs*, NPC RESEARCH 6 (2008), <https://www.ncjrs.gov/pdffiles1/nij/grants/223853.pdf>.

²² *Id.* at 1; GAO Report, *supra* note 18, at 2.

²³ Most drug courts adhere to ten key components, which the National Association of Drug Court Professionals introduced in 1997, and which remain influential today: (1) “Drug courts integrate alcohol and other drug treatment services with justice system case processing” (2) “Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants’ due process rights,” (3) “Eligible participants are identified early and promptly placed in the drug court program,” (4) “Drug courts provide access to a continuum of alcohol, drug, and other related treatment and rehabilitation services,” (5) “Abstinence is monitored by frequent alcohol and other drug testing,” (6) “A coordinated strategy governs drug court responses to participants’ compliance,” (7) “Ongoing judicial in-

after their sentences had been served. The guiding hope behind these programs is that they will ultimately reduce recidivism, improve public safety and offer better outcomes for former offenders by responding to their support needs in creating a more positive way of life. Reentry programs target former offenders who are assessed to be at high risk for recidivism and in need of more intensive treatment, services and supervision. In 2000, the U.S. Department of Justice Office of Justice Programs launched the Reentry Court Initiative (“RCI”), which supported pilot reentry programs, rooted in the drug court model, in various states and localities.²⁴ These pilot programs aimed to develop strategies to support offenders, provide necessary services and work with communities and families to reconnect with and positively engage offenders. The Reentry Court Initiative highlighted six core components of reentry programs: (1) assessment and planning, (2) active judicial oversight, (3) management of support services, (4) accountability to community, (5) graduated and parsimonious sanctions and (6) rewards for success.²⁵ These

teraction with each drug court participant is essential,” (8) “Monitoring and evaluation measure the achievement of program goals and gauge effectiveness,” (9) “Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations,” and (10) “Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.” *Defining Drug Courts*, *supra* note 19.

²⁴ Nine diverse sites were selected to receive technical assistance in implementing reentry courts: San Francisco, California; El Paso County, Colorado; New Castle County and Sussex County, Delaware; Broward County, Florida; Cedar Rapids, Iowa; Fayette County and Campbell and Kenton Counties, Kentucky; Harlem, New York; Richland County, Ohio; and Mineral, Tucker, and Grant Counties, West Virginia. Christine Lindquist, Jennifer Hardison and Pamela K. Lattimore, *Reentry Courts Process Evaluation (Phase 1)*, NAT’L INSTIT. OF JUSTICE, ES-1 (2003).

²⁵ Lindquist, *supra* note 24, at 4. See also Carey et al., *supra* note 21 (outlining the key components of drug courts and highlighting practice variances throughout the courts). In terms of variance, programs track each other with regard to general characteristics, but differ in “specific policies and procedures because of, among other things, differences in local jurisdictions and criminal justice system practices.” GAO Report, *supra* note 18, at 3. Studies

components can interact cooperatively to positively shape future behavior and offer releasees a meaningful opportunity for successful reintegration.

II. REENTRY IN THE FEDERAL CONTEXT

As drug courts were implemented in many jurisdictions around the country, the federal courts were largely excluded from this movement. The federal sentencing guidelines, which were for all practical purposes mandatory until *United States v. Booker*,²⁶ made it impossible for federal district judges to utilize the “carrot and stick” positive and negative reinforcement which is integral to the drug court model. District judges could not lessen sentences for substance abstinence and were unable to sanction non-compliance effectively; indeed, under section 5H1.4 of the United States Sentencing Guidelines, drug addiction was a prohibited basis for fashioning a sentence.²⁷ After conviction and sentencing, however, in the post-imprisonment stage, federal district judges have the leeway to adjust incentives and sanctions to address compliant or non-compliant behavior.²⁸ At this stage, the federal court system is more naturally compatible with the reentry model.

Nevertheless, reentry programs mark an enormous departure from the federal courts’ normal way of doing business. First, reentry courts are essentially problem-solving courts; they at-

have shown that successful programs are adaptive to local conditions, as every jurisdiction presents unique challenges and issues. Lindquist, *supra* note 24, at 56.

²⁶ 543 U.S. 220 (2005).

²⁷ U.S. Sentencing Guideline Manual (U.S.S.G.) § 5H1.4 (2009). Even after *Booker*, with the guidelines discretionary, drug addiction remained a prohibited sentencing factor until 2010, and large deviations from the guidelines based on drug treatment successes or failures are rarely permitted. U.S.S.G. § 5H1.4 (2010).

²⁸ *Study Requested on Reentry Court Programs*, THE THIRD BRANCH 4-5 (2009) (newsletter of the federal courts, published by Admin. Office of the U.S. Courts).

tempt to harness court resources to address the special problems of former prisoners returning to the community. In the area of criminal law, courts traditionally find the facts and apply the law; the effect of their actions on defendants, their families and their victims is seldom their concern.

Second, in the reentry context, courts operate as a team.²⁹ Judges, defense lawyers, prosecutors and probation officers must all “come out of their silos,” meaning they must work together, bringing their diverse professional expertises collectively to bear on solving the problems on which the program is focused.³⁰ As a team, the stakeholders have better access to institutional resources and information and consequently can better shepherd participants through the bureaucratic obstacles which often stymie successful reintegration. Joint problem-solving and resource-sharing among stakeholders in the criminal justice system is a marked departure from the courts’ normal way of doing business.

Third, reentry programs are “evidenced-based,” which means that they utilize scientific and clinical research to develop and execute effective programs.³¹ Instead of organizing programs to

²⁹ Operating in a non-adversarial manner is a central principle of reentry courts. Council of State Gov’ts, *supra* note 4, at 18-22 (Policy Statement 1).

³⁰ *Id.* See also Daniel W. Close, Kevin Alltucker & Melissa Aubin, *The District of Oregon Reentry Court: Evaluation, Policy Recommendations, and Replication Strategies* 4 (2007) [hereinafter *District of Oregon Reentry Court Evaluation*].

³¹ Roger K. Warren, *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries*, NAT’L CENTER FOR STATE COURTS 25-26 (2007). “Evidence-based practice (EBP) is the objective, balanced, and responsible use of current research and the best available data to guide policy and practice decisions, such that outcomes for consumers are improved. In the case of corrections, consumers include offenders, victims and survivors, communities, and other key stakeholders. Used originally in the health care and social science fields, evidence-based practice focuses on approaches demonstrated to be effective through empirical research rather than through anecdote or professional experience alone.” *Implementing Evidence-Based Policy and Practice in Community Corrections*, CRIME & JUSTICE INST., NAT’L INSTIT. OF CORRECTIONS, U.S. DEP’T OF JUSTICE, ix (2009).

reflect an instinctive or a presumed sense of what should work, evidence-based principles seek to put into practice the wealth of cutting-edge research and empirical data about what actually works to accomplish successful prisoner reintegration.³²

III. INNOVATING FEDERAL REENTRY COURTS

The reentry model is new, but it has grown remarkably quickly in the federal court system. At the turn of the century, there were no federal reentry courts. The Eastern District of New York began the first such program in 2002, followed by the District of Oregon in 2005.³³ By 2007 there were seven.³⁴ Today, there are forty-five.³⁵

Given the newness of such federal programs, there is currently limited empirical research as to their success.³⁶ Generally speaking, however, state reentry and drug courts are comparatively effective at reducing recidivism.³⁷ One thing is certain:

³² Crime & Justice Inst., *supra* note 31, at ix; Steve Aos, Marna Miller & Elizabeth Drake, *Evidence-Based Adult Corrections Programs: What Works and What Does Not*, WASHINGTON STATE INST. FOR PUBLIC POL'Y 6 (2006) (“[T]he goal is to improve the criminal justice system by implementing programs and policies that have been shown to work.”).

³³ Close et al., *District of Oregon Reentry Court Evaluation*, *supra* note 30, at 2.

³⁴ *Id.* Early federal districts adopting reentry programs include the Western District of Michigan (2005), District of Massachusetts (2006), Southern District of Mississippi (2006), Southern District of Indiana (2007), and Eastern District of Pennsylvania (2007). *Id.*

³⁵ *Summary of Results of the 2010 “Reentry” Program Survey*, FEDERAL JUDICIAL CENTER 1.

³⁶ The Third Branch, *supra* note 28, at 4.

³⁷ See Aos et al., *supra* note 32, at 3; Lindquist, C., Hardison, J., & Latimore, P.K., National Institute of Justice, *Reentry Courts Evaluation* (Phase 1), Final Report, Washington, D.C. (general RCI site evaluation); but see Donald J. Farole, *The Harlem Parole Reentry Court Evaluation: Implementation and Preliminary Impacts*, CENTER FOR COURT INNOVATION (2003).

One notable and highly successful drug court program, aimed at individuals serving terms of probation, is Hawaii’s Opportunity Probation with Enforcement (HOPE). “In a one-year, randomized controlled trial, HOPE

with approximately 100,000 persons currently on federal supervised release³⁸ and with the substantial and costly rate of recidivism,³⁹ there is a pressing need for attempting a different approach to federal reentry. We are in a reentry crisis, and crisis demands innovation.

In a young field, the experiences of sister state court programs have been deeply influential. These courts have generally relied on evidence-based principles to develop and evaluate their programs.⁴⁰ These empirically tested principles have a proven record of success⁴¹ and are endorsed by the Judicial Conference of the United States.⁴² By utilizing an evidence-based framework

probationers were 55 percent less likely to be arrested for a new crime, 72 percent less likely to use drugs, 61 percent less likely to skip appointments with their supervisory officer and 53 percent less likely to have their probation revoked.” *The Impact of Hawaii’s HOPE Program on Drug Use, Crime and Recidivism*, PEW CENTER ON THE STATES 1 (2010). On balance, programs tend to be effective at reducing recidivism, *see generally* GAO Report, *supra* note 18, although in the reentry context there have been some initial challenges to measuring the effectiveness of such courts, such as collecting sufficient data on comparison groups. Close et al., *District of Oregon Reentry Court Evaluation*, *supra* note 30, at 94-96.

³⁸ Mark Motivans, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, FEDERAL JUSTICE STATISTICS 2005 1 (2008). The Sentencing Reform Act of 1984 eliminated parole and established “supervised release” in its stead. Pub. L. No. 98-473, 98 Stat. 1987 (1984). “Although supervised release has some similarities to the other two primary types of ‘nondetentive monitoring,’ parole and probation, there are significant differences.” *Federal Offenders Sentenced to Supervised Release*, U.S. SENTENCING COMM’N 1 (2010) (quoting *Johnson v. United States*, 529 U.S. 694, 710 (2000)). “Just as with federal parole, ‘Congress intended supervised release to assist individuals in their transition to community life [therefore] supervised release fulfills rehabilitative ends, distinct from those served by incarceration.’” *Id.* (quoting *United States v. Johnson*, 529 U.S. 53, 59 (2000)).

³⁹ *See* Pew Center, *State of Recidivism*, *supra* note 8, at 1-2, 5-6, 25-26.

⁴⁰ *The Third Branch*, *supra* note 28, at 4-5.

⁴¹ *See* Steve Aos, Marna Miller & Elizabeth Drake, *Evidence-Based Adult Corrections Programs: What Works and What Does Not*, WASH. STATE INST. FOR PUBLIC POL’Y (2006) (meta-analysis); GAO Report, *supra* note 18.

⁴² *An Overview of the Federal Post Conviction Risk Assessment*, ADMIN. OFFICE OF THE U.S. COURTS & OFFICE OF PROBATION & PRETRIAL SERVICES 1 (2011).

for structure and analysis, advocates of federal reentry programs are confident that these programs will ultimately succeed.

Despite being rooted in the same principles, programs in the federal system vary greatly in terms of participants and structure.⁴³ In 2009, the Judicial Conference Committee on Criminal Law, with the endorsement of the Judicial Conference, commissioned the Federal Judicial Center to undertake a study, currently underway, to assess the operational aspects, outcomes and cost-effectiveness of different types of reentry programs and compare the reentry model to other types of supervision.⁴⁴ In the meantime, much can be gleaned from preliminary reviews of programs operating in district courts in Oregon, Massachusetts, and the Eastern District of Pennsylvania.⁴⁵

A. District of Oregon Reentry Court

The District of Oregon Reentry Court was the second federal reentry program in the country.⁴⁶ It was created in response to a methamphetamine epidemic which plagued the district as well as a growing awareness that many of probation revocations were tied to substance abuse issues.⁴⁷ Representatives from the court, U.S. Probation, the Federal Defender's Office and the U.S. Attorney's Office, teamed up to gather information as to innovative programming and best practices to address substance abuse

⁴³ The Third Branch, *supra* note 28, at 4.

⁴⁴ *Introduction to the Experimental Study of Federal District Court Reentry Programs*, FEDERAL JUDICIAL CENTER 1 (May 2010). The FJC is working in concert with the Office of Probation and Pretrial Services to design and conduct the study. *Id.*

⁴⁵ These particular courts were selected because they were early innovators and because formal evaluations and preliminary outcome analyses have been conducted.

⁴⁶ See District of Oregon Reentry Court Evaluation, *supra* note 30, at 1.

⁴⁷ *Id.* at 3. At the time, "[o]ver 70 percent of offenders under supervision in the District of Oregon either had a history of drug abuse or were under supervision for a drug-related crime." *Id.*

in former offenders.⁴⁸ Out of much planning and investigation came the Reentry Court, which became operational in the spring of 2005.⁴⁹ The court has two distinct divisions: one operates in Eugene, Oregon under the guidance of Chief Judge Ann Aiken, and the other operates in Portland, Oregon under the direction of Magistrate Judge Paul Papak and Judge Marco Hernández.⁵⁰

The court focused on an evidence-based, best-practices, court-involved model.⁵¹ The program is available to federal supervised releasees; generally, participants have documented substance abuse issues, but the program is also available to those without drug treatment needs.⁵² Participants volunteer for the program.⁵³ Considerations for admission include a candidate's history and characteristics, extent of his or her need, information from team members and others and his or her risk assessment score.^{54,55} An individualized treatment plan is developed

⁴⁸ *Id.* at 3, 7.

⁴⁹ *Id.*

⁵⁰ Melissa Aubin, *The District of Oregon Reentry Court: An Evidence-Based Model*, 22 Fed. Sent'g Rep. 39, 39 n.2 (2009).

⁵¹ *Id.* at i, 7.

⁵² U.S. DISTRICT COURT FOR THE DISTRICT OF OREGON, INTERAGENCY AGREEMENT GOVERNING REENTRY COURT OPERATION 3 (2011) [hereinafter Oregon Interagency Agreement]. Sex offenders and supervisees with severe mental illness are precluded from participating. *Id.*

⁵³ Aubin, *supra* note 50, at 39.

⁵⁴ Oregon Interagency Agreement, *supra* note 52, at 3.

⁵⁵ In corrections, various analytic tools have been adopted to measure the risk of recidivism. Risk assessment tools, such as the Risk Prediction Index (RPI), are widely utilized. For instance, information on age, number of arrests, history of substance abuse, education, home environment, supervision history, and use of a weapon in the offense can be used to assess likelihood of success on supervision. The RPI utilizes a scale from 0 (very likely to be successful) to 9 (highly likely to recidivate). Studies have shown that higher-risk releasees, such as those who rate as a 6, 7, or 8 on the RPI scale, are more likely to benefit more from a reentry program. Douglas B. Marlowe, et al., *Matching Judicial Supervision to Clients' Risk Status in Drug Court*, 52 CRIME & DELINQUENCY 52, 54 (Jan. 2006) [hereinafter Marlowe et al., *Matching Judicial Supervision*]; Douglas B. Marlowe, *Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Crimi-*

for each participant; the plan is a touchstone for the participant's progress, and focuses on "sobriety, employment and constructive problemsolving."⁵⁶ As is typical, each participant is required to sign a contract, which sets forth expectations and program strictures, and waive certain due process rights.⁵⁷

Oregon utilizes a reentry team of various stakeholders to shepherd participants through the process.⁵⁸ The presiding judge actively participates in the process, providing encouragement and meting out sanctions, where necessary.⁵⁹ The reentry team, consisting of a district court judge, an assistant U.S. attorney, an assistant federal defender, a probation officer, a substance abuse counselor and a mental health counselor, meets prior to court each month.⁶⁰ Collaborating, the team offers input as to appropriate rewards and sanctions, carefully tailoring the extent of such to the participant's progress.⁶¹

During program hearings, "the team works in a nonadversarial setting to engage each participant in self-assessment and problem-solving to address an individual's particular challenges, usually in the areas of sobriety, employment, education, housing, family problems, transportation or financial literacy."⁶² "With accountability to a nonadversarial team, support of peers

nogenic Needs, 1 CHAPMAN J. OF CRIM. JUSTICE 167, 175 (2009) [hereinafter Marlowe, *Evidence-Based Sentencing*].

⁵⁶ Close et al., District of Oregon Reentry Court Evaluation, *supra* note 30, at i, 8, 9.

⁵⁷ *Id.* at 7; Oregon Interagency Agreement, *supra* note 52, at 11-18 (sample participant contract).

⁵⁸ Close et al., District of Oregon Reentry Court Evaluation, *supra* note 30, at 7.

⁵⁹ Oregon Interagency Agreement, *supra* note 52, at 4.

⁶⁰ Aubin, *supra* note 50, at 40. "In addition, an investigator from the Eugene division of the Federal Defender's office staffs the Eugene reentry court team as a 'utility infielder,' who assists participants with individualized reentry challenges, typically involving bureaucratic difficulties with relevant agencies or services." *Id.*

⁶¹ Close et al., District of Oregon Reentry Court Evaluation, *supra* note 30, at i.

⁶² Aubin, *supra* note 50, at 39.

and counseling and other services continued over a minimum of twelve months, reentry court participants are offered an opportunity to make a permanent shift away from behaviors that led to illegal activity.”⁶³ Successful participants are those who achieve twelve continuous months of sobriety.⁶⁴ In exchange, they receive a reduction of up to one year in their term of post-incarceration court supervision.^{65, 66}

B. Massachusetts’ C.A.R.E. Program

The United States District Court for the District of Massachusetts began the Court Assisted Recovery Effort (C.A.R.E.) Program in May 2006.⁶⁷ C.A.R.E. is also a trailblazing federal reentry program, and has been led since its inception by U.S. Magistrate Judge Leo Sorokin. The program developed as a response to increasingly severe substance abuse problems and re-

⁶³ *Id.*

⁶⁴ From the observations of visiting team members from the Northern District of Illinois, the Eugene, Oregon reentry program requires twelve months of continuous sobriety to graduate, which is somewhat more rigorous than most of the programs that the team observed.

⁶⁵ Interim “incentives are awarded on an as deserved basis to reward compliant behavior, honesty, progress in a participant’s reentry plan, successes in recovery, and development of risk-management skills.” Oregon Interagency Agreement, *supra* note 52, at 6.

⁶⁶ District of Oregon Reentry Court Evaluation, *supra* note 30, at i. A preliminary study showed that the comparison group appeared to perform better than the treatment group. *See* Close et al., District of Oregon Reentry Court Evaluation, *supra* note 30, at 94-95. Yet, this could be attributed to less intensive supervision experienced by the comparison group. Difficulties adequately tracking and evaluating the control group make comprehensive analysis of the data difficult. *Id.* at 95-96. As federal reentry programs become more popular, and evaluation techniques are tested and applied, it is expected that success rates will increase.

⁶⁷ Farrell, C.A.R.E. Evaluation, *supra* note 18, at 2.

lated crime within the district,⁶⁸ and is rooted in the ten key components of drug courts.⁶⁹

C.A.R.E. participants are federal offenders in the Boston and Lawrence area with substance abuse problems.⁷⁰ Participants volunteer for the program, and selections are made by a Treatment Services Unit, with input from involved agencies; admissions are on a rolling basis.⁷¹ They generally score in the severe range of both the Risk Predictor Index (RPI) and the Texas Christian University (TCU) Drug Screen.⁷²

With C.A.R.E., the court, U.S. Probation, the Federal Defender's Office and the U.S. Attorney's Office work jointly together as institutional participants.⁷³ Members of the C.A.R.E. team meet before each weekly session "to review the status of each participant in the program and to discuss any changes in treatment, compliance problems or suggested sanctions."⁷⁴ The cohesive environment enables the team to dispense encouragement and address issues and non-compliance promptly.⁷⁵

"During the court session, each participant comes forward to engage in discussion with the Judge about his or her progress or

⁶⁸ United States District Court for the District of Massachusetts Interagency Agreement for the Creation of C.A.R.E. (Court Assisted Recovery Effort) for Handling of Supervised Release and Probation Violations 1-2 (Rev. 2006) [hereinafter Massachusetts Interagency Agreement].

⁶⁹ See *supra* note 23 (setting forth ten key components of drug courts).

⁷⁰ Farrell, C.A.R.E. Evaluation, *supra* note 18, at 2.

⁷¹ *Id.* at 4, 5; Massachusetts Interagency Agreement, *supra* note 68, at 4. Releasees with major mental illnesses generally do not participate; sex offenders are prohibited. Farrell, C.A.R.E. Evaluation, *supra* note 18, at 5.

⁷² Farrell, C.A.R.E. Evaluation, *supra* note 18, at 4-5. The TCU is based on a questionnaire about frequency and nature of drug use. *Id.* at 5 n.2. "Responses are assigned a value and scores are calculated by adding up the values associated with their responses. The TCU Drug Screen scores range from 0 to 9. Scores of 3 or greater suggest relatively severe drug-related problems that correspond to a clinical drug dependence diagnosis." *Id.* The RCI is discussed more fully above in footnote 55.

⁷³ *Id.* at 4.

⁷⁴ *Id.*

⁷⁵ *Id.*

troubles.”⁷⁶ In addition to the team, other participants are expected to provide feedback and support to their peers.⁷⁷ The group dynamic is essential for the participants as well, as they gain peer support and accountability.⁷⁸ The active involvement of the judicial officer is also essential.⁷⁹

C.A.R.E. is a yearlong program, and is structured in phases: three twelve-week phases, followed by one sixteen-week phase.⁸⁰ Supervision, drug testing and court attendance are most intensive in the first phase, and diminish with each progressive phase.⁸¹ However, lesser supervision is a privilege that the participant must earn.⁸² If setbacks occur, that time is not credited towards successful completion of the program, and non-compliant behavior will result in graduated sanctions.⁸³ Yet, participants can also receive rewards such as an acknowledgment in open Court and a certificate of completion for each phase.⁸⁴ Importantly to participants, successful completion of the entire program results in a one-year reduction of their term of supervised release.⁸⁵

An evaluation of the program’s first three years reveals that 46% of C.A.R.E. participants achieved graduation.⁸⁶ That is to say that they were employed, drug-free and without any new

⁷⁶ Farrell, C.A.R.E. Evaluation, *supra* note 18, at 3.

⁷⁷ *Id.* at 4.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.* at 3.

⁸¹ *Id.*

⁸² *Id.* “A ‘good week’ means that the participant attended all required meetings with Probation, attended all treatment sessions, went to all scheduled drug tests (and tested negative), and was in compliance with all other conditions of supervision.” *Id.*

⁸³ *Id.* at 3, 6. “Failures to abide by the mandates of C.A.R.E. may result in the participant being terminated from the program and returning to traditional supervision.” *Id.* at 3.

⁸⁴ *Id.* at 3.

⁸⁵ *Id.* at 4. Graduation requires that the participant successfully complete each phase. *Id.*

⁸⁶ *Id.* at i.

criminal charges for one year.⁸⁷ Compared to only a 31% success rate for non-participants, it appears that C.A.R.E. is doing something right.⁸⁸

C. Eastern District of Pennsylvania's STAR Program

Recognizing the importance of successful reintegration of former offenders, the Eastern District of Pennsylvania launched the Supervision to Aid Reentry (STAR) Program in September 2007.⁸⁹ STAR was born from collaboration between judges, representatives of the Federal Defender's Office, the U.S. Attorney's Office and the U.S. Probation Office; it launched with twelve participants.⁹⁰ By the spring of 2010, STAR had had more than 100 participants and two separate reentry programs,⁹¹ administered under the guidance of U.S. Magistrate Judges Timothy Rice and Felipe Restrepo.⁹² STAR is aimed at releasees with a high risk of recidivating, and eligible participants need not have substance abuse problems; participants must rank as a medium to high risk for recidivism,⁹³ and have been recently released to the Philadelphia area after being convicted of and serving time for a federal offense.⁹⁴

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ Caitlin Taylor, An Investigation of the Key Components of the Supervision to Aid Reentry Program (STAR) Program: Overcoming Obstacles to Ex-Offender Reentry through Unique Judicial Roles, Sanctions & Rewards, Partnerships with Social Services Providers and Enhanced Social Capital (Report submitted to the Federal Probation for the Eastern District of Pennsylvania) [hereinafter STAR Program Investigation] 3-4 (April 2010). The program was encouraged by Chief Judge Harvey Bartle III; in 2006, Judge Bartle developed a pilot program in consultation with criminal justice practitioners.

⁹⁰ Taylor, STAR Program Investigation, *supra* note 89, at 19.

⁹¹ *Id.*

⁹² *Id.* at 4.

⁹³ *Id.* at 4, 19. A former offender is evaluated as medium to high risk for recidivism if she or he scored high on a risk-prediction index. *Id.*

⁹⁴ STAR participants who meet these criteria may volunteer for the program; they participate willingly and are not required to do so. *Id.* at 19.

The reentry program meets once every two weeks, and each participant is assigned to either Judge Rice or Judge Restrepo.⁹⁵ The program has a reentry coordinator who helps participants find needed services such as “education, vocational training and placement, mentoring, drug abuse treatment, counseling, mental and physical healthcare, legal services and housing assistance.”⁹⁶ Each reentry court also has a probation officer who supervises the releasees.⁹⁷ Sessions are attended by all STAR participants assigned to that particular program, as well as by the reentry coordinator, the probation officer and representatives from the Federal Defender’s Office and from the U.S. Attorney’s Office.⁹⁸

Before each session, a workgroup meets and discusses successes and setbacks of the program participants.⁹⁹ Collaboratively, the group decides on how best to respond to particular issues, be they failures or successes.¹⁰⁰ Then, during reentry court, the presiding judge

individually calls each participant up to the front of the court and asks the individual to discuss both successes and obstacles in regards to their reentry back into the community. These successes and obstacles often include issues related to employment, education, family, health and personal mat-

⁹⁵ Taylor, STAR Program Investigation, *supra* note 89, at 19-20.

⁹⁶ *Id.* at 21. The coordinator also has the responsibility of partnering with community organizations and businesses with the goal of providing such services to participants. *Id.* at 20.

⁹⁷ Caitlin J. Taylor, Supervision to Aid Reentry (STAR) Program Evaluation, A Report on Program Effectiveness for the First 60 STAR Participants 8 (2011) [hereinafter STAR Program Evaluation].

⁹⁸ Taylor, STAR Program Investigation, *supra* note 89, at 20.

⁹⁹ *Id.* at 21. The workgroup includes the “participants’ probation officer, the administrative assistant, the reentry coordinator and representatives from the Federal Defender’s Office and the U.S. Attorney’s Office.” *Id.*

¹⁰⁰ Taylor, STAR Program Investigation, *supra* note 89, at 19-20. The close-knit nature of the team fosters the program’s success. Ware, *supra* note 108, at 13.

ters. The judge praises individuals for successes and encourages individuals to continue with their reintegration efforts. When an individual reports a certain obstacle to their reentry (such as employment problems, ongoing substance abuse problems or other legal problems), the judge may refer the individual to a particular service provider or he may invite the reentry coordinator to suggest possible strategies for overcoming the obstacle.¹⁰¹

The participants are largely supportive of one another, and the “group dynamic has proven a powerful tool in fostering positive behavior among participants.”¹⁰²

The STAR program is completed after fifty-two weeks of successful supervision, which need not be consecutive.¹⁰³ Graduation from STAR includes a ceremony, complete with motions to reduce the participants’ term of supervised release.¹⁰⁴

A qualitative study of the STAR program “revealed four particularly important components of the Reentry Court process: the unique role of the judge, the use of sanctions and rewards, access to social services and efforts to strengthen social networks and develop social capital.”¹⁰⁵ As of 2011, “participation in the STAR program decrease[d] the odds of supervision revocation by an impressive eighty two percent.”¹⁰⁶ and participants

¹⁰¹ Taylor, STAR Program Investigation, *supra* note 89, at 20.

¹⁰² Memorandum from U.S. Magistrate Judge Timothy Rice and U.S. Magistrate Judge Felipe Restrepo to Chief Judge Harvey Bartle III and District Court Judge Anita Brody (July 22, 2009) (2009 Annual Report of STAR Reentry Program), at 5.

¹⁰³ Taylor, STAR Program Investigation, *supra* note 89, at 21.

¹⁰⁴ *Id.* Participants may receive a reduction of up to twelve months. *Id.*

¹⁰⁵ *Id.* at 8.

¹⁰⁶ Memorandum from U.S. Magistrate Judge Timothy Rice and U.S. Magistrate Judge Felipe Restrepo to Chief Judge Harvey Bartle III and District Court Judge Anita Brody (Aug. 4, 2011) (Annual Report of the Reentry Program), at 1. [hereinafter 2011 Annual Report of STAR Reentry Program].

“were significantly more likely to be employed.”¹⁰⁷ Now in its fifth year, STAR has had seventy-four program graduates, and, importantly, the uniform satisfaction of program participants.¹⁰⁸ While this may be a drop in the bucket, as Judge Restrepo explained, “[y]ou have to measure your success in a different matrix . . . you have to look at the success of each individual.”¹⁰⁹

IV. THE JAMES B. MORAN SECOND CHANCE PROGRAM

A. *Starting a Reentry Court: One District's Path*

Thus, in 2008, with a few scattered reentry programs in operation throughout the United States, the FJC, which provides educational programs for federal judges, began to introduce other district court judges to the reentry program idea. Many judges in the Northern District of Illinois had been tracking these developments with great interest, and some attended the FJC course offerings. An FJC program in Boston, in the summer of 2008, was attended by Northern District of Illinois District Judges Elaine Bucklo and Joan Gottschall, and included a session on reentry with Judge Ann Aiken, who leads the reentry program in Eugene, Oregon, and Judge Carol Jackson, who leads a program in St. Louis. The FJC offered a more intensive workshop at Duke University in the fall of 2008, led by Mark Sherman of the FJC, which Judge Gottschall attended.

Upon returning from the Boston workshop, Judges Bucklo and Gottschall approached Northern District Chief Judge James Holderman about the possibility of starting a reentry program in our district. At the same time, Judge Ruben Castillo, who had become interested in reentry through his work on the United

¹⁰⁷ Taylor, STAR Program Evaluation, *supra* note 97 at 3-4.

¹⁰⁸ 2011 Annual Report of STAR Reentry Program, *supra* note 106, at 1; Jamie M. Ware, The Supervision to Aid Reentry (STAR) Program: Helping Previously Incarcerated Federal Prisoners Succeed in Transitioning Back to the Community 1, 14 (2011).

¹⁰⁹ *Id.* at 13.

States Sentencing Commission, suggested the same idea. Judge Holderman thus appointed a committee, chaired by Judges Castillo and Gottschall, to look further into the possibility of establishing a Northern District of Illinois reentry program. A large number of district judges and magistrate judges joined the committee, along with Chief Probation Officer Richard Tracy, Senior U.S. Probation Officer and drug abuse treatment specialist Karen White, Assistant United States Attorney David Weisman, Chief Federal Defender Carol Brook and Federal Defender Program Staff Attorney Helen Skinner.

In the fall of 2009, the FJC offered an even more intensive reentry program workshop, open to judges who had attended the fall 2008 workshop and had in place, or were able to assemble, a reentry program team. By this time, our committee had progressed far enough to name a preliminary reentry program team. This workshop gave our team the opportunity to work together to plan our program under the auspices of the FJC with researchers who had studied the reentry concept and teams from districts with successful reentry programs already in operation.

In further preparation for the start of our program, Chief Judge Holderman authorized our committee to send interested judges, probation officers, prosecutors and defense lawyers to observe operating programs throughout the country. Teams went to Eugene and Portland, Oregon; Boston; and St. Louis. By observing these programs, the visitors from the Northern District of Illinois observed characteristics common to all programs and characteristics that varied from district to district.

B. Observing Other Reentry Courts: Differences and Similarities

What the programs had in common were a team approach, graduated rewards (including a year's reduction in supervision for successful completion of the program) and graduated sanc-

tions for violations ranging from coming late to meetings to more significant failures in compliance with treatment, sobriety and other supervision requirements. Sanctions for these violations ran the gamut from judicial reprimands, to required community service, to curfew restrictions, to brief periods of imprisonment. All districts provided for termination from the program for serious violations, such as chronic lack of compliance with drug treatment or the commission of additional offenses. Most districts aimed to have approximately ten to twenty people participating at any one time.

Programs differed significantly from one another in their degree of formality; whether the judge wore a robe and ascended the bench, whether a court reporter was present and whether the session was conducted more like a meeting or more like a court session. They also differed in the participant groups on whom they focused: whether or not a documented history of substance abuse was a requirement for participation; the resources available to the team; and whether all participants were supervised by the team's probation officer or whether numerous probation officers supervised the various participants. For a variety of reasons, most programs excluded from participation persons with significant mental health issues and sex offenders. Almost all the programs allow supervisees who are considering joining the program to observe program sessions.

In further preparation for the commencement of our program, our committee reached out to representatives of the Bureau of Prisons and the United States Marshal, to determine how we might best implement a sanctions component. To our delight and surprise, the United States Marshal's office was interested in joining the committee and ultimately joining the program team. The team concluded that our program would be strengthened by the deputy marshals' unique perspective and knowledge of the participants, as well as the team's reasons for any sanctions that are imposed.

C. Structuring the Northern District's Second Chance Program

Taking lessons from the diverse programs we had learned about and visited, on April 1, 2010, the United States District Court for the Northern District of Illinois began its own reentry program, called the "James B. Moran Second Chance Program." The Second Chance Reentry Team currently includes District Judge Gottschall; United States Magistrate Judge Sidney Schenkier; U.S. Probation Officer Karen White; Assistant United States Attorney Maribel Fernandez-Harvath; Federal Defender Program Staff Attorney Helen Skinner; a substance abuse specialist;¹¹⁰ and Deputy United States Marshal George Peters.

Working collaboratively promotes enhanced communication between agencies and stakeholders, encourages mutually-beneficial sharing of resources and services, increases efficiency and promotes more creative problem-solving and support. The participation of a U.S. probation officer, an assistant U.S. attorney and a deputy federal defender is common in reentry programs in other districts. Our inclusion of a drug specialist, while not unique to our program, adds an important dimension of knowledge of the problems substance abusers face and the way treatment programs work and are supposed to work. Having a drug specialist on our team has been enormously helpful to the team members and we trust to the participants as well. The participation of a deputy U.S. marshal is unique among reentry programs as far as we know, but the marshal's presence adds an important dimension to our program by making the process of implementing sanctions easier and by bringing unique experience and expertise to our discussions.

¹¹⁰ Originally, Kay Krasin of Lutheran Social Services filled the position. It is currently occupied by Jim Edgren of Pillars, a not-for profit social services organization.

Judicial involvement is a key component of Second Chance's reentry program model. The judicial officer leads the treatment team and presides over status hearings or meetings where he or she evaluates participants' performance and imposes sanctions and rewards contingent on that performance. In keeping with the collaborative spirit of the Second Chance program, it was decided that the judges would wear robes but would not ascend the bench. In envisioning a judicial role, Second Chance drew upon qualitative evaluations of drug and reentry courts which demonstrate a correlation between successful participants and their interactions and engagement with a judge. It is believed that this involvement "communicates to participants—often for the first time—that someone in authority cares about them and is closely watching what they do."¹¹¹ The Second Chance program is unique in being led by two judges. Judges Gottschall and Schenkier chose to lead the program together, rather than separately, because they anticipated that their heavy caseloads might cause one or the other of them to be absent from time to time, and they concluded that continuity would be best achieved if both were present for most of the meetings.

D. Getting Off the Ground

Having determined how the program should be structured, the Second Chance team turned to who our participants would be. We sought candidates who had a documented substance abuse problem and who had at least two years remaining on their period of post-incarceration, court-ordered supervision.¹¹²

¹¹¹ Marlowe, *Matching Judicial Supervision*, *supra* note 55, at 54.

¹¹² United States District Court for the Northern District of Illinois, Inter-agency Agreement for the Creation of Second Chance Court Program for Handling of Supervised Release, at 4. Specifically, participants were to be persons "who were previously convicted and sentenced in a United States District Court and who (a) are serving a term of supervision, (b) have a documented substance abuse problem, and (c) a special condition of drug after-care program (DAP)." *Id.*

Rather than have volunteer participation, the team sought the assistance of the United States Probation Office for the Northern District to identify potential participants based upon risk-prediction tools, presentence investigation reports, violation history, participation in Bureau of Prisons drug treatment programs and information from loved ones and the releasees' supervising district judge.¹¹³ The team drew upon extensive research which teaches that higher-risk releasees are more likely to be successful in the context of a reentry program's intensive supervision.¹¹⁴ Thus, in identifying candidates, the team's probation officer sought individuals with a high risk-prediction index (RPI) score.¹¹⁵

Individuals who indicated an interest in the program were then interviewed by members of the Reentry Program Team. The team members quickly learned during these interviews that the most important question to many of the interviewees was whether the judges had been *required* to create a reentry program or whether they had *voluntarily* chosen to do so. When assured that the judges had volunteered to start the program because they believed in it, most interviewees were won over.

After thirty-minute interviews, in which the team asked questions of the interviewee and the interviewee had an opportunity to ask questions of the team, individuals who indicated that they wished to participate met privately with the deputy federal defender, Ms. Skinner. Ms. Skinner explained the terms of the program, including the potential sanctions, as well as the contract each would have to sign to be able to participate. The contract states that in addition to general conditions of supervision, participants agree to a drug and alcohol evaluation, to the rec-

¹¹³ *Id.*

¹¹⁴ Marlowe et al., *Matching Judicial Supervision*, *supra* note 55; Marlowe, *Evidence-Based Sentencing*, *supra* note 55.

¹¹⁵ See *Id.* for a fuller discussion of the RPI, a tool used in the federal system to measure recidivism risk.

ommended treatment and to drug testing.¹¹⁶ The program lasts at least twelve months and not more than eighteen months.¹¹⁷ In exchange for successful completion of the program (including sobriety) participants receive a one-year reduction in their term of supervision.¹¹⁸ From these interviews and post-interview meetings, eight individuals initially qualified for the program and signed contracts to participate.

E. The Living Court

Prior to each reentry program meeting, the team gathers to discuss the progress of each participant, using summaries prepared by the probation officer in consultation with the participants' drug treatment counselors. If the team knows that sanctions will be necessary, they discuss appropriate measures tailored to the participant at issue.

The members of the team, including back-up lawyers for the assistant United States attorney and the federal defender staff attorney, as well as a social work intern working with the Federal Defender Program, meet with the eight participants for a two-hour session bi-weekly on the first and third Thursdays of the month. During the first session on April 1, 2010, as well as in the sessions which followed, participants were urged to be honest about their successes, failures and problems. While the members of the reentry program team had assumed that their role would be to offer advice and counsel to the participants, the best advice and counsel frequently comes from other participants. Without exception and with extraordinary generosity, the participants offer what resources they have available to them, such as job information and friends in social service agencies who can offer needed assistance, to help each other. Indeed,

¹¹⁶ *Contract for Participation in Second Chance*, UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS 1.

¹¹⁷ *Id.* at 1, 4.

¹¹⁸ *Id.* at 5.

participants have expressed their desire to be available to each other outside of team meetings. The reentry team has had to specify conditions for such out-of-court contact because most defendants on federal supervision are barred from associating with other ex-felons, unless they have explicit permission to do so.

At the meetings, team members and participants sit together around a large table. Meetings are taped so that there is a record, should the need for one arise; the team decided that the presence of a court reporter might make people reluctant to talk freely. The deputy marshal takes attendance to create a record of who comes and when. Members of the team begin by summarizing the progress each participant has made. Each participant has an opportunity to speak to the issues which have most occupied him or her during the preceding weeks. Team members and participants are urged to offer their thoughts about each report, and the discussion is open and free among team members and participants. Often, other participants have more experience with one another's challenges and issues and thus more to offer their fellow participants than the team members themselves. Successes are recognized and failures are dealt with by graduated sanctions, depending on the seriousness of the violation and/or its frequency. Between sessions, all participants are required to engage in drug treatment, abstain from the use of illegal controlled substances and find work if able. The team also tries, with the agreement of the participants, to set additional goals for each participant at the close of each meeting, which might include applying for a specific job, finding a new apartment or seeing a doctor to deal with serious health issues. Thus, at the end of each meeting, everyone has a goal to work on in the weeks ahead.

Because a key principle of reentry programs is to reward success and sanction failures swiftly and surely, a key preliminary decision was how to recognize success. Empirical studies consistently show that to teach consequences, it is essential to create

clear rules with a graduated reward and punishment system which responds swiftly in reinforcing positive behaviors and punishing negative behaviors.¹¹⁹ These rewards and sanctions start small and escalate. Research teaches that carrots work better than sticks in changing criminal behavior.¹²⁰ Applauding success is natural, given how closely our group has bonded and given how much we know and care about the issues with which our participants are struggling. It is common in reentry programs in other districts to reward success with a small token such as a gift certificate, movie tickets or a candy bar; our participants let us know at the outset that they would prefer that we not give them candy bars or other high-caloric sweets. In response, our team came up with an alternative reward mechanism, a punch card. When the probation officer reports that a participant, between program meetings, has passed all drug tests, has been compliant with treatment, has completed any assigned tasks and has had no new arrests, the participant is rewarded with group applause and a punch on his or her card. When a participant accumulates three punches, he or she gets a gift certificate or some other small token to recognize the achievement. At the end of a successful program year, a participant is given a substantial reward—a year off his or her period of federal supervision.

Another key principle of reentry programs is sanctions: swift, sure, but not necessarily (except in the case of repeated failures) severe. For example, graduated sanctions may begin with writing a paper on a given setback or spending the day sitting in the courtroom, may increase to electronic monitoring, an outpatient 30-day drug program or some number of hours of community service, and escalate from there to an afternoon in lockup or a

¹¹⁹ *Implementing Evidenced-Based Principles in Community Corrections: The Principles of Effective Intervention*, CRIME AND JUSTICE INST. 6 (2004).

¹²⁰ Roger K. Warren, *Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries*, NAT'L CENTER FOR STATE COURTS 42, 48 (2007); Crime and Justice Inst., *supra* note 10 at 6.

short period in jail.¹²¹ The team works hard to tailor sanctions to the needs of the participant, so that setbacks can become opportunities. The presence of a deputy United States marshal, with the ability to take someone's freedom away for hours or for days, serves as a reminder that participation in the program means an agreement to a program of personal responsibility.

F. Graduation

In spring of 2011, the James B. Moran Second Chance program celebrated its one-year anniversary and the graduation of five successful program participants in an official ceremony presided over by Chief Judge Holderman and attended by numerous magistrate and district court judges.¹²² The team invited the participants' family members, the general public, and members of Illinois' congressional delegation¹²³ to a special court session to share in a celebration of the participants' hard-won success in the Northern District's ceremonial courtroom.

After introductory comments, the judges all descended from the bench to the well of the courtroom. Each participant was given a certificate of completion and individually congratulated by each judge. Graduating participants had their supervision terms reduced by one year. Participants were recognized individually by Second Chance's presiding judges Schenkier and Gottschall in short speeches which elucidated the participants' personal struggles and victories as well as the program's rigors. The five successful participants and the stories of their success

¹²¹ Should graduated sanctions fail to change behavior, the individual is removed from the reentry program and returned to a traditional supervision environment, subject to more severe sanctions and no rewards.

¹²² In attendance were Magistrate Judge Martin Ashman, Judge Elaine Bucklo, Judge Ruben Castillo, Magistrate Judge Jeffrey Cole, Magistrate Judge Susan Cox, Magistrate Judge Jeffrey Gilbert, Judge Joan Gottschall, Magistrate Judge Arlander Keys, Judge Joan Humphrey Lefkow, and Presiding Magistrate Judge Sidney Schenkier.

¹²³ Congressman Danny Davis and Michael Daly, representing Senator Richard Durbin, attended and delivered congratulatory remarks.

exemplify the importance of reentry courts and individualized support for releasees:

1. Male Participant A¹²⁴

A served a forty-two month sentence for distribution of heroin. He had prior convictions for distribution of user quantities of heroin as well as small amounts of marijuana and crack cocaine; he had many prior arrests for abuse of various substances, including alcohol. On his release from prison, he was thirty-one years old.

A's early life was difficult. He was surrounded by relatives who used drugs, including his mother, who would eventually die of AIDS. Because his mother was unable to care for him, he was raised by an aunt. Although A was surrounded by people with substance abuse problems and negative attitudes, including hopeless and negative attitudes about him, his aunt was not one of them. She believed in him, and with her encouragement, he graduated from grammar school and high school.

A was doing well until a host of problems, including his mother's illness, caused him to try to relieve his stress with marijuana. He believed it was not a bad drug, but it was a bad drug for him, and his drug use caused him to lose his job, become depressed and start selling drugs to support his own use. This case, as well as his lengthy criminal history, were the result.

A entered our program with a notably positive attitude and a good deal of self-knowledge. He had already developed a strong and supportive relationship with his drug counselor. He was sober when he started the reentry program and remained sober consistently throughout his year in the program, despite the challenge of losing his beloved aunt. At various times, he was under so much stress that the reentry team worried about

¹²⁴ Each participant gave her or his permission to share her or his story here.

his resilience. But his commitment to his sobriety and to his future prevailed.

A interacted with the other participants in a warm and kind way. He spoke up easily, and could always be counted on to make clear whether he found credible what other participants were saying. Most significantly, he was a good listener and an active participant.

From day one, A told us that his dream was to become a cosmetologist and hairdresser. Halfway through the year, he enrolled in school to pursue this objective. To make money to support himself, he drove a limousine. As the program ended, he was making enough money to support himself and succeeding in and enjoying his studies.

2. Female Participant B

B served twenty months for conspiracy to possess with intent to distribute heroin. She had no prior convictions, but had a history of substance abuse. Her dream from the first day of the program was to become a nurse. Like A, she was sober when she started the program and maintained her sobriety throughout the year. She was forty-four years old when she entered the program.

B endured a year of significant pain and serious health problems, including a diagnosis of rheumatoid arthritis. She endured the death of an uncle, to whom she was extremely close. She was required to take care of her sister, who was diagnosed during the reentry program year with cancer.

B came to our program with a commitment to helping others. She was enormously supportive of other participants in the program, particularly in sharing information about available jobs. Her drive to help others was manifested in other ways as well. B was constantly involved in charitable activities, such as participating in walkathons for charity and making sandwiches for the

homeless on Lower Wacker Drive. She regularly provided home healthcare for relatives and other people in need.

Despite all her other activities, B enrolled in school to pursue her dream of becoming a nurse. She is doing well in school and liking it.

3. Male Participant C

C came into the program having completed an eighty-four month sentence for possession with intent to distribute cocaine base. He had six prior convictions for drug offenses. He had a history of cocaine and alcohol abuse. C entered the program sober and remained sober throughout his year in the program. He was thirty-one years old when his year in the program started.

Atypically among our participants, C had no problem finding employment as his family had a construction business and welcomed him back to work.

C was a quiet person, and he said little in group for many months. But as the year went on, he shared more with the group. In the course of his year in the program, he had problems with the mother of his children; deaths of an aunt, uncle and three close friends; a potential kidnapping incident involving one of his children; and a severely broken ankle that required surgery and a long convalescence. The broken ankle kept him out of work and prevented him from engaging in the physical activities he depended on to keep his spirits up.

Through this year of adversity, C appeared to learn the value of sharing his circumstances with the group. From a person who always looked glum and withdrawn when the program started, he became an upbeat, positive person, even as he faced repeated incidents of adversity. At a reentry meeting on the eve of his graduation, C told the group that his graduation would be the first thing that he both successfully and honestly completed, be-

cause although he had graduated from high school, he had cheated to do it.

4. Female Participant D

D came to the program having served 180 months of incarceration for participation in a heroin conspiracy involving her husband, among others. Before entering prison, she was addicted to heroin, having used that drug since 1975. Undoubtedly due to her drug dependency, she had accumulated a significant criminal history of retail theft, retail fraud and drug offenses. She was age fifty-five when she joined the program.

During her years in prison, D made a decision to remain drug-free and to live her life without the kind of dependency on others which she believed had led to her conviction and sentence. She had, she said, looked for love in all the wrong places. She came into the program sober, and remained drug-free throughout the year. D was determined to work. She was already working two jobs when she entered the program and at times was working three. These were basically low-wage jobs, selling fast food or doing janitorial work, but working and supporting herself were essential to her vision of herself as an independent person, who could resist the pressure of others.

Despite D's express commitment to her independence, she distinguished herself immediately as a generous person and as a problem solver for the entire group. When a participant in the group let the group know that he was struggling with uncontrolled diabetes, she found a relative employed at the Cook County Hospital to help him find a doctor. She came to most sessions with information about available jobs, often with her own employer. Indeed, in the months since her graduation, as D has moved into a supervisory position at her workplace, she has already found jobs for two current participants. When other participants struggled with drug addiction relapses, she responded with tough love: letting them know how much she

cared about them, but making it clear that they had to take responsibility for their failure to maintain sobriety, emphasizing the total personal commitment she had made and that they would have to make if they were to achieve success.

D faced more than her share of trouble during her year in the program. She endured significant health problems herself. She had to deal with the serious health issues and emotional needs of family members, at least one of whom is a drug addict. She has dealt with the serious illness of one of her children and the death of a son-in-law. She has been taken advantage of by employers, one of whom accused her of theft (a charge that was quickly found to be without merit). By her own admission, she has taken on too many jobs and kept herself too busy, exhausting herself and straining her precarious health. Yet throughout all of this, she has persevered, kept working, found an apartment, furnished it, gotten promoted and stayed drug free, always trying to be of help to other people.

5. Male participant E

E joined the reentry program after completing an eighty-eight month sentence for bank robbery. He had a number of prior felony convictions and an extensive history of substance abuse. E told the group that he had started using marijuana on a daily basis at the age of twelve. At the time he entered the program, E was fifty years of age.

E began the program unemployed and was dogged in looking for employment. He followed up on every lead and took advantage of every resource to which the program team could direct him. He completed a job training program that made him LEED certified. For month after month, his efforts bore no fruit, but he kept at it. And he remained sober.

On top of his difficulty in finding a job, E encountered a serious health scare involving his breathing. The preliminary diagnosis was terrifying, but the scare turned out to be false and the

problem resolved. When he felt well again, E started riding his bike everywhere, regardless of the weather. He began to look very buff.

E's persistence in his job hunt finally paid off. Through the assistance of the Safer Foundation, he found a full-time job, which he has kept to this day. He has performed well and has been rewarded with pay raises. He does not believe it is the job to end all jobs or the job of his dreams. But it has allowed him to get his own apartment, to furnish it, to have money in his pocket and to have some self-respect. When the construction business improves and he can put his LEED certification to use, he hopes to do so. He is aware that by then, he will have an impressive resume as someone who has been successfully employed for a long time.

E is not a person who talks a lot, but he has brought to our group a wonderful, positive attitude and a firm commitment to his sobriety and to his future.

At the conclusion of the reentry program's first graduation ceremony, each graduate had a moment to say something. Their remarks were moving and meaningful. They talked about how much it meant to them to have the group's support, how much help they had received in trying to reach their goals, how meaningful it was to them that they were able to help each other and how liberating it was to have a place where they could be open about their struggles. As one participant said, "[A] system that was designed to tear you apart was the same system that made me a better person. . . . The system gives you so many programs; this is a program that I can honestly say works."¹²⁵

¹²⁵ The James B. Moran Second Chance Program Graduation Ceremony, Apr. 21, 2011, at 29. A court reporter was present during the ceremony and transcribed it.

V. CONCLUSION

Our nation devotes enormous resources to investigating and punishing crime: police and other investigative agencies; public prosecutors; taxpayer-funded defender services (which represent the vast majority of defendants accused of crime); the judicial system, including judges and their staffs, court clerks, stenographers and marshals and other court security personnel; pretrial and probation officers; addiction counselors; and the enormous state and federal prison system. With the small exception of some probation services, however, these resources are all devoted to identifying offenders and punishing them. Nevertheless, most offenders eventually return to the communities they left, sometimes many years later, only to face the same criminogenic factors that initially led to their criminal behavior: addiction, lack of education, lack of job skills and meaningful job experience, homelessness, family issues and a personal network too often comprised of confederates in crime. Added to these overwhelming obstacles to a law-abiding life are a felony record and many years of incarceration. Despite our massive financial and resource expenditures devoted to identifying and punishing lawbreakers, two-thirds of all ex-offenders are rearrested¹²⁶ and 40% return to jail or prison within three years.¹²⁷ These statistics, troubling as they are, fail to account for the untold costs to these offenders' families and communities caused by their criminal behavior. And they fail to account for the loss of human capital that the offenders' repeated imprisonment represents.

Reentry programs attempt to do better. They recognize that many ex-offenders do not want to reoffend and do not want to return to prison, but that the obstacles many of them face, particularly with substance addiction, are daunting. A reentry program is labor-intensive, it is true. Yet, there is growing evidence

¹²⁶ Petersilla, When Prisoners Return to the Community, *supra* note 6, at 3.

¹²⁷ See Pew Center, State of Recidivism, *supra* note 8, at 1-2.

that reentry programs, in the long run, save money. Most importantly, reentry programs promise the possibility of doing better than we usually do. Business as usual, with its large percentage of failures, is an option. Disregarding empirical research and its teachings is also an option. They are simply not the options we have chosen.

Reducing recidivism and avoiding the costs that recidivism represents are the reasons that a reentry program makes sense. But the reentry experience transcends these concrete goals. Judges, probation officers, prosecutors, defenders, addiction counselors and, in our case, deputy U.S. marshals, work together, rather than hierarchically or as adversaries, to bring their different training and expertise to bear on solving the problem of crime, which is what inspired many of us to become involved in the judicial system in the first place. We all have one goal—to help the program participants establish law-abiding, satisfying lives—and we work toward that goal collaboratively, learning from each other. There is nothing else in the judicial system like this.

But there is more. The participants in our program do not take for granted that the team has chosen to invest its time and its energy in their success. The team has made a commitment to the participants, and the participants let us know that they know it. Similarly, by choosing to participate in the program, to show up for meetings, to work toward reaching the goals that we set with and for the participants and to submit to Second Chance's intensive supervision (including sanctions when called for), the participants reveal their own desire to achieve success. By investing themselves and tremendous energy in Second Chance, participants seek an enhanced opportunity to change their path, shape their future, and participate as contributing members of our community. We have all—team members and participants alike—committed to these objectives; of this, there is no secret, and from this, a very unusual sort of energy has developed among the team members and the participants of our program.

As much as we, the team members, learn from each other, we learn much more from the participants. They know their own struggles better than the team does. They recognize the struggles of one another with more clarity than the team is capable of. The team has been astounded and inspired by our participants' generosity—their willingness to tell the truth about themselves and to insist on truthfulness from one another; their ability to recognize when one of their number is holding back or deceiving him or herself; and their extraordinary generosity toward one another, which has been demonstrated by offering a ride to a twelve-step meeting, calling a relative with the ability to intervene in a medical situation, providing leads on jobs and simply sharing with the group the struggles they are experiencing.

District judges leading other programs tell us that what we are experiencing is not unique. They give us a hope that the positive dynamic we have observed in our program is a natural product of the reentry program model. That dynamic comes, perhaps, from the fact that, despite the difference in the life experiences of team members and program participants, we have found commonality in a shared desire for a meaningful life in which we make a positive contribution to others. The mountain facing our participants is higher than the mountain the rest of us have to climb, but it is the same mountain. No one ever knows whether he or she will get to the top, but in the James B. Moran Second Chance Program, we know that we are working together toward that common goal.

