

INSIDE: Bail Guidelines • Department of Correction • Reentry • Restorative Justice • Focus on Judge Helen Balick

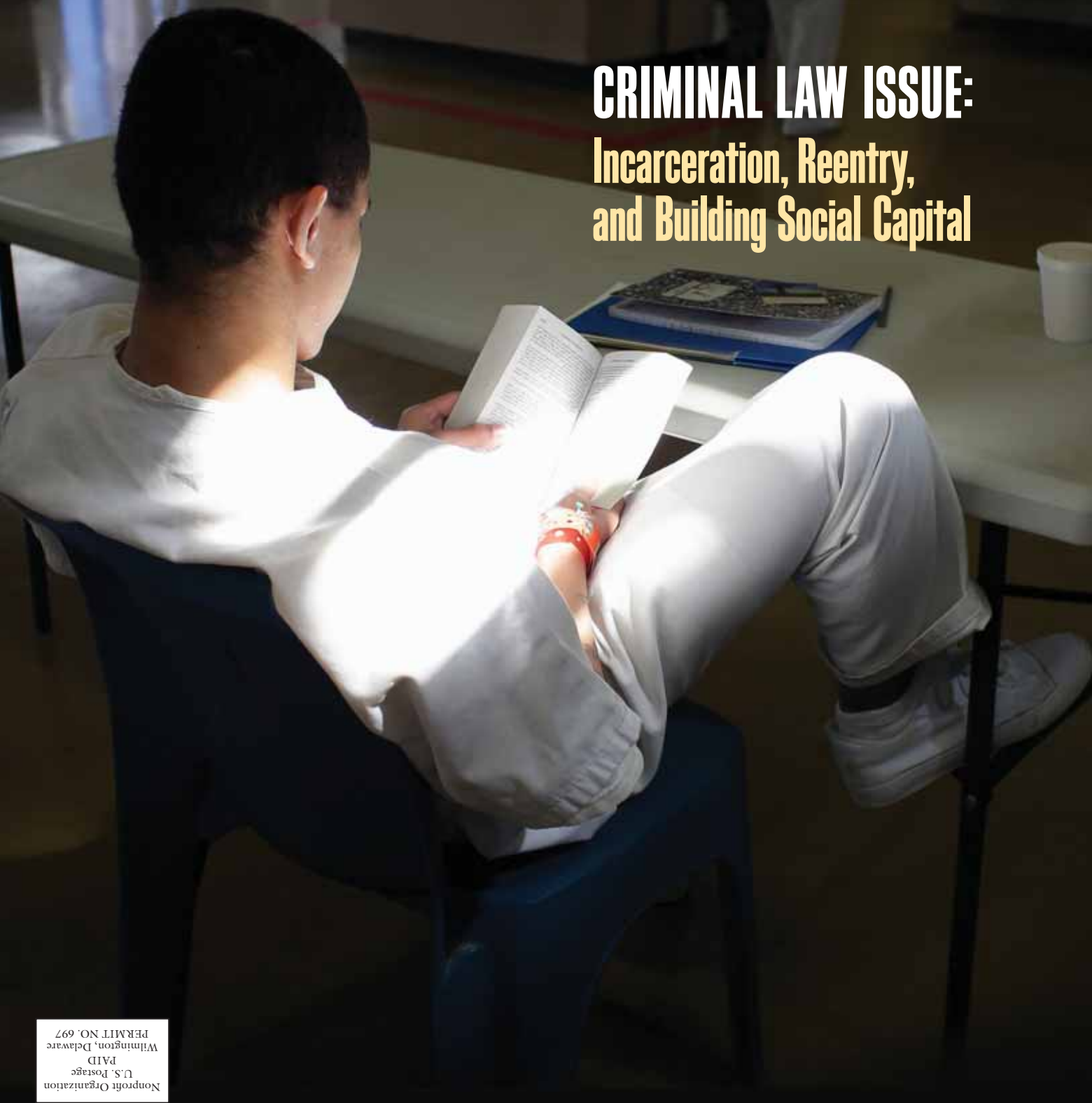
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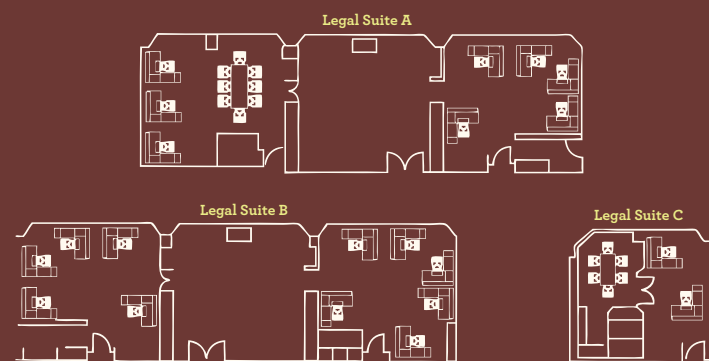


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EDITORS' NOTE

Loretta M. Young & Rosemary K. Killian

Whether you are a lawyer, doctor, local businessperson, criminologist, concerned citizen, parent or an investor, crime and recidivism are of interest and concern to us all. People who share a zip code, share problems and successes; incarceration has both direct and collateral consequences for everyone.

High rates of recidivism mean more crime, more victims, and more pressure on an overburdened criminal justice system. Delaware and other states have analyzed data and research, and recognize that the solution lies with comprehensive change within the criminal justice system and the community. Promoting a public health/safety approach is the most successful model in stopping the cycle of arrest.

There seems to be consensus that social capital contributes to the quality of life in a community. However, researchers have had a difficult time defining social capital. Coleman first defined social capital as a form of social organization that, "makes possible the achievement of certain ends."¹ Subsequently, Portes defined social capital more in terms of the benefits secured by membership in social networks,² while Putnam focuses on the "features of social organization, such as networks, norms and trust, that facilitate coordination and cooperation for mutual benefit."³

Social capital then, is a byproduct of social relationships that provides the capacity for collective understanding and action. Social capital is important for communities because it is the resource residents need to realize their collective goals: reduced crime, the accumulation of new resources, and improved overall quality of life.⁴

The landscape of the Delaware criminal justice system has changed over the years. In 2011, legislative proposals to focus on drug sellers rather than users finally led to the abolition of minimum mandatory sentences for drug possession and use. Also in that year, the Justice Reinvestment Task Force, convened by Governor Markell, began to closely study the issue of recidivism and the efficacy of treatment programs. Assisted by the Vera Institute of Justice's Center on Sentencing and Corrections, with support from the Department of Justice and the Bureau of Justice Assistance, the Task Force analyzed data, corrections programs, and community supervision policies and practices to develop a package of reforms.

Today, Delaware is tackling the issues of pre-trial detention, incarceration, and return to the community from all sides. Justice of the Peace Courts have developed new guidelines to better balance the rights of the accused against public safety. Trial courts have special problem-solving programs that focus on the root cause of crime and the treatment necessary to interrupt the cycle of repetitive criminal conduct. As this issue will explore, other crucial State agencies such as the Department of Correction no longer simply "house" people, but provide educational opportunities, job training, and treatment. Opportunities in the community also have blossomed for returning prisoners through the tireless efforts of non-profits and local government. Delaware is building social capital.

We hope that you will find this issue informative and interesting and that it will renew your hope in a better tomorrow.

Loretta M. Young

Rosemary K. Killian

FOOTNOTES

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CONTRIBUTORS

Lauren Abramson, PhD.



is a psychologist who has worked with children and families in communities for the past 25 years. She is the Founder and Executive Director

of the Community Conferencing Center in Baltimore, Maryland, and Assistant Professor in the Department of Psychiatry and Behavioral Sciences at Johns Hopkins School of Medicine. Dr. Abramson focused attention on Community Conferencing in Baltimore in 1995. She has advanced conferencing as a means of building social capital and collective efficacy on many levels, including empowering individuals and communities to resolve their own conflicts, keeping young people out of the criminal justice system, and mobilizing the existing untapped human assets in communities. Dr. Abramson publishes articles on both the theoretical and empirical socio-political aspects of conferencing.

Alan Davis



became Delaware's fourth Chief Magistrate on July 12, 2005, after appointment by then-Governor Ruth Ann Minner. Judge Davis is a

graduate of the University of Virginia and Widener School of Law. Prior to appointment, he was an associate at the law firm of Henry Clay Davis III, PA, in Georgetown, Delaware, practicing general civil litigation. He also served as counsel to the Delaware House of Representatives and was an adjunct professor at Delaware Technical & Community College. Judge Davis heads a court in which almost 480,000 traffic, misdemeanor, and civil filings took place last year – more than any other court in Delaware. The 60 judges of the Court set initial bail on more than 30,000 criminal defendants in 2013.

Joanna Champney



is the Executive Director of the Delaware Center for Justice, a nonprofit organization serving justice-involved people including victims

of crime, youth who are in trouble with the law, and adults returning home after prison. The Delaware Center for Justice also engages in advocacy on policy and legislative issues faced by their clients. Ms. Champney earned a B.A. at the University of Delaware and an M.A. in criminology at the University of Pennsylvania. She previously was the Executive Director of Stand Up for What's Right and Just (SURJ), a Delaware organization focusing on reforming the Delaware criminal justice system.

Robert Coupe



was appointed as Commissioner of the Delaware Department of Correction on March 19, 2013, by Governor Jack Markell. Commissioner

Coupe oversees the Department's 2,500 employees who are responsible for the 7,000 incarcerated offenders in the Department's 11 facilities, as well as 15,000 offenders in the community under the supervision of Probation & Parole. Commissioner Coupe retired from the Delaware State Police in 2012, after 28 years of service in that agency, his final three-and-a-half years as the Superintendent. Commissioner Coupe earned a Bachelor's degree in Criminal Justice from Wilmington University and an Associate's degree in Mechanical Engineering from Delaware Technical and Community College.

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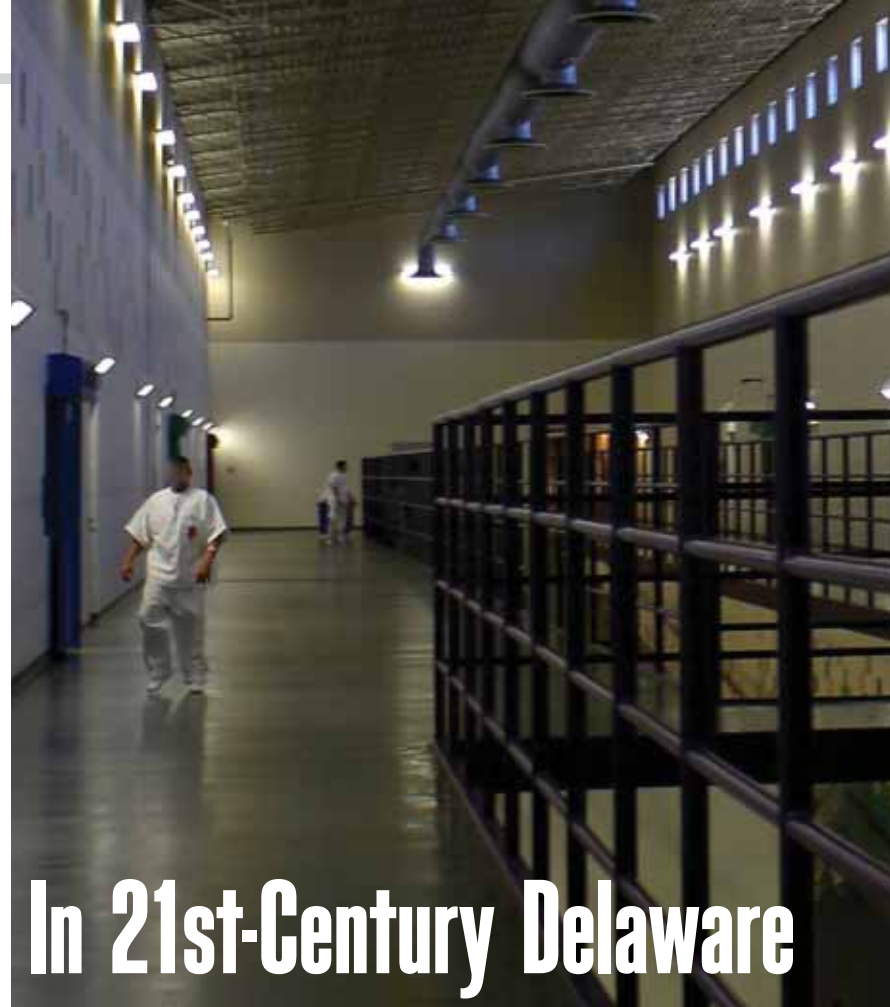
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Bail Considerations In 21st-Century Delaware

New thinking on bail-setting policy and procedures, including more research-based risk assessments, affects how courts approach pretrial detention decisions.



When the editors at *Delaware Lawyer* magazine asked me to write this piece and told me I would have approximately 2,400 words to explain how bail is approached in Delaware, I thought that it might be best to politely decline.

Hundreds of pages of written guidance and forms, mostly contained in a three-inch-thick bench book and covering dozens of standard and unique circumstances, inform the bail decisions of the judges of this Court. Federal and Delaware constitutional principles are in play and an entire chapter of the criminal code controls pretrial detention decisions.

In just the past couple of years, nearly a half dozen pieces of legislation have affected bail-setting processes, significant research into current correctional practices has been performed, and the Court has adopted new policies and processes regarding bail.

All of these moving parts make bail setting a broad, evolving topic with important policy issues at stake. In short, this is a lot of ground to cover in such

a small space. But if the issue is complex, it is also timely, and worthy of an attempt to broaden understanding. In this article I hope to convey a sense of how substantively intricate the process of determining initial bail is, review some recent changes in policy and legislation affecting bail-setting practices, and peek over the horizon at what else may be down the road.

The General Parameters of Bail

Bail setting is arguably the most demanding and the most heavily critiqued duty of a justice of the peace in Delaware. The judges of this Court make 99% of all initial bail decisions. Reading the crime shorts in the newspaper, comparing the various bail amounts of individuals charged with similar offenses, sometimes produces head-scratching results.

Differing judicial philosophies of judges may well play a role in some disparities, but sometimes you will find widely different bail amounts and types for seemingly similar cases involving the same judge. How is this even possible? Don't we have bail guidelines in this state? Let's start with some basics of bail determination to get a better sense of what is going on.

The 8th Amendment to the U.S. Constitution states, in pertinent part, "excessive bail shall not be required...". This provides the absolute floor for bail considerations and has been interpreted as a balancing test between the rights of the defendant — particularly the presumption of innocence along with the ability to participate in one's own defense — and the interests of the state to ensure orderly process and public safety.¹ Bail is not to pose so high a barrier as to constitute punishment before conviction.² Instead, the primary goals of bail must be to ensure the appearance of the defendant at future court dates and to provide protection for specific victims or the community.

Similarly, the Delaware Constitution requires that all persons "shall be admitted to bail, unless for capital offenses when the proof is positive or the presumption great."³ This is broader than the U.S. Constitutional protections, requiring reasonable bail in all cases unless a capital offense — currently only first-degree murder.

Supplementing the constitutional underpinnings, Delaware's statutory scheme dictates that every pretrial release decision begins with the presumption that personal recognizance (often called OR bond) or unsecured bail is appropriate, unless articulable factors dictate otherwise.⁴

A non-exclusive list of those factors includes the nature and circumstances of the alleged crime; the family ties, employment history, criminal history of the accused; any record of flight from prosecution and history of appearance rates in other cases; financial resources available to the defendant; and character and mental condition of the accused.⁵ A judge must make a recorded finding of

the reasons for not permitting an OR or an unsecured bond.⁶

Aside from determining the type of bond — OR, unsecured, secured or cash — the presiding judge must also determine if there are any conditions that could be imposed that would further the interests of public safety or ensure the appearance of the defendant.⁷ The code provides for a number of potential conditions of bond, including imposing limited or no contact orders; requiring restrictions on travel or activities; precluding consumption of alcohol or drugs; and putting the person under the supervision of pre-trial services or a particular person or organization.⁸

The Code also makes provision for a judge to establish creative additional conditions that will address the facts specific to the defendant's situation and the alleged criminal activity.⁹

The Legal Framework in Practice

Judges are assisted in putting this legal framework into practice by the development of bail guidelines. In the early 1980s then-Chief Magistrate Barron promulgated the first set of bail guidelines in an attempt to create some level of uniformity in bail-setting practices by justices of the peace. Those guidelines established default bail positions for different charge classifications from felony A charges to violations.

The guidelines included both bail types and monetary ranges depending on the charge type and its designation as violent or non-violent. Over the years, other Chief Magistrates provided additional guidance for specialized case types such as domestic violence, DUI, and drug offenses, but the bail guidelines remained essentially the same for nearly 25 years.

In 2011, this Court promulgated a new set of bail guidelines, which established three significant changes to bail-setting policy.¹⁰ First, those guidelines took a more holistic approach to the question of setting bail and eschewed the rote application of bail types and amounts for particular charge classifications. Specifically, while a set of suggested monetary ranges were kept, no longer are there any presumptions that a

particular charge classification requires secured bail. This was in keeping with the mandate of 11 *Del. C.* §2105(a) to always begin with the presumption for unsecured or OR bond.

Further, the Court explicitly adopted a "totality of the circumstances" test, ensuring that the specific circumstances of the individual defendant's flight risk and public safety risk are carefully weighed. Delaware is the first jurisdiction to administratively adopt such a model; the few others to do so have been through case law. Doing so ensured proper consideration of the many bail factors enumerated in 11 *Del. C.* 2105(b).

Finally, judges are encouraged to consider whether any set of reasonable conditions might reduce the necessity to establish a secured bond. While judges are limited to the resources available to them in doing so, the conditions are otherwise only limited by a judge's imagination. Each of these three changes to the bail policy gives real meaning to the individualized assessment of the defendant's characteristics and the alleged act, as well as considerations of reasonable alternatives to detention.

In addition to these policy-based changes, the Court also adopted a comprehensive bail bench book. The bail bench book contains standard procedures and considerations, as well as sections that include domestic violence, sexual offenses, fugitives from other states, drug cases, violations of probation, and a variety of other special circumstances encountered on a regular basis. This is designed to give the judges of this Court information about some of the case-specific considerations that a judge should examine in conducting the "totality of the circumstances" review of the defendant and the case as alleged.

For instance, in the "drugs" tab of the bench book, judges are reminded to consider whether the offense was alleged to have been committed in some protected area, such as a school zone; whether the act involved a minor; any prior drug convictions of the defendant; the weight or quantity of the drugs; whether there was an alleged use of

force; and if the alleged offense carries a minimum mandatory sentence. Each special case type is similarly accompanied by its own unique aggravating or mitigating circumstances.

None of these changes in approach to bail are a tremendous departure from the norm across the nation. This initiative on the part of the Court was not intended to shake up the bail-setting world, but to push our judges away from the comfort of stale, presumptive guidelines and toward a more back-to-basics emphasis on ensuring that each bail decision made was individual to the case and defendant before the judge. But the Court’s forays into bail-setting policy are not the only ones having an effect on pre-trial issues.

Other Recent Bail Initiatives

The Delaware legislature has taken up bail issues numerous times in the past several years. Mostly these have sought to deal with specific circumstances or case types. The Department of Justice (DOJ) has advanced a number of efforts to strengthen the application of more stringent bail under certain circumstances. For instance, House Substitute 1 for House Bill 39, passed in 2013, creates a presumption for cash bail when an offense involves a firearm or if it is a violent felony committed while the defendant is on probation or pre-trial release.¹¹ The act also directs that when a person is arrested for a second violent felony while on pre-trial release for a first violent offense, the court shall temporarily revoke bond on the first offense until such time as a proof positive hearing may be held in Superior Court.¹²

The DOJ has also sought a constitutional amendment to expand the list of crimes that would make the accused eligible to be held without bail.¹³ That act would modify the Constitution to permit the General Assembly to add crimes classified as Class A or Class B felonies to the list of “no-bail” detention-eligible offenses.¹⁴ Such detention would be subject to a finding that no condition or combination of conditions of bond would adequately protect the safety of the community or an individual.¹⁵

That proposal, having been defeated

twice in the Senate before passing that chamber in late June last year, cleared its assigned House committee in January, and may be considered by the full House at any time this session. It would require passage again in the next legislative session to become effective.

Another major enactment affecting the bail-setting process is Senate Bill 226 w/Senate Amendment 1 of the 146th General Assembly.¹⁶ That act, often referred to as the Justice Reinvestment Act, provides for a number of significant modifications to the processes of the criminal justice system, employing evidenced-based practices to find areas of potentially significant cost avoidance or savings, with an aim of reinvesting those savings in other criminal justice priorities.

Savings projected by proponents of this act are typically identified in the reduction of the prison population. At any given time, approximately one quarter of the inmates in Delaware correctional facilities are being held in pre-trial detention, a greater percentage than in other states with unified corrections systems, raising the possibility that modifications to bail-setting processes could better identify those who pose a risk of flight or danger to the community.

Furthering that end, the legislation required the application of a pre-trial risk assessment instrument (PRAI) in every instance of initial bail consideration. In December 2013, the Justice of the Peace Court implemented a newly created PRAI, which assesses risk based on 11 specific criteria. The basic criteria are not new — they are the same factors that have been considered in bail decisions for half a century or more. What is new is that they are being presented in a more structured, systematic, and uniformly quantifiable manner.

For example, instead of a judge considering the general relevance of a defendant’s overall history of failure to appear, the PRAI provides information on whether the defendant has failed to appear three times or more in the past three years. Each of the factors is similarly quantitatively evaluated and point values are assigned depending on the

severity of the risk.

Ultimately the factors are calculated and the judge is given an assessment score that ranks the defendant overall as low, medium, or high risk. While a judge is not bound to any particular type or amount of bail as a result of an assessment, it does provide more information to a judge — in a uniformly analyzed fashion — to be used in making the bail decision.

The first three months of data from the use of the PRAI shows that the gross number of pre-trial detentions is down. This is not necessarily directly and wholly as a result of the use of the PRAI, as other factors are in play, but it is a promising sign that our PRAI is working as intended, pending confirmation from future data.

The Future of Bail

Gone are the days when a judge cobbled together vague tidbits of information available to them about a defendant and the alleged criminal act to use experience, intuition, and bare good judgment to discern whether the person presents a flight or safety risk. With the implementation of the data-driven approach required by the PRAI we are on the cusp of some significant changes in the realm of pre-trial process in this state.

As we await evaluation of the effectiveness of the PRAI through further data analysis and, subsequently, an independent third-party validation of the risk factors the instrument uses, it gives us time to contemplate the direction of bail decisions of the future.

The PRAI experience has started many down the road of thinking about bail less in terms of economics and more in terms of risk. Though the DOJ bail initiatives and the Justice Reinvestment Act could be viewed as polar opposites in some ways, underlying both are questions of risk.

The DOJ seeks to ensure that those that pose the greatest risk, as evidenced by their past actions, are less likely to have another opportunity to harm others. The focus on reducing the growing pre-trial detention population through the PRAI is likewise addressing whether

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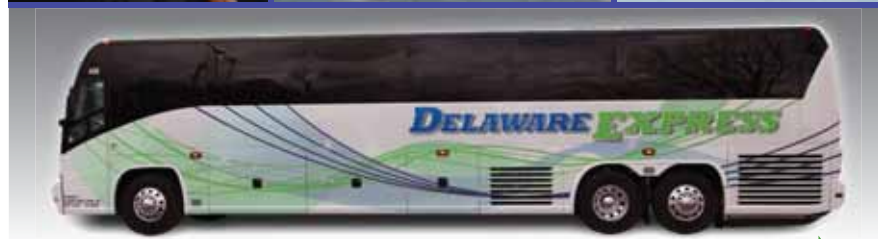
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FEATURE

those who pose less risk can be handled in some way other than being locked up for failure to post a monetary bond.

The more we focus on risk the more it becomes abundantly clear that monetary conditions of bond are among the least useful tools to actually manage the risks associated with the decision to hold or release a defendant. Better information about risk — both qualitatively and quantitatively speaking — makes a better bail decision, and the PRAI is intended to assist in both respects.

All of the information in the world, however, is useless unless we think differently about how we are going to deal with the risks represented in that assessment. Delaware may never get to the point where the word "bail" is not instantly equated with some monetary amount, but, especially on the lower end and mid-range of the risk scale, we need to establish meaningful alternatives to detention that still address the specific risks that remain for any given individual defendant.

Just as the Department of Correction does not have the resources to house every defendant until trial, neither does it have the ability to monitor every individual released. Although the DOC is doing stellar work in realigning services to meet an increased demand for pre-trial supervision, it may not be enough. A broad range of potential responses to both defendant and community needs is necessary to move us toward addressing the risks presented by those awaiting trial — not just identifying those risks and still having the same limited options of incarcerating or releasing.

To that end, some non-governmental criminal justice community members are looking at this issue thoughtfully. One initiative to provide for pre-trial release to responsible community players is being driven by the Delaware Center for Justice. Whether this is successful or not, we need more efforts in this direction, as our bail processes continue to move towards a risk-based system. ♦

FOOTNOTES

1. *Stack v. Boyle*, 342 U.S., 1 (1951).
2. *Id.* at 3. See also 11 Del. C. §2107.
3. Constitution of Delaware of 1897, Art I, §12.
4. 11 Del. C. §2105(a) states, "The court shall release a person accused of a bailable crime on the person's own recognizance or upon the execution of an unsecured personal appearance bond of the accused in an amount to be determined by the court when the court is satisfied from all of the circumstances ... that the accused will appear as required before or after conviction of the crime charged and that there is no substantial risk to the community in permitting such unsecured release."
5. 11 Del. C. §2105(b).
6. 11 Del. C. §2105(c).
7. 11 Del. C. §2108.
8. *Id.*
9. *Id.*
10. See Justice of the Peace Court Legal Memorandum 11-294, November 15, 2011, and Justice of the Peace Court Policy Directive 11-242, November 18, 2011.
11. 79 Del. Laws c. 36
12. *Id.*
13. Senate Substitute 1 for Senate Bill 36 of the 147th General Assembly
14. *Id.*
15. *Id.*
16. 78 Del. Laws c. 392.



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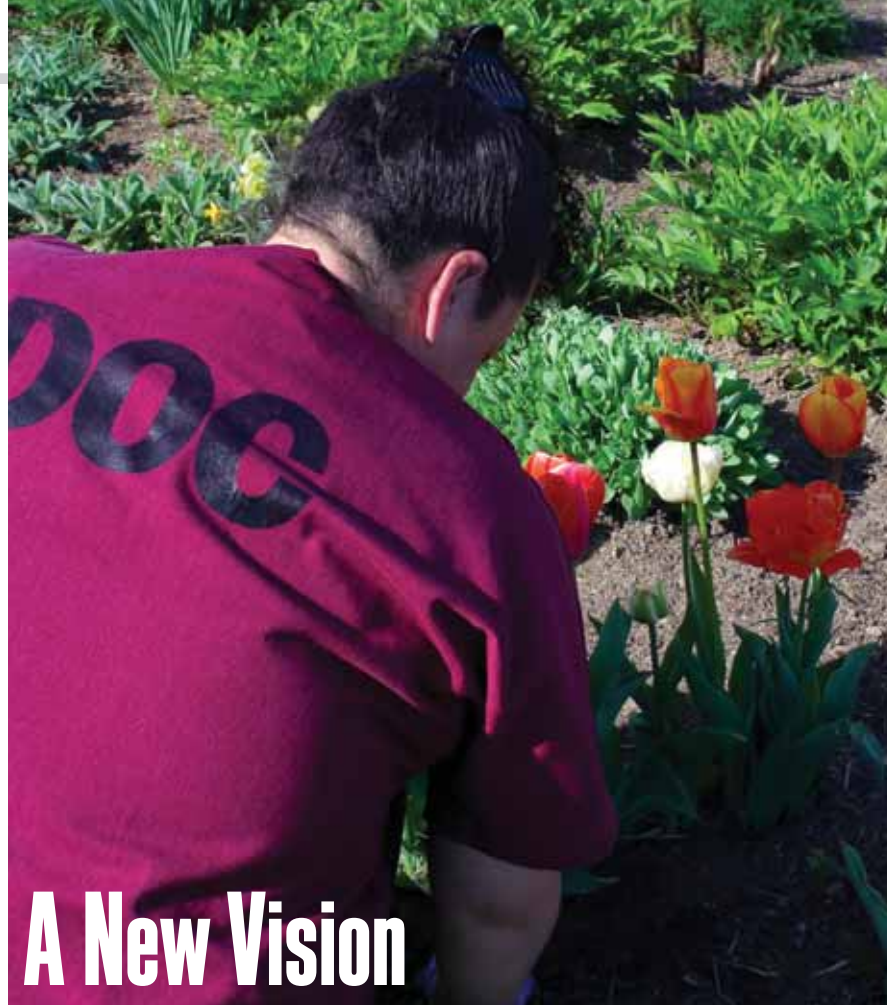
Robert Coupe

Commissioner,
Delaware Department of Correction

Baylor Women's Correctional Institution garden,
New Castle County.

Department of Correction: A New Vision

Innovative strategies,
including
individualized
prisoner-to-community
transition programs,
aim to reduce
recidivism.



Sometimes change comes from external influences and sometimes it comes from within. Currently at the Delaware Department of Correction (DOC), change is emerging from both internal and external influences.

Change for the DOC was primed in August 2012 by the mandates of Delaware Senate Bill 226 w/ SA1 which implemented the recommendations of the Justice Reinvestment Task Force, an entity created by Governor Markell's Executive Order 27 in July 2011.¹ The Order established the Task Force as a bipartisan, inter-branch coalition of criminal justice agencies and stakeholders to analyze data and review corrections and community supervision policies and practices. The Task Force was assisted by the Vera Institute of Justice, a non-profit, nonpartisan center for justice policy and practice.²

The Recidivism Problem

This new vision recognizes that the historical incarceration programs and processes have not impacted high rates of recidivism. The Delaware Statistical Analysis Center publication, *Recidivism in Delaware, An Analysis of*

Prisoners Released in 2008 and 2009,³ reports that more than 76% of offenders are rearrested within three years of their release date.

The Delaware offender population tops 7,000 in our secure facilities and another 15,000 under supervision in the community. Although there may be contributing factors, there is agreement that the DOC cannot continue to do the same thing always done given the high rates of incarceration and recidivism.

To initiate change, one has to start with the basic underlying principles that drive the process. One potential driver is the philosophy that incarceration is solely to punish and to retaliate. This is the concept of an "eye for an eye." In yesteryear, most incarcerated persons had committed crimes against others, which resulted in this retaliation model.

Currently, however, although some incarcerated persons in the DOC fit that profile and interests of safety require they remain incarcerated, the criminal population and social dynamics have changed. Today, the majority of offenders have been destructive to themselves and/or have created a social nuisance. This demographic change prompts a need for a transition from retaliation to rehabilitation.

In addition, 80% of the national prison population suffers from one or more of the following: mental health and psychiatric disorders, substance use disorder, neuropsychological deficits (developmental learning disorders, ADHD, ADD, head trauma, brain injury), learning disorders, and history of childhood and domestic violence abuse.⁴

In the DOC system, it is estimated that 60% of our offenders have a substance use disorder and 40% have a mental health or psychiatric disorder; often these disorders are co-occurring. Also, many offenders have not completed high school and test at primary and middle school educational achievement levels.

Each time low- to medium-risk offenders slide in and out of prisons, families are impacted as well. The families often remain invisible to the penal system but can be an asset to reducing recidivism. The DOC envisions their participation throughout the penal process in addressing offender needs and augmenting transitions in and out of prison. In December 2013, a DOC Family Services Coordinator was added to serve the families of offenders in response to our recognition that concerned family members often become frustrated as they seek answers to questions and concerns about loved ones incarcerated in our facilities. The Family Services Coordinator provides a central point of contact for informational support services to our offenders' families and is averaging 60-70 phone calls, e-mails and letters per week.

Failed education/social systems, increased access to addicting substances, insufficient mental health services/resources, undetected neuropsychological disorders, poor life management

skills, and technology requirements for entry-level jobs are not issues that are part of the traditional criminal profile. Therefore, new philosophical approaches must drive programming and daily processes in order to enhance an offender's ability to become a thriving citizen instead of one who repeats criminal behavior.

New Tools

Individual Transition Plan (ITP)

In order to address an offender's needs, the DOC envisions an intake process that is more effective and efficient at assessing conditions, disorders and risks. This comprehensive intake process will become known as an Individual Transition Plan (ITP) and will be formulated whether the offender is a short-term or a long-term inmate.

We intentionally have referred to the plan as a "transition" plan instead of a "treatment" plan because it will follow the offender as he or she transitions through the penal system and back into the community. In addition, the ITP will be a contract with the offender, empowering the offender with ownership of individual change, self-improvement, and setting good time credit benchmarks.

The offender's ITP will become the theoretical foundation for identifying appropriate services, rehabilitation programs, treatment modalities, and risk management from detention to release into the community. After sentencing, the offender would be placed in the DOC based upon the ITP.

By starting the assessment process earlier in the offender's journey through the criminal justice system, the DOC will be able to initiate treatment and rehabilitation programs focused on our detention population and provide valuable information to the courts and other stakeholders during the court process.

For example, imagine a courtroom where touch-screen monitors, like the ones many of us use at our local Wawa to place a sandwich order, are positioned on the defense table, the prosecution table, and on the judge's bench.

When the offender appears in court the defense attorney would have access to the results of the offender's recommended ITP, as well as information on any treatment or programs the offender had already started.

When the defense is ready to discuss a plea agreement with the prosecutor, it would release appropriate data files so that the prosecutor could view the ITP and related information. If the prosecution and defense agree on a plea and recommendation for sentencing, the defense would release the information to the presiding judge. The judge would have significantly more individualized information than he or she currently has when sentences are crafted for an offender.

The ITP will increase the probability for successful post-release transition into the community because the ITP will follow the offender into the community, allowing him or her to continue with treatment program plans. Taking it a step further, the recommended treatment program inventory would be divided into programs offered in the DOC and those available in the community.

We are currently in discussion with the Department of Health and Social Services to develop a strategy that will incorporate community programs into a searchable database that can augment the transitions from incarceration to community. This access to resources and to support systems post-release could reduce recidivism.

Central Diagnostic Detention Center

To accomplish this goal effectively, the DOC will need to move towards a central point of entry for all offenders. Creating a single diagnostic detention center will allow the DOC to centralize assessment resources and create specific programming for the offender detention population.

In the Delaware one-system approach, the accused represent a dynamic population: 25% of the offenders are detainees on bail awaiting trial and that status increases to 40% at our female prison facility.

Currently, the offenders who are in

detention (pretrial) status are not able to participate in long-term programming within the facilities, due to their shorter stays at DOC – the law prevents the DOC from mingling detained offenders with sentenced offenders in programs. As a result, the DOC historically has invested only limited resources in providing programs and educational resources to the detention population.

This means 25% percent of our offender population gets very few programming benefits while incarcerated. The DOC seeks to improve services to this population by processing through a central diagnostic center.

A significant challenge for this central point of entry model will be offender transportation requirements, especially for court appearances in counties outside of that where the diagnostic center is located. Paramount to the program's success will be close communication and cooperation between the courts and the DOC, and necessarily will include expanded use of the video-phone for administrative proceedings.

Level of Service Inventory – Revised (LSI-R)

The VERA Institute of Justice⁵ worked with Delaware as part of the Bureau of Justice Assistance (BJA) Justice Reinvestment Initiative (JRI).⁶ At the conclusion of the process Senate Bill 226 was drafted.⁷ SB 226 significantly impacted the DOC and several steps were initiated to comply with its mandates.

One significant step was to standardize the use of the Level of Service Inventory — Revised (LSI-R) assessment tool to identify the needs of the offenders.⁸ Bree Derrick of the Rhode Island Department of Correction describes the LSI-R as “a validated risk/need assessment tool which identifies problem areas in an offender’s life and predicts his/her risk of recidivism. It is a 54-item instrument which assesses offenders across 10 domains known to be related to an offender’s likelihood of returning to prison. Addressing need areas through prison rehabilitative interventions can ultimately reduce an offender’s probability of re-incarceration.”⁹

Addressing need areas through prison rehabilitative interventions can ultimately reduce an offender’s probability of re-incarceration.

The 10 domains assessed with the LSI-R are:

- Criminal History
- Education/Employment
- Financial
- Family/Marital
- Accommodation
- Leisure/Recreation
- Companions
- Alcohol/Drug Problem
- Emotional/Personal
- Attitudes/Orientation

The DOC has used the LSI-R for offenders who were under the supervision of Probation & Parole for the previous 10 years, but it was not utilized at SENTAC Level V prison or Level IV Work Release until early 2013.¹⁰

In addition to improving the offender assessment process, under the Justice Reinvestment Initiative the DOC was tasked with assessing the offender treatment programs currently in use to confirm that they were evidence based and working toward the goals of improving offenders individually and reducing recidivism. To facilitate this requirement, VERA connected DOC with George Mason University to explore their developmental software program developed by Drs. Faye Taxman and Michael Caudey known as the Risk Needs Responsivity Simulation Tool (RNR).

The RNR is a web-based computer program that utilizes data from the DOC LSI-R offender assessments, as well as national offender population as-

sessments, and prepares programming treatment recommendations for the individual offender. The RNR can also assess the overall needs of the offender population and evaluate programs for potential effectiveness. Dr. Taxman identifies the three core principles of the RNR framework as:

- Risk – matching the level of service to individual’s risk to reoffend (*static risk*)
- Need – target needs that are related to recidivism (*dynamic risk factors*)
- Responsivity – evidence-based interventions tailored to unique client learning styles and strength¹¹

Changes in the Recent Past and Near Future

The single point of entry into the DOC system, the ITP, the RNR, and revised service/treatment programs tailored to needs, highlight some of the vision for the near future. But other improvements have been instituted in recent months and are planned for the coming years.

Most importantly, the DOC has made a commitment to become an accredited correctional agency under the standards set by the American Correctional Association (ACA).¹² The ACA accreditation process will ensure standardization of the DOC policies and procedures in compliance with national best practices. The recently created DOC Planning and Research Unit is coordinating the accreditation process and will work closely with the ACA representatives as we prepare to attain this prestigious accomplishment.

The first year of the process will include preparation for the audit process and on-site mock audits. In year two of the process, the DOC will begin the three-year audit cycle. The DOC also will rely on the ACA auditors to comply with the Prison Rape Elimination Act (PREA) audit process.¹³

The Daily Release Unit, a new specialized group within the DOC’s Central Offender Records section, concentrates on detainees who have posted bail or those whom the courts have released from custody. The Daily Release Unit’s mission is to process the

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court paperwork on those detainees as quickly and as efficiently as possible.

The Daily Release Unit implemented several process improvements that dramatically reduced the turnaround time of court-ordered releases from up to 48 hours to within an hour of receiving the release documents from the court. Through the collaboration and support of the Courts, Public Defenders Office, and other outside agencies, we have created an efficient process that ensures offenders are released in a fair and timely manner.

The previously mentioned Family Services Coordinator position was created in 2013 and in April, 2014, a Victim Services Advocate was appointed to serve the victim community and support its concerns about offender movements within the system, to assist victims with Parole Board hearings, and to act as a liaison to the victim services programs in the community.

The DOC is working on many other exciting projects and initiatives. These

include partnering with a community agency to develop a pre-trial community supervision program as an alternative to pre-trial detention and pre-trial supervision by the DOC Probation & Parole Unit.

But the expanded vocational training programs at Sussex Community Corrections Center (SCCC), a division of the Bureau of Community Corrections in Sussex County, for those offenders housed at Level IV work release and in need of Level IV violation of probation supervision, exemplify the DOC's drive to prepare offenders for a return to society as stable contributing members.¹⁴ The programs at Sussex Community Corrections Center are an example of the changing nature of corrections in Delaware.

The large expanse of land covered by SCCC affords the opportunity to put in practice some of the new ideas being developed to reduce recidivism and prepare offenders for a productive life outside the supervision of the correct-

ional system. Warden William Oettel of the SCCC oversees numerous vocational programs, some in current operation and some planned for the near future. They range in breadth from the ordinary to the unexpected. The participants include both male and female offenders in the Level IV programs.

Contrary to popular belief, the offenders housed by at Sussex Community Correction Center have never been employed making license plates. The oldest of the current programs is the motor vehicle Service Center – the SCCC “Jiffy Lube,” if you will. That facility has been in operation for more than 10 years, servicing the State’s Sussex County Fleet operation by providing inspections of mechanical conditions and oil changes in addition to weekend cleanup of Fleet vehicles.

There are current plans to expand the services to include brake repairs. The automotive program may grow into an auto body repair division for State vehicles and SCCC already em-

ploys a person experienced with the operation of such a business who can participate in that operation.

Another older program is the Recycling Center, which recycles materials such as aluminum cans, cardboard, and plastic from State operations and accepts materials from outside sources for packaging and resale. The profits are returned to the account which funds SCCC’s vocational programs.

Grass cutting and landscape maintenance for the Department of Health and Social Service and the State Police also save money for the taxpayers, as does growing vegetables for the DOC kitchens. The Apiary provides honey for cooking and wax for candles. SCCC also has a significant beach grass growing project, which distributes and plants the grass to maintain the Sussex coastline, saving the State the cost of buying such grass from outside sources.

A butcher shop, supervised by an employee who has the necessary skills, trains offenders in the preparation of

donated venison. Once prepared, the venison is given to DNREC for distribution to charities throughout the year. A woodcutting program also splits wood donated by DNREC, DelDOT and others for sale to campers in the State parks.

Among the newest programs are two housed in a renovated building previously used as a hog birthing barn at Sussex Correctional Institute. The barn was converted with funds from the vocational program’s account to provide space for an aquaculture operation and a culinary arts program. The Aquaculture program currently grows catfish, which will be used in the culinary arts programs and the DOC kitchens. The culinary arts program is fully equipped through direct purchases from the vocational program’s account and substantial assistance from a local restaurateur. It opened its doors this summer to its first class of 15 to 20 students who will earn a certificate after successful participation.

SCCC has plans to expand into another aquaculture project, which will involve constructing and maintaining several large outdoor ponds for raising other types of fish such as trout, bass, and rockfish, to be used both for State restocking of streams and ponds and for resale purposes.

The DOC is confident that the ongoing accreditation process, the creation of the individualized transition plan for each offender when he or she enters the DOC, the improved services, and the expanding vocational programs will increase the chance of successful readjustment and reduce recidivism after an offender returns to the community.

These programs and plans will allow the DOC to implement its vision to improve the delivery of services to the offender population while maintaining a safe and secure environment. ♦

For footnotes see **A New Vision**, continued on page 23.



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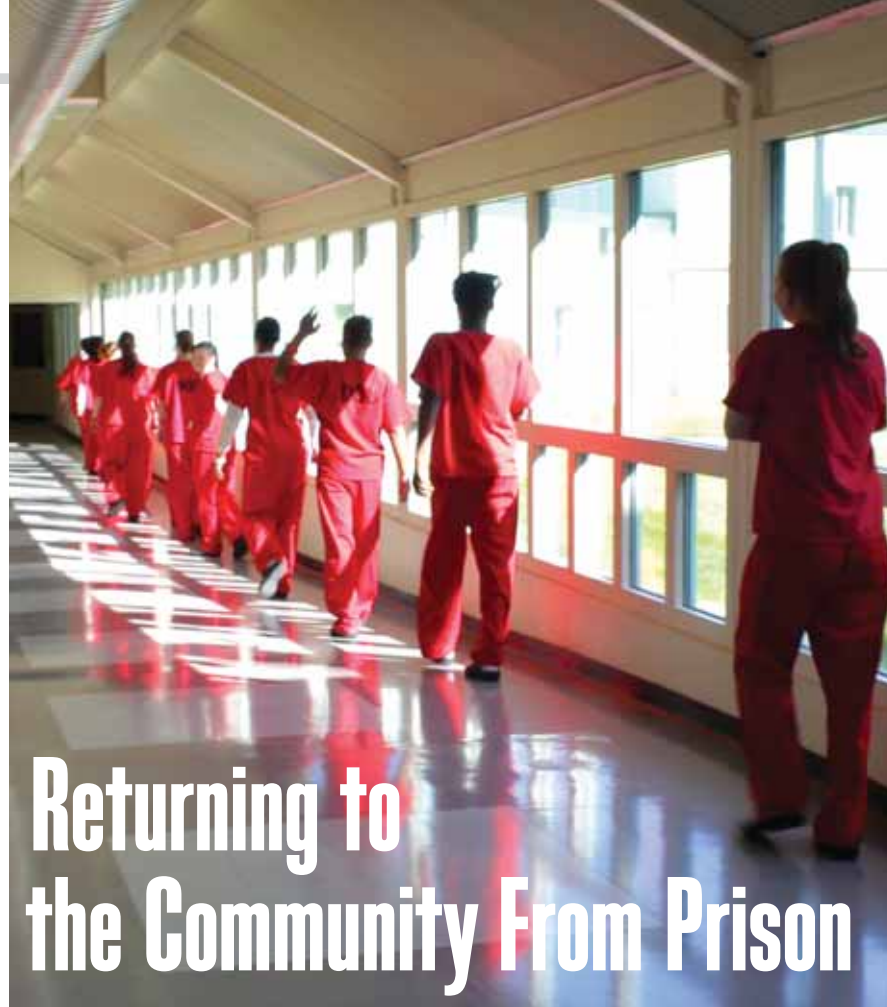
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The Difficult Journey Home: Returning to the Community From Prison

Coordinated State programs and a supportive network of non-profits are making a difference, but funding challenges loom.



The plight of individuals returning to the community from prison has received national recognition from criminal justice reform groups, such as the American Bar Association, the Council of State Governments, and the Urban Institute. Each has launched reentry projects that greatly raised public awareness of the barriers to successful reintegration.

Delaware has also seen a tremendous amount of new policy development, State agency collaboration and non-profit involvement aimed at making the return home more successful for former prisoners and safer for the community. This article explores Delaware policy and program initiatives.

Government Policy Changes in Delaware

The I-ADAPT Program

On May 15, 2009, Governor Markell signed Executive Order Seven, creating a Cabinet-level planning team dubbed the Individual Assessment, Discharge and Planning Team (I-ADAPT). The charge from the Governor to this Team was daunting: reduce recidivism by creating community supports and

resources to recently released offenders through a coordination of efforts among State agencies and community organizations.

The Team was comprised of a representative from the Department of Correction (DOC), the Delaware State Housing Authority (DHA), the Department of Labor (DOL), the Department of Education (DOE), the Department of Health and Social Services (DHSS), representatives from faith-based and other community organizations, and an ex-offender.

Executive Order Seven also mandated that the Team expand the base of knowledge and experience by creating working groups and populating those groups with members of the community with relevant experience and insight.

“The goal of the program was to eliminate the ‘silo effect’ in providing services,” says Jay Lynch of the DHSS. “Previously, individuals who had needs for education, housing, employment, and social services had to access these agencies separately.”

The Program created a streamlined communication system among the five reentry pillar agencies and established a standardized process for documenting service needs upon release to maximize the probability of success by building a continuum of care and supervision.

Since the launch of I-ADAPT in January 2010, more than 2,000 inmates have participated. Monthly workshops are held to educate and recruit inmates anticipating release. Participants are required to sign a waiver allowing their information to be shared among agencies.

Some practical measures have also been implemented to better equip inmates with documentation they need, such as a state-issued photo identification card. I-ADAPT participants’ photo IDs are generated by the DHSS mobile van. Laptops are also used for photo ID creation at work release facilities. Photo IDs are required for virtually everything, such as applying for benefits, seeking employment, applying for housing, and conducting personal business like opening a bank account. These system-level improvements in the prisoner reentry process have made a positive difference.

Advocates and social service agency administrators convinced Delaware lawmakers that public policy changes needed to be made to facilitate an ex-offender’s success, not make it harder. Two major successes were the elimination of the ban on drug felons receiving food stamps¹ (2011) and removal of the five-year waiting period for voting rights restoration² (2013).

Non-Profits Making a Difference Sojourner’s Place

Sojourner’s Place provides an array of services to residents and non-residents. Robyn Beck-Gott, the Director of Reentry Services at Sojourner’s, works

with clients who are mandated to participate in the Superior Court’s special reentry court program: “Some of our clients’ immediate needs are finances and job training – many of them are unskilled. Their criminal history makes it tough to get into training programs and get jobs. They want jobs immediately that pay good money, but we tell them they have to start somewhere. We always try to attend job fairs.” About half of the participants are working, thanks to the program, a record which Beck-Gott feels is “great, considering their blemishes.”

For those in need of a place to stay, Sojourner’s Place offers dormitory-style housing in Wilmington. “Those clients who live with us make the biggest strides,” she says. The average stay at the shelter is six-to-twelve months. For both residents and non-residents, a licensed therapist provides on-site mental health coaching, and a substance abuse counselor provides group drug and alcohol education sessions. Life skills, money management, and GED classes are also offered on-site.

Since receiving a reentry services grant in 2011, Sojourner’s has served about 185 clients, with about 85 clients on the current caseload. Three case managers meet with the clients and help them navigate around housing, employment, and behavioral health problems.

Delaware Center for Justice (DCJ) Community Reentry Services

This program serves approximately 100 individuals each year once they are placed on probation. The Department of Probation refers individuals who need help accessing community services, including work programs, housing programs, and counseling. Co-located on-site at the probation offices, the DCJ program helps clients to prioritize their needs and take steps toward achieving independence.

When asked about challenges faced by clients, Program Coordinator Anthony Jacobs says, “The individuals we are working with are learning life skills and how to make good choices for the first time. We help clients learn how to

access services for themselves. And that takes time. The system expects [ex-offenders] to change a lot, and quickly.”

The Achievement Center

Individuals will also be able to access services to assist them to re-anchor in their community at the Achievement Center, a new facility set to begin operations this spring. Administered by the Wilmington HOPE Commission, the Achievement Center will house approximately eight different service providers under one roof on Vandever Avenue in Wilmington. Between 75 and 100 men will be recruited from Howard R. Young Correctional Institute to participate during the first year.

“We have developed a comprehensive support system with the core components of individualized case management, behavioral health, workforce development, substance abuse treatment, and family reunification,” says HOPE Commission Executive Director Charles Madden.

The Center marks an important collaborative partnership between various social service agencies that work with ex-offenders, the Department of Justice, the prison system, and the City of Wilmington.

Continuing Challenges and Needs

Despite major State and federal efforts, the road home in Delaware still remains bumpy and fraught with peril. Statistics published by the Delaware Criminal Justice Council show that more than 75 percent of offenders were rearrested for a serious offense within three years of release and about two-thirds were reincarcerated within the same time period.³

Securing employment for individuals with a criminal history is the highest hurdle, followed by integrating evidence-based programming and grappling with funding shortages for programming in an unfavorable economy for ex-offender services.

The sparsity of jobs in the community makes it difficult for people to regain their independence and self-esteem. This is particularly true in Wilmington, where unemployment rates remain high and jobs are scarce. Wilmington

overall has an unemployment rate of 6.3%, compared to 5.9% statewide, with unemployment as high as 14.64% in zip code 19801, to which many prisoners return.⁴

Those with criminal histories are often at the bottom of the eligibility pool. Clients may spend weeks perfecting a resume and may apply to a hundred jobs or more with no “bites.” Case managers at DCJ find that building relationships with employers can create a network of companies willing to take a chance on hiring someone who is just starting over.

Utilizing the network of former clients who have already been hired to find out about job openings has proven effective as well. “We keep in touch with our clients once they have a job, and they’ll often tell us if their employer has other openings,” says Jacobs.

Before ex-offenders can become viable candidates for jobs paying a livable wage, most need to acquire marketable employment skills. For many people with a criminal history, however, it’s not as simple as enrolling in a job-training course. Many job training programs bar people with certain criminal offenses, and some have rules about not allowing individuals to participate until they are nearly finished probation. “We need more programs to make them more marketable,” says Beck-Gott. “If they have employment, they are much less likely to reoffend.”

In a tight job market, employers can be selective and scrutinize someone’s past. Asking about criminal convictions during the application phase is also common. A movement to “ban the box,”⁵ referring to the check box on most standard job applications inquiring about an applicant’s criminal convictions, has helped some jurisdictions level the playing field for job seekers with a criminal record. The City of Wilmington⁶ and New Castle County⁷ have removed the question about criminal convictions from their job applications, and State of Delaware job applications will soon follow suit, thanks to a recently passed bill⁸ in the Delaware General Assembly.

Programs that focus on changing learned behavior through cognitive behavioral therapy tend to be the most successful for reducing future crime.

The Importance of Therapy and The Effect on Attitude

While jobs, housing, drug addiction, and poverty are continuing struggles for those coming out of prison, social science indicates that attitude is the biggest predictor of recidivism. Antisocial attitudes and beliefs are primary indicators of whether someone will continue to engage in criminal behavior. Programs that focus on changing learned behavior through cognitive behavioral therapy⁹ tend to be the most successful for reducing future crime.^{10 11}

“We can find someone a job, and find them housing, but if they are anti-social or don’t have the skills to stay the course when faced with life’s challenges, they won’t be able to hang on to the job or the housing,” says Ashley Biden, Executive Director at DCJ.

Beck-Gott confirms this view, adding, “They feel pressure from probation, the judge, the [drug treatment provider], and the social service providers. They feel over-supervised and have to learn how to deal with these pressures.”

Recognizing the importance of cognitive behavioral therapy in reentry case management is still developing in Delaware. Few Delaware reentry programs integrate cognitive behavioral therapy with the more traditional components of social services such as housing and job placement. “Service provisions for ex-offenders haven’t really caught up with the science about what we should be focusing on,” says Biden.

Changes, however, are being considered in the Delaware Center for Justice’s reentry programming to respond to the importance of these factors. “No agency is really equipped to handle it all,” says Biden, “but at the same time, we have to respond to what the science tells us actually works, and just placing someone in an apartment and getting them a job at the local supermarket isn’t going to keep them out of prison.”

Funding Concerns

The lack of sustainable funding for programs serving former prisoners is a looming threat to groups like Sojourner’s Place and the DCJ. “Funding ends soon for our reentry program,” says Beck-Gott of Sojourner’s. “We plan to look for other grants. We’ve found ourselves in lean times, but we will keep doing what we’re doing.”

Grants often run for three years and then expire, and several programs have started up and then fizzled after the federal funds ran out.

“Sustainability of a program is always a concern,” says Biden. “Funders tell you that they don’t want you to get dependent on them, so they don’t like to give repeat funding. There is less and less funding available in the community.”

Lack of long-term funding support is problematic for reentry programs because it can take them several years to build their capacity, including forging strong relationships with the courts and probation, building relationships with employers who will accept applicants with checkered pasts, and identifying landlords and housing complexes that are safe and will collaborate with the case managers. And, just as a program is beginning to flourish, the grant that got it off the ground may end.

While finding funds to support reentry programs continues to be a challenge, the recent bureaucratic moves toward better collaboration between state agencies have brought in more federal dollars. In order for a state to be able to attract federal funds, the climate among state agencies needs to be conducive to programming.

Several recent grants from the federal government focusing on reintegration – including various Second Chance Act Grants¹² for juvenile and adult reentry, a Family Based Treatment Grant for Mothers in Reentry, and Comprehensive Approaches for Sex Offender Treatment were obtained by the Delaware Criminal Justice Council, which acts as a clearinghouse for administering federal criminal justice grant money.

Valarie Tickle, a Criminal Justice Council grant writer on behalf of the State, says that “having the I-ADAPT structure made Delaware more competitive for these federal grants. It shows that our State agencies are collaborating, and that’s what the Feds want to see.”

Pressing On to Create Fresh Starts

Despite the many challenges facing ex-offenders and the programs that serve them, there are many success stories about people who have made fresh starts despite the odds. A former DCJ client, who now works at a local drug treatment center, has made remarkable progress. Facing long-term heroin addiction and hesitant to enter in-patient treatment, she got off to a rocky start in reentry court. DCJ staff advocated on her behalf and helped her decide to give

inpatient treatment a try. With encouragement from program staff, the woman completed treatment, and received funding from DCJ for an apartment. The client has maintained her sobriety, pays her own rent and works at a local drug treatment program where she inspires others to reach for their own success.

Beck-Gott recounts a similar story of a Sojourner’s Place client who was sentenced for cocaine trafficking. Following his release from prison, he violated his probation and was sentenced to the Plummer Center, a work release facility. After serving his sentence, he lived at Sojourner’s for about a year, during which time he managed to get a car and complete treatment. He is now off of probation, enrolled in college, and interning with a local social service agency. “When he came to us, he was angry, resistant, broken. Now he has confidence. To see one small accomplishment, that’s how I get my reward.” ♦

FOOTNOTES

- 1. Senate Bill 12, 146th General Assembly, Delaware.
- 2. House Bill 10, 147th General Assembly, Delaware.

A New Vision (continued from page 19)

FOOTNOTES

- 1. 78 Del. Laws c. 392 (2012).
- 2. Vera Institute of Justice at <http://vera.org/about-us>.
- 3. Recidivism in Delaware: An Analysis of Prisoners Released in 2008 and 2009 (2013); Delaware Criminal Justice Council, Statistical Analysis Center, July 2013, available at www.wilmhope.org/wp-content/uploads/2013/07/recidivism-in-Delaware.pdf.
- 4. Robert E. Hanlon, et al, *Neuropsychological Features of Indigent Murder Defendants and Death Row Inmates in Relation to Homicidal Aspects of Their Crimes*, 25 Archives of Clinical Neuropsychology 1-13 (Feb. 2010).
- 5. See n.2.
- 6. The Justice Reinvestment Initiative was initiated by Congress in 2010 and is administered by the Bureau of Justice Assistance at the United States Department of Justice. It is a data-driven approach to corrections policy that seeks to cut spending and reinvest savings in practices that can improve public safety and strengthen neighborhoods. See also https://www.bja.gov/ProgramDetails.aspx?Program_ID=92.
- 7. See n.1.
- 8. D. Andrews & J. Bonta, *LSI-R: the level of service inventory-revised*, Multi-Health Systems, Inc., www.mhs.com.
- 9. Bree Derrick & Danielle Barron, *Level of Service Inventory-Revised: a Portrait of RIDOC Offenders* 1, Rhode Island Department of Corrections, Planning & Research Unit (April 2011). www.doc.ri.gov/administration/planning/docs/LSINewsletterFinal.pdf.
- 10. 11 Del. Code §6580 (2014). The Sentencing Accountability Commission (SENTAC) defines five levels of supervision in the criminal justice system. These levels range from Level I, which requires minimal interaction with the individual, through Levels IV and V which require incarceration.
- 11. Faye S. Taxman and April Pattavina (eds.), *Simulation Strategies to Reduce Recidivism:*

3. Recidivism in Delaware: An Analysis of Prisoners Released in 2008 and 2009 (2013). Delaware Criminal Justice Council, Statistical Analysis Center. July 2013.

4. United States Department of Labor, Bureau of Labor Statistics, March 2014 data.

5. “Ban the Box: Major U.S. Cities and Counties Adopt Fair Hiring Policies to Remove Unfair Barriers to Employment of People with Criminal Records,” (2014) Resource Guide, National Employment Law Project, April 2014.

6. “Mayor Baker Issues Executive Order to ‘Ban the Box’ and Remove Conviction History Questions from City Job Applications,” Wilmington Executive Order, Posted December 10, 2012.

7. “County Executive Gordon Issues Executive Order to ‘Ban the Box,’” New Castle County Executive Order, Posted February 14, 2014.

8. House Bill 167 w/HA 1, HA 1 to HA 1, HA 2, 147th General Assembly, Delaware.

9. See Martin, B. (2007) In-Depth: Cognitive Behavioral Therapy. Psych Central. <http://psychcentral.com/lib/in-depth-cognitive-behavioral-therapy/000907>.

10. Pearson, Frank S., Lipton, Douglas S., Cleland, Charles, Yee, Dorline (2002). The Effects of Behavioral/Cognitive-Behavioral Programs on Recidivism. Crime & Delinquency, Vol. 48 No. 3, July 2002 476-496.

11. Milkman, H., & Wanberg, K. (2007). Cognitive-behavioral treatment: A review and discussion for Corrections professionals NIC# 021657. Washington, DC: U.S. Department of Justice.

12. To learn more about Second Chance Act grant programs, see https://www.bja.gov/ProgramDetails.aspx?Program_ID=90.

Risk Need Responsivity (RNR) Modeling for the Criminal Justice System, 73-111, Springer+Business Media (2003).

12. The American Correctional Association (ACA) is the oldest and largest correctional association in the world. It accredits more than 1,500 prisons, jails, community residential centers (halfway houses) and various other corrections facilities in the United States using its published best practice standards manuals. See <http://aca.org>.

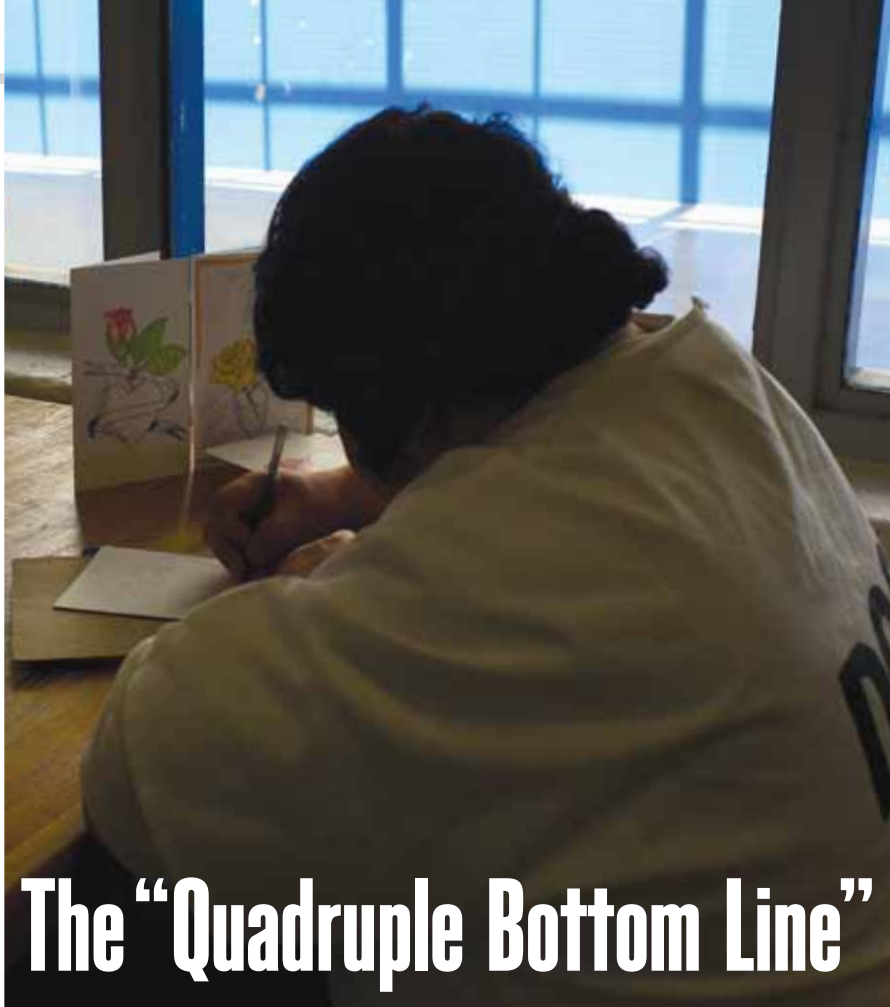
13. The Prison Rape Elimination Act (PREA) was enacted in 2003. Its purpose was to “provide for the analysis of the incidence and effects of prison rape in Federal, State and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape.” www.prearesource-center.org/about/prison-rape-elimination-act-prea.

14. See n. 10. For a description of the Sussex Community Corrections Center see www.doc.delaware.gov/BOCC/BOCC_CCC_sussex.shtml#SWRC.

Howard R. Young Correctional Institution,
English as a Second Language Program,
New Castle County.

Restorative Justice: The “Quadruple Bottom Line”

Accountability,
victim participation,
community cohesion,
and cost savings are
key benefits of this
fresh approach
to criminal justice.



We need only to look at recent headlines to know that the shortcomings of our current criminal justice system are widely recognized. The call for reform is no longer a unilateral cry from the left, but is now being heard from conservatives and liberals alike (“*Conservatives try to make criminal justice reform a signature issue*” Washington Post, March 7, 2014; “*On prison reform, Democrats and Republicans bond*,” CNN, March 19, 2014.).

Lawmakers, lawyers, judges, and citizens across the country are increasingly aware that our criminal justice system struggles to accomplish its primary goals, especially including those related to public safety and reducing re-offending. Many within the system feel that our current justice process often exacerbates individual and society wounds, rather than creating a sense of healing, justice, and peace.

- This is due to a variety of reasons, which in part include:
- Overburdened dockets
 - Costliness of court proceedings
 - Racial and economic bias
 - High dismissal rates (in some areas)
 - Victims not included in the process

Retributive vs. Restorative Justice
Our current system is based on a Retributive model of justice, which is an adversarial (win-lose) model focused on the law that was broken and the punishment associated with the crime. Judges preside over the arguments being made by lawyers on either side. Everyone reading this article will surely be well versed in how this system works.

In contrast, Restorative Justice offers an approach to justice that allows for win-win resolutions by focusing on the harm, the needs of those affected by the harm, and the accountability to repair that harm. Restorative Justice processes are derived from traditional (indigenous) models of justice, many of which have been in use across cultures for

hundreds of years. Restorative Justice began to grow in the United States in the 1990s and has been growing ever since. At this point, every state has some sort of Restorative Justice practice in operation. The difference in these approaches can be clearly seen in the chart to the right.

Impact of Community Conferencing Diversion

Community Conferencing is one of many Restorative Justice processes. It is a remarkably effective way for people to collectively address a crime or conflict. Each conference brings together victims, offenders, and their respective supporters to have a conversation about three things: 1) What happened? 2) How have people been affected by the incident? and 3) How can the harm best be repaired and prevented from happening again?

Community Conferences are voluntary, and are facilitated by a trained and neutral facilitator, typically within the community where the incident occurred.

For 16 years, the Community Conferencing Center (www.community-conferencing.org) in Baltimore has been using Community Conferencing as a safe and effective way to address crime and conflict in the following ways:

- Juvenile justice: court diversion (misdemeanor and felony)
- Schools: alternative to suspension and arrest
- Courts: diversion, ADR
- Neighborhoods: intractable and on-going conflicts
- Organizations: conflict between and within organizations
- Prisons: victim-offender dialogue

Groundbreaking for its use of Community Conferencing in a large American inner city, the Community Conferencing Center (CCC) is one of the longest-standing programs of its kind, handling referrals for 700-1,000 individuals each year. The impact of this work on victims, offenders, and the greater community has been inspiring:

- More than 16,000 individuals have participated in a Community Conference

A DISTILLATION OF THE QUESTIONS ASKED BY EACH APPROACH

Retributive Justice	Restorative Justice
Crime is a violation of the law and the state.	Crime is a violation of people and relationships.
Violations create guilt.	Violations create obligations.
Justice requires state to determine blame (guilt) and impose pain (punishment).	Justice involves victims, offenders, and community members in an effort to put things right.
Central focus: Offenders getting what they deserve.	Central focus: Victims needs and offender responsibility for repairing harm.
Punishment is effective: Threats of punishment deter crime. Punishment changes behavior.	Punishment alone is not effective in changing behavior and is often disruptive to community harmony and good relationships. Offenders also need ways to learn how to do things better in the future.
Victims are peripheral to the process.	Victims are central to the process of resolving a crime.
The offender is defined by deficits.	The offender is defined by capacity to make reparation.
Emphasis on adversarial relationship. Win-Lose.	Emphasis on dialogue and negotiation. Win-Win.
Reliance on proxy professionals.	Direct involvement by those directly affected.

A SUMMARY OF THE DISTINCTIONS BETWEEN RETRIBUTIVE AND RESTORATIVE JUSTICE

Retributive Justice	Restorative Justice
What laws have been broken?	Who has been harmed?
Who did it?	What needs do they have?
What punishment do they deserve?	Whose obligation is it to meet those needs?

- 96% of the Community Conferences have resulted in a Written Agreement, created by the participants
- 95% compliance with those Agreements
- Juvenile re-offending rates are 60% lower
- Conferencing is 1/10th the cost of court

But the statistics do not really convey the heart, soul, and tears that make this work so powerful, so healing for victims and communities, and so effective at turning offenders’ lives around. It is the

real stories of how individuals and communities are transformed through this justice process.

So let me share this one story about a juvenile theft case to give you a sense of what Community Conferencing is really all about (all names have been changed to protect the identity of participants).

An Attempted Auto Theft

Two 16-year-olds, Nate and David, along with 18-year-old Lamont, tried to steal a car and were placed under arrest for destruction of property. Nate and David were processed as juveniles and Lamont was processed as an adult. The

State’s Attorney’s Office juvenile division diverted the case to Community Conferencing.

The victim was eager for accountability. The facilitator, Louisa, called Mr. Linton, the car owner, to explain that the case was referred to Community Conferencing. The process would give everyone involved a chance to: 1) hear what happened, 2) talk about how everyone has been affected, and 3) come up with a written agreement to repair any damages and make sure it never happens again.

If everyone could reach an agreement and abide by it, then the case would be dismissed. If they could not reach an agreement or if the agreement was broken, then the case would be returned to the State’s Attorney’s Office to be processed in the usual manner.

Mr. Linton was skeptical at first but agreed to participate in the Community Conference with Nate and David. He was not keen to go to court after a previous experience with a different incident – in that case, he was forced to take four days off of work as a result of four court postponements, only to see the case dismissed. Nonetheless, he was not interested in meeting with Lamont. Since Lemont was part of the adult system, Mr. Linton wanted to see how the courts would handle his case.

Community Conference. Nate and David attended with their grandfather, Mr. Weller, as their supporter. First Nate and David described the incident: They were hanging out with Lamont and they wanted to take a ride somewhere, so they picked the easiest car to break into. Mr. Linton asked if he had been targeted, and they replied that they had no idea it was Mr. Linton’s car. He asked them how they would like it if someone took their grandfather’s car. The boys again said that they hadn’t targeted Mr. Linton and they regretted having done this. They would be upset if someone had stolen their grandfather’s car. They also expressed being upset about what they put their Grandfather through as a result.

Mr. Weller was loving but firm with his grandsons. He expressed to them in

Deep emotional engagement fuels the profound transformations that take place hundreds of times during Community Conferences.

no uncertain terms how upset he was at their behavior. He let them know that he and their grandmother had not intended to be raising children at this time of their lives, and it was not easy; and furthermore, they did not raise them to do knuckle-headed things like this. He was really upset. Nate’s eyes began to tear up, and David’s head hung low.

Mr. Weller told Mr. Linton that he is a minister at a local church and was also embarrassed by his grandsons’ behavior. He thanked Mr. Linton for being willing to meet with his grandsons like this instead of going to court, because he hoped to keep these boys out of a system that can become a black hole into oblivion. Both boys apologized and expressed a great deal of regret for having done this. They didn’t ever think about how it would affect anyone.

Mr. Linton thanked them for their honesty and for their apologies. Mr. Linton also said how impressed he was by Mr. Weller’s care, concern for, and firmness with the boys. He was glad to know the boys had people in their lives who cared about them.

The Agreement. Both Nate and David agreed to pay \$100 each to Mr. Linton within three months to cover the cost of his insurance deductible. The problem, however, was that they don’t have any way to earn it. At this point Mr. Weller piped in: “I’ll hire you both to work at

the church. It will take about three months for you to earn enough to pay back Mr. Linton.” They both agreed and thanked their grandfather.

Nate, however, had a request — to be able to shake hands with Mr. Linton when they paid the \$200: “I don’t want to just give the money to the facilitator. I would like to be able to look you in the eye when I give you this money.” Even though Mr. Linton lives 50 minutes away, he said he was happy to come back once the boys earned the money.

Three Months Later. As part of their agreement, everyone met three months later, and this time the tenor of the meeting was completely different. Mr. Weller enthused about how the boys had improved and stepped-up their behavior. Their grades were better and Nate was working part-time at Dairy Queen. When Nate handed over the payment, Mr. Linton reached out his hand and said, “I’m really impressed with how hard you two have worked. You know, the money isn’t as important to me as getting to see you two work towards something really positive.”

The boys each hugged Mr. Linton, who then turned to Mr. Weller and said, “I’d like to donate this \$200 to your church,” and the two men shook hands and laughed.

Lamont’s Outcome. Mr. Linton asked Louisa to check into the status of Lamont’s case. According to the Maryland State’s Attorney’s adult division office, Lamont requested a trial by jury and the judge determined that the charge was not sufficiently serious to warrant a jury trial. The judge then dismissed the case and all charges against Lamont were dropped.

Mr. Linton expressed how rewarding the experience was for him to participate in the Community Conference. He not only felt that the matter was satisfactorily resolved, he felt *really good* about having met Dave, Nate, and Mr. Weller, and about the boys’ ability to learn from their mistake and to turn around their behavior and pursue a better path.

He also expressed how utterly disap-

pointed and depressed he was to learn about the outcome of Lamont’s case in the adult system. He stated that the only thing Lamont learned was that he can do bad things and, even though arrested, avoid any consequences. He added that the authorities had wasted the time and resources spent on Lamont’s case.

Hopefully the story of this case conveys some of the emotionality that happens during conferences, because it is this deep emotional engagement that fuels the profound transformations that we have seen take place hundreds of times during Community Conferences.

If you would like to see other examples of specific cases, please visit our website. There is also a video of three case examples (juvenile auto theft, sexual harassment in a school, and ongoing neighborhood conflict) at <http://vimeo.com/36295061>.

Where Do We Go From Here?

Those who advocate for a greater role of Restorative Justice in our criminal justice system still recognize the

Those who advocate for a greater role of Restorative Justice in our criminal justice system still recognize the important role that courts play in our current justice process.

important role that courts play in our current justice process. The adversarial system is necessary when there is no acknowledgment of the harm – requiring a process that will determine who is responsible for the harm and appropriate consequences.

And though Restorative Justice can be very effective when used to deal with

serious crimes, we are not yet likely to see Restorative Justice used for murder cases. Still, you can read about two cases where conferencing was used in murder cases — one pre-sentencing (*Can Forgiveness Play a Role in Criminal Justice?* New York Times, 1/6/13), and the other 15 years post-sentencing (*The Truth about Forgiveness*, Washington Post, 3/22/09).

As we are fond of saying, Community Conferencing delivers a “quadruple bottom line”:

1. Holds offenders accountable
2. Includes victims in deciding outcomes
3. Cost effective
4. Builds community cohesion in the wake of crime

Delaware has an opportunity to provide victims a place at the table and save the state money and other resources at the same time by making a place for more Restorative Justice programs. Given the quadruple bottom line, how can we afford *not* to? ♦

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OF COUNSEL: Judge Helen Balick

Former Federal Bankruptcy Judge Helen Balick was a role model for a generation of men and women lawyers. She never went to college but passed the Graduate Record Exams in Pennsylvania and was admitted to The Dickenson School of Law in 1963, shortly after her first husband's sudden and unexpected death.

She graduated in 1966 as a budding attorney with both innate ability and practical knowledge from her former experience as a paraprofessional in a law office. After graduation and admission to the Pennsylvania Bar, she worked for the former Girard Trust Bank. In 1967, following her marriage to fellow Dickenson Law graduate and currently retired Delaware Superior Court Judge/Vice Chancellor Bernard Balick, she moved to Delaware where she became the thirteenth woman to be admitted to the Delaware Bar and its third woman judge.

She performed general legal work, was the first statewide president of Delaware Community Legal Aid Society, and served as a master in Family Court until she was named United States Magistrate and Bankruptcy Judge in 1974. She maintained that dual position until 1980 when the Magistrate function became an independent position. She also was a long-serving member of the Board of Trustees of The Dickenson School of Law.

Judge Balick was Delaware's sole federal Bankruptcy Judge from 1974 to 1993 when Judge Peter Walsh was appointed. She retired in January 1998, and, subsequently, she not only was replaced but four additional positions were quickly added to the court, which now has a total of six judges.

During her years as judge, she was well known for arriving at work at 8 a.m. after arising at 4:30 or 5 in the morning. She is proud of her involvement in a number of successful Chapter 11 bankruptcies, such as those involving Phoenix Steel and Continental Airlines, which returned to profitability after resolution in her courtroom. She was widely admired as an excellent judge who brought positive national attention to the Delaware Bankruptcy Court while she carried an



enormous workload with dedication and dignity.

Judge Balick says she never looked back after leaving the court in 1998 and adjusted very quickly to an enjoyable retirement. She now indulges two pursuits: she spoils her current dog, an eight-year-old miniature pinscher found in a rescue shelter, who returns her love with devoted companionship and undeviating protection, and she "accumulates" books at every opportunity – she's emphatic that she does not "collect" books, she "accumulates."

A voracious reader, Judge Balick's current interests range from books on dogs and mysteries through social histories. Both she and her husband share the book "accumulating" hobby and their home overflows with bound volumes on almost any conceivable topic. She claims they even carefully maintain stacks of books in their attic. Judge Balick also continues memberships in book-related organizations such as the Delaware Bibliophiles and the University of Delaware Library Associates, and assists with the American Association of University Women's annual book sale.

Judge Balick rises, just as in her pre-retirement days, at 4 or 5 a.m. but now looks forward to several day trips each week with her husband to book sales in Delaware, Pennsylvania, New Jersey, and Maryland. They avoid the major roads and travel the less crowded byways to places like Morgantown, Lancaster, Bel Air, Princeton, and Havre de Grace. They find out-of-the-way places to dine and return home each day to be joyfully welcomed by the Judge's canine protector.

The Judge states she watches little television and limits her attention to PBS stations. She is proud to say that a computer does not grace their home and neither she nor her husband own "smart" phones as they both prefer the less frenetic existence afforded by an absence of such technology.

Judge Balick and her husband attend events related to the Delaware Bar and maintain a keen interest in their family and friends and in the events unfolding in the community and institutions in which they served. They are a happy couple with enthusiasm for this new phase of their life. ♦



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