JUSTICE REINVESTMENT: FOUNDATIONAL REQUIREMENTS FOR EFFECTIVE COMMUNITY-CENTERED OFFENDER REHABILITATION

Hon. Frank L. Racek

Presiding Judge, East-Central Judicial District

Fargo, North Dakota

Matthew Dearth, J.D.

Law Clerk, East-Central Judicial District

Fargo, North Dakota

Introduction

Recently, the North Dakota legislature passed bills referred to as "Justice Reinvestment." These measures were designed to decrease the number of convicted individuals sent to prison. Incarceration and its negative effects are costly and detrimental to society. Many of the offenders who are currently locked up are not best served by the prison system.

For "Justice Reinvestment" to be successful, these offenders must be effectively treated and managed *within* the community. These individuals are more likely to reoffend, are more difficult to treat and manage, and are more likely to be revoked if on probation. If society is not best served by these individuals being imprisoned, what is the solution for rehabilitation? How does the community best accomplish offender treatment and rehabilitation, while keeping offenders from committing crimes in the meantime? How do we keep the community safe *now*, while ensuring that the community is safer in the *future*?

In theory, this can be done: research suggests that treatment designed to be responsive to an offender's criminogenic needs begins to lower that offender's likelihood of reoffending almost immediately. The likelihood continues to decrease as treatment continues. According to the *Risk-Need-Responsivity* (RNR) Principle, offenders have dynamic criminogenic needs which, if met correctly, reduce an offender's likelihood to reoffend. These needs include:

- Antisocial attitudes, values, and/or beliefs
- Antisocial peers
- Antisocial personality factors (e.g. anger, impulsivity, etc.)
- Substance abuse
- Environmental factors (e.g. education, employment, income, etc.)
- Family conflict
- Leisure time

An individual's risk to reoffend is managed by targeting these needs. In addition, barriers that may impede attempts to target these needs should be reduced. Reducing barriers can be achieved by:

- Assessment of characteristic obstacles to treatment
- Access to mental health assessment and treatment
- Reading and Writing Programs
- Access to Transportation
- Access to Childcare
- Access to Housing
- Motivation and Support

Both the needs and responses may vary in degree. For example, housing may range from a night in a shelter to long-term residential placement.

Why the Current System Fails

The past failures of community-based rehabilitation systems (and the resulting public outcries to "lock them up") are attributed to a lack of treatment programs, but this is only partially true. Many current prisoners were already subject to treatment, and it was ineffective at rehabilitation. More programs alone are not the answer. The challenge is to deliver *effective* treatment. The present system has been unable to respond to the offender's needs within the community and deliver effective needs-based treatment.

The current system is a disjointed patchwork of state, county, city, and private agencies, each receiving funding from a number of different sources, each with a different mandate, and priorities. An individual facing rehabilitation often requires assistance merely to navigate the system. The programs themselves are often "program-focused," and not amenable to coordination with other services or agencies, despite the fact that many offenders need to promptly receive multiple services at the same time to meet their needs. Often, while waiting for

needed services, more crimes or setbacks occur. Success depends on being able to re-organize and repurpose our current resources into an effective response delivery system.

Organizational Goals

To succeed at keeping offenders in the community, while ensuring public safety and managing resources effectively, the system for delivering rehabilitative treatment must be (1) *focused*; (2) *fast*, and (3) *flexible*. This system currently does not exist. The three criteria are the legs of a stool; remove any one element and the criminal rehabilitation system eventually becomes ineffective.

A Focused System

The system should not focus on the crime. Placing offenders into programs based only on the crime they committed is ineffective. The system should also not be program-focused; offenders should not be squeezed into programs that do not fit them and their specific needs.

Instead, the system should be focused on the criminogenic needs and risk level of the offenders themselves. Specifically, persons should be responded to with the Risk Principle, prioritizing individuals with a high risk of reoffending and a high level of criminogenic need, where research shows money is best spent. Low-risk, low-needs individuals should not be entangled in the system. Evidence suggests many current programs actually make this population worse. Over-treating low-risk, low-needs individuals also uses limited resources that are better redeployed.

A Fast System

Timing matters in the criminal justice system. Gaps in delivery of needed services increase the risk of further crimes or setbacks. The system needs to act quickly at critical stages to avoid new crimes and keep the public safe. High-risk, high-needs individuals are most likely

to commit crimes during the times their needs are unmet. A successful system needs to quickly assess individuals, make decisions, and respond to needs, while maintaining close contact with the offender. The system (at least initially) cannot rely on the personal initiative of offenders for success.

A Flexible System

Offenders in treatment programs will inevitably experience setbacks. The current solution often involves removal from the program, revocation of probation, and then prison, jail, or release back into the community. In contrast, a flexible system needs to adjust quickly to offender behavior when it does not conform to expectations, and provide for a sustainable solution, which should include treatment adjustments for setbacks. Finding a sustainable solution may require the involvement of several agencies simultaneously to meet criminogenic needs. Both positive and negative reinforcement options are needed to incentivize the individual to work toward progress and provide accountability.

A flexible system also requires that the programs themselves be periodically assessed. The entire process of treatment and rehabilitation, and every program under its umbrella, must be subject to evidence-based evaluation. Programs must be evaluated on their merit, and non-performing programs, or methods within a program, must be abandoned. Ultimately, the system should support programs showing measurable success in furthering the main goal: achieving public safety while reducing recidivism.

Conclusion

Reorganizing the system is a massive undertaking. It will not succeed without the determination and commitment of this community and its leaders. No single branch of government or agency can do this alone. Can our community collaborate between our many

private and public entities to create a safe, responsive, and effective system? Can this system continue to assist offenders after court supervision is finished? Can we fund any gaps in our current resources?

With our prison and jails at capacity and budgets strained, and with more high-risk individuals being placed in the community daily, something different must be done. If the system cannot make adjustments quickly, it will not be able to safely and effectively rehabilitate new offenders. The cycle of recidivism and incarceration will continue and public safety will decline.