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Breaking the Cycle: Ohio Reentry Courts

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I. INTRODUCTION

Reentry is the term used to describe an offender's transition from prison or jail back into their local community.¹ A reentry court is a specialized docket that targets offenders being released from prison under court supervision. Reentry courts were established to address the critical needs of returning prisoners—particularly in the period immediately following release—through a combination of judicial oversight, intensive supervision, and collaborative case management. Emphasizing the Ohio experience, this article examines reentry courts from their inception through current operations.

II. PROBLEM OF MASS INCARCERATION

To gain a complete understanding of reentry courts requires an examination of the reasons why these courts were created. Since 2002, the United States of America (hereinafter “U.S.”) has had the highest incarceration rate in the world.² In 2012, American prisons held roughly 25% of the world's prison population, yet the U.S. only accounted for about 5% of the world's population.³ At the end of 2013, approximately

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1. BUREAU OF JUSTICE ASSISTANCE, CTR. FOR PROGRAM EVALUATION AND PERFORMANCE MEASUREMENT, *What Is Reentry?*, <https://www.bja.gov/evaluation/program-corrections/reentry1.htm> (last visited July 28, 2015).

2. See POPULATION REFERENCE BUREAU, *U.S. Has World's Highest Incarceration Rate*, <http://www.prb.org/Publications/Articles/2012/us-incarceration.aspx> (last visited July 28, 2015).

3. NAT'L RESEARCH COUNCIL, *THE GROWTH OF INCARCERATION IN THE UNITED STATES: EXPLORING CAUSES AND CONSEQUENCES 2* (J. Travis, B. Western & S. Redburn eds., 2014) [hereinafter *THE GROWTH OF INCARCERATION*].

1,574,700 Americans were held in state and federal prisons, which was a slight increase (0.3%) from 2012.⁴ When you include the 731,200 inmates being held in local jails, the total number of people incarcerated in the U.S. becomes approximately 2,217,000 in 2013.⁵ The U.S. rate of incarceration is five to ten times higher than rates in Western Europe and other democracies, with nearly 1 in every 100 adults in prison or jail.⁶ According to a 2014 report issued by the National Research Council, the growth in U.S. incarceration rates over the past forty years is “historically unprecedented and internationally unique.”⁷

According to the International Centre for Prison Studies, there are roughly 3,283 jails, 1,190 state prisons, and 102 federal penitentiaries operating in the U.S.⁸ While in ordinary discourse prisons and jails are frequently confused, there are definite distinctions between the facilities. Prisons are state or federal institutions where offenders who are convicted of crimes and sentenced to imprisonment are sent.⁹ Jails, in contrast, are locally-run facilities primarily holding people arrested, but not yet convicted.¹⁰ Jails are the place where most people are taken upon arrest and are considered the gateway to the formal criminal justice system.¹¹ Despite the fact that on any given day state and federal prisons hold about twice the number of people than jails do, at nearly twelve million annual admissions jails have roughly nineteen times the number of admissions than prisons.¹² To put this in perspective, on any given day approximately 731,000 people are being held in local jails in the U.S., which is more than the population of Detroit and nearly the population of San Francisco.¹³

In Ohio, the statistics mimic the national trends. Since Ohio’s reentry efforts focus on inmates transitioning from prison, the Ohio statistics provided will be referring to the population held in state prisons. In 1974, there were 10,707 inmates incarcerated in Ohio’s eight state prisons.¹⁴ In June 2015, Ohio’s twenty-seven state prisons held 50,407 inmates, of which

4. E. ANN CARSON, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2013 1 (2014), available at <http://www.bjs.gov/content/pub/pdf/p13.pdf>.

5. INT’L CTR. FOR PRISON STUDIES, *World Prison Brief, U.S.*, <http://www.prisonstudies.org/country/united-states-america> (last visited July 28, 2015).

6. THE GROWTH OF INCARCERATION, *supra* note 3, at 2.

7. *Id.*

8. INT’L CTR. FOR PRISON STUDIES, *supra* note 5.

9. RAM SUBRAMANIAN ET AL., VERA INST. OF JUSTICE, INCARCERATION’S FRONT DOOR: THE MISUSE OF JAILS IN AMERICA 4 (2015) [hereinafter INCARCERATION’S FRONT DOOR].

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. Fritz Rauschenberg, *Sentencing Reform Proposals in Ohio*, 6 FED. SENT. R. 166 (1993).

approximately 92% were males and 8% were females.¹⁵ This translates to 1 in every 175 adult Ohioans being housed at taxpayer expense in a state prison, which is 30% more than these facilities were designed to hold.¹⁶ In calendar year 2014, which is the most recent data available, Ohio's prisons admitted 20,023 inmates.¹⁷

One of the many consequences of this mass incarceration of Americans is the effects on the public safety system as a whole. Today, law enforcement, prosecution, the court system, and, more specifically, the corrections system command a much larger share of government budgets than these institutions did just thirty years ago.¹⁸ Often by considerable margins, allocations for corrections have outpaced budget increases for nearly all other key government services, including education, transportation, and public assistance.¹⁹ State spending on corrections today is usually the third highest category of general fund expenditures in most states, ranked only behind Medicaid and education.²⁰ As state corrections budgets have soared, spending on other important social services and government programs has slowed or decreased.²¹ This has resulted in the criminal justice system increasingly becoming the main provider of substance abuse treatment, mental health services, health care, job training, education, and other critical social and economic services for the most disadvantaged groups in our society.²²

In the U.S., public expenditures for constructing and operating prisons and jails increased sharply between 1972 and 2010, keeping pace with the increases in the number of people being incarcerated.²³ Spending on state corrections accounted for 7% or more of combined states' general revenue fund expenditures from fiscal year 2008 through fiscal year 2012.²⁴ Starting with fiscal year 1980, over a twenty-year period, only Medicaid expenditures grew more rapidly as a proportion of state budgets.²⁵ In fiscal year 2011, at the federal level, spending for both operations and capital

15. OHIO DEP'T OF REHAB. AND CORR, DRC DATA SOURCE REPORTS—MONTHLY FACT SHEET (June 2015), available at <http://www.drc.ohio.gov/web/Reports/FactSheet/June%202015.pdf> [hereinafter DRC DATA SOURCE REPORTS].

16. Alan Johnson, *Ohio struggles with rising prison population*, THE COLUMBUS DISPATCH (May 12, 2014 6:46 AM), <http://www.dispatch.com/content/stories/local/2014/05/12/ohio-struggles-to-cope-with-rising-prison-population.html>.

17. DRC DATA SOURCE REPORTS, *supra* note 15.

18. THE GROWTH OF INCARCERATION, *supra* note 3, at 314.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.* at 314-15.

23. THE GROWTH OF INCARCERATION, *supra* note 3, at 315.

24. *Id.*

25. *Id.*

totaled \$6.5 billion.²⁶ Even though spending on incarceration remains a tiny fraction of the federal budget, the percentage of the budget allocated to the Bureau of Prisons has risen from 0.05% to 0.2% of total expenditures since 1985.²⁷ In the past forty years, the financial costs of mass imprisonment have more than quadrupled.²⁸ Since 1980, the rise in government spending for corrections has been propelled almost entirely by the growth in the number of prisoners.²⁹ When combining the expenses associated with all of these functions within the public safety system, the U.S. in 2010 was spending around \$90 billion annually on state and federal public safety including corrections.³⁰

In recent years with the stabilization of incarceration rates, the growth of state corrections spending has slowed.³¹ With increasing medical costs and the aging of the prison population, budget allocations for corrections will continue to be under considerable stress for the foreseeable future.³² The fact remains that incarceration is expensive. In 2014, the annual cost to imprison an offender at the federal level was \$30,619.85 (or \$83.89 per day), and in Ohio the cost was \$24,783.50 (or \$67.90 per day).³³ By contrast, the annual cost for a probation officer to supervise an offender in the community was approximately only \$3,433.³⁴

Nationwide, more than 600,000 inmates are released per year from state and federal prisons. According to the U.S. Department of Justice, Bureau of Justice Statistics (hereinafter “BJS”), 623,337 prisoners were released in 2013, which was less than the 636,715 inmates released in 2012.³⁵ In calendar year 2014, Ohio released 22,664 inmates from its state prisons.³⁶ The rate at which offenders return to prison is known as *recidivism*.³⁷ Recidivism is often used as a measure for determining the success or failure of rehabilitating offenders. Recidivism is the reengagement in criminal behaviors by an ex-offender despite having been punished previously.³⁸

26. *Id.*

27. *Id.*

28. THE GROWTH OF INCARCERATION, *supra* note 3, at 315.

29. *Id.*

30. *Id.* at 317.

31. *Id.*

32. *Id.*

33. For federal figures, see Annual Determination of Average Cost of Incarceration, 80 Fed. Reg. 12523 (Notice Mar. 9, 2015), and for Ohio figures, see OHIO DEP'T OF REHAB. AND CORR, ANNUAL REPORT 27 (2014) [hereinafter ODRC ANNUAL REPORT].

34. NANCY LA VIGNE & JULIE SAMUELS, URBAN INSTITUTE, THE GROWTH & INCREASING COST OF THE FEDERAL PRISON SYSTEM: DRIVERS AND POTENTIAL SOLUTIONS 2 (2012).

35. CARSON, *supra* note 4, at 10.

36. DRC DATA SOURCE REPORTS, *supra* note 15.

37. PEW CTR. ON THE STATES, STATE OF RECIDIVISM: THE REVOLVING DOOR OF AMERICA'S PRISONS 1 (2011).

38. *Id.* at 7.

The percentage of individuals released from prison that are rearrested, reconvicted, and returned to custody is labeled the prison recidivism rate.³⁹ In 2014, the national prison recidivism rate was 49.7%, which is almost double Ohio's prison recidivism rate of 27.1%.⁴⁰

Based on the findings in a 2014 BJS report, more than two-thirds of ex-offenders will be rearrested within three years of their release, and three-quarters will be rearrested within five years of their release.⁴¹ Additionally, more than a third of these individuals who will be rearrested within five years following their release will be rearrested within the first six months after release, and more than half will be rearrested by the end of the first year.⁴²

III. CRIMINAL JUSTICE REFORM

Incarceration rates have grown by more than 700% since the 1970s with the increase in the use of the prison system to combat crime.⁴³ In addition, the rate of confinement, which is the proportion of the population in jail at any one time, also rose.⁴⁴ This increase in the rate of incarceration continued for years after crime rates began declining.⁴⁵ Crime rates for both violent and property offenses peaked in 1991 and have been steadily decreasing ever since.⁴⁶ On the national level, violent crime is down 49% from its 1991 peak and property crime is down 44%.⁴⁷

Why has the U.S. experienced this enormous surge in jail and prison populations if crime rates are declining? The answer centers around the criminal justice policies implemented in the 1970s, 1980s, and 1990s.⁴⁸ Even though research reveals that there is little casual connection between improved public safety and an increased use of imprisonment, a growing percentage of the population is being incarcerated.⁴⁹ Arguably, much of this growth can be attributed to the decisions of policy makers to increase the use and severity of prison sentences.⁵⁰

39. *Id.*

40. ODRC ANNUAL REPORT, *supra* note 33, at 1.

41. MATTHEW R. DUROSE, ALEXIA D. COOPER & HOWARD N. SNYDER, BUREAU OF JUSTICE STATISTICS, RECIDIVISM OF PRISONERS RELEASED IN 30 STATES IN 2005: PATTERNS FROM 2005 TO 2010 1 (2014), available at <http://www.bjs.gov/index.cfm?ty=pbdetail&iid=4986>.

42. *Id.*

43. CHRISTIAN HENRICHSON & RUTH DELANEY, VERA INST. OF JUSTICE, THE PRICE OF PRISONS: WHAT INCARCERATION COSTS TAXPAYERS 2 (2012).

44. INCARCERATION'S FRONT DOOR, *supra* note 9, at 8.

45. *Id.*

46. *Id.* at 9.

47. *Id.*

48. See THE GROWTH OF INCARCERATION, *supra* note 3, at 70.

49. INCARCERATION'S FRONT DOOR, *supra* note 9, at 9.

50. THE GROWTH OF INCARCERATION, *supra* note 3, at 70.

Over the past forty years, three distinctive reform phases in American sentencing and punishment policies are identifiable.⁵¹ From 1975 through the mid-1980s, the first phase of reform concentrated on making sentencing procedures fairer and sentencing outcomes more predictable and consistent.⁵² The problems targeted in this phase of reform were “racial and other warranted disparities,” and the solutions involved various forms of comprehensive sentencing, parole guidelines, and statutory sentencing standards.⁵³ These types of sentencing reform initiatives flourished in the aftermath of the rejection of indeterminate sentencing.⁵⁴ Pervasive in the U.S. since the 1930s, indeterminate sentencing was a system premised on the theory of needing to individualize sentences in each case, with rehabilitation as the primary goal of punishment.⁵⁵ Under this system, statutes defined crimes and identified broad ranges of permitted sentences.⁵⁶ Judges were given discretion concerning whether to impose prison, jail, probation, or monetary sentences.⁵⁷

During the second phase of reform from the mid-1980s through 1996, criminal justice policies primarily focused on making sentences for drug and violent crimes harsher and their imposition more certain.⁵⁸ The primary strategies from this era promoted a tough-on-crime mentality, and included such policies as the War on Drugs, three strikes laws, “Broken Windows” laws, truth-in-sentencing, mandatory minimum sentences, and length of stay increases.⁵⁹ Unlike the goals of the laws passed in the first phase of reform, initiatives in this period were directed at making sentences more punitive and definite, and preventing crime through deterrence and incapacitation.⁶⁰ Under these laws, the emphasis shifted from fairness to certainty, severity, crime prevention, and symbolic denunciation of criminals.⁶¹

The majority of the growth in prison and jail populations throughout this second phase of reform follows the surge in drug crime enforcement most notably associated with the War on Drugs.⁶² From 1981 through 2006, when total drug arrests peaked, the number of people arrested for drug-

51. *See id.* at 72.

52. *Id.* at 72-73.

53. *Id.* at 73.

54. *Id.* at 74

55. THE GROWTH OF INCARCERATION, *supra* note 3, at 71.

56. *Id.*

57. *Id.* at 71-72.

58. *Id.* at 73.

59. *See id.*; INCARCERATION’S FRONT DOOR, *supra* note 9, at 9-10; AMERICAN LEGISLATIVE EXCH. COUNCIL, *Initiatives, Prison Overcrowding*, <http://www.alec.org/initiatives/prison-overcrowding/> (last visited July 29, 2015).

60. THE GROWTH OF INCARCERATION, *supra* note 3, at 78.

61. *Id.*

62. *See* INCARCERATION’S FRONT DOOR, *supra* note 9, at 9.

related offenses tripled while the drug arrest rate grew by 160%.⁶³ In the 1980s, the percentage of people in jail accused of or convicted of drug crimes increased substantially from 9% in 1983 to 23% in 1989, and has remained there ever since.⁶⁴

In the 1980s, more than half of the growth in state prison populations was driven by the increased likelihood of incarceration given an arrest.⁶⁵ With the implementation of mandatory minimum sentences through three strikes laws and other policies, such as “Broken Windows” and truth-in-sentencing, convicted defendants became more likely to serve prison time. Between 1975 and 1996, the most frequently enacted change in U.S. sentencing laws was the imposition of mandatory minimums.⁶⁶ By 1994, every state in the U.S. had implemented mandatory minimum sentences, which primarily applied to drug offenses, murder, aggravated rape, felonies involving firearms, and felonies committed by previously convicted felons.⁶⁷ An example of mandatory minimum sentencing includes the three strikes laws, which typically required a minimum twenty five-year sentence for people convicted of a third felony.⁶⁸

Other criminal justice policies are also responsible for contributing to the rise in the incarceration rates. In the early 1980s, New York adopted the “Broken Windows” approach, which called for arrest and prosecution of all crimes large and small.⁶⁹ The focus of this model is on the importance of disorder (e.g., broken windows) in generating and sustaining more serious crime.⁷⁰ Moreover, truth-in-sentencing laws were enacted by a majority of states and required offenders to serve at least 85% of their prison sentence.⁷¹ The term “truth-in-sentencing” comes from the federal “truth-in-lending” laws of the 1970s that require consumer lenders and merchants to disclose key financing terms, such as interest rates.⁷² The implication here is that there is something untruthful about judicial discretion when sentencing and other mechanisms, such as parole, that allow for discretionary decisions about release dates.⁷³ During this second phase of sentencing reform, policy

63. *Id.*

64. *Id.* at 9-10.

65. THE GROWTH OF INCARCERATION, *supra* note 3, at 3.

66. *Id.* at 83.

67. *Id.*

68. *Id.* at 73.

69. See GEORGE MASON UNIVERSITY, CTR. FOR EVIDENCE-BASED CRIME POLICY, *Broken Windows Policing*, <http://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/broken-windows-policing/> (last visited July 29, 2015).

70. *Id.*

71. THE GROWTH OF INCARCERATION, *supra* note 3, at 73.

72. *Id.* at 79

73. *Id.* at 79-80.

advocates defined the differences between the sentences ordered by judges and the actual time served by offenders as the problem in need of fixing.⁷⁴

Not only are more people ending up incarcerated as a result of these policy changes, but those who are incarcerated are spending more time behind bars. In 1983, the average length of stay for a prisoner was fourteen days.⁷⁵ By 2013, the average length of stay had increased to twenty-three days.⁷⁶ This increase is significant even though the national data regarding length of stay makes no distinction between those held pretrial and those held post-conviction upon a sentence. Since over the last thirty years the percentage of prisoners being held pretrial has grown from approximately 40% to 62%, it is likely that the increase in average length of stay is due to longer stays in jail by people who are not convicted of any crime.⁷⁷

The unprecedented rise in U.S. incarceration rates can be directly attributed to the increasingly punitive criminal justice policy changes prevalent in this second phase of reform. By passing laws that intended to ensure the imprisonment of those convicted and that prison terms for many offenses would be longer than in earlier periods, jail populations unsurprisingly soared. Additionally, these laws reflect a series of policy choices that intensified punishment for drug crimes, required prison for minor offenses, and significantly increased sentence lengths.

The third phase of criminal justice reform, which spans from the mid-1990s to the present, has been an era of drift.⁷⁸ The impulse of policy makers to conduct comprehensive sentencing overhauls or enact significantly harsher penalties for crimes has waned.⁷⁹ During this period, not one state has enacted new comprehensive sentencing reform, nor has any state ratified new truth-in-sentencing laws.⁸⁰ In fact only one state has adopted a three strikes law.⁸¹ Additionally, other mandatory minimum sentencing laws have been more narrowly constructed than in the past and have only targeted such crimes as carjacking, human trafficking, and child pornography.⁸²

According to the National Conference of State Legislatures, since 2000, several hundred state laws have been enacted that actually make sentencing less severe and less rigid.⁸³ However, this has had a relatively minor effect

74. *Id.* at 80.

75. INCARCERATION'S FRONT DOOR, *supra* note 9, at 10.

76. *Id.*

77. *Id.*

78. THE GROWTH OF INCARCERATION, *supra* note 3, at 73.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.*

83. THE GROWTH OF INCARCERATION, *supra* note 3, at 73.

on jail populations since these laws target less serious offenses.⁸⁴ Moreover, the major punitive laws of the second phase of reform rarely have been repealed or significantly altered.⁸⁵ Instead, the changes made to state sentencing laws during the current reform phase have focused on exceptions to or narrowing the scope of mandatory minimum sentencing laws, expanding prison officials' authority regarding early release, and allowing early release for limited categories of prisoners.⁸⁶ Another area targeted by the laws in this phase of reform is directed at reducing the probability of parole and probation revocations for technical violations for offenders under supervision.⁸⁷

Ohio's criminal justice reform experience follows the trends exhibited at the national level. In 1974, Ohio's criminal code underwent major revisions based on the then-current Model Penal Code.⁸⁸ The sentencing modifications made at this time retained indeterminate sentencing by allowing judges to select minimum terms from specific ranges set by statute.⁸⁹ In 1983, the state legislature enacted new sentencing reforms that created harsher penalties, which included new punishments for repeat offenders.⁹⁰ This set of changes incorporated determinate prison sentence ranges, which had not been used in Ohio since 1913, and mandatory minimum prison terms.⁹¹

The next wave of Ohio sentencing reform began in 1990 when the legislature created the Ohio Criminal Sentencing Commission and charged it with developing and recommending a new comprehensive sentencing system.⁹² Rejecting the grid style matrix of sentencing pervasive nationally during this reform era, the Ohio commission opted instead for a determinate system based on judicial discretion and "truth-in-sentencing."⁹³ Under the felony sentencing law modifications evidentially adopted in 1996 as Senate Bill 2 (hereinafter "S.B. 2"), parole release and indeterminate prison sentencing was abolished in favor of determinate sentences judicially ordered from specified ranges.⁹⁴ Previously enacted mandatory minimum prison sentences were retained with minor changes that allowed judges some latitude to choose a sentence of a specific duration within definitive

84. *See id.*

85. *Id.* at 73-74.

86. *Id.* at 74.

87. *Id.*

88. Rauschenberg, *supra* note 14.

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

93. Rauschenberg, *supra* note 14.

94. John Wooldredge et al., *Impact of Ohio's Senate Bill 2 on Sentencing Disparities*, at 3-4 (2002), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/202560.pdf>.

ranges.⁹⁵ Ohio policy makers touted the new sentencing statutes as “the nation’s most honest truth-in-sentencing law” because the majority of individuals sent to prison actually served the exact sentence imposed by the court.⁹⁶

Since the adoption of S.B. 2 and following the sentencing trends prevalent in the third phase of sentencing reform, Ohio has spent the last twenty years clarifying and modifying the penalties established in S.B. 2. Early revisions to S.B. 2 focused on refining the eligibility for diversion programs, expanding the definition of repeat offenders, specifying appropriateness for judicial release, and clarifying which prior offenses can be used to enhance penalties at sentencing.⁹⁷ Later refinements to S.B. 2 centered on increasing the punishments for specific crimes, such as vehicular homicides and assaults, especially for offenders with prior alcohol-related convictions.⁹⁸

More recent and significant amendments to the sentencing system established by S.B. 2 concentrated on stabilizing or reducing the prison population and assisting offender reintegration back into the community upon release from prison. These reforms tackled such issues as raising theft thresholds, equalizing drug penalties for crack and powder cocaine, expanding diversion opportunities, lowering prison sentence lengths for certain drug crimes, and limiting the use of prison for low level felonies.⁹⁹ Legislation also encouraged local incarceration and community alternatives to prison, and provided new mechanisms to judges and prison officials for shortening prison sentences.¹⁰⁰ Local courts and probation departments were required to use evidence-based risk and need criminal assessments, supervision tactics, and probation officer training standards.¹⁰¹ The Ohio Department of Rehabilitation and Corrections also was compelled to prepare written reentry plans for inmates to guide their rehabilitation while incarcerated, assist in reentry into the community, and assess the inmate’s needs upon release from prison.¹⁰²

95. Rauschenberg, *supra* note 14.

96. DAVID J. DIROLL, OHIO CRIMINAL SENTENCING COMM’N, THOUGHTS ON APPLYING S.B. 2 TO “OLD LAW” INMATES 1, *available at* <http://www.sconet.state.oh.us/Boards/Sentencing/resources/summaries/SB2.pdf> (last visited Aug. 6, 2015).

97. *See* OHIO CRIMINAL SENTENCING COMM’N, AM. SUB. H.B. 327 (2002), *available at* https://www.sconet.state.oh.us/Boards/Sentencing/resources/summaries/HB327_summary.pdf.

98. *See* DAVID J. DIROLL, OHIO CRIMINAL SENTENCING COMM’N, VEHICULAR HOMICIDES & ASSAULTS AFTER H.B. 461 (2007), *available at* <https://www.sconet.state.oh.us/Boards/Sentencing/resources/summaries/VHVApostHB461.pdf>.

99. *See* DAVID J. DIROLL, OHIO CRIMINAL SENTENCING COMM’N, H.B. 86 SUMMARY: THE 2011 CHANGES TO CRIMINAL AND JUVENILE LAW 3-9 (2011), *available at* <https://www.sconet.state.oh.us/Boards/Sentencing/resources/summaries/HB86Summary.pdf>.

100. *See id.* at 11-16, 22-24.

101. *See id.* at 18-22.

102. *See id.* at 24-26.

Even with the implementation of recent criminal justice reforms, U.S. prison populations continue to soar with prison overcrowding being quite common in many states. According to the most recent prison capacity data compiled by the Bureau of Justice Statistics, in 2013, over half of the states' prisons reached 100% or more capacity.¹⁰³ In Ohio, state prison populations are bulging with over 30% more inmates than the facilities were designed to hold.¹⁰⁴

IV. HISTORY OF REENTRY COURTS

With the latest criminal justice reform efforts focused on reducing ballooning state corrections budgets and the number of inmates in state prisons, policy makers have been more willing to reassess the past punitive approaches that heavily relied on imprisonment as the principal crime control strategy.¹⁰⁵ Encouraging the development of this new policy environment are the consistent public opinion polls that show most Americans support alternatives to incarceration and the research that demonstrates certain offenders can be more effectively managed in community settings.¹⁰⁶

One solution to addressing the problem of mass incarceration, relieving prison overcrowding, and assisting offenders in reintegrating back into the community after imprisonment is specialized dockets. The criminal justice system concept of coordinating and integrating offender services with intensive supervised monitoring is based on the specialized docket model.¹⁰⁷ "A specialized docket is a therapeutically oriented judicial approach to providing court supervision and appropriate treatment to offenders."¹⁰⁸

The first specialized docket was a drug court, which was created in 1989 in Miami-Dade County, Florida.¹⁰⁹ The basic premise of this program was to develop community collaborations for a complete systems approach to handling cases with the highest rates of recidivism.¹¹⁰ The drug court model targeted a substance dependent population and promoted wrap-around treatment services, intensive court monitoring of the offender's progress, and the imposition of immediate rewards and sanctions based

103. CARSON, *supra* note 4, at 31.

104. *Id.*

105. INCARCERATION'S FRONT DOOR, *supra* note 9, at 5.

106. *Id.*

107. KNOPP ET AL., SUPREME COURT OF OHIO JUDICIAL & COURT SERVICES, MENTAL HEALTH COURT DOCKET: A HANDBOOK FOR OHIO JUDGES 3 (2008), available at <http://www.supremecourt.ohio.gov/JCS/specDockets/MHCourts/handbook.asp> [hereinafter A HANDBOOK FOR OHIO JUDGES].

108. *Id.*

109. *Drug Court's Holistic Approach*, MIAMI DADE COUNTY DRUG CT. WORKS, http://www.miamidrugcourt.com/index.php?option=com_content&view=article&id=44&Itemid=54 (last visited Aug. 7, 2015).

110. *See id.*

upon the offender's compliance with supervision and treatment requirements.¹¹¹ As a result of this approach, the court discovered that participants achieved a considerably lower rate of recidivism and were more likely to successfully complete the requirements of probation.¹¹² With the success of the Florida approach, drug courts began to spread throughout the country and target other criminal justice populations with high rates of recidivism, such as offenders reentering the community from prison.

In the 1990s, many operating drug courts included a reentry track for participants being released from local jails.¹¹³ The concept of reentry courts as a separate docket from drug courts was first introduced in 1998 by the National Institute of Justice as a management strategy for reintegrating all offenders—not just substance abusing offenders—back into communities upon release from correctional facilities.¹¹⁴

In 2000, the Office of Justice Programs sponsored the Reentry Court Initiative (hereinafter “RCI”) as a response to communities’ increasing needs to effectively supervise the large numbers of returning inmates being released from prison.¹¹⁵ Through RCI, nine sites were selected to implement reentry courts with the stated goal to “establish a seamless system of offender accountability and support services throughout the reentry process.”¹¹⁶ Under this program, the following nine sites were asked to create strategies to improve tracking and supervision of released offenders, prepare communities to address public safety issues, and provide offenders with the necessary services to assist them in reconnecting with their families and community:

- California (San Francisco)
- Colorado (El Paso County)
- Delaware (two distinct programs: New Castle County and Sussex County)
- Florida (Broward County)
- Iowa (Cedar Rapids)

111. A HANDBOOK FOR OHIO JUDGES, *supra* note 107, at 3.

112. *Id.*; see *Do Drug Courts Work? Findings from Drug Court Research*, NAT’L INST. OF JUSTICE, <http://www.nij.gov/topics/courts/drug-courts/pages/work.aspx> (last modified May 12, 2008); *Drug Courts Work*, NAT’L ASS’N OF DRUG COURT PROF’LS, <http://www.nadcp.org/learn/facts-and-figures> (last visited Aug. 7, 2015); *Adult Drug Court Research Findings*, NAT’L DRUG COURT INST., <http://www.ndci.org/research> (last visited Aug. 7, 2015).

113. See JEFF TAUBER & C. WEST HUDDLESTON, NAT’L DRUG COURT INST., REENTRY DRUG COURTS 1 (1999), available at http://www.ndcrc.org/sites/default/files/mono3.reentry_0.pdf.

114. *Id.*

115. CHRISTINE LINDQUIST ET AL., NAT’L INST. OF JUSTICE, REENTRY COURTS PROCESS EVALUATION (PHASE 1): FINAL REPORT ES-1 (2003), available at <https://www.ncjrs.gov/pdffiles1/nij/grants/202472.pdf> [hereinafter REENTRY COURTS PROCESS EVALUATION].

116. *Id.*

- Kentucky (two distinct programs: Fayette County and Campbell and Kenton counties)
- New York (the Harlem area)
- Ohio (Richland County)
- West Virginia (Mineral, Tucker, and Grant counties).¹¹⁷

Even though these pilot sites were encouraged to experiment with the reentry court model using individualized approaches appropriate to meet their communities' needs, a core set of reentry court components were implemented by each program.¹¹⁸ The six basic elements incorporated into each of the court pilot sites addressed assessment and planning, judicial oversight, management of support services, community accountability, and the use of rewards and sanctions.¹¹⁹ Two additional key reentry court components shared among the sites included the use of regular status review hearings to monitor the progress of participants and the types of services available to the participants, such as substance abuse treatment, mental health treatment, job placement/vocational services, educational assistance, housing assistance, and assistance with other basic needs.¹²⁰ The importance of the RCI project was to demonstrate that reentry courts were a viable option in need of further exploration for addressing offenders' transition from prison back into their communities.¹²¹

Building on the knowledge gained from the RCI project and as a result of funding made available through the Second Chance Act promulgated in 2007, the Bureau of Justice Assistance (hereinafter "BJA") offered grant funds for a variety of approaches to adult and juvenile reentry, including reentry courts.¹²² Reentry courts receiving money under this grant were required to implement reentry strategic planning and create a Reentry Task Force to ensure interagency collaborations.¹²³ BJA also mandated the use of validated assessment tools, evidence-based treatment practices, and rigorous tracking of services delivered and received for all reentry courts receiving funds.¹²⁴ With the availability of federal funding to support operations, the number of reentry courts inevitably grew.

117. *Id.* at ES-1-ES-2.

118. *Id.* at ES-2.

119. *Id.* at ES-6.

120. REENTRY COURTS PROCESS EVALUATION, *supra* note 115, at ES-6.

121. *Id.*

122. CHRISTINE LINDQUIST ET AL., NAT'L INST. OF JUSTICE, THE NATIONAL INSTITUTE OF JUSTICE'S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS: PROGRAM CHARACTERISTICS AND PRELIMINARY THEMES FROM YEAR 1, 2 (2013), *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/241400.pdf> [hereinafter EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS].

123. *Id.*

124. *Id.*

In 2010, BJA offered specifically targeted funding for reentry courts, which the solicitation defined as “specialized courts that help reduce recidivism and improve public safety through the use of judicial oversight to apply graduated sanctions and positive reinforcement, to marshal resources to support the prisoner’s reintegration, and to promote positive behavior by the returning prisoners.”¹²⁵ This was the first year that BJA identified a separate and specific grant category for reentry court programs.¹²⁶ Ultimately, nine projects received federal funding that year under this grant solicitation.¹²⁷ However, 2011 was the last year that BJA had a specific grant category for reentry courts.¹²⁸ Since then, reentry court projects have been funded under the general Second Chance Act reentry categories.¹²⁹

V. OHIO SPECIALIZED DOCKETS

Ohio has been at the forefront of the reentry court movement as evinced by the inclusion of Richland County in the RCI project.¹³⁰ The growth of Ohio specialized dockets can be attributed to the vision, leadership, and actions of Chief Justice Thomas J. Moyer of the Supreme Court of Ohio. From the inception of the Ohio Sentencing Commission, Chief Justice Moyer served as its Chair and led the 1990s efforts to revise and reform the criminal justice system.¹³¹ Since the early 1990s, Chief Justice Moyer was a proponent of drug courts and dedicated administrative staff time to their development and promotion. In 1998, when I joined the Ohio Supreme Court as staff counsel to the Director of Legal and Legislative Services, drug courts were specifically identified as one of my responsibilities, which at the time encompassed promoting program expansion and providing technical assistance to the seven operating drug courts.

Once drug courts were proven to be a viable alternative to incarceration for drug addicted offenders, the number of programs grew in Ohio and began to address issues related to mental illness, domestic violence, and

125. *Id.* at 1.

126. *See FY 2010 Solicitations for BJA*, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, <http://grants.ojp.usdoj.gov:85/selector/office?po=BJA&fiscalYear=2010&defaultYear=Y> (last visited Aug. 7, 2015).

127. *See Awards Made for “BJA FY 10 Second Chance Act State, Local, and Tribal Reentry Courts”*, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, <http://grants.ojp.usdoj.gov:85/selector/title?solicitationTitle=BJA%20FY%2010%20Second%20Chance%20Act%20State,%20Local,%20and%20Tribal%20Reentry%20Courts&po=BJA> (last visited Aug. 7, 2015).

128. *See Funding Grant Awards*, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, <https://www.bja.gov/funding.aspx#3> (last visited Aug. 7, 2015).

129. *See id.*

130. *See REENTRY COURTS PROCESS EVALUATION*, *supra* note 115, at ES-1.

131. *See Ohio Criminal Sentencing Commission Enabling Legislation*, THE SUPREME COURT OF OHIO & THE OHIO JUDICIAL SYS., https://www.supremecourt.ohio.gov/Boards/Sentencing/enabling_act.asp (last visited Aug. 7, 2015); OHIO REV. CODE ANN. §181.21.

reentry. In 2001, as an acknowledgement of the importance of these programs to criminal justice reform, Chief Justice Moyer coined the phrase “specialized dockets,” created the Specialized Dockets Section in the administrative offices of the Supreme Court, and appointed me as manager of the Section.¹³² The mission of the Specialized Dockets Section, as delineated by Chief Justice Moyer, was to provide resources and technical support to trial courts in analyzing the need for, planning of, and implementation of specialized docket programs.¹³³

In an effort to institutionalize specialized docket programs in Ohio before he retired, Chief Justice Moyer created the Advisory Committee on Specialized Dockets in 2009, with the stated purpose:

[T]o provide ongoing advice to the Court and its staff regarding the promotion of statewide rules and uniform standards concerning specialized dockets in Ohio courts; the development and delivery of specialized docket services to Ohio courts, including training programs for judges and court personnel; and the consideration of any other issues the advisory committee deems necessary to assist the Court and its staff regarding specialized dockets in Ohio courts.¹³⁴

In 2012, as a result of the work of this committee, the Supreme Court promulgated minimum standards for specialized docket operations, created a certification process to enforce these minimum standards, and elevated the Advisory Committee on Specialized Dockets to the Commission on Specialized Dockets, with the charge of overseeing the specialized docket certification process.¹³⁵

Under Article IV, section 5(A)(1) of the Ohio Constitution, the Supreme Court is granted “general superintendence over all courts in the state.”¹³⁶ Based on this authority, the Supreme Court created the Rules of Superintendence for the Courts of Ohio.¹³⁷ Pursuant to Superintendence Rules 36.20 through 36.28, which became effective on January 1, 2013, all specialized dockets operating in Ohio must be certified by the Supreme

132. See A HANDBOOK FOR OHIO JUDGES, *supra* note 107, at 4.

133. *Id.*

134. See THE SUPREME COURT OF OHIO, OPERATING GUIDELINES FOR THE ADVISORY COMMITTEE ON SPECIALIZED DOCKETS (2011), <http://www.supremecourt.ohio.gov/Boards/specDockets/Guidelines.pdf>.

135. See THE SUPREME COURT OF OHIO, RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, SUP. R. 36.02-36.28, available at <http://www.supremecourt.ohio.gov/LegalResources/Rules/superintendence/Superintendence.pdf>.

136. OHIO CONST. art. IV § 5(A)(1).

137. RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO, *supra* note 135, at SUP. R. 1(B).

Court of Ohio.¹³⁸ To become a certified specialized docket, a local court is initially required to do two things: adopt a local rule or issue an administrative order complying with the specialized docket standards contained in Appendix I of the rules and successfully complete the certification process.¹³⁹ The certification process delineated in the rules compels a court every three years (or sooner if there is a change in the judge) to submit an application and supporting materials to the Supreme Court and satisfactorily complete a site visit conducted by Supreme Court staff.¹⁴⁰ The supporting materials mandated under the rules include a copy of the specialized docket's local court rule or administrative order creating the program, program description, participant handbook, and participation agreement.¹⁴¹ If a specialized docket operates without Supreme Court certification, the judge may be subject to a disciplinary charge for violating the *Ex Parte* communications prohibition under Rule 2.9 of the Ohio Code of Judicial Conduct.¹⁴²

As of July 17, 2015, the Ohio Supreme Court has recognized 187 specialized dockets as being at some acceptable stage of certification.¹⁴³ The majority of these programs are drug courts and mental health courts.¹⁴⁴ Forty-nine of these specialized dockets are located within juvenile courts and include the family dependency treatment courts that target parents charged with abuse, dependency, and/or neglect.¹⁴⁵ One hundred and thirty-eight of these programs target adult offenders and are located at the common pleas and municipal court levels.¹⁴⁶ Twelve reentry courts are certified by the Supreme Court, two of which are juvenile programs with the other ten targeting adult offenders.¹⁴⁷

VI. REENTRY COURT RESEARCH

Though the number of reentry courts is increasing, these programs have not been studied as thoroughly as drug courts and other types of specialized dockets.¹⁴⁸ Due to this fact, a concrete reentry court model has not been

138. *Id.* at SUP. R. 36.20-36.28; 99(TT).

139. *Id.* at SUP. R. 36.20(A).

140. *Id.* at SUP. R. 36.21-36.26, 36.28.

141. *Id.* at SUP. R. 36.21.

142. *See* OHIO CODE OF JUDICIAL CONDUCT R. 2.9.

143. *See* THE OHIO SUPREME COURT, OHIO SPECIALIZED DOCKETS CERTIFICATION STATUS SHEET (2015), <http://www.sconet.state.oh.us/JCS/specDockets/certification/statusSheet.pdf>.

144. *See id.*

145. *See id.*

146. *See id.*

147. *See id.*

148. *See* EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 122, at 1-2.

clearly documented or established.¹⁴⁹ In 2010, the Center for Court Innovation released an evaluation of the Harlem Parole Reentry Court in New York City.¹⁵⁰ This reentry court targets new parolees during the first six months following release from prison, with the goal of stabilizing them in their initial phase of reintegration.¹⁵¹ The report highlighted findings in three areas:

- Rearrests—participants, including both graduates and failures, were less likely to be rearrested.
- Reconvictions—participants were less likely to be reconvicted with significant effects at one, two, and three years.
- Revocations—participants were more likely to be revoked and returned to prison for technical violations at one, two, and three years with significantly higher rates after two and three years.¹⁵²

Additional analyses determined that participants who completed the reentry court program experienced lower odds of rearrest and revocation.¹⁵³ Overall, the evaluation found that the reentry court had a positive effect in regards to preventing new crimes as measured by rearrests and reconvictions.¹⁵⁴ However, participants had higher rates of revocations and were more likely to be revoked on technical violations of supervision conditions.¹⁵⁵

In 2012, California's Administrative Office of the Courts released a preliminary study that focused on reentry court programs in six counties in California.¹⁵⁶ The reentry courts examined in this report were created to prevent parole violators with a history of substance abuse or mental illness from returning to prison.¹⁵⁷ Participants in these reentry courts enter the

149. *Id.* at 2.

150. See ZACHARY HAMILTON, CTR. FOR COURT INNOVATION, DO REENTRY COURTS REDUCE RECIDIVISM?: RESULTS FROM THE HARLEM PAROLE REENTRY COURT (2010), available at http://www.courtinnovation.org/sites/default/files/Reentry_Evaluation.pdf.

151. *Id.* at iii.

152. *Id.*

153. *Id.*

154. *Id.* at iv.

155. HAMILTON, *supra* note 150, at iv.

156. JUDICIAL COUNCIL OF CAL., ADMIN. OFFICE OF THE COURTS, AOC BRIEFING: A PRELIMINARY LOOK AT CALIFORNIA PAROLEE REENTRY COURTS 4 (2012), available at <http://www.courts.ca.gov/documents/AOCBriefParolee0612.pdf>.

157. *Id.*

program after having committed a parole violation.¹⁵⁸ Although the reentry courts reviewed in this evaluation were in comparatively early stages of implementation, the outcomes of this preliminary analysis were viewed as promising.¹⁵⁹ The number of participants returning to prison within six months of entering the reentry court program was approximately 23%, as compared to previous research, which indicated that 78% of all parole violations resulted in revocations to prison.¹⁶⁰

In an attempt to identify a more concrete reentry court model, the National Institute of Justice (hereinafter “NIJ”) is currently leading one of the most comprehensive cross-site evaluations of reentry courts to date.¹⁶¹ Through funding received from BJA in fiscal year 2010, NIJ is studying eight BJA-funded reentry courts, one of which is Stark County Common Pleas Reentry Court in Ohio.¹⁶² This study consists of the following three components:

- Process Evaluation—For all eight sites this will document the policies, practices, community context, and implementation barriers and examine reentry courts in the context of the reentry continuum and best practices. This will also draw explicit comparisons between the reentry court models used in each site with the established drug court model.
- Impact Evaluation—For reentry court participants and a matched comparison group, this will compare during- and post-program recidivism outcomes along with other individual outcomes, such as employment, substance use, and housing, to determine if reentry courts reduce rearrests, reconvictions, and re-incarceration. In addition this will examine if reentry courts reduce issues related to criminal behavior, drug and alcohol abuse, employment, housing, mental health, and family relationships and will seek to determine which program practices, services, and participant perceptions are associated with more positive outcomes.

158. *Id.* at 8.

159. *Id.*

160. *Id.*

161. See EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 122, at 2-3.

162. *Id.* at 2-4.

- Cost-effectiveness Analysis—For seven of the sites, this will estimate the cost of the program and conclude whether the costs due to criminal justice, treatment, and other outcomes are lower for reentry court participants than the comparison groups.¹⁶³

In 2013, NIJ released a report representing findings from Year 1 of the study, which encompassed some process evaluation information that summarized early implementation characteristics of the eight courts being evaluated.¹⁶⁴ Additional information on all three components being reviewed in this evaluation shall be forthcoming.¹⁶⁵

VII. CONCLUSION

The unprecedented and historically unique growth of imprisonment rates in the United States over the past forty years has resulted in this country earning the distinction of having the highest incarceration rates in the world. The consequences of this mass incarceration to American society has been ballooning state corrections budgets, with the criminal justice system increasingly becoming the main provider of social and economic services for the majority of disadvantaged populations in the country. Even with recent criminal justice policy reforms moving away from using prison as the principal crime control strategy, huge numbers of American citizens still remain incarcerated or under criminal justice system supervision. Due to this fact, innovative programs, such as specialized dockets and more specifically reentry courts, have been created as one solution to assisting offenders' reintegration back into their communities after imprisonment. Although research on the effectiveness of reentry court programs is on-going, preliminary studies demonstrate that reentry courts provide a positive impact on criminal justice system outcomes.

163. *Id.* at 3.

164. *See id.* at 4-19.

165. *See id.* at 20.