

# Federal Reentry Courts and Other New Models of Supervision

by Hon. Laurel Beeler

**I**t was not a typical federal criminal hearing. The presiding judge for the drug re-entry court hugged each participant. A prosecutor, a public defender, and a probation officer spoke of each participant's progress over the last year. A crowd of judges, prosecutors, federal public defenders, probation officers, service providers, and family members applauded the participants as they graduated from the Northern District of California's first drug re-entry court.

Drug courts have been a mainstay in state courts for over 20 years. These courts were developed in part in reaction to a docket collapsing under the weight of cases related to drug or alcohol abuse.<sup>1</sup> Faced with a repeating pattern of incarceration and re-offending, state courts embraced evidence-based supervision and treatment practices to break the cycle, treat substance abuse and other risk factors associated with crime, achieve rehabilitation, and reduce recidivism.<sup>2</sup> State drug courts evolved into a non-adversarial forum for problem-solving and collaboration by all stakeholders in the criminal justice system: judges, law enforcement, prosecutors, defenders, probation officers, treatment providers, and community members.<sup>3</sup>

Federal courts, by contrast, are relative newcomers to this model of supervision and treatment. Unlike state courts, which often deploy targeted strategies as an alternative to incarceration, federal drug courts employ similar strategies to facilitate re-entry, "the process of leaving prison and returning to society."<sup>4</sup> The U.S. Department of Justice and the Administrative Office of the U.S. Courts, which also encompasses the Office of Defender Services, have made strong commitments to re-entry programs, recognizing that their comprehensive and collaborative approach is a more efficient and cost-effective means of protecting public safety and creating more successful outcomes for former inmates.<sup>5</sup>

This article examines new models in federal supervision, including re-entry courts, diversion courts, and the cognitive-based supervision model called "The Courage to Change."

### **Evidence-Based Practices**

The federal and state models rely on evidence-based practices to target interventions to the criminogenic<sup>6</sup> risks and needs of defendants to achieve lower recidivism and better public safety.<sup>7</sup> In this context, risk means an individual's resistance to standard interventions and thus a risk of continuing to engage in substance abuse and related crime.<sup>8</sup> Among drug defendants, for example, risk factors include a younger age, male gender, early onset of substance abuse or delinquency, prior felony convictions, previously unsuccessful attempts at treatment, and antisocial peers or affiliations.<sup>9</sup> The drug court model targets persons with these risk factors, supervises them intensively, and holds them accountable for their actions so that they may succeed in treatment, stop substance abuse, and

avoid future criminal behavior.

Evidence-based practices also consider an individual's criminogenic needs, meaning needs that—if ameliorated—reduce the likelihood of continued criminal behavior.<sup>10</sup> Addiction is an example of a criminogenic need. Addiction often co-occurs with serious psychiatric disorders.<sup>11</sup> Specialized services such as treatment can help individuals function better and desist from criminal behavior. Addressing other needs—housing, education (including basic literacy), job skills, and living skills—can reduce criminal behavior too.<sup>12</sup>

In the federal system, targeting interventions to an individual's criminogenic risks and needs starts with the use of an actuarial risk assessment tool called the Federal Post-Conviction Risk Assessment (PCRA).<sup>13</sup> That process reflects an institutional determination that actuarial prediction of risk outperforms clinical judgment.<sup>14</sup> The tool allows probation officers to manage risk on an ongoing basis and takes into consideration static factors such as criminal history and age as well as dynamic factors such as recency and severity of substance abuse, financial issues, and social and family support.

Then, in all evidence-based models, interventions are targeted to the person's particular risks and needs, with the goal of reducing recidivism at the least cost to the taxpayers.<sup>15</sup> An important part of the model is that not all individuals require the same treatment: effective treatment for an addict, for example, may be different than effective treatment for a (voluntary) drug abuser. Similarly, different interventions may be needed for an addict with extensive criminal history and an addict who commits lower level crimes to fund a drug habit. The former may need drug treatment and extensive supervision to treat and control a chronically antisocial lifestyle, and the latter may respond well to treatment without a need for other interventions.<sup>16</sup> Indeed, the research suggests that including both in the same drug court only exposes the lower-risk person to antisocial influences and a greater risk of recidivism.<sup>17</sup>

In addition to this actuarial assessment of risks and needs and targeted interventions to address them, other treatment principles used include enhancing participants' intrinsic motivations through motivational interviewing,<sup>18</sup> providing skills training with directed practice (using cognitive methods), increasing positive reinforcement, and engaging ongoing community support for participants (particularly with employment).<sup>19</sup>

As the name implies, a foundation of "evidence-based" practice is systematically and objectively measuring the results of these treatment and accountability principles by collecting data and using that data to inform and guide ongoing best practices.<sup>20</sup>

### **The Federal Drug Re-entry Court**

Most re-entry courts in the federal system are drug courts focused on persons with high criminogenic risks and needs.<sup>21</sup> The target participant typically suffers from drug or alcohol dependence, mental health issues or deficiencies in adaptive functioning, and negative risk factors such as early onset of delinquency and previous failures in treatment.<sup>22</sup> Participants in the program regularly appear on a status calendar, partici-

pate in formal drug and mental health treatment, receive the support (whether therapeutic or vocational) to achieve longer term goals such as a drug-free life and a job,<sup>23</sup> and are subject to consequences if they fail to meet the program's requirements.

The model is grounded in theories of effective behavioral change. For example, participants are immediately capable of meeting certain short-term goals and supervision requirements (such as attending counseling sessions and court). Other goals are more deeper rooted or continual (such as long-term abstinence, employment, or effective parenting). Higher magnitude sanctions (such as jail time or community service) may be appropriate for failure to comply with some of these basic supervision requirements (such as attending treatment and drug tests) and less appropriate for a positive drug test that instead might be treated more effectively with additional therapy and counseling.<sup>24</sup> Also, incarceration ends bad behavior abruptly, but positive supports—jobs, education, productive use of time, and other pro-social activities—create behaviors over time that are inconsistent with drug abuse and crime.<sup>25</sup> The model thus incorporates practices designed to reward good behavior that is incompatible with drug use and crime.<sup>26</sup>

This model of incentives to reward good behavior and graduated sanctions to address bad behavior is a hallmark of a drug re-entry court. Punishment is not the goal: changing behavior is. The certainty and immediacy of sanctions is important. Sanctions need to be fair, predictable, and targeted to reduce a supervisee's bad behavior. Incentives are used to increase desirable behaviors such as going to work or school.

Not all drug re-entry courts in the federal system are the same, but there are some common characteristics. The re-entry team typically is composed of a federal judge, a federal public defender, an assistant U.S. attorney, a probation officer, and treatment specialists who work collaboratively to devise appropriate incentives for positive behavior and sanctions for negative behavior.<sup>27</sup> In particular, judicial engagement in the process is a significant factor in a positive outcome that includes better lives and decreased recidivism (and enhanced community safety).<sup>28</sup> Frequent and random drug testing (including on weekends and holidays) is associated with positive results.<sup>29</sup> Status hearings are conducted regularly, either once or twice a month, and often decrease toward the end of the program, which usually runs for at least a year. Programs generally have phases that participants move through, with different goals for the different phases. For example, securing employment may be a long-term goal at the beginning of a re-entry court when the emphasis is on sobriety and support, but it is a short-term goal in the second half of a program.

The primary incentive for a supervisee to participate in the program is a reduction in the term of supervision (often by a year) following a participant's successful completion of a program.<sup>30</sup> Successful completion means different things in different programs, but usually participants graduate only following an extended period of sobriety (for example, a year) and achievement of other program goals (such as full-time employment). Many programs also require participant agreement, meaning, participants must opt into the program if they meet the objective criteria for participation.<sup>31</sup>

**The re-entry team typically is composed of a federal judge, a federal public defender, an assistant U.S. attorney, a probation officer, and treatment specialists who work collaboratively to devise appropriate incentives for positive behavior and sanctions for negative behavior. In particular, judicial engagement in the process is a significant factor in a positive outcome that includes better lives and decreased recidivism (and enhanced community safety). Frequent and random drug testing (including on weekends and holidays) is associated with positive results.**

### **Other Federal Re-entry Courts**

State courts have evolved to address problems other than drug use. Examples of these problem-solving courts include mental health courts, domestic violence courts, homeless courts, teen courts, and family courts.<sup>32</sup> Following this model, federal re-entry courts sometimes target supervisees who have problems other than substance abuse. For example, several courts target participants who have been in gangs, and other courts target mental health issues.<sup>33</sup>

An even newer federal model is a post-guilty plea, pre-sentence diversion program that offers a blend of treatment, sanction alternatives, and incentives to address offender behavior, rehabilitation, and community safety. In the Central District of California, the Conviction and Sentence Alternatives program requires participants to plead guilty and be supervised in a program that includes drug and mental health treatment and employment and education services.<sup>34</sup> Upon successful completion of a term of supervision (one to two years generally), the participants have their cases dismissed or receive a sentence of time served.

### **Non-Judicial Cognitive-Behavioral Programs: The Courage to Change**

Not all re-entry programs include judicial involvement. One model that began in the federal probation office in the District of Hawaii (a district actively involved with re-entry programs) is called the *Courage to Change*.<sup>35</sup> The cognitive-behavioral

program includes life skills classes, peer counseling, and interactive journaling that addresses criminogenic risks and needs for medium- to high-risk supervisees, most of whom have substance abuse problems.<sup>36</sup> The journals cover topics such as self-control, peer relationships, social values, family ties, skills for successful living, and strategies for success.<sup>37</sup>

People on supervision work as a team with probation officers to apply evidence-based strategies to learn how to make changes in their thinking, feeling, and behaviors. The participants examine their relationships and influences and consider who is a negative influence and who is a supportive influence as they implement new strategies to make positive changes in their lives, including sobriety, pro-social relationships, and employment. The model is a collaboration between supervisees and probation officers to build a positive peer support network.

The program can operate as a stand-alone program, but it also forms an important part of some re-entry courts. In the Northern District of California, for example, a probation officer facilitates a *Courage to Change* group in a time slot that immediately precedes re-entry court.

### Do the Federal Programs Work?

An important part of evidence-based practice is measuring results through an empirical assessment to see whether the programs reduce recidivism effectively.<sup>38</sup> Re-entry programs are so new in the federal system that there is little long-term empirical research, and effective evaluation requires measurement of large-enough sample sizes over the long term for treatment and control groups.<sup>39</sup>

Still, preliminary results are encouraging. In the Northern District of California, participants performed better on three of four outcomes compared to control groups (fewer violation reports, arrests, and revocations in the post-intervention period) and should be cost-effective.<sup>40</sup> Evaluations of programs in the District of Massachusetts, the Western District of Michigan, and the Eastern District of Pennsylvania show more successful outcomes for program participants, including reductions in rearrests and supervision revocations.<sup>41</sup> State court evaluations provide a more robust assessment of outcomes, including the better outcomes and cost advantages of programs that provide training for team members.<sup>42</sup>

On a qualitative front, participants—supervisees, judges, prosecutors, defense lawyers, probation officers, and treatment providers—describe near-unanimous support in the two programs most accessible to this author: the Northern District of California and the District of Oregon.<sup>43</sup>

The District of Oregon's model shows why in a video that can be viewed online at [www.ord.uscourts.gov/en/public/re-entry-court](http://www.ord.uscourts.gov/en/public/re-entry-court). The Oregon re-entry court, which was started by Chief Judge Ann Aiken, is a team-based approach designed to provide a continuum of services to address all facets of a person's life: substance abuse, mental health needs, family and community ties, education, and

job training. This approach makes sense because a key factor in reducing recidivism is getting and keeping a job, and for a person with a criminal record, the chances of that are improved significantly if all the person's needs are addressed. And issues of addiction, for example, are treated more effectively through a medical treatment model than through a penological one.<sup>44</sup>

The re-entry model also is about changing expectations. In the Northern District of California, participants said that re-entry court was the first time they felt that the authority figures in the criminal justice system (judge, prosecutor, and probation officer) genuinely were trying to help.<sup>45</sup> One graduate explained that the program became a "family setting" where he did not "want to let them down."<sup>46</sup> Another said, "It's weird but now you want to reciprocate to the authority figure. [That's] not usually how it is for guys like me. ... When people are helping you, you don't want to let them down."<sup>47</sup>

Peer involvement also builds community and encourages accountability. Participants value the advice and input given by their peers and feel that shared experiences help overcome obstacles and addiction.<sup>48</sup> Mistakes are met not only by admonishment from the judge but also from peers.<sup>49</sup>

At the same time, participants value positive and ongoing feedback from peers and authority figures. One participant in the Northern District of California noted that positive feedback was important to keep him on track when his job search was not going well: "They told me that I was doing all the right things, that it was me performing the right actions, I was in



control, and to keep trying. It helped me keep up the progress.” Others felt that the ongoing feedback and group setting helped accomplish short-term goals because they would have to report progress every two weeks and would receive feedback. Another remarked, “Every criminal I’ve ever known, the only time they get a pat on the back is when they pull off a crime or beat the system. Otherwise, we’re expected to fail. [So] a pat on the back once in a while helps. It goes a long way, especially coming from the P.O. or the judge.”<sup>50</sup>

Another expectation that changes through the re-entry model is what participants expect of themselves. Judge Aiken speaks of setting goals high and describes her role as “helping people find their way out of the system to be successful.” Another way of looking at it is that the model is about believing in people until they learn to believe in themselves. Participants learn to believe in themselves by experiencing successes: developing strategies to avoid future substance abuse, learning job skills, working on self-control, examining negative influences, building positive support communities and relationships, filling up time with pro-social activities (not antisocial ones), learning to deal with setbacks, and persevering until they get and keep a job. There is no better way of changing expectations than experiencing something different, not because it is given out but instead because it is the product of one’s own hard work.

Re-entry courts not only reintegrate people into the community, but also, they create communal bonds through building family and community ties. In Oregon, Judge Aiken and the Re-entry Program were the impetus for the University of Oregon’s Courthouse Garden, a once-vacant lot near the federal courthouse in Eugene that now is a productive and beautiful garden.<sup>51</sup> Volunteers include students from the University of Oregon, re-entry court participants, at-risk youth, and community members, and together they grow food for those in need.<sup>52</sup> One re-entry court participant speaks of the importance of giving back and how good deeds create good deeds.<sup>53</sup> Another, volunteering in the garden, said, “I’m not in a re-entry court because I’ve never been a part of this world. I looked ‘re-entry’ up in the dictionary and you have to be a part of something and leave it in order to re-enter it. So I call it entry court.”<sup>54</sup>

Alternative models of supervised release such as re-entry court can have a life-changing effect on participants (reducing recidivism and costs and increasing public safety as a result).<sup>55</sup> In the Northern District of California, participants showed improved attitudes and a willingness to accept responsibility for mistakes, work toward goals, participate in treatment, and recognize and celebrate successes, leading to progress and better results (including fewer relapses).<sup>56</sup>

Re-entry court not only changes the participants but also has an impact on the judges, lawyers, probation officers, treatment providers, and other stakeholders, requiring them to rethink their own roles in the criminal justice system. As a prosecutor in Oregon remarked, “It’s a chance for ... people [to] step outside the comfortable roles that they occupy in government and actually go beyond those roles to effect real change in people.”<sup>57</sup> Northern District of California probation officers said that their experiences improved their ability to supervise their caseload overall and helped them develop a better under-

standing of the cognitive struggles of supervisees and what it takes to successfully change.<sup>58</sup> And at the end of the 2012 graduation ceremony in the Northern District of California, a U.S. district judge—the sentencing judge for one of the participants—told the packed courtroom that it was one of the best experiences of his career. ☉

*Hon. Laurel Beeler is a U.S. magistrate judge in the Northern District of California, a co-founder of the district’s first re-entry court, and a former president of the Northern District of California Chapter of the Federal Bar Association. © 2013 Hon. Laurel Beeler. All rights reserved.*

## Endnotes

<sup>1</sup>Douglas B. Marlowe & Hon. William G. Meyer, *Introduction: The History of Drug Courts*, THE DRUG COURT JUDICIAL BENCH BOOK 1 (2011), available at [www.ndci.org/publications/more-publications/drug-court-judicial-benchbook](http://www.ndci.org/publications/more-publications/drug-court-judicial-benchbook).

<sup>2</sup>*Id.*

<sup>3</sup>Stephen E. Vance, *Federal Re-entry Court Programs: A Summary of Recent Evaluations*, 75 FED. PROBATION 64 (Sept. 2011), available at [www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/federal\\_re-entry.html](http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/federal_re-entry.html).

<sup>4</sup>Barbara Meierhoefer, *Judge-Involved Supervision Programs in the Federal Courts: Summary of Findings From the Survey of Chief United States Probation Officers*, 75 FED. PROBATION 37, 38 (Sept. 2011), available at [www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/judge-involved.html](http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2011-09/judge-involved.html).

<sup>5</sup>See *id.*; Tracy Russo, *A Comprehensive Anti-Violence Strategy: Re-entry, Prevention and Enforcement*, THE JUSTICE BLOG (Oct. 11, 2012), [blogs.justice.gov/main/archives/2518](http://blogs.justice.gov/main/archives/2518). As Deputy U.S. Attorney General James M. Cole said in October 2012:

[W]e can no longer afford the societal and budgetary costs incurred when people cycle in and out of our prisons. ... As we developed our comprehensive Anti-Violence Strategy, we realized that we cannot arrest and prosecute our way out of this devastating problem. While prosecutions are important, we also have to prevent the violence from happening ... and one important way to do this is to pay attention to the people incarcerated in our prisons and as they prepare to leave those institutions make sure that they are ready to reenter our communities as productive, law abiding members.

*Id.* (remarks of Deputy U.S. Attorney General James M. Cole).

<sup>6</sup>Meaning, tending to produce crime.

<sup>7</sup>Douglas B. Marlowe, *Evidence-Based Sentencing for Drug Offenders: An Analysis of Prognostic Risks and Criminogenic Needs*, 1 CHAP. J. SCI. JUST. 167, 178 (2009).

<sup>8</sup>*Id.* at 179-81.

<sup>9</sup>*Id.* at 180-81.

<sup>10</sup>*Id.* at 181.

<sup>11</sup>*Id.* at 182.

<sup>12</sup>*Id.* at 183.

<sup>13</sup>J.C. Oleson, et al., *Training to See Risk: Measuring*

*the Accuracy of Clinical and Actuarial Risk Assessments Among Federal Probation Officers*, 75 FED. PROBATION 52, 53 (Sept. 2011). A 1997-era tool called the Risk Prediction Index is being phased out in favor of the PCRA. *See id.*

<sup>14</sup>*Id.* at 53, 55.

<sup>15</sup>Marlowe, *supra* note 7, at 178-79.

<sup>16</sup>*See id.* at 184-85.

<sup>17</sup>*See id.* at 192-93.

<sup>18</sup>Motivational interviewing encourages participants to think about how they do things, the need to do things differently, and how to make plans to do so, all in an effort to promote positive change. Janet T. Davidson, et al., *Constructing an EBP Post-Conviction Model of Supervision in United States Probation, District of Hawaii: A Case Study*, 72 FED. PROBATION 22, 23, 24, 27 (Sept. 2008), available at [www.uscourts.gov/FederalCourts/PPS/Fedprob/2008-09/04\\_constructing\\_EBP.html](http://www.uscourts.gov/FederalCourts/PPS/Fedprob/2008-09/04_constructing_EBP.html).

<sup>19</sup>*See id.*

<sup>20</sup>*See id.*

<sup>21</sup>*See* Meierhoefer, *supra* note 4, at 38.

<sup>22</sup>*See* Marlowe, *supra* note 7, at 184-85.

<sup>23</sup>*Id.* at 185-86.

<sup>24</sup>*Id.* at 187-88.

<sup>25</sup>*Id.* at 188-89.

<sup>26</sup>*Id.* at 189.

<sup>27</sup>*See, e.g., Re-entry Court*, U.S. ATTORNEY'S OFFICE FOR THE NORTHERN DISTRICT OF CALIFORNIA, [www.justice.gov/usao/can/programs/re-entry.html](http://www.justice.gov/usao/can/programs/re-entry.html).

<sup>28</sup>*See* Interagency Agreement, United States District Court for the Northern District of California, available at [www.cand.uscourts.gov](http://www.cand.uscourts.gov).

<sup>29</sup><sup>44</sup>"Drug Court Practitioner Fact Sheet," National Drug Court Institute (Sept. 2012), available at [www.ndci.org/publications/fact-sheets](http://www.ndci.org/publications/fact-sheets).

<sup>30</sup>Meierhoefer, *supra* note 4, at 39. Interestingly, that may be a short-term incentive, but the long-term results appear to supplant that incentive as a motivator for participants. *See* Alex Banh, *Re-entry Court: Making the Case for Judge-Involved Supervision. An Evaluation and Analysis of the Northern District of California's U.S. Court's Re-entry Court Pilot Program 14-15* (unpublished manuscript) (on file with the author).

<sup>31</sup>Meierhoefer, *supra* note 4, at 37-39.

<sup>32</sup>Vance, *supra* note 3, at 64.

<sup>33</sup>*Id.*

<sup>34</sup>*See Conviction and Sentence Alternatives (CASA) Program Overview*, U.S. District Court for the Central District of California, [www.cacd.uscourts.gov/judges-requirements/court-programs/casa](http://www.cacd.uscourts.gov/judges-requirements/court-programs/casa).

<sup>35</sup>Sean Janssen, *Four with Troubled Pasts Find "Courage to Change,"* THE UNION DEMOCRAT (CALIF.) (June 16, 2011), available at [www.uniondemocrat.com/News/Local-News/Four-with-troubled-pasts-find-courage-to-change](http://www.uniondemocrat.com/News/Local-News/Four-with-troubled-pasts-find-courage-to-change). The words "courage to change" are from the Serenity Prayer that figures heavily in Alcoholics Anonymous: "the serenity to accept the things I cannot change, the courage to change the things I can, and the wisdom to know the difference." *See* Alcoholics Anonymous, [www.aahistory.com/prayer.html](http://www.aahistory.com/prayer.html).

<sup>36</sup>Janssen, *supra* note 35.

<sup>37</sup>*See Series and Systems*, The Change Companies, [www.changecompanies.net/series.php?ID=7](http://www.changecompanies.net/series.php?ID=7).

<sup>38</sup>Vance, *supra* note 3, at 64, 72.

<sup>39</sup>*Id.*

<sup>40</sup>Banh, *supra* note 30, at 1, 11. It is important to note that the sample sizes are small, and long-term persistency has not been evaluated yet. *Id.* at 12. The resources required to run these programs is not insubstantial. Moreover, given the upfront nature of these costs, they are not always easily empirically linked to the future savings from reduced recidivism.

<sup>41</sup>*Id.* at 4.

<sup>42</sup>*See, e.g.,* Marlowe et al., *supra* note 1, at xi, n.1.

<sup>43</sup>*See, e.g.,* Banh, *supra* note 30, at 2 (addressing the Northern District of California program).

<sup>44</sup>*Id.* at 5.

<sup>45</sup>*See id.* at 15.

<sup>46</sup>*Id.*

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>*See Courthouse Garden*, Dep't of Landscape Architecture, Univ. of Oregon, available at [landarch/uoregon.edu/programs/courthousegarden](http://landarch/uoregon.edu/programs/courthousegarden). The garden can be seen in the video at [www.ord.uscourts.gov/en/public/re-entry-court](http://www.ord.uscourts.gov/en/public/re-entry-court).

<sup>52</sup>*See id.*

<sup>53</sup>*See id.*

<sup>54</sup>*See id.*

<sup>55</sup>*See* Banh, *supra* note 30, at 2, 17.

<sup>56</sup>*Id.* at 17.

<sup>57</sup>*See id.*

<sup>58</sup>Banh, *supra* note 30, at 17.