



Criminal Law Corner

by Geoffrey T. Cheshire

Improving Federal Criminal Justice Outcomes

This August, Attorney General Eric Holder announced

that “by pursuing new ways to promote public safety, deterrence, efficiency, and fairness—we can become both smarter and tougher on crime.” Many viewed this change of tone from the Department of Justice as a welcome development. It is tacit acknowledgement that the dominant approach to the administration of justice in the federal courts has not been as smart as it could be and may in fact be unsustainable.

Take, for example, our federal prison system. The number of prisoners incarcerated by the Federal Bureau of Prisons (BOP) has increased by 41 percent since 2000, resulting in systemwide crowding. Nationally, the BOP is 37 percent over its rated capacity—but that is only part of the story. High-security BOP institutions are a shockingly high 54 percent over rated capacity. Such conditions threaten inmate and staff safety as well as reducing the system’s ability to provide effective recidivism-reducing programs. The Justice Department’s request for federal prisons and detention funding in FY2014 stands at \$8.5 billion, which would only hold the line on overcrowding and inmate-to-staff ratios.

The post-incarceration situation is not much better. One recent report found that 38 percent of former federal inmates across 90 federal districts returned to prison within five years of release.

The current system, therefore, too often fails to interrupt what the attorney general has called a “vicious cycle of poverty, criminality, and incarceration,” which “traps too many Americans and weakens too many communities.” In fact, the department’s Smart on Crime review concludes “many aspects of our criminal justice system may actually exacerbate this problem, rather than alleviate it.”

Innovative strategies in several federal districts are attempting to improve the status quo. In the District of Utah, for example, U.S. Magistrate Judge Paul Warner created the federal system’s first Veteran’s Treatment Court in April 2010. With critical support from the Veteran’s Administration’s (VA) Veterans Justice Outreach (VJO) coordinator, along with the U.S. Attorney’s Office, the federal public defender, and the U.S. Probation Office, Judge Warner’s program connects justice-involved veterans with services in a collaborative model designed to address the root causes of criminal conduct. Federal courts in Chicago, St. Louis, Buffalo, N.Y., and Roanoke, Va., have also started programs designed to address veterans’ issues. The Federal Bar Association’s (FBA) Criminal Law and Veterans and Military Law Sections have organized several seminars to promote such

approaches in other districts.

Re-entry programs aimed at reducing recidivism and returning offenders to a productive life through “evidence-based practices” are also taking hold. The District of Oregon has pioneered these efforts in the federal system. Under the leadership of Oregon’s Chief District Judge Anne Aiken, the court established its reentry program in 2005. This post-conviction program is a cooperative effort of the U.S. District Court, the U.S. Probation Office, the Office of the Federal Public Defender, and the Office of the U.S. Attorney. The District of Oregon is using an evidence-based approach to improving outcomes for some of its highest-risk offenders, including people ravaged by the district’s epidemic of methamphetamine addiction.

In the Eastern District of Missouri, under the leadership of Chief U.S. Probation Officer Doug Burris, the district court has started an education program, Reach Higher, which awards computers to probation clients who enter college, and a Veterans Court, which includes a VA representative and uses a team approach similar to the District of Utah. Education and employment are strongly tied to reducing recidivism, and the Eastern District of Missouri, despite a lack of resources to support such efforts, has seen improved outcomes for individual defendants and the community at large.

The Northern District of Florida has also made re-entry and lowering repeat offender rates a high priority. Under the leadership of Chief District Judge Casey Rodgers, the district established the Robert A. Dennis Reentry Court in 2010, which emphasizes job training, mentoring, and support to help people change criminal thinking into a “pro-social” mindset.

The attorney general’s announced support for these and other programs is promising. He has called for every U.S. Attorney’s Office to designate a prevention and reentry coordinator to focus on such efforts. Assistant U.S. attorneys are now encouraged to devote time to re-entry issues in addition to casework, and the Executive Office of U.S. Attorneys will release periodic reports on progress in these efforts.

The FBA, which counts within its membership federal judges, prosecutors, federal defenders, and members of the private bar, is an ideal organization to facilitate collaborative efforts to improve the administration of justice in the federal courts. As such, the Criminal Law Section encourages FBA chapters to support innovations to improve criminal justice outcomes. A reduction in recidivism, as the attorney general notes, holds the promise of creating “long-lasting benefits for formerly incarcerated individuals and their communities.” ☉

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