

# Rediscovering Rehabilitation: Drug Courts, Community Corrections and Restorative Justice

By Martin I. Reisig

*"It is not unfair to say that if men had deliberately set themselves the task of designing an institution that would systematically maladjust men, they would have invented the large, walled, maximum security prison."<sup>1</sup>*

When I worked at the State Appellate Defender's Office in 1970, there were approximately 9,000 incarcerated individuals in Michigan prisons. Today there are over 42,000 prisoners and the number is growing. As a lawyer with 27 years of combined prosecutorial and defense experience, I watch the enormous expansion of our prison system and wonder if there are better ways to respond to the problem of crime.

A growing interest in alternatives to incarceration stems from both the high costs of incarceration and studies showing that long-term incarceration for nonviolent offenders is less cost-effective than treatment and prevention.<sup>2</sup>

This article will highlight three of these alternatives: drug courts; community corrections; and restorative justice. While the word "rehabilitation" seems to have fallen from our criminal justice vocabulary, it is a revitalized awareness of the need to rehabilitate and to improve and return people to society, which is the core of the alternative programs.

Alternative programs share four common features:

- They can be tougher than prison because they require the offender to participate effectively in such activities as community service, substance abuse treatment, academic and vocational training, and restitution;
- They are far cheaper than prison;
- They have proven success in reducing recidivism rates by providing opportunities for self-improvement and continued connection to the community; and
- They allow scarce prison space to be reserved for the most violent offenders.

## DRUG COURTS

Drug courts make a significant contribution toward refocusing the criminal justice system. The strategy is to place nonviolent drug-abusing offenders into intensive court-supervised drug treatment programs as a structured alternative to prison. The goal is to reduce drug abuse and crime.<sup>3</sup>

The Miami, Florida drug court is the original model. U.S. Attorney General and former Dade County Prosecutor Janet Reno is among the concept's chief proponents. The drug court offers defendants the opportunity to avoid a conviction or incarceration by participating in a tough rehabilitation program. Typically, an offender receives at least 12 months of combined detoxification, counseling, education, vo-

ational courses, group meetings, urine testing and weekly court appearances to monitor progress.

Where recidivism rates of 60 percent after traditional imprisonment were common, this Dade County program has recidivism rates of 11 to 23 percent. At a cost per defendant of \$4,000, the alternative program has been a fraction of the \$30,000 per year cost of incarceration.<sup>4</sup>

American University's Drug Court Clearinghouse and Technical Assistance Project reports that nationally 45 percent of drug possession defendants commit later crimes in comparison to five to 28 percent recidivism from drug court participants. The cost savings are astronomical. Of course the biggest savings relate to lowering the recidivism rates.

Among the 200 drug courts currently functioning in the U.S. there are many models, but defendants charged with low level possession offenses will typically spend more time in the drug court program than they would spend in custody.

Most models have limited the scope of drug courts to lesser crimes and to simple drug possession cases. However, in many drug cases, the line between users and distributors is blurred. Many users share their drugs in order to buy more. On day one you're a user and on day two you're a distributor. As drug court programs continue to be successful, it is anticipated that the scope of their caseload will be increased.

As one judge told me, the only reason to limit the cases is political—i.e. “tough on crime” rhetoric.

The Los Angeles Drug Court has had remarkable success. The program is tough, as it requires 12 to 14 months of treatment, including drug tests five times a week for at least the first six months. Failure leads to re-imposition of the original charges. Only 43 percent of the participants make it through the program, but of those only 10 percent have been re-arrested on a new felony charge. Los Angeles Municipal Judge Stephen Marcus notes a prior recidivism rate of 70 percent for drug addicts.<sup>5</sup>

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human resources wisely.**

Michigan now has drug courts operating in Berrien and Kalamazoo counties. Berrien Circuit Chief Judge John N. Fields reported in September 1997, that the 60 graduates of their program had *no* repeat offenses.<sup>6</sup> This is not likely to continue, but anything under the national recidivism averages of 40 to 60 percent would be a success.

Kalamazoo Circuit Judge William G. Schma reports that 60 to 70 percent of that county's criminal case load relates to drug problems. He describes the Kalamazoo Circuit Court as receiving 3,000 “social” problems per year and their district court as receiving 8,000 “social” problems a year. Judge Schma calls incarceration the “easy way out” and states that for \$2,000 each year per participant, the Kalamazoo Drug Court can provide a “Cadillac program.” To date 70 percent of the participants have stayed in the program and off drugs. Two years after completion of this program the recidivism rate has been 11 percent as compared to 40 to 60 percent national recidivism averages. Significantly, separate courts adjudicate men and women. Kalamazoo intends to have a separate juvenile drug court soon.



*Hope* by Timoteo Mora

The Kalamazoo female drug court was the first female-only drug court in the U.S. It is responsive to the need to focus on the unique problems of female drug offenders, including abusive relationships with men and responsibility for children. The lack of rehabilitative programs for women is also recognized and a greater effort is made to tap into community resources. Drug testing is done three times per week, specified programs must be attended and court attendance is required biweekly. The participants are not discharged from the

program until they're employed, and those who don't meet the requirements may be sent to jail.<sup>7</sup>

**T**raditional handling of drug offenders has been to capture the offender, followed by the offender evading responsibility, then a punitive response by the court, and a negative reaction by the offender to being further downgraded. By creating a caring and supportive or “therapeutic” atmosphere, the Kalamazoo drug court attempts to break this vicious cycle.<sup>8</sup>

In Detroit, the proposed 36th District Drug Court will target misdemeanants and will initially focus on 70 percent female and 30 percent male participants. The expectation is that this initial ratio will provide the greatest assistance to families and children. The program will provide for treatment confinements, work, education, counseling and drug treatment.<sup>9</sup>

According to the Office of National Drug Control Policy, more than half of all inmates have substance abuse problems and over 3.5 million Americans are considered *chronic* drug users.<sup>10</sup> Since all drug users are potential prison candidates, the need for an alternative approach is overwhelming. The drug court movement represents a real effort at rehabilitation and is quickly gaining in sophistication. The National Association of Drug Court Professionals (NADCP) formed in 1994 sponsors conferences and workshops and also coordinates a mentoring program for new drug courts.<sup>11</sup>

Another innovative program, "Drug Treatment Alternative to Prison" (DTAP) is run by Brooklyn, New York's District Attorney. This program is for second-felony drug offenders. The fact that it is run from the District Attorney's office and that it focuses on second offenders are unique characteristics. The offenders are sent to residential drug treatment for 15 to 24 months. The D.A. dismissed 60 percent of the cases for those who complete the program. Rearrests are reported to be rare. Those who drop out are convicted 95 percent of the time and go to prison.<sup>12</sup> This type of alternative which fills the gap between short-term treatment and endless prison makes so much sense that it's hard



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to understand why it does not already represent the norm.

The current emphasis, especially in Michigan, on long mandatory sentences appears to be the least effective use of taxpayer dollars to fight drug use. The Rand Drug Policy Research Center calculated the impact of spending \$1 million on three different strategies for fighting cocaine abuse.

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The lead researcher, Jonathan Caulkins, testified before the Michigan Senate Judiciary Committee on May 22, 1997:

*"Per million dollars in cost to taxpayers, applying mandatory minimum-length sentences to a representative national sample of drug dealers reduces total national cocaine consumption by 13 Kilograms. Conventional enforcement, without mandatory minimum sentences, when applied to the same dealers is over twice as effective, reducing consumption by 27 kilograms per million dollars. By way of contrast, spending one million dollars treating heavy users can avert over 100 kilograms of consumption. A principal reason that long sentences are not more cost-effective is the high cost of incarceration."<sup>13</sup>*

Based on Attorney General Reno's prior experience, the Department of Justice is now promoting the use of drug courts. For fiscal year 1997, the Department of Justice has provided grants of more than \$28 million, distributed to 160 drug courts, and has authorized one billion dollars for future programs.<sup>14</sup>

The drug court emphasis on treatment is a dramatic step in the right direction. Kalamazoo Circuit Court Judge William Schma, a leader in the drug court movement, succinctly summarizes his perspective:

*"In the criminal context, the first thing a judge or other drug court professional should do is appreciate the opportunity for intervention created by the defendant's arrest."<sup>15</sup>*

The drug court movement should be supported by adequate counseling and treatment facilities so that further progress

can be made toward encouraging people to end their addictions.

## COMMUNITY CORRECTIONS

Michigan is one of 26 states which provides community corrections placement. In Michigan, the Community Corrections Act became effective on December 29, 1988.<sup>16</sup> Community corrections encompasses a broad range of alternatives to prison and jail. To obtain funding, local communities and/or agencies must submit comprehensive plans for review and approval. The Michigan plan is in its infancy, but is already showing signs of success and model programs from other states are quite encouraging.<sup>17</sup>

Beginning in 1992, the Michigan Office of Community Corrections has been funding a variety of programs for nonviolent offenders. The impact has been significant. In 1989, more than one in three Michigan offenders were sent to prison. By 1996, fewer than one in four received a prison sentence.<sup>18</sup>

The Oakland County Community Corrections Division provides an excellent example of the developing use of this alternative to incarceration for adult nonviolent felony offenders.<sup>19</sup> Programs include:

- Probation residential services, a 24-hour-a-day supervised setting that emphasizes behavior standards, therapeutic interventions and employment. The cost of the program is \$38 per offender per day, or half the cost of regular incarceration;
- Community service, in which the offender comes to understand the consequences of his/her behavior through compelled labor while integrating with the community;
- Substance abuse treatment; and
- Impact weekends, coordinated with Mothers Against Drunk Driving, where drunk driving offenders meet with representative victims.

A flyer produced by the Oakland County Office of Community Corrections includes these poignant observations:

*"...Professor Perry Johnson and William Kime, both former Corrections employees, state, 'offenders should not be used as scapegoats; punishment must be in proportion to the harm done and limited to that. For the many who do not require confinement, a tough and responsible Community Corrections program has more*

*potential for restorative justice than any prison ever will.’”<sup>20</sup>*

Michigan’s move into Community Corrections merits increased support. This is a real attempt at rehabilitation.<sup>21</sup>

## RESTORATIVE JUSTICE

Restorative justice places less emphasis on punishment and more on restoring harmony to the lives of offenders and victims. Instead of relying on traditional courts, community-based conferences involving the victim and the offender are central to this alternative approach.<sup>22</sup>

**R**estorative justice is not a fantasy land program, but one successfully being implemented in New Zealand, Great Britain, and Canada, as well as in Minnesota, New York, Texas and Vermont.

After criminal behavior has occurred, the restorative justice process generally involves a referral by a prosecutor or police officer to a community-based board. A conference is then arranged involving the offender, victim (voluntary) and community representative. Under the guidance of trained mediators a resolution is then agreed upon.

A most important aspect of restorative justice programs is that of victim satisfaction. Often upon learning more about the offender, the victim exhibits generosity that surprises hardened professionals.

Harold Zehr in *“Changing Lenses: A New Focus For Crime and Justice,”* makes the following comparisons in order to clarify the difference between traditional retributive justice and restorative justice:

***A most important aspect of restorative justice programs is that of victim satisfaction. Often upon learning more about the offender, the victim exhibits generosity that surprises hardened professionals.***

Everything about the “restorative lens” view is in the best interest of the victim, offender and society. While restorative justice will take many forms, it is this different way of thinking that is most important.

Examples of restorative justice programs are numerous. The New Zealand Youth Court was one of the earliest. When a juvenile is charged with a crime, a family group conference (FGC) is arranged by a youth justice coordinator. The young offender, his family members, the victim, the police officer and, as appropriate, community representatives and drug agency representatives attend. The goal is to develop a plan that does what is right for the victim and encourages the offender toward better behavior. The youth court judge must ultimately approve the plan.

In parts of Canada, a program called “Mediation Services” provides mediation in the criminal justice system. Typically used for theft, threats, and assault cases, the crown attorney brings a charge and then refers the offender to Mediation Services before a court resolution.

At the mediation, the victim and offender tell their version of events uninterrupted. Trained mediators then guide the process of clarifying issues, concerns, damage and ideas for resolving the situation. As in civil mediation, the mediator may meet

with each participant separately. Finally, an agreement is reached and signed by both parties. Typically, it includes apologies, restitution, volunteer work and, if appropriate, counseling. The court case is then postponed with the victim’s consent. A case worker confirms compliance before recommending final resolution of the case by the crown attorney.

In Canada, Mediation Services are used for both adult and youthful offenders. Participating victims usually feel greater satisfaction as the offenders acknowledge greater responsibility. One strength of restorative justice has been a dramatic reduction in the victim’s fear of being revictimized.<sup>24</sup>

**T**he program in British Columbia uses mediation procedures for robbery, rape and homicide cases in the sentencing phase. The goal is to secure closure for victims and to begin a process of growth for the offender. As appropriate, based on the wishes of the victim these mediations are sometimes conducted by video.<sup>25</sup>

Vermont, with the support of the U.S. Bureau of Justice Assistance Correctional Options Grant, has been dismantling its “retributive” approach and in its place building a restorative justice system.<sup>26</sup> Community Reparative Boards meet face to face with offenders to address and monitor compliance. Victims are involved in this process and share in the goal of healing social problems. Community involvement is a critical aspect of all restorative justice programs. Probation officers and the courts work with these community boards, but the boards use local resources to create restorative programs.<sup>27</sup>

In 1988, the Michigan Legislature passed a law known as the “Community Dispute Resolution Act.”<sup>28</sup> Community dispute resolution centers used grant funds to start providing private mediation and conciliation services. Today, almost every county in Michigan is served by a community dispute resolution center.

Michigan now has a strong foundation upon which a criminal restorative justice program could be built.<sup>29</sup>

### UNDERSTANDINGS OF JUSTICE

#### Retributive Lens

- Blame-fixing central;
- Focus on past;
- Battle model: adversarial;
- Imposition of pain considered normative;
- Focus on offender; victim ignored;
- Rituals of personal denunciation and exclusion;
- Offender’s ties to community weakened;
- Sense of balance through retribution;
- Process alienates; and
- Assumes win-lose outcomes.

#### Restorative Lens

- Problem-solving central;
- Focus on future;
- Dialogue normative;
- Restoration and reparation considered normative;
- Victim’s needs central;
- Rituals of lament and reordering;
- Offender’s integration into community increased;
- Sense of balance through restitution;
- Process aims at reconciliation; and
- Makes possible win-win outcomes.<sup>23</sup>

## CONCLUSION

Prison should be a last resort. When inmates are released they often lack vocational skills, are more distanced than ever from society's values and have been trained at the "ultimate crime school." Drug courts, community corrections and restorative justice can provide more meaningful, just and beneficial resolutions for society, victims and offenders. Rediscovering rehabilitation is not about being soft on crime; it is about using our economic and human resources wisely. ■

### Footnotes

1. Hans Mattick, a noted criminologist, quoted in Gordon Hawkins, *The Prison: Policy and Practice* at 45 (University of Chicago Press, 1976).
2. Jonathan Caulkins, *Mandatory Minimum Drug Sentences: Throwing Away the Key or the Taxpayers Money* (Rand Distribution Services, 1997)
3. Drug Strategies, "Cutting Crime—Drug Courts in Action" (1977).
4. Peter T. Elikann, *The Tough-On-Crime Myth—Real Solutions to Cut Crime* (New York, Insight Books, 1996), at 215.
5. Michael Higgins, "Drug War on the Cheap—Studies Tout Savings, Other Benefits of Treatment for Addicts" (ABA Journal, August 1997)
6. Mayor's Conference on Drug Control (Detroit, September 4-5, 1997), remarks by Hon. John N. Fields.
7. *Id.*, remarks by Hon. William G. Schma.
8. Review of Wexler and Wimick, "Law in a Therapeutic Key: Developments in Therapeutic Jurisprudence" (Dunham, NC, Academic Press, 1996), by Hon. William Schma (The Judges Journal, Summer 1997).
9. Mayor's Conference, *supra* n 6, remarks by Hon. Joseph Baltimore, Chief Judge, 36th District Court.
10. *Id.*, letter of 9/5/97 from Barry McCaffrey, Director, Office of National Drug Control Policy to Mayor's Conference on Drug Control.
11. National Association of Drug Court Professionals, (703) 706-0576.
12. Elikann, *supra* n 4 at 208-209.
13. See also Caulkins, *supra* at n 2.
14. Mayor's conference, *supra* at n 6, Marilyn Roberts, Department of Justice.
15. Hon. Peggy Fulton Hora and Hon. William G. Schma, "Legal Intervention," a chapter in *Intervention Strategies for Addicted Persons* (The Haworth Press, Binghampton, NY 1997).
16. MCL 791.401; MSA 28.2354(1).
17. Elikann, *supra* n 4 at 204-205 (describes Connecticut's Alternative Incarceration Centers).
18. "Controlling Prisoner Population Growth—A Status Report." January, 1997, Michigan Department of Corrections. At the same time, restrictive parole procedures and mandatory sentencing have caused the continued growth of the Michigan prison system.
19. For a more detailed description of Oakland County programs see Kenneth J. Aud and J. Scot Garrison, "Sentence Alternatives in Oakland County," Laches (October, 1997).
20. "Understanding P.A. 511 Michigan's Community Corrections Act," Oakland County Office of Community Corrections 3/95.
21. Programs are currently being funded in 71 of Michigan's 83 counties. For more detailed information contact Robert Levy, Department of Corrections, Office of Community Corrections, (517) 373-0415 and George Miller, Manager, Oakland County Office of Community Corrections, (248) 858-5110.
22. My particular thanks to Larry Feldman Esq., Toronto, Canada and Joseph Williams, M.A., Director, Detroit TOP/Prison Fellowship, for forwarding information on restorative justice.
23. Howard Zehr, "Changing Lenses: A New Focus For Crime and Justice" (PA, Herald Press, 1990)
24. Mark S. Umbreit, "Victim Meets Offender: The Impact of Restorative Justice and Mediation" (NY, Criminal Justice Press, 1994). See also Rob Finlayan, "Alternative Dispute Resolution in Canada—Mediation in the Criminal Justice System" (Winnipeg, Manitoba, 1994).
25. Thomas J. Quinn, "Corrections and Restorative Justice," Topics in Community Corrections (U.S. Department of Justice, National Institute of Corrections, 1996). See also Mark S. Umbreit, "Mediation of Criminal Conflict: An Assessment of Programs in Four Canadian Provinces," University of Minnesota, Center for Restorative Justice and Mediation (1995).
26. Michael Dooley, "Restorative Justice in Vermont: A Work in Progress" (U.S. Department of Justice, National Institute of Corrections, 1996).
27. An excellent source for information on restorative justice is the Center for Restorative Justice and Mediation School of Social Work, University of Minnesota, 386 McNeal Hall, 1985 Buford Avenue, St. Paul, MN 55108-6144.
28. MCL 691.1551; MSA 27.15(51).
29. One excellent source of information on mediation centers is Nanci Klein, program development coordinator, Oakland Mediation Center, 2267 Telegraph Road, Bloomfield Hills, MI 48302, (248) 338-4280.