



Toward Bridging the Civil-Criminal Divide

Establishing the State Bar Criminal Issues Initiative

By Linda K. Rexer and Anne M. Vrooman

Roosevelt Smith wanted to go back to school to become a nurse, but the nursing school rejected him because Michigan law bars persons with criminal records from joining the profession. Years earlier, police had stopped him for a traffic violation and found a duffel bag containing a gun in the back seat of his truck. Though Roosevelt had a permit to own the gun, this was not a legal way to carry it (he had moved the duffel bag from its usual place earlier in the day when cleaning the truck in preparation to sell it). He pled no contest to carrying a concealed weapon and served two years' probation. Despite a nursing shortage and Roosevelt's excellent grades, the school was prohibited by law from evaluating his credentials and aptitude for such work. The statute simply prohibits those with criminal records from becoming nurses.¹



The Intersection of Civil and Criminal

Stories like Roosevelt Smith's are all too common. When those charged with crimes (and sometimes their lawyers) are unaware of the civil ramifications of a conviction, the collateral consequences are often more severe than the sentence imposed by the court. For some clients, the conviction imposes a life sentence of barriers to employment, education, housing, government benefits, and lawful citizenship. These collateral consequences often feed a downward spiral that spawns recidivism.

With a national focus on crime in the 1990s, large numbers of people came into the criminal justice system. (Some estimate that more than 1.3 million persons have felony records in Michigan.) Criminal defense offices faced with burgeoning caseloads and very limited resources typically could not address their clients' noncriminal matters beyond the "core mission" of criminal defense. At the same time, funding for civil legal aid to low-income persons was cut drastically, and restrictions on services for prisoners by the Legal Services Corporation resulted in many providers not being able to serve the civil needs of criminal offenders. People with overlapping criminal and civil legal issues were left without adequate assistance that encompassed a broader view of their legal and social needs. More people began to recognize the complexities facing those who make valiant efforts to become productive in society rather than return to prison.

Several partnerships were forged to address these issues. The Michigan Prison Reentry Initiative (MPRI)² seeks to equip those released from prison with "the tools needed to succeed in the community" because "successful re-entry [has] great benefits to the community including improved public safety, a tremendous cost savings by reducing the chances for recidivism, and the long-term reintegration of the former prisoner."

Some civil legal aid programs, including Legal Aid of Western Michigan, have also obtained funding to help ex-offenders or those charged with a crime with civil legal matters to facilitate their success in society. For example, selling a car before entering prison helps an ex-offender avoid being burdened with so much

debt that he or she cannot subsist on wages earned from a job obtained after release. Establishing a guardianship can help children get needed care until they are reunited with a parent.

These providers were instrumental in posting information on the Internet to educate clients, lawyers, and others about overlapping civil and criminal issues. See reentry.mplp.org.

Fortunately, some of the people involved in the MPRI, legal aid, indigent criminal defense, and other arenas encountering these issues were also part of the State Bar Committee on Justice Initiatives (CJI). The CJI had gone through an overall planning process in which discussions highlighted the growing importance of bridging the civil-criminal divide. In 2005 in response to a recommendation of the CJI planning process, Judge Cynthia Stephens, CJI chair, appointed the Criminal Issues Workgroup (CIW) to consider whether the CJI, which had traditionally focused its work on indigent civil legal aid, should expand its work to address criminal issues.

The CJI recognized that to truly address the complex issues that had been raised, the solutions had to come from the collaboration of many stakeholders—some within the justice system and others within the human services community. The appointed CIW represented the viewpoints of public schools, prisons, immigration lawyers, public defenders, prosecutors, juvenile judges, appellate judges, court administrators, family services, civil legal services, and criminal defense attorneys. We were privileged to serve as chair (Linda Rexer) and consultant (Anne Vrooman) of this talented group.

Using a consensus model for decision-making, the CIW quickly moved beyond its main charge—considering whether a new civil-criminal initiative should be formed—to a much deeper discussion of issues at the intersection of criminal and civil matters and how to address them in a multidisciplinary and holistic manner. The resulting proposals truly embodied the principle of collaboration; the final product was indeed greater than the sum of its parts.

Establishing the State Bar Criminal Issues Initiative

In recommending that a Criminal Issues Initiative (CII) become part of the work of the Committee on Justice Initiatives, the CIW selected two areas of focus: (1) promoting a better understanding of the intersection of civil and criminal issues, as previously highlighted; and (2) the representation of indigent defendants, which is relevant to the collateral consequences topic because criminal defense attorneys who are knowledgeable about the civil consequences of specific crimes can produce better results for their clients through case-handling strategies and linking defendants to other community resources. Additionally, the CIW identified the importance of good representation in all aspects of indigent defense: a statewide system for providing effective indigent defense, standards related to the quality of representation, mandatory training for criminal defense attorneys and the provision of tools to



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assist in key areas, and identifying data that should be collected to help evaluate and improve the system. The new CII would define its efforts and projects with these representation needs in mind as well as the related collateral consequences issues.

The CIW used the following key principles to guide its work:

- Many unmet legal needs and systemic problems in the criminal arena have severe consequences for individuals and the justice system.
- Civil and criminal issues are inextricably intertwined.
- Problems should be addressed in a more holistic way, through coordination and integration of services and training among multidisciplinary stakeholders.
- The needs in this area will remain great and the population who cannot afford to pay for legal assistance will continue to grow.
- Resources are likely to be flat or constricted.
- The State Bar of Michigan, as a justice system leader, should work on these issues through an entity of the State Bar that provides leadership and allows for multidisciplinary participation.

The CIW identified the following goals:

- Educate justice system stakeholders about civil collateral consequences of convictions and share data and research on the impact of these consequences.
- Address issues through multidisciplinary collaboration; increase capacities of communities to provide services and promote greater integration between components of the system.
- Promote a statewide indigent criminal defense system to provide competent and fair representation of indigent defendants.

Members of the Criminal Issues Initiative, 2007–2008

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- Develop and promote standards for criminal indigent defense systems and for ensuring that the collateral consequences of criminal convictions are understood and disclosed to relevant justice system stakeholders.
- Develop and conduct research on indigent defense systems to identify and evaluate current practices, best practices, and model systems.
- Develop and promote training and education for attorneys handling specific case types.
- Develop and propose systemic methods and tools to provide information and guidance related to collateral consequences that can be used by stakeholders at all stages of the criminal justice and post-release processes.
- Identify areas for policy consideration.

The themes resonated with the overall CJI and the State Bar Board of Commissioners, and the Criminal Issues Initiative was born. Frank Eaman was appointed the CII's inaugural chair and quickly led the group to an impressive and concrete list of projects to realize the above goals. See sidebar for a list of CII members. For information about the CII and its current projects, visit www.michbar.org/programs/criminalissues.cfm.

Conclusion—Collaboration is Key

The model for an interdisciplinary and collaborative approach is not new. Universities and the private sector have led the way in recognizing the value of many stakeholders working together to address complex issues, increasing mutual understanding and working with shared responsibility. Collaboration shifts the focus from competition between entities to building consensus among them, and from short-term fixes to long-term solutions.

Our criminal justice system does not easily lend itself to collaboration. Typically, in both the adult and juvenile systems, cases end at sentencing or adjudication, with little attention given to what comes next and how one action affects another. But a growing movement recognizes that the larger social issues of juve-

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nile crime, domestic violence, and prisoner assimilation require new dynamics between our institutions. Partnerships with multiple stakeholders, including those outside the criminal justice system, are becoming more frequent as a strategy to address those issues.

Collaboration in the justice system has great potential as the framework to create long-term solutions to the challenging issues confronting our communities. However, it must go well beyond networking and cooperating—it must have at its core the shared desire to work together to achieve a common goal that could not be achieved without the efforts of others. This is challenging work, but the difficulties should not deter us from expanding our efforts. The State Bar Criminal Issues Initiative is a collaboration we can all be proud of and learn much from. Not only are its efforts already moving toward improving our indigent defense system and helping ex-offenders reenter society as productive citizens, but the ongoing involvement in CII of leaders from many parts of the justice system and many other disciplines will no doubt deepen and expand the partnerships needed to make a difference in the future. ■

Linda K. Rexer, JD, has been executive director of the Michigan State Bar Foundation since 1987. The Foundation makes \$10 million in grants annually for civil legal aid and other charitable purposes. Ms. Rexer serves on the ABA's Commission on IOLTA and the State Bar Justice Initiatives Committee. She was president of the National Association of IOLTA Programs and received the 2005 Michael Franck Award from the State Bar Representative Assembly.

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FOOTNOTES

1. Adapted from Gerritt, *Minor Convictions Shouldn't Turn Into Life Sentences*, Detroit Free Press, February 23, 2007, available at <http://reentry.mplp.org/reentry/index.php/Minor_Convictions_Shouldn%27t_Turn_Into_Life_Sentences> (accessed October 13, 2008).
2. Michigan Prisoner ReEntry Initiative <<http://www.michpri.com>> (accessed October 13, 2008). The MPRI is a statewide collaborative effort administered through a public and private partnership, including the Department of Corrections, Department of Labor and Economic Growth, Department of Community Health, Department of Human Services, Department of Education, Public Policy Associates, and the Michigan Council on Crime & Delinquency.

