



A Recovery Plan

for Michigan's Criminal Justice System

By Hon. Patrick C. Bowler

When the police arrested Mary Smith¹ in 2005 for gross indecency, Michigan's overloaded prison system was destined for one more customer. As a habitual offender, Mary faced a maximum sentence of life in prison. Mary pleaded guilty; it was her eighth felony conviction.² The prison system did not need any more Mary Smiths. While Michigan suffers through an economic recession, the Michigan Department of Corrections budget, at more than \$2 billion, continues to increase its share of the General Fund, from 5 percent in 1983 to more than 20 percent in 2008.³ But Mary Smith did not join the more than 2.1 million incarcerated Americans,⁴ or the more than 50,000 people in Michigan's prisons.⁵ She did not become one of the 16,000 nonviolent offenders in the Michigan prison system.⁶ Mary was sentenced to a drug treatment court.

In times of economic distress, the government jumps to offer transient responses to the high costs of incarceration. These include early release of prisoners on discounted sentences, proposals to reduce sentencing guidelines recommendations, and changes in crime classifications so that felons become misdemeanants and serve their time in local jails instead of prison. Contrast these reactions with the government's efforts in good fiscal times, when new crimes are created, longer sentences are proposed, and more prisons are built.

Neither in good times nor bad do our policymakers understand and address the underpinnings of our crime problem and the resulting overcrowded jails and prisons. Organized task forces tend to focus on quicker processing or shifting bodies to other parts of the system and avoid analysis of the underlying causes.⁷ The

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recently released results of a major review of Michigan's criminal justice system conducted by the Council of State Governments Justice Center, at the request of Michigan's governor and legislative leaders, again nominally notes the problem, but totally neglects the logical recommendations to properly address it.⁸ A realistic approach to the crisis of an overcrowded jail and prison system must back up and focus on the front end of the criminal justice system. Who are the people coming into our criminal courts? The answer glares at us from the research and the everyday observations of our trial court judges. Multiple studies show that more than 80 percent of the people in our prisons and jails have substance abuse problems.⁹ Research shows that 66 to 80 percent of those arrested test positive for alcohol or illicit drugs.¹⁰ Between 1983 and 1997,

crept into the criminal justice system. The concept of specialty courts integrates a process for immediate legal screening of non-violent, drug and alcohol dependent offenders who enter the criminal system and determining their eligibility for entry into a specialty court. The criteria for eligibility focuses on offense and offender characteristics agreed upon by the specialty court team, consisting of the judge, a prosecutor, a defense attorney, the caseworker or probation officer, and a treatment provider. There follows more thorough clinical and risk and needs assessments to establish a court-enforced treatment plan tailored directly to the offenders' addictions to drugs and alcohol and mental health problems. These specialty courts demonstrate that if courts aggressively mandate compliance with treatment, negative behaviors can be changed. Recidivism rates—the repeat of criminal behavior by convicted felons, which run as high as 60 to 80 percent in the traditional criminal justice system—have been dramatically reduced for offenders introduced to the drug treatment courts.¹⁵

For the addicted and the alcoholic, a traditional approach of incarceration or regular probation, whether long- or short-term, does not provide the impetus for the change necessary to stop the criminal behavior. Incarceration is not a cure for addiction. In sharp contrast, the intensive therapeutic approach of drug treatment courts—using aggressive drug and alcohol testing, mandatory treatment, and continual monitoring—can in fact engineer the changes necessary to break the cycle of criminal behavior and transform lives. These unique courts have undergone extensive evaluation, and the results substantiate their success. A White House policy report cites a meta-analysis of more than 120 evaluations of drug treatment court programs and confirms that they outperformed virtually all other strategies attempted: "Offenders who graduated from drug courts had significant reductions in rearrest rates and in charges for serious crimes. Data show that within the first year of release, 43.5 percent of drug offenders are rearrested, whereas only 16.4 percent of drug court graduates are rearrested."¹⁶ The Michigan Supreme Court's fiscal year 2009 budget request to the legislature highlighted the results of an independently conducted evaluation of Michigan's DWI courts, which use the same principles as drug treatment courts:

Results from the three DWI courts evaluated show that offenders who participated in DWI treatment court programs were 5 to 19 times less likely to be rearrested for another alcohol-related driving offense within two years after entering DWI programs, compared to offenders who did not participate.¹⁷

▶ FAST FACTS

A realistic approach to the problems of an overcrowded prison system must back up and focus on the front end of the criminal justice system.

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the number of violent offenders imprisoned doubled, the number of nonviolent offenders tripled, and the number of drug offenders who went to prison increased 11-fold.¹¹ This has both ethnic and gender consequences as well, with overrepresentation of African Americans and women serving drug sentences.¹² The study by the Council of State Governments noted above declared that 83 percent of the high-risk parolees in Michigan need substance abuse treatment.¹³ The plain truth is that alcohol and drug use drive our criminal caseloads. Another part of that truth is that many of the defendants brought into the criminal justice system for substance abuse related offenses also have mental health disorders.¹⁴

Over the last 20 years, a nontraditional approach to criminal sentencing—the creation of drug treatment courts and their progeny: sobriety courts (also called DWI courts, for driving while intoxicated), mental health courts, juvenile drug treatment courts, family treatment courts, and domestic violence courts—has slowly

By institutionalizing the proven principles of our specialty courts and taking those principles to scale by increasing the number of specialty court participants from all of those actually eligible, Michigan's policymakers would create a significant impact on Michigan's crime problem and, in turn, relieve the burden of our overcrowded jails and prisons. Such a change, however, will require a major overhaul of several structural components of the Michigan criminal justice system.

Recommendations

- **Establish regional specialty courts having cross-jurisdiction with all district and circuit courts in the designated region.** It is impractical to expect each of Michigan's trial courts to develop the resources and expertise necessary to operate individual specialty courts.¹⁸ Specially trained, multijurisdictional courts would accept assignments throughout the designated region, ensuring that all qualified offenders in the state have the opportunity to participate in a specialty court. Regionalized specialty courts would avoid the duplication of expenses that results from having several specialty courts in one region. They would offer a valuable resource for those jurisdictions unable to establish a particular specialty court on their own.
- **Transfer the jurisdiction of circuit court probation officers from the Department of Corrections back to the circuit court.** It is critical that circuit court probation officers, who case-manage the progress of participants through probation, work directly for the court and not the Department of Corrections. The success of drug treatment courts is based on the team model in which the judge is the head and the probation officer is the director. The probation officer must be responsible to one supervisor—the judge who leads the team—and be guided by the wise use of discretion to meet the individual needs of the participants, not by a disconnected set of rules and directives from a distant bureaucracy. Local control of the probation officer is more effective for the process.
- **Eliminate parole as we know it.** Present parole practices result in consistent failure of parolees and their return to prison. Two-thirds of those released after serving time in state prisons for drug offenses are arrested again within three years.¹⁹ Addictive disease continues as the root cause of recidivistic offenses, with nearly 41 percent of those arrested again charged with a drug offense.²⁰ Upon release from state prison, all eligible parolees would be referred back to the jurisdiction of the courts that sentenced them for reentry into the community. Properly assessed drug addicted and alcoholic offenders would be required to comply with the regime of the regional drug treatment court or other specialty court as a condition of supervised release. Reentry into the community would integrate comprehensive treatment, transitional care, and aftercare. The under-

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lying concepts of successful reentry programs would be incorporated by court order and judicial enforcement.

Evidence-based studies have established that a major factor in the success of drug treatment courts and other specialty courts is intensive judicial involvement and mandated compliance with treatment and other program requirements. Under traditional procedures, courts often begin probation sentences with a period of confinement in jail. Upon release, probationers are expected to abide by the terms of probation, with consequences for the failure to do so. The same should apply for individuals receiving a prison sentence. Upon completion of confinement, offenders would reenter their communities and be expected to abide by judicially enforced drug or other specialty court conditions. The proven elements of the specialty courts—accountability and use of court authority for provision of incentives and imposition of immediate sanctions for violations of reentry conditions—would significantly affect parolee behaviors. They would also add significantly to public safety and restore public confidence in the criminal justice system.

- **Introduce evidence-based practices into all aspects of the criminal justice process.** Any new policy or practice must be based on the best available research, with outcome-based and measurable performance expectations of those practices.²¹ Each case should begin with a uniform, validated "risk and needs" assessment.²² Such a tool, mandated upon the arrest of every individual, would assist the court in making critical decisions, from arraignment to sentencing, through probation, and following confinement, if necessary, and would assist the Department of Corrections in decisions involving classification and confinement. The assessment would assist in determining the actual risk the offender poses, identify personal deficits that have contributed to the offender's past criminality, and target those deficits most likely to lead to further criminal behavior.
- **Establish a permanent Sentencing Commission.** Other states have wrestled with the same sentencing and correctional system problems that Michigan suffers. Several have established permanent sentencing commissions with the authority to advise their governors and legislatures on matters relating to sentencing policy and structure and to identify and make recommendations regarding emerging trends and "best



practices” in sentencing and corrections.²³ A national expert on sentencing, Professor Douglas Berman, stated in a presentation to the New York State Commission on Sentencing Reform, “Just about every academic who looks at this field ultimately concludes that having a permanent sentencing commission, a body with the unique, distinctive and committed responsibility to monitor, assess and advise all of the sentencing players helps the system operate effectively long term.”²⁴ Such a committee would provide thoughtful, politics-free recommendations to government on the significant problems facing the criminal justice system.

- Establish a permanent Specialty Court Fund.** The changes proposed would require that specialty courts be funded at adequate levels to ensure their effectiveness and allow more individuals to be included in their programs. Many of those resources can be redirected from the present Department of Corrections budget, since the specialty courts would take over much of the department’s present monitoring responsibilities. To effectively change behaviors, resources must be available to conduct the appropriate risk and needs assessments for everyone who enters the criminal justice system, to conduct the intensive drug and alcohol testing, to ensure that there is drug and alcohol treatment for the indigent, and to supply the intensive oversight and monitoring that leads offenders to recovery. In the long run, those dollars will be recouped several times over. Research consistently substantiates that drug treatment courts save money. The Michigan Supreme Court studied two drug treatment court programs and found the programs more cost-effective than traditional case processing:

Barry County drug court participants showed cost savings of more than \$3000 taxpayer dollars per participant over a two-year period. The combined savings of the Barry County and Kalamazoo County drug courts in just two years was nearly \$1 million (\$946,314). If drug court participants continue to experience positive outcomes in subsequent years (as demonstrated in other studies), these cost savings can be expected to continue to accrue over time, repay program investment costs, and avoid additional cost to public agencies.²⁵

The report found that drug treatment court participants were less likely to be arrested again, spent less time on probation, and

had fewer new court cases. A report by the Urban Institute’s Justice Policy Center estimated that if slots in drug treatment courts were available for all arrestees eligible for those courts, the expansion would yield a benefit to society of more than \$1.17 billion.²⁶ In February 2005, the White House proposed increasing funding for drug treatment courts by \$30 million.²⁷ In announcing the president’s proposal, National Drug Policy Director John Walters described drug treatment courts as places “where miracles happen”²⁸ and the “most significant criminal justice initiative in the last 20 years.”²⁹

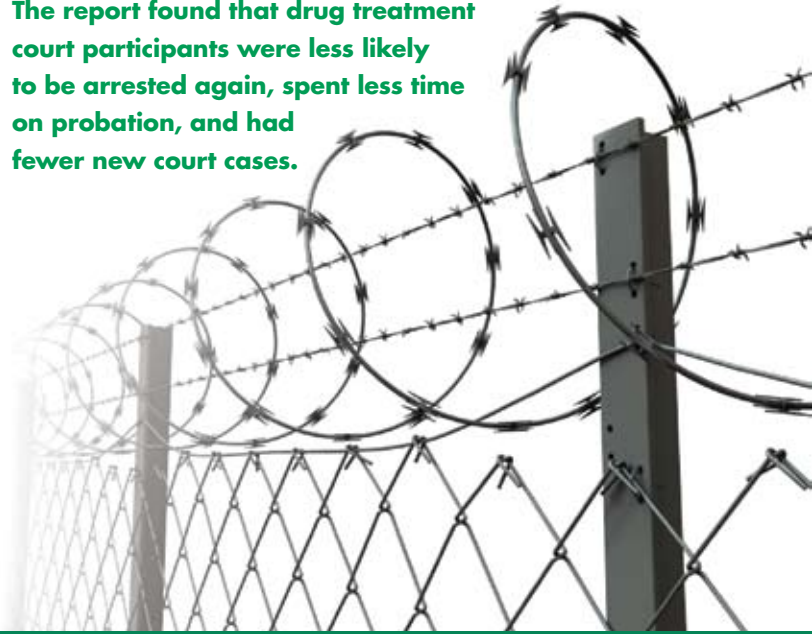
Recovery of criminal sentencing in Michigan depends on the system’s ability to effectively intervene in a criminal defendant’s cycle of crime. It will require flexibility and commitment. Funds must be redirected so that behaviors are changed earlier in an individual’s criminal history. Jurisdictional and geographical lines must be made flexible. It will require rethinking about the goals of criminal sentencing, examining the forms of punishment and not just their severity, thus opening the door to alternatives. Perhaps most importantly, governmental leaders will need to support necessary changes and have the courage to resolve the problems that arise with shifts in jurisdiction and control. But these are challenges, not barriers, and should not prevent the people of Michigan from receiving the relief they deserve from a recidivistic, out-of-control crime population and a nonresponsive criminal justice system. In their law review article, Judge Peggy Fulton Hora, who is a drug treatment court judge and well-known expert and lecturer, and Theodore Stalcup presented a thorough analysis of the documented success of drug treatment courts and noted that “[c]oncerns are always raised when a program alters the traditional components of the criminal justice system. But, rather than adhere blindly to tradition, especially when tradition is shown to be ineffective, court systems must strive to improve results, even though that may require some flexibility.”³⁰

Mary Smith, a longtime drug addict, graduated from drug treatment court. She completed mandatory treatment, was randomly tested for alcohol and other drugs several times a week, and attended more than 250 12-step meetings over an 18-month period. Mary was required to work, she was monitored by surveillance officers, she did 50 hours of work crew—an intensive form of community service—she paid all her fines and costs, and she reported all of this directly to the judge in regular court appearances. Along the way she received short jail sentences for violations of her drug treatment court agreement, sanctions that helped

shape the necessary changes in her behaviors. Likewise, Mary's good behaviors were affirmed. She has not been arrested in the more than four years since her graduation. She works, pays taxes, and contributes to society. The cost of Mary's drug treatment court sentence was less than \$3,000; the prison sentence Mary could have received would have averaged \$31,000 a year.³¹ More importantly for Mary Smith and thousands like her, she is now a productive member of society who continues to maintain a mature recovery. And as importantly for the Grand Rapids community, that life is now crime free. ■

Judge Patrick C. Bowler recently retired from the Grand Rapids District Court after serving for 24 years. He was an honors graduate of both Michigan State University and the Detroit College of Law. He has served as president of the Michigan District Judges Association, chairperson of the Judicial Conference Section of the State Bar, and president of the Grand Rapids Bar Association. He instituted a drug treatment court in 1998 and a sobriety court in 2002 in Grand Rapids.

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FOOTNOTES

- Mary Smith is an alias.
- Mary was arrested 19 times between 1996 and 2005.
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- In 2003, "43 percent of new prisoners were sentenced for non-assaultive crimes and 17 percent were imprisoned on drug offenses." *State Must Evaluate Its Prison Population*, The Detroit News, November 21, 2004.
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- The White House, *2007 National Drug Control Strategy*, p 25, available at <<http://www.ncjrs.gov/pdffiles1/ondcp/216431.pdf>>.
- Michigan Supreme Court, *Fiscal Year 2009 Budget Request* (February 27, 2008), p 7, available at <<http://courts.michigan.gov/supremecourt/AboutCourt/FY09-HouseBudget.pdf>>.
- There are 246 trial courts in Michigan: 57 circuit courts, 78 probate courts, 107 district courts, and 4 municipal courts.
- Langan & Levin, United States Department of Justice, Bureau of Justice Statistics, *Recidivism of Prisoners Released in 1994* (2002), p 8, available at <<http://www.ojp.usdoj.gov/bjs/pub/pdf/rpr94.pdf>>.
- Id.* at 9 n 2, table 10.
- See National Center for State Courts, *Drug Court Statewide Technical Assistance Project: Developing Statewide Assessment Standards for Drug Court Participants in Michigan* (2008), available at <<http://contentdm.ncsconline.org/cgi-bin/showfile.exe?CISOROOT=/spcts&CISOPTR=191>>.
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