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# The Challenge of Prison Overcrowding and Recidivism

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## CHAPTER EIGHT

### *The Challenge of Prison Overcrowding and Recidivism*

PEARL JACOBS

If you ask people what they fear most in present-day society, no doubt many will say becoming a victim of a crime. Coupled with this is the belief that the only way to eliminate this fear is to incarcerate criminals for a very long time, maybe forever. It is possible that such a philosophy is actually creating more crime. If criminals are incarcerated for longer periods of time then there must be prison space to secure these individuals for these extended periods. This requires the construction of additional prisons. Most law-abiding citizens are opposed to the use of government funds to build prisons. The existing prisons are forced to accommodate more criminals leading to overcrowding. Rather than rehabilitating individuals in our correctional facilities and returning them to society with the potential to become productive citizens, overcrowding has transformed prisons into holding facilities with little or no opportunities for rehabilitation. Prison overcrowding produces individuals unable to cope or survive in free society. Crime and not honest work becomes the ex-offender's survival method because the criminal world is the only world this individual is accepted into and can succeed in. It is a vicious cycle. We attempt to fight crime by incarcerating criminals for longer and longer periods of time in existing facilities. These people leave these facilities after serving their sentences much the same as they entered. They are still not

prepared to function in legitimate society. Ex-offenders then resume their criminal careers returning again and again to prison. Thus, the recidivist, a major source of crime in our society and a contributor to Connecticut's prison overcrowding problem, is created.<sup>1</sup>

The state of Connecticut is currently dealing with a growing prison population. Research has determined that incarceration may be responsible for about a 25% decline in the crime rate. However, 75% of the drop in crime may be due to factors other than incarceration.<sup>2</sup> An Urban Institute report indicated that "massive incarceration practices weaken the informal social structures long associated with crime prevention (i.e., strong families, individual and social capital, workforce participation of men in the community) and a tipping point is reached where crime is less inhibited."<sup>3</sup>

There is a solution to this problem; however, there is a great deal of reluctance to pursue this solution because it means supporting a politically unpopular group, the individuals convicted of crimes. I am not suggesting that we ignore the crimes committed by these individuals. I am suggesting that we consider alternatives to reducing the recidivism rate rather than relying on incarceration. Reducing recidivism will also reduce prison overcrowding. Thus, we should focus on programs and policies to alleviate recidivism.

Studies indicate that there are indeed legitimate alternatives to incarceration as a means of reducing the rate of recidivism. For example, it has been suggested that we concentrate on expanding intervention programs dealing with drug treatment, employment, and education. Such programs have been found to reduce the recidivism rate.<sup>4</sup> One question that may be asked in response to the suggestion that we support the rehabilitation and reintegration of ex-offenders is simply, why? Why should we assist this group of unpopular and unproductive individuals? If we are seeking safety and security in our society then we must provide assistance and support for this very large group of individuals, ex-offenders, who without such support threaten the security of society. They are expected to leave the controlled and restricted environment of a prison and immediately become productive citizens. They

cannot do this without major assistance. They are, after all, a very large group of people. It is estimated that 47 million people in this country have criminal history files. That is about 25% of the adult population of this country.<sup>5</sup> In 2003 it was reported that Connecticut was number three in prisoner population increase. The Connecticut prison population had grown 7.9% from the previous year. This represented the third highest growth rate in the country.<sup>6</sup>

Large numbers of offenders are released from state prisons each year and returned to society. In 1999 over 500,000 individuals were released from state and federal institutions. Most of these ex-offenders were not convicted of violent crimes but rather drug-related or property crimes. Data indicate that 71% of state prisoners have non-violent conviction records.<sup>7</sup> The major reason for prison admissions in the U.S. since 1980 is some kind of drug offense.<sup>8</sup> In addition, deinstitutionalization has resulted in increasing numbers of mentally ill inmates. It has been reported that almost 1 in 5 inmates in the U.S. prisons is mentally ill.<sup>9</sup> The conditions fostered by prison overcrowding exacerbate the mental illness. Despite these problems, states are spending increasing amounts on prison operating costs but not on rehabilitation. This translates into individuals leaving prison without having their employment, education, or substance abuse problems addressed.

Individuals released from prison today remain unprepared for reintegration into society. They often have no skills and lack a family support system. In addition, they have the stigma of a prison record. Their lack of preparation for successful reintegration into society places them at risk to become repeat offenders. In a report for the National Institute of Justice on ex-offenders returning to the community, Joan Petersilia wrote:

Most arrests occur in the first 6 months after release. Fully two-thirds of all parolees are rearrested within 3 years. The numbers are so high that parole failures account for a growing proportion of all new prison admissions. In 1980, they constituted 17 percent of all admissions, but now make up 35 percent.<sup>10</sup>

Ex-offenders face enormous obstacles trying to reconnect with society and get a job. Many have substance abuse problems, limited work experience, limited education, and physical and mental health problems. Successful reintegration is extremely difficult given these many barriers. Most researchers agree that employment is essential for the reintegration of ex-offenders. Employment creates stability, commitment, and responsibility. Providing assistance to ex-offenders in obtaining employment reduces the likelihood of recidivism.

There is, in fact, national support for prevention and rehabilitation programs. That is, we as a society do care about these people. We do believe that assisting them will help reduce crime. The results of a recent survey demonstrate society's support for these individuals:

Almost two-thirds of the respondents agreed that "the best way to reduce crime is to rehabilitate prisoners by requiring education and job training," twice as many as supported long prison sentences to incapacitate prisoners. The poll also found that three-quarters of those surveyed favored supervised mandatory drug treatment and community service rather than prison time for those convicted of drug possession and minor drug sales offenses. These results and other indicators suggest greater public support for criminal justice policies which are not just "tough on crime" but which fairly and effectively increase public safety and reduce recidivism.<sup>11</sup>

Research has indicated that one common factor shared by most ex-offenders is the difficulty of finding permanent employment. There is evidence that this is related to recidivism.<sup>12</sup> This problem has been made worse by the change in policy in the late 1970s that increased the incarceration period for individuals convicted of crimes. Beginning in the 1970s the philosophy of rehabilitation that was integral to the model of indeterminate sentencing began to erode. Indeterminate sentencing is defined as "a period of incarceration set by a judge as a minimum term that must be served before a decision on parole eligibility is made and

a maximum term at the conclusion of which the sentence has been completed (for example, five to ten years)."<sup>13</sup> Indeterminate sentencing encompassed a wide range of possible sentences that supported the correctional goal of rehabilitation. In the mid-1970s critics began demanding change for various reasons. A report by the Urban Institute describes some of these reasons:

For instance, civil rights activists and defense lawyers, citing evidence of widespread racial and class disparities in sentencing and correctional administration, called for limiting the discretion of judges and other correctional authorities in sentencing matters. On the other hand, political conservatives pointed to rising crime rates and research findings that questioned the effectiveness of rehabilitation and advocated sentencing reforms as a means to enforce tougher standards and crack down on criminals. This ideological and political shift away from the framework of indeterminate sentencing has had significant effects on federal and state sentencing policy. The unifying sentencing approach of the past has been replaced with a variety of state-level experiments in mandatory minimums, abolition of discretionary parole release, three-strikes laws, sex offender registration, sharply reduced judicial discretion, and truth-in-sentencing policies among others.<sup>14</sup>

Thus, ex-offenders are being released after being away from society and employment for longer periods of time. We also know that since the 1990s pre-release programs involving education and vocational training have declined. The so called "tough on crime" measures are largely responsible for this. This action encouraged, "similar retrenchment at the state level."<sup>15</sup> Fishman wrote about the effects of these policies on prisoner re-entry in New Jersey:

In 1996, for example, almost \$22 billion was spent on prison construction, staff and maintenance of facilities and prisoners, but only 6 percent of that amount was spent on education, job training, treatment, and similar program

activities. This is particularly troublesome because the majority of prisoners enter prison with substance abuse problems, but only 10 percent reported receiving treatment in 1997, compared to 25 percent in 1991.<sup>16</sup>

Ex-offenders need support after their release; the research tells us that they are most likely to commit crimes within their first year of release.<sup>17</sup> Assisting ex-offenders in their search for employment during this critical time can reduce the rate of recidivism. Employment offers stability and provides less time to engage in illegal activities. There have been many government programs that have tried to provide job placement services for ex-offenders, beginning with the Manpower Demonstration and Training Act of 1962 and ending with the Comprehensive Employment and Training Act of 1973 (CETA). CETA funding ended in 1982 and so did government-assisted employment programs for ex-offenders. These programs were not very successful because they concentrated on job placement rather than "job readiness." That is, they failed to consider the problems faced by many ex-offenders, such as substance abuse, lack of proper housing, low literacy levels, and mental illness as well as the stigma associated with being an ex-offender.<sup>18</sup>

The status of "ex-offender" also legally excludes these individuals from certain occupations such as health care, government positions, and criminal justice occupations. In addition, special statutes close certain occupational fields to those with a "lack of good moral character," commonly associated with individuals with criminal backgrounds.<sup>19</sup>

It is not just certain types of discrimination and lack of job skills that limit the successful reintegration of ex-offenders. It is their low literacy levels as well. There is insufficient education and training available to prison inmates to change this situation. Prior to 1994, inmates could avail themselves of Pell Grant funds. Inmates received a mere 1% of these funds. Although limited, these funds did provide inmates some opportunity for rehabilitation through education. But the Violent Crime Control and Law Enforcement Act of 1994 denied access to these funds to anyone in a federal or state penal institution, despite research that

supports a positive correlation between education and a reduction in recidivism.<sup>20</sup>

The reintegration of ex-offenders is made even more difficult by the fact that they are often denied access to public assistance. A report by the Great Cities Institute noted the significance of this denial of aid:

Ex-offenders are also confronted with severe financial hardships after they are released. The difficulties of earning a living wage through employment are magnified by the restrictions imposed on ex-offenders through the new welfare reform laws. A key provision in the federal welfare law of 1996 requires states to permanently bar individuals with drug-related felony convictions from receiving public assistance, including food stamps, during their lifetimes. The denial of welfare benefits makes it more difficult for the increasing number of individuals with drug-related felonies to participate in drug treatment and job readiness programs that are critical for their reintegration into society.<sup>21</sup>

Ex-offenders also face problems with securing adequate housing. According to the law, if individuals commit a drug-related offense that results in eviction from public housing, they are denied eligibility for such housing for three years. Thus, many ex-offenders find themselves homeless.

It seems clear that individuals who have been incarcerated need assistance making the transition from inmate to ex-offender. Pre-release programs have been developed to ease this transition. The problem with most current pre-release programs is that they are not long enough nor are they offered soon enough. This must be corrected.

The state of Connecticut is beginning to understand the special needs of ex-offenders. It is beginning to act on the research supporting the correlation between employment and lower recidivism rates, but so far the government's response to this pressing need has been minimal. In July 2002, Connecticut received \$200,000 in federal funds to assist the reintegration of ex-



offenders. We continue to invest in prison expansion despite evidence that incarceration costs far exceed the costs involved in rehabilitation and reintegration.<sup>22</sup> For example, the Violent Crime Control and Law Enforcement Act of 1994 supports stricter punishments and funding for the construction of new prisons. It does not provide funding for the education of offenders or ex-offenders.

We need to invest more in reintegration programs if we are truly determined to reduce recidivism and thereby reduce crime and prison overcrowding. We will not be successful in helping ex-offenders sustain employment until we address the problems affecting their employment. These problems begin at the so-called "moment of release." Ex-offenders are often released from prison without the necessary identification required for employment or information on how to obtain substance abuse treatment or apply for public assistance. The extensive use of pre-release and follow-up programs might reduce the rate of recidivism and result in more successful reintegration after release.<sup>23</sup> These pre-release and follow-up programs should also be used to create awareness of the need to support ex-offenders and eliminate the fear that employers have concerning the hiring of ex-offenders. A report prepared under the direction of the Department of Labor stated that "perhaps the most serious barriers to employment are the bias and stigma arising from having a criminal record. Many employers are hesitant to hire applicants with conviction histories."<sup>24</sup> If we are serious about reducing crime then we must be aggressive in supporting the employment of ex-offenders. Perhaps the state of Connecticut should consider providing services that would ease the fears of employers, such as drug testing and verifying prior employment records.

Employment for ex-offenders can be secured and continued if officials become familiar with employers who are willing to hire ex-offenders. There are such employers. They are aware of the economic benefits of such hires, and should be sought and cultivated. One way of encouraging employers to participate in the hiring of ex-offenders is to make them aware of the financial incentives available. These include the Federal Bonding Program, tax credits, and Workforce Investment Act assistance.<sup>25</sup>

In addition, an attractive incentive that the state could provide to employers is free human resource services, to help match the

employee to the position. This would be of particular benefit to smaller employers who can't afford human resource departments. Larger employers would benefit as well from the ready source of employees. The state could save employers additional funds by providing information on the employees and eliminating the need for costly background checks.<sup>26</sup>

There are substantial difficulties even the most determined and motivated ex-offender must face once he or she secures employment. We must develop programs that consider and deal with these issues as well. For example, individuals placed on probation or parole must adhere to certain rules. Finding employment is not the only requirement of probation or parole. Individuals convicted of drug offenses have additional obligations of attending counseling sessions, drug screenings, and meeting with probation and parole officers. It is difficult to find a job with the flexibility to meet all these obligations.

Perhaps some attention should be given to the adjustment of parole requirements. A report by the Urban Institute indicated that first time offenders were more successful on parole than recidivists. Parole agencies could use this information to identify those individuals more likely to return to incarceration.<sup>27</sup> This report suggests that states could use this information for resource allocation:

For example, states often have a standard set of release conditions that applies to all parolees under supervision. All parolees may be required to report to their parole officer within the first 48 hours. All parolees may be required to check in with their parole officer on a weekly basis. All parolees may be prohibited from traveling more than 50 miles from their place of residence. Knowing that first-releases are more likely than re-releases to succeed may suggest a different set of standard conditions for the two groups, allowing finite fiscal and human resources to be targeted better.<sup>28</sup>

There are also several post-employment services that the state could provide to help ex-offenders sustain employment. They include childcare, transportation, and training courses. The state

could also mediate problems between the employer and the employee. A report by the Department of Labor states that "by taking the initiative in addressing issues that might otherwise compromise the working relationships of your participants and their employers, you will be providing an additional incentive to employers to hire your clients."<sup>29</sup>

The road to employment and reintegration of the ex-offender not only involves preparing the employer but preparing the ex-offender as well. The ex-offender will most probably be asked to discuss his or her criminal record. The manner in which he or she does this will determine whether or not he or she remains a candidate for the job. Individuals must be encouraged to be completely honest. Employers conduct a variety of background checks and they will discover erroneous information. Such information constitutes legal grounds for dismissal. There are legitimate ways of approaching this issue that should be taught to the job seeking ex-offender. There is literature that describes the techniques involved in this process. For example, Mukamal suggests the following:

Persuade participants to explain any mitigating circumstance connected to a particular offense. Efforts at rehabilitation should be emphasized. Particular attention should be paid to any vocational training or education, employment experiences, community service performed, and successful alcohol or substance abuse treatment the client has attained since committing the offense. While participants should be advised to tell the truth about their criminal records, you should discuss with them ways to limit their responses to employment applications to the specific information asked of them. For instance, if an application asks a person to list all "convictions" or convictions of all "offenses," the applicant should identify both criminal (felony and misdemeanor) and noncriminal conviction but need not list any arrest that was not followed by a conviction. On the other hand, if an application asks about "crimes," "convictions or crimes," or "criminal offenses," only misdemeanors and felonies need to be identified.<sup>30</sup>

The Ex-Offender Employability Task Force of the State of Illinois researched a series of ex-offender employment programs and prepared a list of recommendations.<sup>31</sup> These recommendations address specific issues related to ex-offender employment. Many of them are worthy of consideration and application to ex-offender employment programs in Connecticut. They include:

- Make personal contact with inmates early in the incarceration period and provide information about resources.
- Conduct a broad assessment of ex-offenders' skills, interests, strengths, and talents. Use assessment results to help ex-offenders build a realistic and meaningful employment plan.
- Insure that practitioners are available to assess and respond to ex-offenders' issues in a timely and supportive manner.
- Provide ex-offender participants access to vocational training opportunities to qualify them for career path jobs.
- Create relationships with a broad range of community service providers, including substance abuse, housing, and legal services, to meet ex-offenders' needs.
- Cultivate diverse entry-level job opportunities to match the diverse skill levels of clients.
- Follow-up with ex-offenders intensively immediately after placement.
- Create personal relationship with employers through consistent follow-up and responses to problems when they arise.
- Create linkages with Community Colleges to supplement the community-based ex-offender employment programs with Basic Adult, GED, and credit educational programs.

We need to show ex-offenders that they are still part of our society. We should treat them "humanely and creatively while at the same time expressing society's condemnation, not of them as persons, but of their conduct and the conditions underlying their conduct."<sup>32</sup> As Harold J. Berman points out:

Today everyone knows that no amount of force which the police are capable of exerting can stop urban crime. In the last analysis, what deters crime is the tradition of being law-abiding, and this in turn depends upon a deeply or passionately held conviction that law is not only an instrument of secular policy but also part of the ultimate purpose and meaning of life.<sup>33</sup>

We will have a safer and more secure world if we can incorporate ex-offenders into society and show them that the law is designed to benefit and protect all of us.

#### Notes

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