

The Joint Effort to Supervise and Treat Elderly Offenders: A New Solution to a Current Corrections Problem

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The criminal justice system is presented with the difficult question of which corrections option is best suited to supervise and to treat elderly offenders. The author finds that no current corrections option satisfies both society's need for deterrence and the offender's need for solutions to personal problems underlying the crimes. Elderly inmates face many obstacles in prisons designed for younger criminals. Probation often fails because overburdened probation officers must direct more attention toward younger, more dangerous probationers and away from older offenders. Diversion programs are often very limited in scope and many are not structured to address the specific social service needs of elderly offenders. The author's solution to the current corrections problem is the Joint Effort to Supervise and Treat Elderly Offenders ("Joint Effort"). Combining probation's structured supervision with diversion's focus on social services, the Joint Effort seeks to prevent the recurrence of crime by the elderly by treating the problems underlying their offenses. The author outlines the Joint Effort's required assessments and monitoring logistics, while also recognizing the program's limitations and keys to success. Utilizing the best traits of the current corrections options, the Joint Effort allows probation officers and social service professionals to make a beneficial change in the lives of elderly offenders.

I. INTRODUCTION

Many Americans see the elderly's contact with law enforcement as nothing more than a police officer helping a grandparent across the street or taking a robbery report from a victimized older person. However, with increasing frequency in many communities, the officer helps an elderly shoplifter, drunk driver, or even murderer, into a police cruiser for a trip to the booking station. While younger criminals typically steal for economic gain or to feed drug addictions, the elderly are driven to commit crimes for very different reasons. From shoplifting and public drunkenness to murder and sex crimes, an elderly offender's criminal behavior¹ is often rooted in mental, emotional, physical, and

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¹ See *infra* Part II.C.

economic problems inherent to growing old in our society.²

Despite the prevalence of elderly crime and its numerous causes, the criminal justice system continually struggles to meet the challenge of dealing with the older offender and problems unique to the offender's age. The traditional institutions of criminal rehabilitation—prison, probation, and diversion—do not adequately address the needs of the elderly criminal. Absent admission to a special geriatric unit,³ older inmates face constant challenges in penal institutions designed to rehabilitate the younger criminal.⁴ While the violent elderly criminal may deserve to spend a long sentence behind bars, some other option may better serve many first-time offenders.

On paper, probation may be a more humanitarian way to punish elderly criminals. In practice, the limitations of probation make rehabilitating this unique group of offenders difficult. Many probation officers are burdened with large numbers of cases, the majority of which involve younger probationers.⁵

² See *infra* Part II.D.

³ For a discussion of special care facilities for elderly inmates, see *infra* note 69.

⁴ Except for the seasoned offender well along in a life sentence, few elderly criminals are able to fully adjust to prison life. The elderly, like most other inmates, are faced with harsh emotional and physical difficulties in this brutal environment. The elderly's prison ordeal, however, is exacerbated by the impairments of old age. Where younger inmates bound and shuffle down flights of stairs with ease, the older inmate with heart or respiratory problems may have a long and arduous journey to the dining hall or commissary. See Joseph N. Ham, *Aged and Infirm Male Prison Inmates*, AGING, July–Aug. 1980, at 24, 25. Once at the prison store, the elderly criminal is an easy target for intimidation and theft by younger inmates seeking to supplement their meager spending money. See O.W. Kelsey, *Elderly Inmates: Providing Safe and Humane Care*, CORRECTIONS TODAY, May 1986, at 56, 56 (describing "wolf-prey syndrome where younger inmates threaten the elderly with violence in exchange for favors"). Also, while the daily fare at the dining hall is by no means palatable to many inmates, the elderly prisoner may have greater difficulty in chewing and digesting food better suited to their younger counterparts. See *id.* at 58. No criminal enters prison prepared for the rough sentence that lies ahead. However, the elderly inmate faces even greater challenges in navigating everyday tasks in a younger criminal's prison.

⁵ The elderly offender does not constitute the bulk of the probation officer's caseload. Federal Bureau of Investigation (F.B.I.) crime statistics report that the elderly over age 65 comprise less than one percent of all arrests nationwide. See Francis T. Cullen et al., *The Rise of the Elderly Offender: Will a "New" Criminal Be Invented?*, 23 CRIME & SOC. JUST. 151, 155 (1985). While the probation officer deals more frequently with a younger street criminal than with an elderly offender, older probationers are not an insignificant group in the corrections system. With their ranks surging to near 100,000 nationwide, older probationers age 50 and over are estimated to outnumber their incarcerated elderly counterparts by a four-to-one ratio. See Thomas Ellsworth & Karin A. Helle, *Older Offenders on Probation*, FED. PROBATION, Dec. 1994, at 43, 44. Probation departments are likely to come into contact with elderly offenders in increasing numbers in the future, as up to "60,000 new offenders" reportedly filter into these programs each year. *Id.*

Among these files are unwanted elderly probationers who are commonly placed at the lowest priority level.⁶ While an examination of the offender's problems could provide the key to the individual's rehabilitation, overburdened probation officers are often unable or unwilling to counsel the eighty year old shoplifter. These seniors need supervision, but actually receive little supervision or structure under their probation.⁷ Although in need of substance abuse, family, and employment counseling, most seniors are sent through the system without being referred to community agencies for help with their problems.⁸ Without any attention to the underlying cause of the offense, the elderly criminal may return to deviant behavior.

While pretrial diversion programs focus on addressing participants' social problems, these programs are only designed to help a narrow range of elderly offenders, usually those convicted of property crimes.⁹ The benefits of such diversion programs could be extended to elderly criminals who commit a wider range of crimes. Despite the limitations, diversion programs have greater potential than prison or probation to improve the lives of elderly offenders and to prevent the recurrence of crime among the elderly.

Neither prison, probation, nor diversion alone adequately serves the interests of rehabilitating and integrating the elderly criminal back into society. Because prisons are especially inhospitable to the elderly offender suffering from several serious health ailments,¹⁰ probation and diversion programs offer

⁶ Probation officers do not often consider elderly probationers "to be much of a threat (regardless of their offenses, prior records and performance on supervision)." Belinda R. McCarthy & Robert H. Langworthy, *Older Offenders on Probation and Parole*, 13:1 J. OFFENDER COUNSELING, SERVICES & REHABILITATION, Fall/Winter 1987, at 7, 22-23. This belief that the elderly do not require close supervision results in many of these offenders being placed on "inactive supervision status," whereby the "probation or parole officer . . . rid[s] his active caseload" of unwanted offenders. *Id.* at 22.

⁷ *See id.*

⁸ "In theory probation would provide supervision and counseling for the offenders. Actually the heavy caseload of many probation officers prevents any real supervision or personal help." Ruth Shonle Cavan, *Is Special Treatment Needed for Elderly Offenders?*, 2 CRIM. JUST. POL'Y REV. 213, 218 (1987).

⁹ The major drawback of pretrial diversion programs is the narrow focus on certain types of elderly offenders. Broward County, Florida's Senior Intervention and Education Program fits the characteristics of many diversion programs: "implementation after conviction of an offense, *limitation to certain types of minor crimes*, and willingness of the offender to cooperate." *Id.* at 219 (emphasis added). As the Broward County program assists only first-time misdemeanor elderly shoplifters, its restricted enrollment policy denies potentially beneficial counseling services to elderly felons and repeat offenders. *See id.*

¹⁰ William Kelsey notes that "[n]early every geriatric inmate has some long-term chronic debilitation that requires frequent medical attention." Kelsey, *supra* note 4, at 56. As the inmate population ages and accepts elderly newcomers, prisons are slowly beginning to

the best rehabilitation options. The limitations inherent in probation and diversion can be overcome by combining probation's structured supervision with diversion's focused social services. This Note proposes just such a solution, combining the beneficial aspects of probation and diversion: a Joint Effort to Supervise and Treat Elderly Offenders ("Joint Effort").

The Joint Effort integrates the current probation assessment of offender risk and need for supervision with the diversion program's evaluation of social services that the offender requires. The potential success of the Joint Effort lies in the necessary cooperation of probation departments and social service agencies to individually evaluate and supervise each offender. The benefits under the Joint Effort are two-fold: the probation department benefits from caseload assistance and the social service agencies are often better able to assist a troubled class of elderly citizens. Once implemented and properly managed in a community, the Joint Effort has great potential for decreasing the level of elderly crime by treating the problems which contribute to elderly crime.¹¹ The ultimate goal of the Joint Effort is to prevent the recurrence of criminal activity by these offenders by identifying and addressing the problems underlying the elderly's offenses.

Part II of this Note briefly profiles the typical elderly offender: age, criminal history, range of crimes, and underlying problems that contribute to the criminal behavior. Part III discusses the drawbacks to each of the primary correctional options to which the elderly are currently sentenced (prison, probation, and diversion) as well as the detrimental leniency exercised by police and judges dealing with elderly offenders. Part IV develops the Joint Effort, beginning with its justifications, followed by an illustration of how an offender would be serviced by the program's need and risk assessments and monitoring logistics.¹²

accommodate the real medical needs of the older inmate. As "health care administrator for Pennsylvania's Department of Corrections," Kelsey marveled at the 15 million-dollar increase in medical expenditures between 1973 and 1986, peaking at 16.7 million dollars. Sol Chaneles, *Growing Old Behind Bars*, PSYCHOL. TODAY, Oct. 1987, at 46, 51. These funds were spent on a myriad of health care services and products for older inmates. Pennsylvania's prisons allocated money to meet the increasing medical needs of the elderly behind bars, including expenditures for items and services from "[e]yeglasses and dentures" to open-heart surgery and special units for terminally ill inmates. *Id.* While incarceration is tough for any inmate, the elderly prisoner often must cope not only with this harsh environment, but also with a failing body.

¹¹ See *infra* Parts II.D, IV.C.1.

¹² Interspersed throughout this Note are my impressions of corrections options and what I perceive to be their inadequacies in dealing with the elderly offender. The reader should keep in mind that while not based either on first-hand knowledge of the corrections field or on experience in rehabilitating convicted criminals, my impressions provide an outsider's

II. PROFILE OF THE ELDERLY OFFENDER

Many Americans are unaware that the elderly have become increasingly involved as criminals in the criminal justice system.¹³ A look at common characteristics of these offenders—age, criminal history, types of offenses committed, and underlying causes of criminal behavior—provides a basis for understanding these unique offenders and their need for a specialized rehabilitation program.

A. Age

Researchers studying the older offender cannot agree on an exact age at which a criminal becomes “elderly.”¹⁴ This lack of uniformity simply shows that pinning down an arbitrary cut-off age is not important to understanding the motivations behind elderly crime. Regardless of how each researcher defines the “elderly” offender, these criminals share common characteristics that justify treating them as a group.¹⁵ Just as one age category cannot effectively define the

perspective on the current state of corrections. Based on my research into elderly crime, the Joint Effort is my suggestion of a better way of handling elderly offenders entering the criminal justice system. The Joint Effort is offered as an ideal solution for needed reform of the current corrections system.

¹³ Some researchers believe that elderly crime, while difficult to estimate due to different tracking procedures, is “increasing at a rate more rapid than for that associated with other age categories.” Gerri S. Turner & Dean J. Champion, *The Elderly Offender and Sentencing Leniency*, 13:2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION, 125, 125 (1989). The number of crimes committed by the elderly is “[e]stimate[d] range from 300,000 to 500,000 per year.” *Id.*

¹⁴ Each study or article focuses on a different sample age group. Age 65 has been suggested as “more appropriate in identifying” this offender “than some arbitrarily selected younger age.” Cavan, *supra* note 8, at 214. Age 65 is seen as “signif[ying] a break in life style,” in part due to the commencement of Social Security benefits. *Id.* However, the F.B.I. Crimes Index shows that older Americans over 65 constitute only 11.6% of the total population and less than 1% of all arrests. See Cullen et al., *supra* note 5, at 155. Other statistics suggest that older offenders over age 55 “represent only about 3% of all offenders,” thus providing a larger group of offenders for examining “elderly” crime. Cathleen Burnett & Alice Kitchen, *More Than a Case Number: Older Offenders on Probation*, 13:2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION, 149, 149 (1989).

¹⁵ Generalizations are not unreasonable when discussing elderly offenders. “Although older offenders are not a completely homogenous group, they are not sufficiently different to defy generalization.” McCarthy & Langworthy, *supra* note 6, at 19. McCarthy and Langworthy point out that the main distinction between “[y]ounger ‘old’ persons (50-59)” and “older ‘old’ persons” is the increased probability that the younger group “ha[s] had less prior experience with the criminal justice system.” *Id.* As discussed above, other distinctions (particularly health problems) also differentiate older offenders from more youthful offenders.

“elderly” criminal, the problems experienced by these offenders are diverse and affect each individual differently. Accordingly, each community establishing the Joint Effort can best evaluate its own elderly crime problem and structure the Joint Effort to bring an appropriate group of older offenders into the fold in that community.¹⁶

B. *Criminal History*

As the age of elderly offenders differs significantly, so too do their individual criminal histories. The offender’s prior criminal record and contacts with the justice system will, in large part, determine what type of program or punishment the offender will receive. One sociologist identified four main types of incarcerated offenders, each having different traits.¹⁷ The first type consists of “the chronic offender who has grown old during one major sentence or in a steady series of shorter stretches.”¹⁸ The second type consists of young inmates who will grow old in jail while serving “long mandatory terms.”¹⁹ The third type consists of middle-aged, repeat offenders who remain in prison until they reach old age.²⁰ The fourth type is the “elderly prisoner, the convict who is serving time for his first serious offense, often murder.”²¹

This fourth type most resembles the public’s perception of the elderly criminal,²² a first-time offender distinguishable from older recidivists who have conducted a “life of crime.”²³ As the Joint Effort is better suited to addressing the problems of the first-time elderly offender, this specific type-four offender is the focus of this Note.

C. *Types of Offenses Committed*

From the first-time misdemeanor to the career criminal, elderly offenders

¹⁶ See *infra* note 144 and accompanying text.

¹⁷ See Chaneles, *supra* note 10, at 49.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *id.*

²¹ *Id.*

²² Chaneles’s example of this type of inmate is a 72 year old black man who, despite saving for retirement from a 40 year construction career, is now serving a 30 year mandatory sentence for “shooting and killing a handicapped [84 year old] neighbor in a senior citizens’ residence.” *Id.*

²³ Older repeat offenders are most like Chaneles’s first group of inmates. See *supra* text accompanying note 18. This Note does not address issues particular to chronic repeat offenders or “career criminals.”

commit a wide array of crimes, although most are concentrated in certain types of offenses. One study examining the Federal Bureau of Investigation (F.B.I.) Crimes Index noted that persons over the age of sixty-five commit mostly larceny, theft, and shoplifting offenses (78.62%), followed by aggravated assault (13.73%).²⁴ A study of elderly offenders on probation found that drunk driving was the most frequently committed crime (32.2% of the sample), followed by “[d]riving with a revoked license” (6.5%).²⁵ This probation study also showed that 18.7% of offenders in the total sample were convicted of the primary offenses of abuse or assault, while another 21% were sentenced for “‘sex offenses,’ including aggravated criminal sexual assault, public indecency, indecent solicitation of a child, and lascivious acts with a child.”²⁶ Although older offenders commonly commit certain crimes, such as theft and shoplifting, more than others, elderly offenders do commit such diverse crimes as murder (1.9% of the sample), drug possession and delivery (collectively 5.1%), forgery (2.8%), and criminal damage to property (1.4%).²⁷ As this study shows, the elderly offender does not always fit the stereotypical roles of grandmotherly shoplifters or intoxicated old men.²⁸ The criminal justice system must be prepared to handle a wide assortment of elderly criminals, including those

²⁴ See Cullen et al., *supra* note 5, at 155.

²⁵ Ellsworth & Helle, *supra* note 5, at 45-47.

²⁶ *Id.* at 46-47.

²⁷ See *id.* at 46.

²⁸ Similarly, the elderly criminal cannot be grouped together with the younger offender in terms of frequency of crimes committed. The U.S. Department of Justice statistics for 1982 state prison admissions show the disparity in frequency of crimes most often committed by elderly offenders compared to their younger counterparts:

Crime and percentage of new inmates for each age class				
Age Class	18-24	25-34	55-64	65+
Murder	3.1	4.2	11.0	18.4
Manslaughter	1.6	2.6	9.8	16.8
Robbery	20.1	17.1	4.6	2.6
Burglary	34.9	23.2	7.3	4.1
Drug Offenses	5.1	10.5	8.0	9.7
Public Order	3.1	5.6	19.8	17.3
Other Offenses	6.4	7.7	11.0	11.7

Chaneles, *supra* note 10, at 51 (citing BUREAU JUST. STAT., U.S. DEP'T JUST., SPECIAL REPORT: PRISON ADMISSIONS AND RELEASES (1982)). Other offenses “include[] . . . sexual assault [other than rape], . . . violent offenses [other than murder, manslaughter, and assault], . . . property offenses [other than robbery, burglary, larceny, and auto theft], and miscellaneous offenses [other than forgery, fraud, and embezzlement].” *Id.*

convicted of violent crimes and sex offenses.

D. *Underlying Causes of Criminal Behavior*

Just as the elderly commit a wide variety of crimes, the underlying causes of their criminal behavior are similarly diverse. These causes can be classified into four basic groups: (1) mental/behavioral, (2) emotional, (3) physical, and (4) economic. First, psychological disorders can be the result of organic imbalances or a natural part of the aging process,²⁹ while behavioral problems such as alcoholism play a serious role in the lives of many elderly offenders.³⁰ Second, some criminal activity can be traced to the individual's emotional reaction to growing old or to "the loss of a spouse or of . . . health, job, home, or independence."³¹ Third, physical problems and the burdensome cost of medication and health care may cause economic hardships that drive the elderly to commit crimes.³² Fourth, social status is a prominent factor in the elderly's economic motivation to commit crimes generally "requir[ing] few sophisticated skills and no access to positions of economic or political power."³³ Because each elderly offender experiences a set of problems unique to that person's life, an examination of the underlying causes of that individual's criminal behavior should not be limited to any single category, but should encompass all four categories.³⁴

²⁹ See Stephen J. Hucker, *Psychiatric Aspects of Crime in Old Age*, in *ELDERLY CRIMINALS* 67, 68 (Evelyn S. Newman et al. eds., 1984). For a discussion of undiagnosed mental disorders and the need for post-arrest psychological evaluations, see *infra* note 109.

³⁰ Alcoholism in particular is a factor in the commission of violent crimes by the elderly. See Karen M. Jennison, *The Violent Older Offender: A Research Note*, *FED. PROBATION*, Sept. 1986, at 60-65. Jennison's review of prior studies of violence and alcohol use showed "that violent crimes among the elderly are, for the most part, associated with a history of excessive drinking and with the use of alcohol immediately prior to the crime for which they were arrested." *Id.* at 60. Her research on offenders age 50 and older found a connection between "generally high alcohol consumption patterns," pre-offense drinking, and drinking "with friends or acquaintances." *Id.* at 62-63.

³¹ Gary S. Moak et al., *Clinical Perspectives on Elderly First-Offender Shoplifters*, 39 *HOSP. & COMMUNITY PSYCHIATRY* 648, 650 (1988). The authors suggest that "shoplifting may represent a defense against the grief associated with a loss or with feelings of inferiority." *Id.*

³² In a study of older offenders under the supervision of the Kansas City Office of Probation, the researchers found that the offenders "seem to have physical and financial problems that have aggravated their ability to maintain a law abiding lifestyle." Burnett & Kitchen, *supra* note 14, at 159. As a result, these offenders "tended to be in need of services and supervision rather than rehabilitation." *Id.*

³³ Cullen et al., *supra* note 5, at 156.

³⁴ For a discussion of the need for proper examination of each elderly offender's

III. THE INEFFECTIVENESS OF CURRENT CORRECTIONAL OPTIONS FOR ELDERLY OFFENDERS

Once a convicted elderly offender is brought to court for sentencing, the judge has several options with which to address the offender's crime. Because prison, probation, and diversion offer only limited effectiveness for aged offenders, they are not completely suitable for older criminals facing their first sentences.

A. Arrest and Sentencing

1. Arrest

The police are the initial contact between the criminal justice system and the elderly offender. With the power to arrest, the officer walking the beat determines whether elderly offenders will answer for their criminal conduct. While it is difficult to pinpoint how much of a factor the offender's age plays in the decision to arrest, it is apparent that many elderly offenders exhibit the non-aggressive traits likely to elicit favorable treatment from police officers.³⁵ A police officer making an elderly person return shoplifted goods without any other sanction is undoubtedly a daily occurrence in many communities.³⁶

problems by trained professionals in the medical, psychological, and correctional fields, see *infra* note 109 and Part IV.C.1.

³⁵ See LETITIA T. ALSTON, *CRIME AND OLDER AMERICANS* 203 (1986). Alston argues that police discretion to arrest "may depend more on the circumstances of the misbehavior than on age." *Id.* Thus, an offender who is "nonmalicious, obedient to authority, and unlikely to repeat his offense in the near future" may be given a break and a ride home, while the "uncooperative, unruly" offender may be given a ride to the booking station. *Id.* (footnote omitted). Despite the uncertainty as to the number of elderly criminals receiving only warnings, "there is a strong, but poorly documented, belief among criminologists that most older offenders have probably benefited from the discretion that police exercise in their contacts with offenders." *Id.* (footnote omitted).

³⁶ One former police officer acknowledged the common 1970s practice of on-site dismissal of elderly shoplifters by store security personnel. See James J. Fyfe, *Police Dilemmas in Processing Elderly Offenders*, in *ELDERLY CRIMINALS* 97, 101 (Evelyn S. Newman et al. eds., 1984). Fyfe suggests that since that time, a greater number of shoplifters have been held to answer for their offenses due to merchants' increased need to minimize theft losses and due to more informal police procedures for processing shoplifters (such as permitting store detectives to initiate shoplifting charges without police intervention). See *id.* However, Fyfe's commentary does not focus on the effect of these procedures on *elderly* shoplifters. See *id.* It is possible that the same factors inhibiting store detectives from detaining and charging suspected elderly shoplifters (bad store publicity and public embarrassment for the arrested offender) in the 1970s, see *id.*, have an effect in on-site

The problem with this "act of mercy" is its circumvention of the justice system. Obviously, the system would grind to a halt if every petty offender was dragged downtown to appear before the local magistrate. While the answer to the problem of elderly crime does not lie in making all elderly offenders face sentencing for every petty crime committed, such widespread leniency does not allow the system to properly rehabilitate the elderly offender because it ignores physical, social, and economic problems underlying the elderly offender's criminal behavior.³⁷

Police leniency hinders the justice system in two ways. First, as the initial contact between the offender and the justice system, police have the best vantagepoint to assess the seriousness of the crime committed and the offender's acceptance of responsibility. By consistently letting elderly offenders go with a mere warning, the officer is not holding the offenders accountable for their actions. This instant justice can be counterproductive because it may result in an offender continuing the pattern of criminal activity without acknowledging the elderly offender's illegal behavior or the problems spurring the actions.³⁸

A second problem with on-site dismissal is the perpetuation of the underlying causes of the offense. The immediate contact with the offender affords the officer a unique opportunity to detect problems underlying the offense. For example, if a police officer continually allows an elderly drunk to sober up without answering for the disruptive conduct, the offender will most likely continue this disruptive pattern of behavior untreated.³⁹ Arresting the

dismissals today.

³⁷ See *infra* note 39 and accompanying text.

³⁸ Fyfe noted that "it has been argued that police reluctance to arrest in incidents of family violence serves to license and encourage future, and often more serious, acts of violence." Fyfe, *supra* note 36, at 104.

³⁹ In the long run, the elderly offender does not benefit from police leniency, especially when some police officers appear to be focused more on sending the elderly offender home than on discovering that an underlying problem exists and directing the offender to agencies and programs that can address the problem. Fyfe illustrates the dilemma presented here:

It is far simpler for police at all levels when offenses never come to their attention, or when they may be readily disposed of informally, than it is when there exists pressures to arrest. The police chief need not be concerned about issues regarding custody of elderly drunken drivers when his officers routinely handle such apprehensions by parking offenders' autos, stealthily removing ignition keys, returning key rings to offenders, and finding them taxi rides home. Such practices are also quite simple for officers, who usually find that the victims of such thefts are usually too embarrassed or too grateful for the "breaks" given them to lodge complaints against the officers involved.

Id. While the officer may be in the best position in this scenario, the elderly offender

offender⁴⁰ will set the judicial process in motion and will allow court personnel to evaluate the offender's situation. Even if formal charges do not appear on the criminal record, the offender may still benefit from referral to an alcohol abuse treatment program subsequent to arrest. Police leniency toward the widowed shoplifter or the aged drunk breaks this vital link for bringing elderly offenders into the criminal justice system, where appropriate action may be taken to address the underlying causes of the criminal behavior.⁴¹ The decision not to arrest these older offenders often deprives them of the counseling and treatment benefits that the system can offer.⁴²

2. Sentencing

An appearance before a judge often does not end the elderly criminal's wayward behavior. Just as police officers feel sorry for the "old drunk," judges are often prone to have similar feelings of compassion toward elderly offenders.⁴³ With their own wide range of discretion in sentencing the offender,

inevitably loses. The drinking habit may very well continue and the individual may again sit behind the wheel after drinking. The implications of this police practice are potentially devastating for the offender in need of help and for the unwilling victim crossing the path of the drunk driver's car.

⁴⁰ Although potentially traumatic for some older people, an arrest can make the elderly offender realize the consequences of the illegal behavior. Instead, police officers use their discretion to give the elderly a break, which may include "offer[ing] a 'promise to appear' option in lieu of standard arrest-booking processes." Gary Feinberg & M. David McGriff, *Defendant's Advanced Age as a Proponent Status in Criminal Case Disposition and Sanction*, 13:2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION, 87, 108-09 (1989).

⁴¹ The need to maintain this link is all too apparent: "[I]ncreased exposure to elderly offenders and increased pressures to arrest demand that officers carefully balance the possible negative effects of their actions on the lives and health of elderly offenders against the risk of endangering themselves and other innocent persons by dealing too leniently with these offenders." Fyfe, *supra* note 36, at 105.

⁴² Fyfe suggests that statutory restrictions on police discretion may be partly to blame for the police officers' inability in some situations (such as family violence) to direct elderly offenders with mental disorders to appropriate social service agencies. *See id.* at 105-06.

⁴³ One study of County Court judges in Florida found a significant percentage could be classified as "generally sympathetic toward the elderly." Gary Feinberg & Dinesh Khosla, *Sanctioning Elderly Delinquents: Judicial Responses to Misdemeanors Committed by Senior Citizens*, TRIAL, Sept. 1985, at 46, 47. The classification was based on the judges' responses to three statements. First, "[t]he elderly are not shown enough respect in our society." Second, "[t]he elderly have paid their dues and ought to be looked after by society if they need help." Third, "[t]he elderly suffer more than the general population during hard economic times." *Id.* at 47. Of the 121 judges responding to the survey, "approximately 59 percent . . . are sympathetic toward the elderly," while "22 percent are distinctly unsympathetic, and 20 percent are neutral." *Id.*

judges perpetuate the offender's problem in one of two ways: (1) by either ignoring it altogether, or (2) by contributing to it through the choice of sentence.

The hard-line sentencing of one elderly offender to jail time may send the message that the court intends to similarly punish other older offenders convicted of comparable crimes.⁴⁴ However, imprisonment may have little or no effect on the undiagnosed mental disorder or persistent poverty contributing to the offender's delinquency. While knowledgeable about the sentence's potential for reforming certain offenders, judges are not always trained to spot problems which steer the elderly to commit criminal conduct in the first place.⁴⁵

Similarly, the judge's choice of sentence may compound the problems underlying the elderly offender's criminal behavior. For example, the common fine or other economic sanction, such as court costs,⁴⁶ puts a strain on those elderly defendants who steal as a result of their financial situation.⁴⁷ Thus, "[t]he judges' response . . . aggravates an already tenuous financial status, exacerbating the very condition they contend is responsible for the misdemeanor in the first place."⁴⁸ Judges would benefit from having information on the offender's mental, physical, and economic status to assist in the sentencing process. While law enforcement, corrections, and social service agencies may separately collect some of this data, such information may not always be available to the courts on a regular basis, in complete form, or in sufficient detail.

Leniency exercised by both police officers and judges creates major problems in the arrest and sentencing of elderly offenders. Both law enforcement agents and judges have ultimate discretion to address the offender

⁴⁴ Judges do not always impose upon elderly offenders the maximum sentence possible, especially when imprisonment is involved. Judges often recognize the problems (discussed in Part III.B, *infra*) inherent in committing an older criminal to a prison facility "designed for younger offenders." Turner & Champion, *supra* note 13, at 134. "Older offenders pose special problems for correctional personnel, and no doubt these are considerations taken into account by judges when imposing sentences on convicted felons." *Id.* Even if the offender is spared possible jail time, the judge still faces the dilemma of what alternative punishment or program best suits the needs of both the offender and the criminal justice system.

⁴⁵ Judges need to accept the input of trained professionals who can more readily and accurately determine whether the offender is best served by some alternative form of punishment and counseling. For a listing of these professionals, see *infra* note 129.

⁴⁶ See Feinberg & McGriff, *supra* note 40, at 109.

⁴⁷ See *id.* at 119-20 ("That the courts respond to these elderly [misdemeanant theft] offenders with economic sanctions . . . is especially important given their fixed income, the high proportion living in poverty, and judicial belief that they generally suffer more economically than younger populations." (citation omitted)).

⁴⁸ Feinberg & Khosla, *supra* note 43, at 49.

as each sees fit.⁴⁹ Despite society's need to hold offenders accountable for their crimes, the elderly criminal sometimes reaps the benefit of an officer's gift of a second chance or a judge's compassion for a broken elderly spirit. While a stern lecture and a second chance may be enough to deter future crimes by some elderly offenders, this method does not always work when an additional problem, such as alcohol abuse or a mental disorder, caused the criminal behavior.⁵⁰ Passing through the justice system with little or no sentence, the elderly offender stands a greater chance of repeating the offense because the system may not have adequately identified and addressed the underlying problem.⁵¹

B. Prisons

Elderly offenders who threaten the community with serious violent crimes should be sentenced to prison time. Advanced age should not excuse the murderer or serial rapist from receiving punishment commensurate with the crime.⁵² The down side to a "get tough" stance on violent senior citizen crime is that many elderly offenders are not readily suited to prison life,⁵³ given the present state of our nation's correctional facilities.

Old men serving long sentences are becoming more common in the ranks of today's inmate population.⁵⁴ Just as the newly incarcerated elderly inmate has considerable difficulty adjusting to prison life, so too does the prison system find it difficult to meet the needs of its entire aging population. The first-time offender is not able to enter an average prison today without encountering a myriad of challenges, which take three main forms: (1) structural, (2) social/emotional, and (3) physical.

⁴⁹ See ALSTON, *supra* note 35, at 203 (discussing police discretion).

⁵⁰ See *supra* note 39 and accompanying text.

⁵¹ See *supra* notes 38-40 and accompanying text.

⁵² For the retributivist perspective on punishing the elderly commensurate with their crimes, see Jason S. Ornduff, *Releasing the Elderly Inmate: A Solution to Prison Overcrowding*, 4 ELDER L.J. 173, 188 (1996).

⁵³ While all new inmates struggle to settle into the new environment of prison life, serious health and mobility problems are just some of the additional difficulties compounding the elderly inmate's adjustment to a long sentence behind bars. See Ham, *supra* note 4.

⁵⁴ In 1989, criminals age 50 and over accounted for 12% of all inmates in the federal prison system. See Peter C. Kratcoski & George A. Pownall, *Federal Bureau of Prisons Programming for Older Inmates*, FED. PROBATION, June 1989, at 28, 30. These inmates are expected to increase to 16% of all federal prisoners by the year 2005. See *id.* In the general public, the number of persons over age 65 is expected to increase by 21% by the year 2000. See Chaneles, *supra* note 10, at 51. The corresponding number of elderly offenders in state prisons is estimated to increase by 50% of those currently incarcerated. See *id.*

Even though prison is not intended to be a comfortable environment for inmates, the elderly offender may struggle from the stress imposed by the structural design of the facility. Prisons were, and still are, designed primarily for a younger population.⁵⁵ As a result, uncomfortable temperatures, dampness,⁵⁶ and loud noise levels⁵⁷ provide an inhospitable environment for many aged as well as young offenders. Obstacles such as stairs make it difficult for older inmates to make their way to dining and recreation areas.⁵⁸ Privacy and security are often lacking for older offenders, who prefer individual rooms with doors rather than housing in the common cell block configuration.⁵⁹

In addition to prison structural design flaws, prison life has many down sides for the elderly offender in a younger inmate's prison. Pervasive loneliness fueled by the lack of mail or regular visitors contributes to older inmates' isolation amongst their younger counterparts.⁶⁰ This isolation, and the generation gap, is exacerbated by the division of power within the prison. Younger inmates regularly hustle and cheat older prisoners and extort payments for gambling losses and other debts.⁶¹ Some older inmates employ survival techniques, such as feigning mental illness, in order to cope with their vulnerability,⁶² while others rely on prison staff for support and protection.⁶³ Unfortunately, these corrections officers generally do not have special training in helping the elderly.⁶⁴ Older inmates may also find that prison programs and

⁵⁵ See Ronald H. Aday, *Golden Years Behind Bars: Special Programs and Facilities for Elderly Inmates*, FED. PROBATION, June 1994, at 47, 48 ("Prison systems are primarily designed to house young, active inmates.").

⁵⁶ See *id.*

⁵⁷ See Ernest O. Moore, *Prison Environments and Their Impact on Older Citizens*, 13:2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION 175, 181 (1989). ("Noise in prisons is amplified by the typical hard surfaces of concrete and becomes an uncontrollable nuisance and source of stress.").

⁵⁸ See Ham, *supra* note 4, at 25.

⁵⁹ See Moore, *supra* note 57, at 190 ("Privacy needs for prisoners tend to be overlooked or ignored in many existing prisons when in fact it is a critical issue in many situations.").

⁶⁰ See Chaneles, *supra* note 10, at 49.

⁶¹ See *id.* at 51. "This [lack of respect for the aged prisoner] can lead to the wolf-prey syndrome, where younger inmates threaten the elderly with violence in exchange for favors." Kelsey, *supra* note 4, at 56.

⁶² See Patricia A. Washington, *Mature Mentally Ill Offenders in California Jails*, 13:2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION 161, 162-63 (1989).

⁶³ See Kratcoski & Pownall, *supra* note 54, at 32.

⁶⁴ See Aday, *supra* note 55, at 53 ("Prison staff need to be specifically trained to understand more fully the social and emotional needs of the elderly, dynamics of death and dying, procedures for identifying depression, and a system for referring older inmates to experts in the community.").

counseling are designed to specifically rehabilitate the younger inmate.⁶⁵

Compounding the emotional strains of prison life are the inescapable physical and mental ailments inherent in growing old in prison. Prisons designed for incarcerating younger inmates simply cannot adequately address the numerous health problems of older inmates.⁶⁶ As “[n]early every geriatric inmate has some long-term chronic debilitation that requires frequent medical attention,”⁶⁷ prisons are often hard-pressed to provide the medical staff and special equipment necessary to provide for older inmates’ needs.⁶⁸ The trend in some jurisdictions is to create special geriatric units within the prison, at great expense to taxpayers.⁶⁹

⁶⁵ See *id.* In addition, participation by older prisoners in these programs and activities may be limited by health conditions. See Kratcoski & Pownall, *supra* note 54, at 31.

⁶⁶ “[O]ur prison and jail systems are simply not equipped to deal with the special needs of the elderly class of offender. Special diets, special housing, and special medical treatments are often beyond the normal capabilities of most jail and prison facilities.” Turner & Champion, *supra* note 13, at 126.

⁶⁷ Kelsey, *supra* note 4, at 56. A survey of elderly Michigan inmates found that 83% had “at least one chronic health problem,” while 49% complained of three or more such ailments. Moore, *supra* note 57, at 185–86. The three largest categories of health problems affecting the surveyed inmates were cardiac (25.9%), vision (17.0%), and lung (14.8%) conditions. See *id.* at 186. Gastro-intestinal (9.0%), dental and internal medical (each 7.9%), hearing (4.5%), orthopedic (3.6%), and urinary (2.2%) ailments also afflicted these elderly inmates. See *id.*

⁶⁸ See Kelsey, *supra* note 4, at 56. Older inmates’ physical health problems require expensive staffing and resources to treat and monitor. Aside from “[t]wenty-four hour nursing” and emergency medical staff, prison infirmaries often need a wide array of medical equipment, including “lockable bedrails to prevent falls[,] . . . [w]alkers, wheelchairs, bedside commodes, and lift-type bathing equipment.” *Id.* Prison staff must adapt to other more basic health concerns as well, such as providing the “special or therapeutic diets [needed] to complement [elderly inmates’] medical regimens.” *Id.* at 58.

⁶⁹ The phenomenon of the geriatric unit within a growing number of federal and state prisons is a sign of the increasingly aging inmate population. These wards usually consist of either a separate prison wing or, in some jurisdictions having a large number of elderly inmates, a facility devoted only to these special-needs prisoners. See *id.* (“Correctional administrators need to decide whether the size of the geriatric population warrants a unit within each facility or if one facility should be designated as a center for geriatric populations.”).

Federal geriatric facilities, such as the Comprehensive Health Care Unit at the Federal Correctional Institution in Fort Worth, Texas, are designed to address special mobility (wheelchair access) and sanitation concerns, and offer special health programs conducted by the nursing staff. See Kratcoski & Pownall, *supra* note 54, at 33–34. Admission to such federal facilities, however, is limited based on the security classification of needy inmates: unless a unit exists in higher security prisons, those particular inmates may not receive the beneficial treatment. See *id.* at 34.

Coupled with the physical health ailments are the mental disorders common to growing old and adjusting to prison life. The onset of advanced age naturally brings the effects of "long-term deterioration of the mental process."⁷⁰ Many large prisons cannot provide the individualized attention from therapists necessary to promote and maintain "reality orientation" among these older inmates.⁷¹ Other mental disorders, such as institutional neurosis,⁷² can be caused by the prison environment itself when older inmates are locked up and subjected to "unusually high levels of environmental regimentation, rigid discipline, pressure, and stress."⁷³

While violent and dangerous seniors should be sentenced to prison terms, other punishment options, including probation and diversion, are preferable

Several states have also instituted geriatric facilities in a variety of formats. The State Park Correctional Center in South Carolina, for example, is unique in providing for elderly male *and* female inmates. *See* Aday, *supra* note 55, at 49. Among the facility's health care services are around-the-clock medical attention, over 900 prescriptions written per month, and chemotherapy and dialysis treatments provided at a local hospital. *See id.* A Mississippi geriatric facility, modeled in a "nursing home-like setting," offers 24 hour nursing and a case manager to work with the inmates. *Id.*

These separate facilities and wards, while necessary for treating the ailments of an aging prison population, are not without their drawbacks. Often located only in particular correctional institutions, these geriatric units may isolate inmates from relatives living a fair distance away. *See id.* at 52. Limitations on available space may create long waiting lists for admission and may prevent placement of many needy inmates. *See id.* Due to a lack of resources or even a significant number of eligible inmates, some jurisdictions are simply not able to establish such specialized units. *See id.* at 52-53. The most persuasive argument against furnishing special treatment to elderly inmates is the unavailability of adequate medical care for many law-abiding citizens. It is difficult to reconcile the fact that a state may provide a heart transplant to a 90 year old murderer while large numbers of needy citizens outside of prisons are denied such expensive treatment.

⁷⁰ Kelsey, *supra* note 4, at 58.

⁷¹ *Id.*

⁷² *See* Ham, *supra* note 4, at 27. "Institutional neurosis" has been described in the following manner:

The long-term institutional resident or inmate, unless he is of exceptional strength from the beginning, has some fixed external point towards which to orient, or is provided with positive stimulation by the institution, may degenerate into not only a "mindless" but a will-less person. This concept presents the classical picture of institutional neurosis.

Id. (citing DAVID J. VAIL, DEHUMANIZATION AND THE INSTITUTIONAL CAREER 10-11 (1966)). Other mental disorders also directly related to the older inmate's "[i]nstitutional isolation and . . . monotonous bland environment" include "regression of emotional responses; dependent behavior; . . . [and] fears, psychosis, withdrawal, changes in body image, and hyperactivity." *Id.* at 29.

⁷³ *Id.* at 27.

over incarceration for many older first-time offenders. The problem, however, is that these alternatives are in many ways just as inadequate in dealing with elderly offenders. The majority of elderly offenders are better off receiving some other form of punishment.

C. Probation

Of all the possible correctional alternatives, supervision in a probation program offers the best scenario for tracking the aged offender's successful rehabilitation. While rehabilitation could be addressed by a separate probation program geared to the specific needs of the elderly offender, most probation departments have neither the staff nor the resources needed to run a specialized program.⁷⁴ Elderly offenders are therefore grouped together with their younger counterparts under the weary eyes of overburdened probation officers. Older offenders simply do not receive the level of supervision or individualized attention necessary for a successful transition to normal life because elderly crime is not perceived to be a serious threat.⁷⁵

Supervision of the elderly offender is sacrificed on the premise that elderly offenders do not merit the attention given to younger criminals.⁷⁶ This is because the current risk-need assessment for determining the necessary level of supervision is, by itself, not an adequate manner of evaluating the problems underlying elderly offenses. These faults leave many elderly probationers without proper supervision and necessary counseling.

1. *The Probation System Cannot Adequately Cope with Supervising Elderly Offenders*

As many older offenders receive probation in lieu of prison sentences,⁷⁷ the need for supervision becomes more important. The major drawback of the probation system is its inability to adequately supervise elderly probationers. This is significant because older offenders are assigned to probation for an increasing array of crimes, including violent offenses, and for significant periods of time averaging around four years.⁷⁸ Many probation departments are faced with overwhelming caseloads consisting mostly of younger offenders.⁷⁹

⁷⁴ See *infra* note 99.

⁷⁵ See *infra* Part III.C.1 for a discussion of the drawbacks of placing elderly offenders in an inactive supervision program.

⁷⁶ See *supra* note 82 and accompanying text.

⁷⁷ See McCarthy & Langworthy, *supra* note 6, at 22.

⁷⁸ See *id.* at 19.

⁷⁹ See *infra* note 99.

As a result, the elderly offender is likely to be placed on "inactive supervision status," whereby the probation officer neglects the aged offender in favor of monitoring a younger, and perhaps more dangerous, criminal.⁸⁰

Inactive supervision status provides judges and probation officers with a method of punishing the elderly with the least commitment of time and resources.⁸¹ The probation officer, unwilling to deal with the elderly offender on a regular basis, can use inactive supervision status "to rid his active caseload of offenders who, because of their age, are not perceived to be much of a threat."⁸² The problem, however, is that this decision is not always made with a full evaluation of just how likely the offender would commit additional, perhaps more serious, crimes. Without close examination of "offenses, prior records and performance on supervision," the probation officer is essentially handing the offender a pass to return to his criminal behavior.⁸³

The inactive status probationer is also deprived of proper assessment and treatment of hidden problems. When an elderly shoplifter is placed on inactive status, the offender may not be fully examined and monitored for latent signs of alcoholism, drug abuse, or mental disorders.⁸⁴ Researchers find that many elderly offenders have significant social problems contributing to their criminal activity: "Their alcohol problems are as prevalent as the drug problems of younger offenders, medical disabilities affect almost one-fourth of their number and more than one-third of them are unemployed (but not retired and living on an income) at the time of arrest."⁸⁵ Studies show that probation officers will

⁸⁰ McCarthy & Langworthy, *supra* note 6, at 22-23.

⁸¹ *See id.* at 22.

⁸² *Id.* at 22-23.

⁸³ *Id.* at 23. This problem of selective supervision is particularly troubling when considering the potential for repeated crimes by sex offenders and drunk drivers supervised at only minimal levels. *See* Ellsworth & Helle, *supra* note 5, at 49.

⁸⁴ While recognizing the limitations of the sample used in their study, McCarthy and Langworthy state that judges and probation officers exhibit "a tendency to disregard the older offender, not necessarily because . . . her crimes are not serious or needs are not real, but simply because . . . she is older." McCarthy & Langworthy, *supra* note 6, at 23. These researchers note that leniency and reduced supervision must be balanced with the need to address the elderly offender's problems: "If one of the purposes of community supervision is to assist probationers and parolees in the management of their problems and needs, then ignoring those who do not make trouble does not seem to be a very good strategy of correction." *Id.* This Note shows how neglected supervision of elderly criminals is actually a disservice to those having important problems which currently go unaddressed. The Joint Effort responds to these offenders' needs by combining supervision with specific attention to the social problems.

⁸⁵ *Id.*

limit their focus either entirely to the younger offender's problems⁸⁶ or, if necessary, pay attention only to the condition most likely to cause the elderly criminal to commit another crime.⁸⁷

The unfortunate result of inactive status probation is that the older offender is neither treated for problems contributing to the offender's crime, nor given an incentive to stop committing crimes. The lack of supervision amounts to essentially no sentence, and thus does not force the elderly offenders to see the wrongfulness of their actions. Obviously, not every aged offender needs strict or even regular supervision to accomplish this objective. However, the probation system must in some way hold the elderly offenders as accountable for their actions as it does the younger offender. Requiring attendance at an Alcoholics Anonymous meeting or requiring volunteer work as part of the sentence is a step in the right direction, but these measures alone may not be sufficient to deter future crimes or to solve the elderly criminal's physical, social, or economic problems.

2. Family-Based Probation Cannot Provide Adequate Supervision in All Cases

Explored in some jurisdictions as a possible alternative to inactive supervision status, family-based probation involves releasing the offender into the custody of family members for day-to-day supervision, supplemented by contact with the probation officer.⁸⁸ This may be instituted on the initiative of the judge or the probation officer, or if the family is successful at "persuad[ing

⁸⁶ See Ellsworth & Helle, *supra* note 5, at 49-50. Alcohol-related problems, for example, are not addressed due to "probation staff members [having to] decide who among their many cases will receive their attention." *Id.* The result is "that the older probationer, the one who is often troubled with physical and health problems which limit his or her ability to report [back to the probation officer], is neglected in favor of the younger offender." *Id.* at 50.

⁸⁷ See *id.* at 47 ("Three-digit caseloads in many jurisdictions, . . . will inevitably force the probation officer to address the most immediate problem or the situation which, if left unresolved, will contribute to the older probationer committing a subsequent crime.").

⁸⁸ See J. Mark Watson, *Legal and Social Alternatives in Treating Older Child Sexual Offenders*, 13:2 J. OFFENDER COUNSELING, SERVICES & REHABILITATION, 141, 145 (1989). Watson is Professor of Sociology at Tennessee Technological University as well as a caseworker and consultant on elderly sex offenders. See *id.* at 141. Watson's general remarks in this section concerning family interaction with older offenders "are based on [his] experiences over five years on a professional review panel which advised social service agencies and the courts in the disposition of child abuse cases." *Id.* The reader should note that my impressions of the potential problems with family-based supervision supplement Watson's general remarks on this corrections option.

the] authorities that they can prevent a recurrence by exercising control over the older [offender].”⁸⁹ While probation officers are sometimes only able to develop a superficial acquaintance with the offender’s problems, family members benefit from first-hand knowledge of the elderly offender’s personality, as well as attention to obvious emotional, physical, and economic needs.

Family-based supervision is, in many respects, no supervision, as it allows offenders to find shelter from their sentence rather than face the consequences of their conduct.⁹⁰ The family provides too many avenues for older offenders to return to criminal activity.⁹¹

The reality is that basic problems that the probation officer experiences in dealing with the elderly sex offender, for example, are exacerbated when the sex offender is left under the total supervision of the offender’s family. Relatives are not adequately trained to detect and deal with the offender’s complex latent problems, such as introverted emotional disorders, deviant sexual behavior, and addictions. As a result, the offender under family-based supervision is deprived of proper diagnosis and treatment for alcohol or drug abuse, mental disorders, and other ailments. The criminal justice system is better able to provide the necessary evaluations to uncover these problems.

An even more troubling aspect of family-based supervision is the propensity of family members to provide a haven against the probation department and its sanction for the offense.⁹² The safe haven is particularly troubling when a member of the family group watching the offender is the victim of the elderly’s offense, as is the case with child sex abuse.⁹³ Families are naturally protective of their members and often become lackadaisical in supervising the offender.⁹⁴ As the family fails in its responsibility to adequately supervise the offender, the probation officer must pick up the slack in the face of resentment and resistance

⁸⁹ *Id.* at 145.

⁹⁰ While “[c]ustody of the offending [elderly] parent may be accepted,” the family’s denial of the problem and its unwillingness to watch the offender’s conduct results in a lack of supervision. *Id.* Thus, family supervision under these circumstances is essentially *no* supervision.

⁹¹ Watson found that in addition to the possibility of repeat offenses against family members, “family traditions may be difficult to stop, and family defenses may be raised in some cases of outside intervention.” *Id.*

⁹² Family members tend to work against case workers not only through their failure to supervise the elderly offender, but also through the family’s “active[] resent[ment]” of the case workers. *Id.*

⁹³ *See id.* (Family intervention “can work if the offender is not being placed in the family unit in which the victim also resides.”).

⁹⁴ *See id.*

from the family.⁹⁵ The unnatural and unworkable alliance of probation officer and family members is mostly ineffective in preventing recurrence of sex offenses, particularly in cases of incest in "isolated extended famil[ies]."⁹⁶

Denial that a problem even exists, common when the offender is placed under family supervision,⁹⁷ can compound the problems underlying the older offender's criminal behavior. Blaming the offender's conduct on advanced age, for example, is a dismissal of the signs of serious problems. What may be taken as forgetfulness, impulsive behavior, or poor judgment may in fact be indications of more serious mental and behavioral disorders which, if left untreated, may contribute to subsequent offenses.⁹⁸ An impartial evaluation of the offender is needed to detect these problems and to arrange for treatment. In the final analysis, family members are not in the best position to coordinate evaluation and treatment of the elderly offender, because familial ties and biases may prevent them from looking objectively at the elderly offender's real problems.

3. A Specialized Probation Officer Is Not a Feasible Option in Many Jurisdictions

An ideal solution to the limitations inherent in the probation alternative would be to create a specialized probation officer who monitors all elderly offenders on probation within a given jurisdiction. This probation officer could be trained to evaluate and respond to the special needs of the elderly offender. All elderly offenders needing more substantial supervision could then be reassigned to this probation officer, leaving other probation officers, who are not trained in the special needs of the elderly offender, free to focus on younger, more problematic offenders.

While a specialized probation officer may be ideal for certain communities, such a position is not a feasible option for most communities. The reality of this alternative is that many jurisdictions are unable to allocate resources to create such a specialized position. First, the position is not justifiable in many communities due to the low number of elderly criminals needing full or partial

⁹⁵ *See id.*

⁹⁶ *Id.*

⁹⁷ *See id.*

⁹⁸ Shoplifting, for example, is believed by some researchers to be a manifestation or symptom of undiagnosed mental disorders. *See* Moak et al., *supra* note 31, at 648. If these latent problems are difficult for law enforcement personnel and the courts to diagnose from their contact with the offender, family members lacking any diagnostic training may also overlook the signs of serious mental disorders plaguing the elderly offender.

supervision.⁹⁹ Second, special training would be made available to the probation officer assigned to the elderly probationers, rather than to other probation officers within the same department. By concentrating the knowledge in only the specialized probation officer, the remaining officers would continue to lack basic training in dealing with problems of the elderly. Finally, many probation departments are overloaded with cases and cannot afford to create another position to address a narrow group of offenders.¹⁰⁰ A position devoted only to elderly criminals would adversely affect the department by siphoning resources away from its budget and by preventing additional probation officers from being assigned to the sizable caseload of younger offenders.

4. Risk-Need Assessments Require Revision to Address

If an elderly offender is sentenced to probation, a risk-need assessment is made of the offender by a probation officer. The purpose of the assessment is to classify the offender according to the appropriate level of supervision merited by the offense.¹⁰¹ Probation officers base their assessments on a variety of factors, including “the previous offense record” and readily apparent indications of substance abuse and “emotional [in]stability.”¹⁰² The end result of the

⁹⁹ The Kansas City Office of Probation, for example, is responsible for all probation cases referred by both municipal and appeals courts. *See* Burnett & Kitchen, *supra* note 14, at 151. The incoming caseload for the Office of Probation is heavy, as the two court systems employ eight judges who collectively preside over 1000 cases each day. *See id.* Despite the existence of a first-time offender diversion program accepting some youth and elderly offenders, the full brunt of probation assignments fall on the department’s seventeen officers. *See id.* This caseload suggests that, absent additional funds to hire new officers, the Office of Probation would not necessarily be willing to assign one of the seventeen officers to exclusively handle only 8.5% of the total caseload, the offenders over age 55. *See id.* This jurisdiction is somewhat unusual in its percentage of elderly probationers—the average number of older offenders in other probation programs is 1–3% of the total caseload. *See id.*

¹⁰⁰ *See supra* note 99.

¹⁰¹ *See* David Shichor, *An Exploratory Study of Elderly Probationers*, 32:2 INT’L J. OFFENDER THERAPY & COMP. CRIMINOLOGY 163, 170 (1988).

¹⁰² *Id.* at 169–70. One study of probation departments reports that the risk assessment covers the following areas:

- “Number of Address Changes in Last [Twelve] Months”;
- “Percentage of Time Employed in Last [Twelve] Months”;
- “Alcohol Use Problems”;
- “Drug Use Problems”; [and]
- “Attitude.”

Ellsworth & Helle, *supra* note 5, at 48. The study lists the somewhat overlapping needs

assessment is classification of the offender to maximum, medium, or minimum risk, which determines the appropriate level of supervision administered by the probation department.¹⁰³

While each probation department handles specific offenders differently, certain trends are common to the risk-need assessment across probation departments. Offenders convicted of violent crimes or sex crimes characteristically receive a maximum rating from the assessment.¹⁰⁴ The main belief, however, is that the average elderly offender, whether a shoplifter or a drunk driver, is less dangerous to the community than a younger counterpart, and is therefore “more easily supervised.”¹⁰⁵ The corresponding result is that senior citizens are given lower risk ratings regardless of the offense committed

assessment criteria as:

- “Academy Vocational Skills”;
- “Employment”;
- “Financial Management”;
- “Marital/Family Relationships”;
- “Companions”;
- “Emotional Stability”;
- “Alcohol Use”;
- “Other Drug Use”;
- “Mental Ability”;
- “Health”; [and]
- “Sexual Behavior.”

Id. at 49. Each of these risk and need categories are further divided into three or four sub-categories; for example, the “Marital/Family Relationships” area represents sub-classifications of

- “Exceptionally strong”;
- “Relatively stable”;
- “Some stress but can improve”; [and]
- “Major distress or disorganization.”

Id.

¹⁰³ See Shichor, *supra* note 101, at 170.

¹⁰⁴ See *id.* Aged sex offenders, often eligible for prison terms, are more likely to be sentenced to probation than incarceration. See *id.* Some probation officers generally regard this particular group of offenders to be “high risks for the community,” thus meriting the highest level of supervision. *Id.* at 171. In addition, probation departments in at least one state instituted a policy assigning maximum supervision to all offenders “convict[ed of] an aggressive offense within the previous [five] years, including the offense for which the offender is placed on probation.” Ellsworth & Helle, *supra* note 5, at 47.

¹⁰⁵ Shichor, *supra* note 101, at 170.

and are often given low priority for supervision.¹⁰⁶ Age is a definite factor in determining just how much time and effort the probation officer will devote to each offender. The older the offender, the more likely the probation officer will “downgrade the risk-need classification” and even “recommend[] . . . less severe punishment.”¹⁰⁷

The risk-need assessment is fraught with problems when applied to the elderly offender. These problems center around the three main faults of the probation system. First, the lack of training prevents probation officers from detecting some important problems underlying an elderly offender’s criminal behavior.¹⁰⁸ In some cases, probation officers may note alcohol or drug abuse from a police report or an offender interview and take appropriate action to arrange for counseling or treatment, while at the same time easily overlooking signs of a mental disorder.¹⁰⁹

¹⁰⁶ This accounts for the shift of many elderly probationers to inactive supervision status. *See supra* Part III.C.1.

¹⁰⁷ Shichor, *supra* note 101, at 172.

¹⁰⁸ The need for training is not limited to probation officers supervising elderly offenders. A 1988 survey of probation and parole officers, conducted as part of the National Justice Institute’s National Assessment Program, found that “at least 76 percent of all groups reported they need to upgrade staff skills to handle special problem offenders.” Randall Guynes, *Difficult Clients, Large Caseloads Plague Probation, Parole Agencies*, in CONTEMPORARY COMMUNITY CORRECTIONS 150, 161–62 (Thomas Ellsworth ed., 1992).

¹⁰⁹ As the common risk-need assessment criteria, *supra* note 102, demonstrate, probation officers may focus their assessment on external manifestations of the elderly offender’s problems. The risk-need assessment becomes ineffective when probation officers fail to delve beyond the obvious surface signs to detect other serious psychological and medical problems, such as senility or Alzheimer’s Disease.

Some medical professionals advocate making psychological evaluations standard practice in elderly offender arrests. *See* Moak et al., *supra* note 31, at 648. Moak, Zimmer, and Stein believe that shoplifting may be a symptom of psychiatric disorders that go undiagnosed when elderly offenders do not receive proper evaluation before release. *See id.* As “the criminal shoplifter usually acts from rational motives for readily understandable gains,” shoplifting may be a simple mechanism for coping with personal feelings of grief, loss of independence, or “aggressive or sexual drives for which there may be few culturally accepted avenues of expression.” *Id.* at 648, 650. These authors note, however, that an absence of “such motives as subsistence needs” may signal the possibility of a more serious “psychiatric problem” such as kleptomania. *Id.* at 648. Just as police officers can let these offenders slide through the system without evaluation, so too can probation officers lack the training to spot serious mental and behavioral disorders.

Because of this lack of training, probation officers should at least be made aware of available community resources which focus on care for the elderly. Informational meetings can be held to educate probation officers as to these services; this instruction was particularly helpful for one volunteer organization helping elderly crime victims. *See* Lynne Bliss, *Police Practice: Assisting Senior Victims*, F.B.I. L. ENFORCEMENT BULL., Feb.–Mar. 1996, at 6–7.

Second, even if a difficult problem with the elderly offender is detected, the probation officer is often unable to adequately handle it.¹¹⁰ While an offender's alcoholism may influence the risk-need assessment, the probation officer is not likely to be the best resource for counseling or treatment of that problem.¹¹¹ The probation officer can require counseling as part of the probation, but cannot personally provide that treatment while monitoring the offender's lifestyle.¹¹² Some officers are unable to devote time to locating the best program for the offender. As a result, a detected problem not affecting the immediate propensity to commit additional crimes will likely go unchecked.¹¹³

For 40 hours, the volunteers were briefed by psychologists, geriatric specialists, business organizations, and other professionals regarding the specialized needs of the elderly. *See id.* at 6. The volunteers also received a directory of relevant local social service agencies, including "hospital emergency rooms, the domestic violence safehouse, the local social security office, crisis hotlines, local senior assistance agencies, the State's department of social services, and many others." *Id.* at 7. Probation officers would greatly benefit from this type of training and from a handbook of available community resources accepting older offender referrals.

¹¹⁰ One author counsels probation and parole officers not to undertake all facets of the offender assessment process:

Attempting to move your clients toward more responsible lifestyles is a difficult burden that you need not bear alone. Corrections is a community problem; you are in partnership with community-supported agencies in the rehabilitative endeavor. Probation and parole departments do not have the resources to provide for all the needs of their clients.

ANTHONY WALSH, CORRECTIONAL ASSESSMENT, CASEWORK & COUNSELING 235 (1992).

¹¹¹ Not only may the probation officer not be the best resource for addressing the elderly offender's problems, but also the officer may lack sufficient knowledge of available community resource options which are able to help. In order "[t]o make proper use of community agencies," probation officers "must understand their functions before . . . need[ing] them." *Id.* at 236. A basic familiarity with the available community resources is essential to "mak[ing] the appropriate referral for a specific need." *Id.*

¹¹² In this situation, referral to an outside agency or community professional is a major step toward addressing the elderly offender's problems. Walsh advocates the probation officer serving "as a broker, matching the concern referred to [him] with the appropriate action," even if this means contacting an agency better equipped for handling the offender's particular needs. *Id.* at 237.

¹¹³ Walsh cautions probation officers to not allow offenders' potential mental problems to go unchecked: "[Probation officers] must learn to recognize symptoms of mental illness and specific diagnostic and treatment needs best dealt with by a mental health professional. Never underestimate client symptoms that suggest serious mental problems. You may be wrong, but err on the side of caution: Refer." *Id.* at 236. Referral at least initially halts the elderly offender's slide back to criminal behavior; with proper assessment and attention to treatment options, mental health professionals can provide invaluable services for the

Third, while lack of training causes difficulties in matching the offender with the appropriate services, indifference, disinterest, and apathy are detrimental to the fulfillment of the "need" aspect of the probation assessment. The probation officer may be resistant to taking a more active role in the elderly offender's life, or may even be totally indifferent to detecting and addressing particular needs, such as health problems or personal management of finances. An overburdened officer may not be interested in getting involved to any large extent with the perceived passive offender's personal problems. Resistance toward involving other professionals and agencies in the assessment and rehabilitation process can lead to misdiagnosis of critical offender problems.¹¹⁴

offender's rehabilitation.

¹¹⁴ In an article praising the virtues and professional image of probation and parole officers, Paul Keve emphasizes his belief that the probation officer's perspective on the offender's problems should take precedence over the diagnosis obtained from another professional. See Paul W. Keve, *The Professional Character of the Presentence Report*, in PROBATION AND PAROLE: SELECTED READINGS 81, 84-85 (Robert M. Carter & Leslie T. Watkins eds., 1970). While noting that mental health and other professionals can provide helpful assessments if first provided with offender background information, Keve states that the probation officer "ha[s] the case responsibility and . . . abdicate[s] that responsibility if [he] turn[s] it over to the psychologist or the psychiatrist for the final job of diagnosis and recommending." *Id.* at 84. Because the probation officer collects data on many facets of the offender's life, the officer is in the best position to evaluate the offender's situation and to recommend avenues for rehabilitation. See *id.* Keve believes that the probation officer can diagnose offender problems without active involvement of other trained professionals: "Whether or not [probation officers] have clinical services available to supplement [their] own appraisal of a case, [they] can sharpen [their] powers of observation and adjust the focus of [their] case scrutiny to get a surprising amount of diagnostic information without other professional help." *Id.* at 85. Through observation, the probation officer is able to "spot the signs and symbols of underlying problems" and follow up "to see if his initial impressions are correct." *Id.* at 86.

Keve ignores several important variables in the larger picture of offender assessment. First, without specialized training, some probation officers will misdiagnose or fail to detect latent and potentially dangerous offender conditions. Trained health care professionals are better suited for making these diagnoses. Second, not all probation officers will take sufficient time to thoroughly check all leads stemming from their observation and assessment of the offender. Mountainous caseloads burdening some probation officers make completing this task unlikely. Third, Keve underestimates the beneficial objectivity that an outside professional can provide. While advocating the use of a clinician's report as "one of the ingredients that contribute to the [probation officer's] final, total diagnostic product," Keve does not recognize that the probation officer may have a biased view conditioned by the data that he has collected on the offender. *Id.* at 84. An objective professional, given just enough case information to provide a context of the offender's actions, will be better able to look at the offender's symptoms without the lens of all other case assessment data. Keve does acknowledge the importance of "th[e] kind of unhindered, freely conceived professional opinion and advice" found apart from the direct management of the offender's case. *Id.*

As many probation departments are unable to afford an officer specializing in the needs of the elderly criminal, the older probationer may not receive the personalized attention integral to successful rehabilitation.

D. *Diversion*

Pretrial diversion programs provide a workable alternative to the standard court-imposed fines, probation, or imprisonment. The goal of these programs is to allow the participating offender to complete a prescribed regimen and to be rewarded with expungement of the conviction at the end of the program.¹¹⁵ The focus is on addressing the offender's needs and problems as well as helping the offender to deal with the realization of guilt.

A typical diversion program specifically designed for the elderly operates in Broward County, Florida.¹¹⁶ This program, operated under the auspices, not direction, of the legal community, is an advantage over imposing fines and probation, and reduces costs for both the court system and the offender.¹¹⁷ Having previously pleaded guilty and been accepted into the program, first-time misdemeanor shoplifters are offered counseling, referrals, educational activities, and community volunteer work.¹¹⁸ The suspended sentence given at the outset is deleted from court records if the elderly offender successfully completes the program.¹¹⁹ The program is administered by a relatively small staff consisting of one coordinator "responsible for overall program management and development" and two counselors who help the participants

Probation officers should not be resistant to working with outside professionals. Probation should be a partnership effort on several different levels. First, the probation officer and the elderly offender should maintain an amicable relationship. They should work toward the common goal of the offender maintaining a law-abiding lifestyle. Second, probation departments, health care professionals, and other agencies should collaborate to assist the elderly offender in all facets of the probation process, from accurately assessing the offender's problems to providing counseling and other services necessary for addressing those problems. Keve's resistance toward seeking assistance from outside professionals is an attitude which threatens both partnership efforts and ultimately the offender's successful rehabilitation.

¹¹⁵ As a conviction can be particularly devastating to a minor elderly offender's "reentry into the law-abiding community," expungement can be an important step in turning one's life around and moving beyond the offense. ALSTON, *supra* note 35, at 206. Admission to a diversion program "may be seen as a reward for an otherwise law-abiding life." *Id.*

¹¹⁶ See Cavan, *supra* note 8, at 213-24; Gary Feinberg, *Shoplifting by the Elderly: One Community's Innovative Response*, AGING, Oct.-Nov. 1983, 20-24.

¹¹⁷ See *id.* at 21-22.

¹¹⁸ See Cavan, *supra* note 8, at 219.

¹¹⁹ See *id.*

through all stages of the program, from court appearances to counseling, to volunteer placement.¹²⁰ The counseling component is particularly important to the program, as the participants, with the help of the counselors, learn to address the problems underlying their criminal behavior.¹²¹

Like any other correctional option, diversion programs have drawbacks. Unlike the Broward County example, some diversion programs are simply not designed for elderly offenders. While diversion programs can be very beneficial to the elderly criminal, matching the offender with the appropriate diversion program is a crucial factor for successful rehabilitation. "While the causes of [the elderly's] offenses may not be very different from those of other ages, the personal and social resources required to deal with their problems can be quite different."¹²² As a result, "older offenders cannot be casually attached to existing diversion programs."¹²³

Some of these diversion programs are plagued by the same counterproductive attitude held by many overworked probation officers. The staff of one pretrial diversion program complained of having to take on "cases that were 'too lightweight' at a time when dangerous offenders were left unsupervised in the community."¹²⁴ The probation officers assigned to this program disapproved of "[being] forced to handle inappropriate cases" involving elderly offenders placed in the program due to a lack of other alternatives.¹²⁵ Friction arose as the diversion program staff made "[s]everal unsuccessful attempts . . . to turn the elderly caseload over to volunteer agencies."¹²⁶

Unfortunately, the reality in many communities is that specialized diversion programs are not available for the elderly offender.¹²⁷ Those programs that do

¹²⁰ Feinberg, *supra* note 116, at 22.

¹²¹ *See id.* at 23-24. This counseling is the particular individualized attention to the offender's needs that the probation officer is often unable to provide. *See supra* Part III.C.1, III.C.4.

¹²² ALSTON, *supra* note 35, at 208.

¹²³ *Id.* (emphasis added).

¹²⁴ Lincoln J. Fry, *The Implications of Diversion for Older Offenders*, in *ELDERLY CRIMINALS* 143, 148 (William Wilbanks & Paul K.H. Kim, eds., 1984).

¹²⁵ *Id.* at 152, 149.

¹²⁶ *Id.* at 152.

¹²⁷ While some communities have established elderly-specific diversion programs, their initial success is subject to conservative scrutiny. Broward County, Florida's elderly offender diversion program boasts "an impressive track record" of only 1.5% recidivism in 1400 participants. Gary Feinberg et al., *The Broward Senior Intervention and Education Program: A Pilot Program*, in *ELDERLY CRIMINALS* 177, 188 (Evelyn S. Newman et al. eds., 1984). The authors suggest this optimistic outlook will be more reliable if the track record continues

exist are geared to younger or more violent offenders and are staffed by individuals not attentive to the special needs of the elderly. The beneficial services these programs provide are thus denied to many elderly offenders. In light of the inherent drawbacks of both probation and diversion, the Joint Effort provides a better solution for dealing with the elderly offender.

IV. THE JOINT EFFORT TO SUPERVISE AND TREAT ELDERLY OFFENDERS

None of the main correctional options currently in use is totally suited to meet both the elderly offender's needs and the criminal justice system's goals. The criminal justice system must develop a different method of dealing with the problem of elderly offenders. Many benefits can be derived from reconfiguring current correctional institutions to address elderly offenders in a new way. The goals and justifications of the Joint Effort give reason for courts, probation officers, and prisoner rights advocates to give serious consideration to this program as a fresh alternative to the static nature of elderly rehabilitation.

The Joint Effort is comprised of three basic stages. The first and second stages are relatively familiar to the corrections field. The first stage involves police officers and courts taking the initiative to admit elderly offenders into the program. In the second stage, revised risk-need assessments¹²⁸ are conducted by appropriately trained professionals¹²⁹ from the medical, psychological, and

its solid performance:

[T]he program is so young that not enough data are yet available for evaluating the durability of any cure effected. A zero-order or low recidivism rate within one year may be a measure of the program's achievement. Ensuring an abstention for three or five years or longer would be a still greater achievement. Best would be a longitudinal study over one generation.

Id. at 188-89.

¹²⁸ See *supra* Part III.C.4.

¹²⁹ The "professional" referred to throughout the Joint Effort proposal symbolizes the participation of many different individuals and social service agencies. Social service professionals who can contribute valuable time and expertise to evaluating and treating elderly offenders form a non-exhaustive list, which includes: social workers, physicians, dentists, ophthalmologists, substance abuse counselors, psychologists, psychiatrists, sex abuse counselors, child abuse specialists, employment placement coordinators, financial and estate planners, attorneys, physical therapists, volunteer coordinators, hospital staff, nursing home and geriatric care workers, and others offering to help treat and supervise elderly criminals in the Joint Effort program. The use of "professional" in this proposal is not meant to signify one particular type of community service specialist. Rather, it stands for the participation of an appropriate individual better trained than a probation officer in evaluating and treating the

correctional fields.

The third stage bridges the gap that exists in the current system between probation officers and community agencies. This critical stage combines the supervisory function of probation with the service-oriented, individualized attention found in diversion programs. Responsibility for monitoring offenders is shared by the probation departments and local social service agencies according to the risk classification. An offender's special needs are addressed by social service agencies that not only counsel the offender, but also communicate the offender's progress toward successful completion of treatment to the probation officer. Overburdened probation officers find welcome assistance in the unique division of responsibility. This uncommon plan for advocating agency cooperation allows health care providers, counselors, and volunteer coordinators to monitor the progress and adherence of lower-risk offenders to their treatment requirements. Probation officers are thus freed to monitor higher priority probationers.

A. *Goals and Justifications of the Joint Effort—Why a Special Program Is Needed*

While many may criticize the Joint Effort as special treatment for the elderly,¹³⁰ the Joint Effort is a viable correctional alternative that aims to

elderly criminal's problems.

¹³⁰ Critics of the development of special programs for elderly offenders fear the dilution of the justice system's power to punish. Advocates of a retributionist justice system would focus on punishing criminals based on the nature of their offenses, rather than accounting for their age. See Ornduff, *supra* note 52, at 188. Cf. Cavan, *supra* note 8, at 217 (One scholar advocates "focus[ing] on specific crimes or impairments, rather than on age, with treatment adjusted to the individual offender."). As courts have the discretion to sentence offenders of all ages according to various factors (such as type of crime and violence), "special treatment [for the elderly] without stronger justification than now exists would do violence to the values of equality and fairness which help shape the present justice system." ALSTON, *supra* note 35, at 253-54.

Opponents of the retributionist view have strong objections to harsh sentencing of elderly criminals. They point out that "because elderly criminals will lose a greater percentage of their lives than the younger criminals, the elderly criminals suffer more even though the sentences imposed are the same." Ornduff, *supra* note 52, at 188. The utilitarian response rationalizes "using age as a factor in giving a lesser sentence" by recognizing that deterrence can be achieved with more lenient sentences. *Id.* at 189.

Other critics find benefits in maintaining the status quo regarding sentences given to elderly offenders. For example, the integration of elderly inmates into the general prison population is seen as beneficial in stabilizing the often hot-tempered conflicts of younger offenders. See Cavan, *supra* note 8, at 217. (See *supra* note 69 for the opposing view, which advocates creating specialized geriatric units.) Some critics dispel the special treatment

improve both the offenders' quality of life and progress toward rehabilitation. The program has several basic goals which distinguish it from the current method of funneling the elderly through the system.

The basic objective of the Joint Effort is to keep elderly offenders under some level of supervision, rather than just sentence them to inactive status probation.¹³¹ The Joint Effort's increased supervision of all elderly offenders, especially those convicted of violent crimes or sex crimes, will make the community a safer place to live. A second goal of the Joint Effort is to improve the quality of elderly offender supervision by integrating outside agency input and assistance into the traditional probation and diversion format. "Probation officers who supervise older offenders must be prepared to deal with clients whose needs and rehabilitation potentials differ from those of the typical offender."¹³² Rather than completely revamp probation officer training, the Joint Effort recruits substance abuse centers, psychological counselors, and other trained professionals to diagnose and treat the unique problems facing elderly offenders.

Finally, a third goal of the Joint Effort is to use community professionals to ease the strain on probation officers lacking sufficient time to devote to elderly probationers in the program. Agencies can monitor the offender's progress through each stage of the required program and advise the probation officer of any breaches of participation or any additional concerns. Making the agencies responsible for the offender's completion of the assigned treatment and counseling benefits the system as a whole as well as the offender.

The Joint Effort solves the current system's problem of improper allocation of time and resources. As social workers and local agencies take responsibility for at least some of the inactive status seniors, probation officers are free to spend their valuable time tracking more violent youthful offenders. Under this

argument by noting that the "system that currently exists includes enough treatment variation to accommodate the unique characteristics of most older offenders without violating [the] principles of justice." ALSTON, *supra* note 35, at 254.

The most forceful criticism of the trend of creating new geriatric programs is the risk that the justice system will go overboard in addressing this narrow issue. The critics foresee an overemphasis on "the creation of elder offender institutions, geriatric courts, probation officers with gerontological training, and so forth," much in the same mold as the system sought to process and to treat juvenile offenders. Cavan, *supra* note 8, at 216. The overreaction to the elderly crime problem is, for some critics, unjustified in light of statistics showing that the problem is not as prevalent as once thought. See Cullen et al., *supra* note 5, at 159. Rather than having authorities focus on the misleading statistical rise of elderly crime, these critics advocate addressing the "socioeconomic conditions that undergird the existing status of the elderly and make significant alterations in their criminality unlikely." *Id.*

¹³¹ See *supra* Part III.C.1.

¹³² ALSTON, *supra* note 35, at 255.

supervision, elderly offenders receive proper assessment, better monitoring, and more effective counseling as they progress through the program.

B. *The First Stage—Get Elderly Offenders into the Program*

The Joint Effort has great potential for solving the problem of elderly crime, but its success is dependent on the efforts and support of police officers. The Joint Effort will never be totally effective unless the proper offenders are assigned to the program. Police officers must recognize that the needs of elderly offenders may be better served by the Joint Effort. As leniency in arrest is counterproductive to the Joint Effort, police officers should aggressively “recruit” for the program by bringing more elderly offenders before a judge. As the program proves its worth to the community over time, the police will be more willing to participate in this initial “recruitment” stage.¹³³

Courts must also curb their tendency for compassion and be willing to defer sentencing on the condition that offenders enter and successfully complete the program. Educating judges about the Joint Effort’s benefits will allow them to make informed decisions when sentencing elderly offenders. Judges must give the Joint Effort a chance. As offenders are assigned to and successfully complete the program, judges will be better able to assess the Joint Effort as a viable correctional alternative.

C. *The Second and Third Stages—Assessments, Classification, and Program Logistics*

1. *The Need Assessment—Receiving a Helping Hand from Community Professionals*

Under the Joint Effort, a social worker¹³⁴ or other professional¹³⁵ trained in

¹³³ The paradox here is that the program’s overall success in the community depends on the police officers’ attitude towards arresting older offenders and supporting the program. “Any alternative must be more attractive than the traditional solution both in terms of convenience to the police and in terms of its ability to live up to its promises.” *Id.* at 205. Thus, initial support from the police, even if on a trial basis, is crucial to the program’s success.

¹³⁴ For a discussion of a social worker’s perspective on helping elderly offenders, see Mindy L. Gewirtz, *Social Work Practice with Elderly Offenders*, in *ELDERLY CRIMINALS* 193–208 (Evelyn S. Newman et al. eds., 1984).

Gewirtz recognized the underlying need addressed by the Joint Effort: the “link[ing] and integrat[ing of] services within existing frameworks effectively and . . . us[ing] those services to provide the best care possible for those in need.” *Id.* at 206. While Gewirtz’s theoretical view focuses on utilizing service-oriented programs, her reliance on the family is apposite to

spotting elderly offenders' problems will begin the need assessment process. After interviewing the offender and reviewing court, medical, and other records, the professional will compile a report on the individual elderly offender highlighting specific areas that need attention. Referrals should be made to the proper agency, and recommendations should be made as to the necessary treatment regimen the offender should be required to complete.

The need assessment should address the following:¹³⁶

(a) Drug and Alcohol Abuse.

1. *Prior History*. The professional may be able to detect a history of personal or family substance abuse problems by interviewing the offender. The professional should also examine police, court, probation, diversion, social service agency, and private treatment records¹³⁷ to find indications of drug or alcohol problems.

2. *Current History*. If the offender refuses to acknowledge a drug or alcohol problem during the interview, the professional may consider the nature of the charged offense (e.g., public drunkenness), circumstantial evidence from the offense (e.g., drugs in possession, or smell of

the goals of the Joint Effort. *See id.* at 206–07. She sees the social worker as a central player, “the broker, advocate, and linker of services in addition to providing psychotherapeutic help when necessary.” *Id.* at 206. Gewirtz also sees “primary and secondary informal care systems” (family, friends, churches, and others) assuming some of the responsibility and allowing “the formal system” (social service agencies) to concentrate on “people who cannot be served in another way.” *Id.* at 206–07, 199, 201. In contrast, the Joint Effort moves away from large-scale involvement of the family, which is often unsuccessful in probation programs. *See supra* Part III.C.2.

¹³⁵ A probation officer could possibly perform this stage if she has received basic training from the medical and mental health community in spotting the signs of latent problems. As training a probation officer could be time-consuming and costly, professionals and specialists from these fields remain the preferred choice for conducting the need assessment. *See supra* Part III.C.4. For a listing of possible professionals who can take part in the need assessment process, see *supra* note 129.

¹³⁶ These criteria parallel the offender profiles discussed in Shichor, *supra* note 101, at 166–69, and Burnett & Kitchen, *supra* note 14, at 154–58. Probation officers have regularly looked to some of these areas in evaluating the needs of the elderly offender. However, the Joint Effort places this responsibility in the hands of professionals who are better able to perform this need assessment.

¹³⁷ These records may not be available for many elderly offenders, particularly first-time offenders. However, some offenders may have had previous contact with law enforcement authorities or prior treatment for substance abuse and other problems. Whenever possible, the professional and probation officer should coordinate efforts to secure and review these records as part of the complete assessment process. Failure to do so could result in a misdiagnosis of the elderly offender's needs and of the risk posed to the community.

alcohol on breath), and the interviewer's insight from experience in reading the signs and symptoms of substance abuse to determine whether the offender does have a problem.

3. *Substance Abuse Treatment Recommendation.* Upon completion of the offender interview and evaluation, the professional should offer a recommendation for specific substance abuse counseling or treatment needed by the offender. This recommendation to the probation department should address whether such counseling should be made a requirement for completion of the program. The professional should indicate which agencies in the community can best address the offender's particular needs.

(b) Financial and Employment Problems.

1. *Current Financial Situation.* The professional should determine the offender's ability to meet basic subsistence expenses (e.g., food, clothing, rent, medical), and should evaluate whether the offender is receiving Social Security, pension, welfare, worker's compensation, unemployment compensation, veteran's, or other benefits.

2. *Money Management Problems.* If the offender's money situation suggests trouble meeting expenses, the professional should evaluate whether the offender would benefit from counseling in managing personal finances.¹³⁸

3. *Community Funds and Services.* The professional should assess whether the offender has received appropriate federal and state social service funds (e.g., Social Security and welfare), and whether the offender is eligible for community assistance in the form of additional monthly benefits, food (e.g., Meals-on-Wheels), health care from local clinics, and other free or low-cost services.

4. *Employment Prospects.* After assessing the offender's employment situation (e.g., retired, disabled, full-time, part-time, skilled in trade, unskilled), the professional should recommend possible plans for re-entry into the work force (either in the same trade or in a new occupation), job placement counseling, and training in new marketable skills. Offenders who are willing to work should be assisted in finding employment to supplement current government assistance payments.

(c) Mental and Physical Health Problems.

1. *Prior History of Mental Health Problems.* If the offender discloses a past problem, or if police, court, probation, diversion, or social service

¹³⁸ This may be a way to eliminate shoplifting and other thefts motivated by an inability to make Social Security and other benefits last throughout the month.

agency records indicate signs of a history of mental health problems, an interviewer with no mental health training should refer the offender's case to a trained professional responsible for psychological evaluation and treatment if necessary.

2. *Psychological Evaluation.* These evaluations should be conducted upon discovery of signs of mental disorders or acknowledgement of past problems, *or* according to the type of crime committed (e.g. arson, sex crimes, violent crimes). Results are to be communicated to both the appropriate treatment agency and the probation department.¹³⁹

3. *Mental Health Treatment Recommendation.* Upon completion of the interview and psychological evaluation, the professional should offer a recommendation for specific mental health services needed by the offender. This recommendation to the probation department should include whether these services should be made a requirement for completion of the program. The professional should determine which agencies in the community can best address these needs.

4. *Physical Evaluation.* A trained professional should determine whether any physical ailment contributed to the offender's criminal behavior or tendency to commit crime. For example, the onset of senility or some other organic disease may affect the offender's ability to reason and function properly. Medical personnel should also determine which ailments give the offender the most difficulty in everyday life (e.g., maintaining personal hygiene or affecting mobility).

5. *Physical Health Recommendation.* The professional should offer a recommendation for specific services (e.g., physical therapy, cancer treatment) and devices (e.g., hearing aids, corrective lenses, walking aids, wheelchairs) that the offender needs in order to improve the offender's quality of life or to aid in rehabilitation. The professional should determine which agencies in the community can best provide these services, and whether the offender qualifies for special agency assistance (e.g., Veterans Administration health care).

6. *Insurance Coverage.* Through the interview process, the professional should determine what insurance coverage, if any, the offender has and how the offender's insurance plan can be utilized to reduce the monetary drain on participating agencies and community resources.

(d) Volunteer and Community Service Prospects.

1. *Volunteering and Community Service Requirements.* Where

¹³⁹ This evaluation provides key information for the probation officer's assessment because psychological problems strongly influence the determination of the offender's risk to the community.

appropriate, volunteering and community service activities should be utilized as a requirement for successful completion of the program. Volunteer coordinators can best identify potential matches between the offender and community groups. Factors in this search should include the type of offense charged and any mental problems, as well as particular group needs and openings. Agency staff should coordinate this phase of the program with the probation officer's recommendations on the risk the offender poses to the community and the level of necessary supervision.

2. *Extended Service Opportunities.* Volunteer coordinators should work with community groups and offenders to establish opportunities for continued community service work once the program requirement has been completed.

Although the risk assessment ultimately decides the offender's level of supervision and type of permissible activities, the need assessment should be taken as seriously by all agencies involved in the program. Wherever possible, courts and probation officers should integrate the professional's recommendations into the offender's required regimen. The court and probation officer, however, should make the final decision on the program requirements. Failure to complete counseling, volunteer work, or other requirements should result in the offender being sentenced by the judge according to the offense committed.

2. *The Risk Assessment—Allowing Probation Officers to Do What They Do Best*

While the professional prepares the need assessment report, the probation officer or other qualified court officer should begin a risk assessment of the offender. By reviewing information gathered in the interview and by examining court, probation, and diversion records,¹⁴⁰ the officer can determine both the threat posed by the offender to the community and the level of supervision needed to insure successful program completion and to prevent the recurrence of crime.

The risk assessment cannot be finalized until the probation officer reviews the completed need assessment, which provides important information on the offender's mental and physical state as well as the status of substance abuse problems. This data influences the probation officer's decision to classify the offender in one of three categories of supervision: maximum, medium, and

¹⁴⁰ See *supra* note 137.

minimum.¹⁴¹ Based on the data compiled from the need and risk assessments, the probation officer recommends to the court whether the offender is a suitable candidate for the program,¹⁴² and what activities and treatments the offender should be required to complete. The judge will defer sentencing the offender and allow participation in the program based on the Joint Effort offender report.

The risk assessment is comprised of two parts: (1) the offender's threat to the community, and (2) the level of necessary supervision. The threat component involves the review of the offender's prior criminal record and previous contacts with the criminal justice system. To complete this phase of the risk assessment, the probation officer examines all police, court, prison (when available), probation, and diversion records to assess the criminal history of the offender, with particular attention to the following factors:

- (a) Violent crimes, or propensity to commit such offenses;
- (b) Crimes committed against children, or against victims having mental disorders (e.g., Alzheimer's patients) or diminished mental capacity (e.g., mentally retarded);
- (c) Crimes involving compulsive, habitual, or uncontrollable behavior, and behavior not treatable by medication or other means of intervention (e.g., senility and certain mental disorders);
- (d) Crimes involving the offender's family, including child abuse, sex crimes, and domestic violence;
- (e) Previous experience in probation, parole, pretrial diversion, and community service programs, with special attention to reasons for failing to complete such programs;
- (f) Previous experience in jail or prison, including any disciplinary action taken and any interpersonal problems recorded;
- (g) Other factors which indicate a hazard to individuals in the offender's family or in the community.

The supervision component of the risk assessment requires the probation officer to review both the professional's need assessment and probation officer's threat evaluation to determine the proper level of supervision required under each offender's circumstances. To complete this phase of the risk assessment,

¹⁴¹ These supervision categories parallel the basic classifications discussed in Shichor, *supra* note 101, at 169-70.

¹⁴² Examples of elderly offenders not suitable for the Joint Effort program are most violent offenders (e.g., murder, assault with a deadly weapon), some sex offenders (e.g., serial rapists), and most serious repeat offenders (having failed to complete traditional probation or diversion programs, or having continued criminal activity without regard to past punishment).

the probation officer can use the following guidelines:¹⁴³

(a) Maximum Supervision.

1. *Basic Description*. This is the most restrictive level, deemed necessary for those offenders who pose the greatest risk to the community.

2. *Characteristic Offenses*. This level should be assigned such offenses as:

- Violent crimes (e.g., assaults, sex crimes, armed robbery);
- Homicide and other crimes involving death (except vehicular homicide and other unintentional deaths);
- All crimes involving firearms, or actual use of dangerous weapons;
- Exploitation of children (including sex crimes).

3. *Character Traits*. Offenders having serious psychological disorders detected during the need assessment should be assigned to maximum supervision to insure participation in counseling and treatment.

4. *Restricted Activities*. Court-imposed probation restrictions (e.g., restraint orders and curfews) will be common for these offenders, who are most akin to aggressive younger counterparts on probation or parole. These offenders are usually not appropriate for programs involving extensive volunteering or community service.

5. *Responsible Agency*. Probation officers will be responsible for these offenders, with supplementary assistance from agency staff providing psychological and other services. These offenders are best dealt with by the probation department.

(b) Medium Supervision.

1. *Basic Description*. Regular reporting by, and progress checks with, the offender are generally required, even though the probation department is involved to a lesser extent. This level allows some flexibility in activity assignment (e.g., volunteering and community service).

2. *Characteristic Offenses*. This level should be assigned to such

¹⁴³ The criteria presented here are not meant to be an inclusive listing. In addition, this phase of the risk assessment is not rigidly specified—the probation officer is not locked into certain decisions based solely on the type of crime committed. Jurisdictions should be free to mandate stricter supervision for particular offenders and to establish their own formulas for offender placement. The officer is able to use personal judgment and experience to classify the offender. Having the final word on each offender's program requirements, the judge acts as a balancing safeguard to prevent probation officers from shifting undeserving offenders into less restrictive supervision categories.

offenses as:

- Larceny and more serious property crimes;
- Domestic violence not involving serious injury or potential death, and not directed at children;
- Drunk driving;
- Drug possession or abuse;
- Some crimes involving threats with, but not actual use of, weapons—up to the discretion of the probation officer and the judge.

3. *Character Traits*. While they may have substance abuse or other problems, these offenders will need just enough supervision to insure completion of the program and receipt of essential counseling or treatment.

4. *Restricted Activities*. Some probation restrictions may be imposed on a case-by-case basis.

5. *Responsible Agency*. Probation officers and community agency staff must cooperate to make sure these offenders stick with the program. Agencies handling counseling, treatment, and community service duties will be responsible for tracking the offender's attendance at required sessions. Even if a violation does not occur, agency staff should regularly pass along attendance and progress reports to the probation officer. The probation officer is responsible for making sure that the offender complies with specific court-imposed conditions, and that the offender understands the consequences of not completing the program.

(c) Minimum Supervision.

1. *Basic Description*. This is the least restrictive level, best suited for those offenders who normally need little supervision by the probation department for completion of the program. These are the cases the probation department does not want to handle, based on the more pressing need to supervise violent offenders.

2. *Characteristic Offenses*. This level should be assigned to such offenses as:

- Minor property crimes (e.g., shoplifting, petty theft);
- Public drunkenness;
- Disorderly conduct;
- Harassment by telephone or other means;
- Other minor, nonviolent crimes easily dealt with through counseling or some other treatment.

3. *Character Traits*. The offender's character should be an important factor for this level of supervision. The respective offense permitting,

remorseful offenders willing to make a concerted effort to complete the program should be admitted at this level.

4. *Restricted Activities*. These offenders are suited to most activities. Volunteer and community service is ideal for these offenders, who can contribute to the community as part of their sentence. Additional services such as career and money management counseling, and assistance with health care needs, can best be addressed for these offenders as part of the program.

5. *Responsible Agency*. Community agency staff will have nearly all responsibility for making sure that the offender completes the treatment and community service participation components.

3. *Additional Program Logistics—Tracking and Disciplining Participating Offenders*

Special procedures must also be put in place for tracking and disciplining participating offenders. If a concerted effort to secure the offender's participation fails, social service agency staff should report the problem to the probation officer. In addition to simply warning the offender, the probation department may take appropriate action to revoke the program privilege and submit the offender to the court for sentencing. Even in the absence of participant truancy, social service agency staff should contact the probation officer to report the offender's progress and successful completion of the respective program components. Once the offender satisfactorily completes all stages of the program, the probation officer should convey the information to the court for expungement of the record.

D. *The Roundtable—A Way to Encourage Institutions and Agencies to Work Together*

On a conceptual level, the Joint Effort looks promising. However, no single plan can be uniformly applied in all jurisdictions.¹⁴⁴ To be successfully

¹⁴⁴ A variety of factors affect the success of the Joint Effort. For particular cities, small towns, local townships, and even counties, the program may not be appropriate given the community's needs. A smaller town may simply not have a high enough concentration of elderly criminals to merit establishing a special older offender program. Counseling and treatment in these jurisdictions may be effective on a one-on-one basis if done under the direction of the probation department.

Depending upon the size of the community or jurisdiction, courts and probation officers may be unwilling to create and support the Joint Effort. The program's success is undermined when courts do not mandate the participation of qualifying offenders. *See supra* Part IV.B. Likewise, judges must take the recommendations of probation officers and community

implemented in a particular community, the Joint Effort must be adapted to the probation caseload as well as to the available social service agencies in that community.

Even if the probation department, social service agencies, and independent professionals are enthusiastic about organizing the Joint Effort, there must be a concerted effort by these entities and individuals to work together to effectively operate the program. Cooperation and trust between these groups are the foundation of the Joint Effort's success. As each agency staff member and probation officer completes individual responsibilities with enthusiasm and a sense of teamwork, the entire program becomes stronger and more successful. Communication and cooperation between the groups can identify if one group is particularly overburdened and arrangements may be made to pick up the slack, thus preventing certain offenders from sliding through the program untreated and untracked.

One way to promote cooperation and trust between the entities is to provide for regular interaction at roundtable meetings which address pressing issues and which evaluate program effectiveness. The roundtable discussions, attended by designated representatives from the probation department and each of the participating local agencies, will offer a structured environment to share ideas and to make important decisions concerning program operations. Among the many possible topics for discussion are the following:

- (a) All representatives should contribute information and updates on program operations, including:
 - Assessments of day-to-day happenings;
 - Suggested revisions to entry/exit, reporting, and other procedures;
 - Analysis of statistical success and failure rates;
 - Caseload assessments for both probation officers and agency staff;
 - Transfers of the overflow cases between agencies.
- (b) All representatives should review certain trouble cases and suggest collective action for retaining borderline offenders in the program.

professionals seriously. The probation department must be willing to work with local agencies and must have enough confidence in the Joint Effort to give up some control over the elderly offenders. Without the active support of these two key institutions, the Joint Effort will not be a feasible option in any community.

The courts and probation department constitute just one half of the partnership in the Joint Effort. The program's success depends as heavily upon the availability and enthusiasm of local social service agencies. Many communities do not have adequate social service organizations to deal with the specific problems of the elderly offender. The agencies that do exist may not be sufficiently staffed or funded to take on the extra caseload supplied under the Joint Effort. Other agencies may be reluctant to deal with offenders or to be responsible for tracking their progress. An absence of these crucial services renders the program obsolete.

(c) All representatives should discuss funding issues¹⁴⁵ and develop plans for soliciting private contributions as well as public grants. When certain agencies report difficulties in handling the influx of cases, the representatives should collectively devise efforts to keep those agencies financially solvent and active in the program.

(d) All representatives should discuss new ideas on expanding and improving the program, particularly bringing new agencies into the fold (e.g., extended family and religious counseling services) and streamlining agency interaction (e.g., improving the channels of communication and cooperation).

¹⁴⁵ A key stumbling block to the successful treatment of elderly offenders is adequate funding. The Joint Effort is beneficial because it utilizes the *pre-existing* staff and resources of these community entities. Theoretically, no additional funding is necessary in order to have the program operate effectively. The criminal justice system need not come up with additional money for extra personnel because under the Joint Effort existing officers will handle their normal caseloads with assistance from social service agencies. Just as most probation departments will not be expanded, the program is not centered on creating additional agencies, creating bureaucrats to run its daily operations, or allocating large sums to fund its participating agencies. If probation officers and agency staff are willing to work together to accomplish a common set of goals, then each agency can assist the program as its own funding situation allows.

While the timesaving benefits are obvious for the probation department, some agencies may experience difficulty in justifying participation in light of their own intra-agency problems of understaffing and underfunding. These entities may justify their participation as being able to assist elderly people who under normal circumstances would not necessarily benefit from the agencies' services. Each agency is responsible under the program for its own financial contribution of personnel and resources. Agency managers need to work together and within their own organizations to manage available funds. Obviously, the lack of adequate funding for the agencies' current services will not provide any incentive to participate in the program. Nevertheless, the agencies can use the increase in referrals received through the program as a basis for requesting additional funding. Collective efforts to raise or pool funds for the program should also be considered.

Some diversion programs are adequately funded through private contributions and offender participation fees. The problem with requiring the elderly offender to contribute money to the program is the same problem courts face in levying fines and costs: the economic straits many elderly offenders experience are worsened to an extent by the participation fee. *See supra* notes 46-47 and accompanying text. Proponents would justify the fee in that the elderly offender benefits from the services essentially provided at little or no cost. The participation fee could also replace the imposition of court costs and other economic sanctions. While the fee could defer some of the costs associated with running the program, offender participation should by no means be predicated on the offender's financial situation.

Whether the fee system is employed at all, or only used on an ability-to-pay basis, the service providers must confront the certain funding complications with an aggressive attitude toward money management and fund-raising. The overall existence of the program is dependent on the cooperation and participation of these organizations.

(e) All representatives should discuss the long-term future of the program and plan for its continuation. The group should look at recidivism rates as an indicator of success or need for improvement, and at forecasted budgets and available funding sources as a way to alleviate problems in keeping the program together.

Judges and police officials should regularly attend the roundtable meetings to share ideas on improving the program. This participation serves to keep lines of communication open between all levels of the criminal justice system. By keeping all groups on the same track as to the Joint Effort's mission and benefits, the roundtable meetings will strengthen ties between the groups and result in increased success in implementing the program.

V. CONCLUSION

Because the elderly criminal is not suited to a younger offender's sentence, prison should be the last resort for nonviolent offenders. In the majority of elderly offender cases, incarceration is neither a feasible nor desirable solution: space is limited in institutions where rehabilitating younger criminals takes precedence over nursing the ailments of older inmates. Versatile in its degrees of supervision and lifestyle restrictions, probation is similarly focused on handling an overwhelming caseload of youthful probationers. Common probation officers, stretched to the limit of available time, energy, and resources, understandably view the shoplifting grandparent as the least of their worries. This realistic response to a mountainous caseload, however, will not appease the shop owner confronting the older offender for recurring thefts. Diversion programs offer positive counseling to needy first-time offenders, but many communities simply do not have an elder-specific diversion program with sufficient staff and funding. In jurisdictions having a high volume of elderly crime, the real result is that elderly offenders and their problems end up being swept under the rug. Something more must be done. The Joint Effort is the best solution.

The Joint Effort is not a revolutionary solution to the problem of elderly crime in America. It does not offer a new perspective in terms of criminal justice theory or corrections practice. This program does not propose to totally eliminate the elderly from the ranks of offenders in society. The Joint Effort recognizes that a problem exists and addresses that problem in a comprehensive manner. It takes current corrections programs and combines them to utilize each program's best traits. The Joint Effort allows corrections officials and officers to better cope with the overall problem of crime. It defers some of the caseload to community professionals who are able to do more for the offender than merely supervise. The Joint Effort has the potential to change lives. Its success depends

on the willingness of criminal justice officials and community professionals to do the same.