



EMORY
LAW

Emory Corporate Governance and Accountability
Review

Volume 4
Issue 0 *Presidential Inauguration Issue*

2017

Considerations for the Next Administration: Criminal Justice Reform and Prisoner ReEntry

J. C. Lore III

Jason S. Kanterman

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/ecgar>

Recommended Citation

J. C. Lore III & Jason S. Kanterman, *Considerations for the Next Administration: Criminal Justice Reform and Prisoner ReEntry*, 4 Emory Corp. Governance & Accountability Rev. 201 (2017).

Available at: <https://scholarlycommons.law.emory.edu/ecgar/vol4/iss0/19>

This Essays and Interviews is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory Corporate Governance and Accountability Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact law-scholarly-commons@emory.edu.

CONSIDERATIONS FOR THE NEXT ADMINISTRATION: CRIMINAL JUSTICE REFORM AND PRISONER REENTRY

*J.C. Lore, III**
*Jason S. Kanterman***

INTRODUCTION

This year, some 600,000 inmates will be released from prison back into society. We know from long experience that if they can't find work, or a home, or help, they are much more likely to commit more crimes and return to prison ... America is the land of the second chance, and when the gates of the prison open, the path ahead should lead to a better life.¹

—President George W. Bush, 2004 State of the
Union Address

Criminal justice reform has, once again, taken center stage in American Politics.² This discussion is more than just an academic exercise; it is about creating a system that reduces recidivism, reduces criminal behavior, and enhances community safety. One critical component for reforming our system is through enhanced reentry programming and support: ensuring that offenders

* Professor Lore is the Director of Trial Advocacy at Rutgers Law School. He trains law students and attorneys throughout the country and internationally. He is the co-author for *Modern Trial Advocacy: Analysis and Practice* which is one of the country's leading trial advocacy books used by lawyers and students throughout the world. He is an expert on issues of children's rights, juvenile law, and trial advocacy and frequently contributes to media outlets throughout the world.

** Jason Kanterman is currently a law clerk for the Honorable Marie P. Simonelli, J.A.D. Jason graduated from Rutgers Law School in 2016 graduating Cum Laude. He was a Staff and Business Editor for the Rutgers Law Review between 2014–2016. Apart from being a teaching assistant for numerous Professors, he was also on the Mock Trial Team at Rutgers and Trial Advocacy team as well. The views expressed in this article are solely those of the Author and are not made on behalf of either the New Jersey Supreme Court or the court system. The Author is available for contact by email at Jason.Kanterman@gmail.com.

¹ George W. Bush, U.S. President, State of the Union Address before the U.S. Congress (Jan. 20, 2004) (transcript available at <https://georgewbush-whitehouse.archives.gov/news/releases/2004/01/20040120-7.html>).

² See e.g., THE WHITE HOUSE, OFFICE OF THE PRESS SECRETARY, FACT SHEET: PRESIDENT OBAMA ANNOUNCES NEW ACTIONS TO PROMOTE REHABILITATION AND REINTEGRATION FOR THE FORMERLY- INCARCERATED (NOV. 2, 2015), <https://www.whitehouse.gov/the-press-office/2015/11/02/fact-sheet-president-obama-announces-new-actions-promote-rehabilitation>; Hillary R. Clinton, *Criminal justice reform: Our criminal justice system is out of balance*, HILLARY FOR AMERICA, (July 8, 2016), <https://www.hillaryclinton.com/issues/criminal-justice-reform/>.

are provided adequate support and guidance post-incarceration, so that they may re-enter society as a contributing member of the global community.

Here is what follows. First, we will briefly explain what prisoner reentry is. We will then move on to the who, where, when, why, and how; specifically, where these programs can be implemented; who can and should be involved; when and why they will be important for the next administration to focus on; and how the next administration can help.

Before continuing, it is helpful to understand the scope of the issue. During 2010, 708,677 sentenced prisoners were released from state and federal prisons, an increase of nearly 20 percent from 2000.³ This number pales in comparison to the nearly 4.9 million individuals who were on probation or parole at the end of 2010.⁴

I. WHAT IS PRISONER REENTRY: A BRIEF INTRODUCTION

Reentry programs are designed to assist incarcerated individuals to successfully transition back into society after being released from prison.⁵ The details and structures of these programs vary widely, in part, because the research and data regarding “best practices” is relatively limited. That said, most of the research appears to agree on the basic goals and structure of reentry type work.

[t]hree phases are associated with offender reentry programs: programs that take place during incarceration, which aim to prepare offenders for their eventual release; programs that take place during offenders’ release period, which seek to connect ex-offenders with the various services they may require; and long-term programs that take place as ex-offenders permanently reintegrate into their communities, which attempt to provide offenders with support and supervision. There is a wide array of offender reentry program designs, and these programs can differ significantly in range, scope, and methodology. Researchers in the offender reentry field have suggested that the best programs begin during incarceration and extend throughout the release and reintegration process. Despite the

³ THE COUNCIL OF STATE GOVERNMENTS JUSTICE CENTER: NATIONAL RESOURCE CENTER, NRRC FACTS AND TRENDS, (last visited Jan. 8, 2017), <https://csgjusticecenter.org/nrrc/facts-and-trends/>.

⁴ *Id.*

⁵ See Cynthia Caporizzo, *Prisoner Reentry Programs: Ensuring a Safe and Successful Return to the Community*, WHITEHOUSE.GOV BLOG (Nov. 30, 2011), <https://www.whitehouse.gov/blog/2011/11/30/prisoner-reentry-programs-ensuring-safe-and-successful-return-community>.

relative lack of highly rigorous research on the effectiveness of some reentry programs, an emerging “what works” literature suggests that programs focusing on work training and placement, drug and mental health treatment, and housing assistance have proven to be effective.⁶

Additional research conducted by the Federal Bureau of Prisons, Federal Probation, the United States Department of Labor, and Congress, has indicated that most reentry programing seeks to provide participants with assistance in key areas,⁷ including: employment, mentorship,⁸ housing, legal representation,⁹ mental health and addiction counseling, education,¹⁰ life-skills training, domestic and family relations,¹¹ and financial literacy.¹²

All of these areas are necessary components to successful reentry, and many, if not all of these areas, overlap. For example, employment is important because it provides the reentrant with stability, responsibility, and income—all necessary tools for reintegration. As would be expected, individuals returning from an extended period of incarceration face a difficult road in finding gainful employment:

[t]he prospect of having to search for meaningful work upon release from prison can be a daunting one, particularly for inmates who have been out of the labor market for a number of years. Many inmates acquire valuable skills and work experience through programs like Federal Prison Industries (FPI), vocational training opportunities,

⁶ NATHAN JAMES, CONG. RESERCH SERV., RL31340, OFFENDER REENTRY: CORRECTIONAL STATISTICS, REINTEGRATION INTO THE COMMUNITY, AND RECIDIVISM, 1 (Jan. 12, 2015).

⁷ Todd A. Berger & Joseph A. DaGrossa, Overcoming Legal Barriers to Reentry: A Law School-Based Approach to Providing Legal Services to the Reentry Community, *available at* file:///Users/Jason_Kanterman/Downloads/fed_probation_june_2013.pdf (June 2013).

⁸ *See supra* n. 3.

⁹ *See* Gloucester County Times, *Rutgers program to aid re-entry of federal inmates into society*, NJ.com, Oct. 2, 2010, *available at* http://www.nj.com/camden/index.ssf/2010/10/rutgers_program_to_aid_re-entr.html. *See also* Terry Nagel, *Stanford Law School Announces Prisoner Reentry Program to Support White House Clemency Initiative*, Stanford Law School, Dec. 18, 2015, *available at* <https://law.stanford.edu/press/stanford-law-school-announces-prisoner-reentry-program-to-support-white-house-clemency-initiative/>.

¹⁰ *See Reentry Programs*, Federal Bureau of Prisons, *available at* https://www.bop.gov/inmates/custody_and_care/reentry.jsp (“The prospect of having to search for meaningful work upon release from prison can be a daunting one, particularly for inmates who have been out of the labor market for a number of years. Many inmates acquire valuable skills and work experience through programs like Federal Prison Industries (FPI), vocational training opportunities, and/or other occupational education courses offered at Bureau facilities. But inmates nearing release in today’s society need to re-learn, or perhaps for the first time learn, how to effectively ‘search for a job.’”).

¹¹ *See Reentry Court Aim to Reduce Offender Recidivism*, Ohio State Bar Association, *available at* <https://www.ohioabar.org/forpublic/resources/lawyocanuse/pages/lawyocanuse-665.aspx> (“those who are incarcerated have a high risk of reoffending due to untreated emotional and family issues. . .”).

¹² *Id.*

and/or other occupational education courses offered at Bureau facilities. But inmates nearing release in today's society need to re-learn, or perhaps for the first time learn, how to effectively 'search for a job.'¹³

The value added by reentry programming in the employment arena is not limited to assisting reentrants in locating gainful employment, but also includes the benefit of reinforcing ideas of responsibility and stability:

People recently released from prison not only need to find a job, but they also need to remain employed in order to establish stability and, ideally, to lay the foundation for long-term advancement and wage growth. However, the jobs they find are often temporary or transitional. Ex-prisoners also have a high rate of either quitting these jobs or being fired. [. . .] Among the participants who found a job and were active in the program for at least three months, 65 percent met the job retention benchmark. Furthermore, those who met with a mentor were 56 percent more likely to meet the benchmark than those who did not.¹⁴

Similarly, reentry programming provides assistance to those facing difficulty locating and maintaining stable and safe housing:

[h]ousing problems, including homelessness, are common among individuals leaving the corrections system. They tend to have limited or low incomes, and, often due to their criminal history, lack the ability to obtain housing through the channels that are open to other low-income people. As a result, one in five people who leave prison becomes homeless soon thereafter, if not immediately.

In fact, a California Department of Corrections study found that in major urban areas such as San Francisco and Los Angeles, the percentage of parolees who are homeless can be as high as 30 to 50 percent at any given time. Preliminary studies indicate that those who leave prison and become homeless are substantially more likely to return to prison than those with stable housing.¹⁵

¹³ *Reentry Programs: Release preparation begins the first day of incarceration*, Federal Bureau of Prisons available at https://www.bop.gov/inmates/custody_and_care/reentry.jsp (internal hyperlinks removed).

¹⁴ Renata Cobbs Fletcher, *Mentoring Ex-Prisoners: A Guide for Prisoner Reentry Programs*, U.S. DEPARTMENT LAB. 6 (Nov. 2007), available at https://www.doleta.gov/pri/pdf/mentoring_ex_prisoners_a_guide.pdf.

¹⁵ See National Alliance to End Homelessness, *Re-Entry*, available at http://www.endhomelessness.org/pages/re_entry.

The integration may be seen in strategies for combating drug usage by ex-offenders. Towards the middle of his two-term service, President Obama's staff indicated that "Improving reentry is a critical component of President Obama's Strategy to reduce drug use and its consequences. Specifically, the Strategy calls for supporting post-incarceration reentry efforts by assisting in job placement, facilitating access to drug-free housing, and providing other supportive services."¹⁶

II. WHY WILL THIS BE IMPORTANT FOR THE NEXT ADMINISTRATION

Over 10,000 ex-prisoners are released from state and federal prisons every week and more than 650,000 ex-offenders are released from prison every year.¹⁷ Of those individuals released back into society, studies have shown high recidivism rates. Specifically, one study found that within three years of release, 67.8% were rearrested;¹⁸ that number grew to 76.6% within five years of release.¹⁹ That said, the ultimate goal of reentry programing is to provide individuals reentering society with the tools necessary to succeed, and not become just another factor in a recidivism statistic.

The issues facing individuals returning to society post-incarceration are, without exaggeration, almost insurmountable without assistance. While some of the obstacles may seem obvious—like back-due criminal fines or child support and drivers license restoration fees—others may be more surprising. For example, an individual returning after an extended term of imprisonment may not understand how to open a bank or credit card account; they may not understand how to use the Internet or other technological advancements; and may not know how to obtain necessary assistance, such as healthcare or an education. Similarly, they may be precluded from certain activities hindering their reentry efforts, and again, some of these restrictions may not be surprising, while others less-known. For example, while it may appear obvious that a felon will not be permitted to possess a firearm—and therefore, will not

¹⁶ Cynthia Caporizzo, *Prisoner Reentry Programs: Ensuring a Safe and Successful Return to the Community*, WHITEHOUSE.GOV BLOG (Nov. 30, 2011, 1:09 PM), <https://www.whitehouse.gov/blog/2011/11/30/prisoner-reentry-programs-ensuring-safe-and-successful-return-community> (November 30, 2011), last visited March 17, 2016.

¹⁷ See U.S. Department of Justice, *Prisoners and Prisoner Re-Entry*, https://www.justice.gov/archive/fbci/progmenu_reentry.html.

¹⁸ Durose, Matthew R., Alexa D. Cooper, and Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, Bureau of Justice Statistics Special Report, April 2014, NCJ 244205.

¹⁹ *Id.*

be able to obtain certain types of employment (armed security for example)—the reentrant may also be precluded from obtaining licensing to practice less-apparent employment, such as a telemarketer or race-horse jockey.²⁰

As United States Attorney General Loretta E. Lynch noted, “supporting successful reentry is an essential part of the Justice Department’s mission to promote public safety—because by helping individuals return to productive, law-abiding lives, we can reduce crime across the country and make our neighborhoods better places to live.”²¹ For the next administration, and for any thereafter, the promotion of public safety and the reduction of criminal activity should be tirelessly pursued, and for that reason, reentry should remain a focus.

III. WHERE AND WHEN SHOULD REENTRY PROGRAMMING BE IMPLEMENTED

The short answer is everywhere and continuously; criminal justice reform, and therefore, reentry, is truly a nationwide endeavor. Reentry programs can be implemented, and have in fact been implemented on the local, state, and federal levels, and appear in many forms. For example, the federal government conducts reentry-based programing in federal prions pre-release;²² and provides continuing reentry supervision post-incarceration in collaborative efforts orchestrated by the federal courts, United States probation and pre-trial services, United States Attorneys’ offices, and federal public defenders.²³ Examples of successful federal programs may be found across the country, and include the STAR Program run by the Eastern District of Pennsylvania,²⁴ the ReNew Court hosted by the District of New Jersey,²⁵ and the reentry program hosted by the Northern District of California.²⁶

²⁰ For a complete list of statues imposing collateral consequences of criminal convictions in New Jersey, for example, see 1–2 LNPG: New Jersey Collateral Consequences PART 2 (2015); see also The ABA National Inventory of Collateral Consequences of Conviction, available at <http://www.abacollateralconsequences.org/>.

²¹ *Roadmap to Reentry*, U.S. DEP’T OF JUST. (Apr. 2016), <https://www.justice.gov/reentry/file/844356/download>.

²² See *Reentry Programs*, FEDERAL BUREAU OF PRISONS, https://www.bop.gov/inmates/custody_and_care/reentry.jsp.

²³ See *Reentry Program*, UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/usao-ednc/reentry-program>.

²⁴ *Reentry Court*, UNITED STATES PROBATION OFFICE: EASTERN DISTRICT OF PENNSYLVANIA, <http://www.paep.uscourts.gov/re-entry-court>.

²⁵ *U.S. Attorney Paul J. Fishman, U.S. Senator Cory A. Booker To Deliver Remarks At Newark Prisoner Re-Entry Court Graduation*, U.S. DEP’T OF JUSTICE (April 29, 2016), <https://www.justice.gov/usao-nj/pr-us-attorney-paul-j-fishman-us-senator-cory-booker-deliver-remarks-newark-prisoner-re>.

²⁶ *Reentry Court*, U.S. DIST. CT. N. DIST. OF CAL., <http://www.cand.uscourts.gov/pages/757>.

On the state and local levels, we see similar initiatives. For example, New York established county re-entry task forces designed to reduce recidivism by coordinating and strengthening community supports in response to high-risk offenders transitioning from prison back to the community, which they did by bringing together stakeholders, service providers and community resources needed to help those released from prison become productive members of the community.²⁷ Even non-governmental organizations and community partners have begun taking part, often providing necessary community support, from volunteer hours, to free legal services.²⁸

For the next administration, reentry provides an opportunity to engage local communities, throughout the country, around common goals: “reducing recidivism, improving public safety, and saving money.”²⁹

IV. WHO CAN AND SHOULD BE INVOLVED

This question too is simply answered: anyone and everyone willing and able. Aside from the various branches of government, which already play a vital role in the administration of criminal justice reform and reentry programming, community support and leadership is vital to the success of reentry endeavors. In various corners of this country, religious institutions, corporate entities, low-cost or pro bono service providers, educational institutions, and individual citizens provide necessary contributions to reentry efforts. For example, reentry programs have seen contributions from: members of the bar in the form of pro bono legal services; private citizen contributions in the form of mentorship; religious institutional support in the form of support groups; corporate involvement in the form of employment engagements and employment training; contributions of educational instructions in the form of basic-level skills trainings.

²⁷ See *DCJS County Re-entry Task Force Initiative*, N.Y. STATE, http://www.criminaljustice.ny.gov/crimnet/ojsa/initiatives/offender_reentry.htm.

²⁸ See N.J. REENTRY CORP., <http://njreentry.org/about/>.

²⁹ *Annual Determination of Average Cost of Incarceration*, FEDERAL REGISTER, <https://www.federalregister.gov/documents/2015/03/09/2015-05437/annual-determination-of-average-cost-of-incarceration> (indicating that the average cost of incarcerating a federal inmate was approximately \$31,000); see also U.S. DEP'T OF JUSTICE, <https://www.justice.gov/usao-sd/reentry-program>; but see *NYC's Jail Population: Who's There and Why*, N.Y.C. INDEP. BUDGET OFFICE (Aug. 22, 2013), <http://ibo.nyc.ny.us/cgi-park2/2013/08/nycs-jail-population-whos-there-and-why/> (concluding that the cost of incarceration per inmate in New York City was nearly \$170,000).

Reentry programming plays a critical role in criminal justice reform. It provides a central location where reentrants can locate resources and find the support they need in order to successfully reintegrate into society. For the next administration, criminal justice reform will present an opportunity to implement rehabilitative justice through an investment of resources. The benefits of doing so appear clear—the community is safer when people are successfully reintegrated and precious resources are saved by not having to incarcerate those who don't successfully reintegrate.