A Viable Alternative? 
Alternatives to Incarceration across Seven Federal Districts

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Though Alternatives to incarceration courts have entered the state system for nearly 30 years, each court uses a relatively new phenomenon in the federal system. Alternatives to Incarceration (ATI) courts, or “front-end” courts as they are sometimes known, are generally based on the “drug court” model first used in the state court in Miami-Dade County in 1986 (Smith and Hammond, 2017). While alternatives to incarceration court programs proliferated in the state courts in the 1990s and 2000s, they were mostly nonexistent in the federal system. A confluence of factors has contributed to the recent emergence of ATI courts in the federal system:

• The popularity of “problem solving” courts in state systems has led to experimentation in the federal system, especially for minority courts, which focus on defendants who have returned to the community following incarceration.

• A growing body of empirical evidence has emerged that the “drug court” model—practiced with fidelity in other jurisdictions—is effective at reducing recidivism and provides financial credits on imprisonment by reducing recidivism.

• A change in the legal environment that resulted from the 2005 Supreme Court decision Booker v. United States that rendered advisory the federal sentencing guidelines, and subsequently the Supreme Court’s decisions in United States v. Booker and United States v. Pepper v. United States, which generally approved discretionary variations based on defendants’ successful efforts at rehabilitation—allowed courts additional flexibility in sentencing.

• The crisis of over-incarceration has led to widespread recognition among criminal justice professionals and policy makers that the policies and practices that have led to mass incarceration are not only extremely costly but ineffective at promoting public safety. Several publications by government entities called for such action at the federal level and encouraged stakeholder to strongly consider alternatives to incarceration.

• There has been increasing awareness of empirically demonstrated evidence of the benefits of the effectiveness of various reentry programs, interventions, and even the potential for improved outcomes in subsequent stages of the criminal justice system, including more favorable sentences and reduced recidivism post-correction supervision.

Research Objectives

Though federal ATI programs have proliferated

Kapilipono meaning

kapili: build, mend, fix, repair...
pono: goodness, equity, fair...
Kapilipono eligibility

admitted felons apply prior sentencing

sentencing deferred program completion

consensus: US atty, Fed PD, Pretrial Services
One weekly activity

- Speciality court 1x month
- Pretrial officer 2x month
- CBT session 1x month
RJ, solution-focused, desistance theory:

What works to help people stay clean & sober and law abiding?
Public health approach

- Interactive Group Process
- Goal Oriented
- Strength-Based

public health learning principles
Learning methodology

Montessori: students knowledge sources

Lewin: democratic decision making

Bandura: direct experiences

Frankl: finding meaning

Berg & deShazer: solution-focused
Solutions v. Problems

- What’s right? (not What’s wrong?)
- How did you overcome past problems?
- How have you coped?
- What’s better?
Instead of Why? What & how?

Solution-focused dialogues . . . assist [people] build a vision of what they would like their life to look like in the future.

(Walker, Tarutani & McKibben, 2014, p. 11)
“It’s not just talking, it’s planning for the future, and that’s what really helped.”

~ family member circle participant
Desistance

Making Good
HOW EX-CONVICTS REFORM AND REBUILD THEIR LIVES
Shadd Maruna
FOREWORD BY HANS TOCH

Shadd Maruna
Promotes desistance

- Relationships w/law abiding
- Meaningful work /activity
- Transformative story
Mindful facilitators

Moment to moment nonjudgmental awareness – notice new
Notice biases & find strengths
CBT sessions

Open: *What good thing happened?*

Activities in dyads & small groups

Responses to *Change Companies* journals

Lots of compliments
non-facilitated individual practices

Apology and Forgiveness
Your partner in behavior change

The Change Companies® provides customized solutions that support lasting, positive change.
RJ’s fundamental Q’s

- Who harmed by past behavior?
- How harmed?
- What might repair harm?

(Howard Zehr)
Restorative & Solution-Focused Reentry Planning
Circles voluntary

Adult & youth replicated transition planning:

~ prison
~ parole
~ probation
~ substance abuse treatment
~ domestic violence victims
Ds’ reentry circle purposes

1. Reconciliation

2. Healing

3. Meet law abiding and clean & sober needs
Reentry circle outcomes

- Recidivism reduced 3+ years after
- Benefits outweigh costs
- 99% participants like
- Healing for children & families (including re-incarceration)
Realized she is paddling her own canoe and we are paddling ours to the light.
~ 50 year old grandmother (raising her grandchildren)

Reduce the limitations on who qualifies and incorporate a pretrial diversion for dismissal of criminal charges
~ Judge Kobayashi & Magistrate Judge Trader
Phases of Transformative Learning
Jack Mezirow 2009

Phase 1  Disorienting dilemma involving dissonance, discomfort, or unexpected

Phase 2  Self examination [with feelings of guilt or shame]

Phase 3  Critical assessment of epistemic, sociocultural, or psychic assumptions

Phase 4  Recognition of a link between discontent and the process of change

Phase 5  Exploration of options for new roles, relationships and action

Phase 6  Planning a course of action

Phase 7  Acquiring knowledge and skills for implementing one’s plans

Phase 8  Provisional trying of new roles

Phase 9  Building competence and self-confidence in new roles and relationships

Phase 10  Reintegration into life as dictated by one’s perspective
Program effectiveness

- Team members
- Non-punitive ‘disciplinary approach’
- Relationships: (building trust, supportive, caring in *their* interests)
- Decision-making: (freedom to choose, respect/recognition as equals)
- Appropriate/preponderate community resources
- Restorative reentry planning circles (making amends, sense of belonging)
- Desire to change (acceptance of responsibility, self love, belief in self)
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