

Alternatives To Incarceration

A Viable Alternative? Alternatives to Incarceration across Seven Federal Districts

Laura Baber
Consultant

Kevin Wolff
John Jay College, CUNY
Christine Dozier

Chief, U.S. Pretrial Services Office, District of New Jersey
Roberto Cordeiro

Chief, U.S. Pretrial Services Office, Eastern District of New York

THOUGH ALTERNATIVES TO incarceration courts have existed in the state system for nearly 30 years, such courts are 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 1989 (Scott-Hayward, 2017). While alternatives to incarceration court programs proliferated in the state courts in the 1990s and 2000s, they were nearly 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 reentry 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 return on investment 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 *Gall v. United States* and *Pepper v. United States*, which generally approved downward variances 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 swift action at the federal level and encouraged stakeholders to strongly consider alternatives to incarceration.
- There has been increasing awareness of empirically-demonstrated evidence of the importance of defendants' success on pretrial services supervision as a harbinger of improved outcomes in subsequent stages of the criminal justice system, including more favorable sentences and reduced failures during post-conviction supervision.

Research Objectives

Though federal ATI programs have proliferated

at the grass roots level, and now number 38 as of January 2019,¹ to date there have been no empirical studies of the effectiveness of these programs in the federal system. Several districts at the forefront of implementing ATI programs have sought to contribute to the knowledge base concerning these programs. As a result, the pretrial offices of the districts of New Jersey (NJ), Southern District of New York (NY-S), Eastern District of New York (NY-E), Central District of California (CA-C), Northern District of California (CA-N), Eastern District of Missouri (MO-E), and the probation and pretrial services office of Illinois Central (IL-C) collaborated on a research effort that quantifies the association of ATI program participation with short-term outcomes. These districts contracted with a researcher from the John Jay College of Criminal Justice of the City University of New York to perform the analysis and publish an article with its results. Specifically, the study sought to quantify the pretrial services measures of new criminal arrests, failures-to-appear (FTAs), and other violations of

Baber, et al, 2019;
Walker, et al, in
press, 37+ US
districts use ATI
currently

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

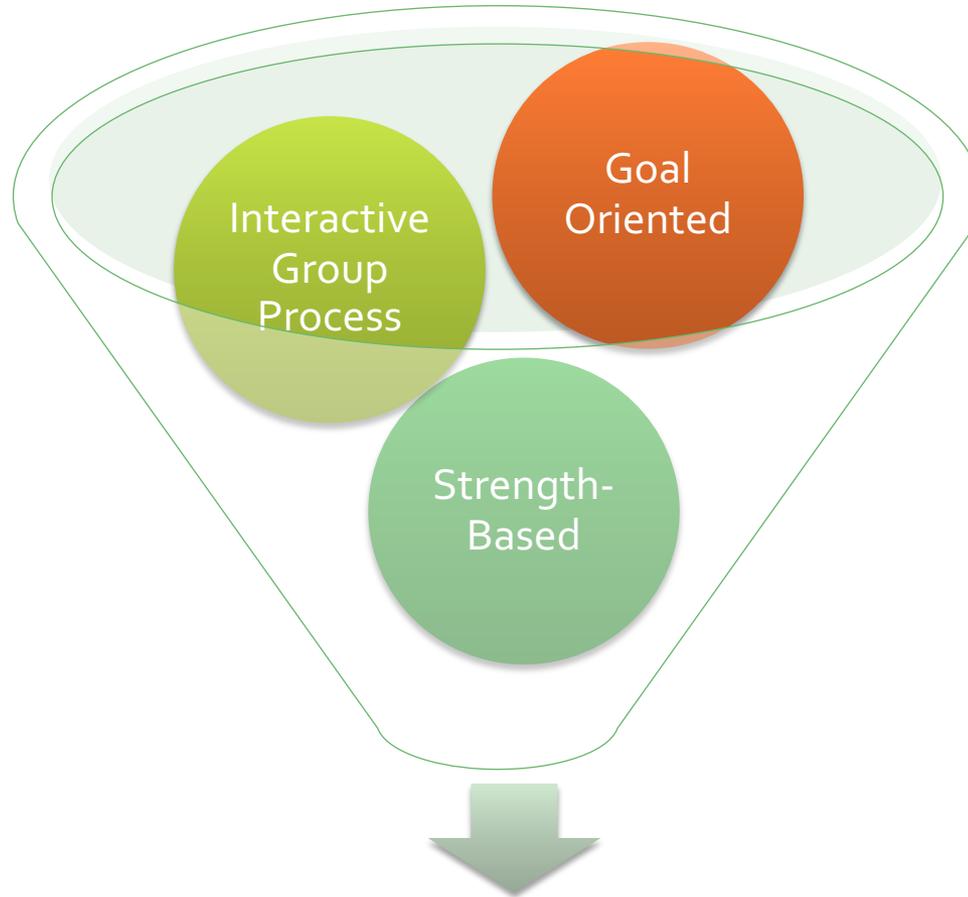
- Speciality court 1x month
- Pretrial officer 2x month
- CBT session 1x month

CBT & Reentry Planning Circles

RJ, solution-focused, desistance theory:

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

Public health approach



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.

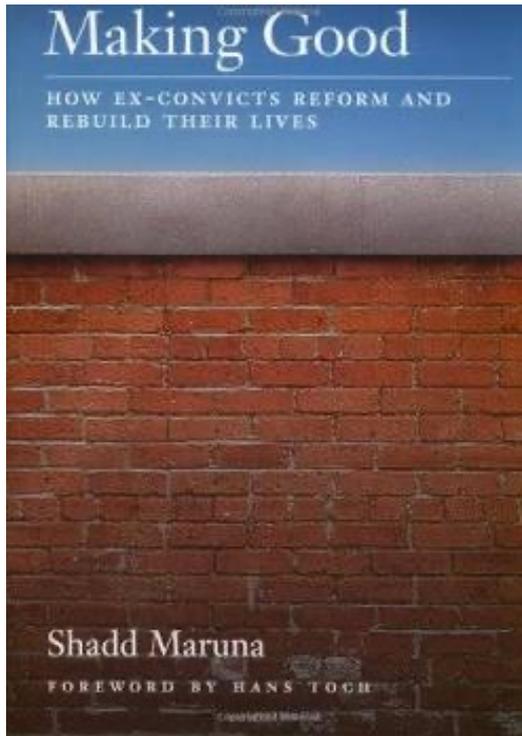
(Walker, Tarutani & McKibben, 2014, p. 11)

Planning a law-abiding life (desistance)

“It’s not just talking, it’s *planning* for the future, and that’s what really helped.”

~ family member circle participant

Desistance



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

www.apologyletter.org

non-facilitated individual practices

Apology
and
Forgiveness

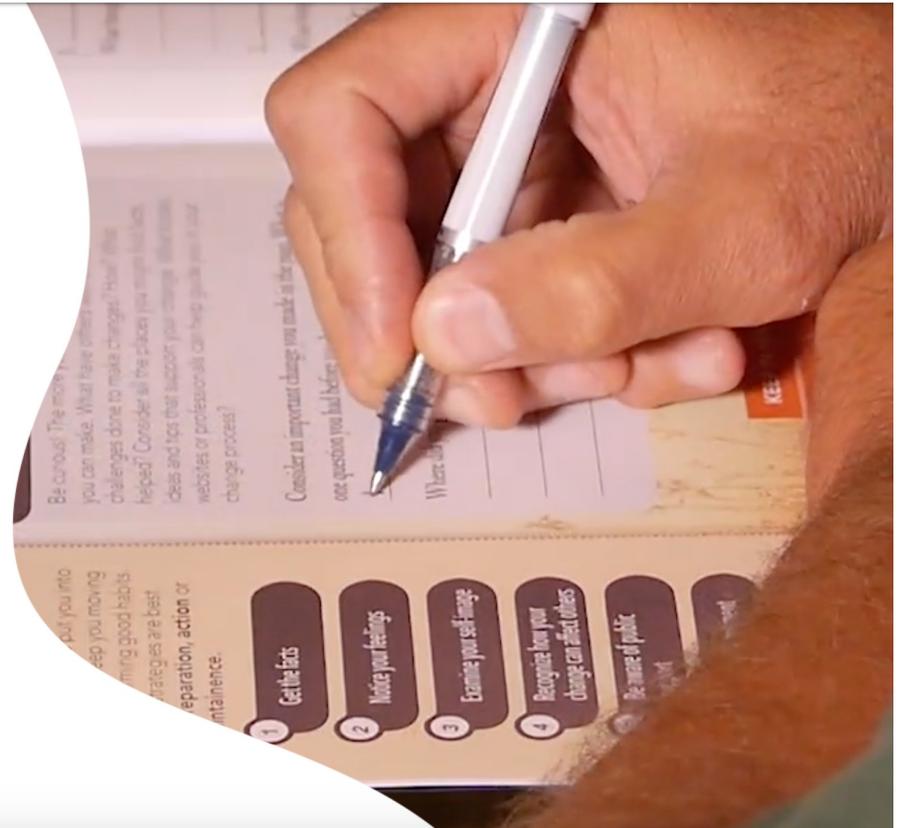


Change Companies Journals

Your partner in behavior change

The Change Companies® provides customized solutions that support lasting, positive change.

[EXPLORE SOLUTIONS](#)



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)

Participant & judge comments

*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)

Mahalo!

hawaiiifriends.org (publications)

bjlum@berkeley.edu

lorenn@hawaii.edu

