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Kelsey Geary

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A WARMER WELCOME HOME: THE NEED FOR INCORPORATING THERAPEUTIC JURISPRUDENCE IN REENTRY COURTS

KELSEY GEARY*

I. INTRODUCTION

“What goes up[,] must come down”; what goes in, must come out.¹ Right?² Not always.³ Through an evolution in the court system that gave birth to problem solving courts, and the emerging field of therapeutic jurisprudence, we see an ability to reform and rehabilitate individuals in such a way that the individual who enters the criminal system is not necessarily the same person who must emerge from the other side.⁴

* Juris Doctor Candidate, May 2016, St. Thomas University School of Law, *St. Thomas Law Review*, Member; B.S. in Psychology, The University of Georgia (2005). Ms. Geary will work as a summer associate at the Miami office of Rumberger, Kirk & Caldwell, P.A. in the summer of 2015, practicing litigation in a variety of practice areas. A special thank you to Professor Amy Ronner for introducing me to the subject of Therapeutic Jurisprudence and guiding and supporting me through the writing of this Comment, to Judge Michele Towbin Singer for her insight of the problem solving courts, and a tremendous amount of appreciation to the Editorial Board of the *St. Thomas Law Review* for thinking enough of my Comment to publish it.

1. See Isaac Newton, GOODREADS.COM, <http://www.goodreads.com/quotes/433926-what-goes-up-must-come-down> (last visited Nov. 18, 2014) (explaining the law of gravity); *Conservation of Mass using Control Volumes*, PENN STATE MECHANICAL & NUCLEAR ENGINEERING, www.mne.psu.edu/cimbala/learning/fluid/CV_Mass/home.htm (last visited May 8, 2015) (explaining the law of conservation of mass). See generally CHRISTINE LINDQUIST ET AL., NAT’L CRIMINAL JUSTICE REFERENCE SERV., THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS: PROGRAM CHARACTERISTICS AND PRELIMINARY THEMES FROM YEAR 1, 1 (2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/241400.pdf> [hereinafter THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS] (stating nearly all incarcerated individuals will eventually be released).

2. See generally Morris B. Hoffman, *Therapeutic Jurisprudence, Neo-Rehabilitationism, and Judicial Collectivism: The Least Dangerous Branch Becomes Most Dangerous*, 29 *FORDHAM URB. L.J.* 2063, 2064 (2002) (“Drug [usage] . . . [is] no more treatable today than juvenile delinquency was treatable in the 1930s”).

3. See *infra* discussion Part IV (discussing the Harlem Reentry Court (“HRC”) and the success it has had in reducing recidivism).

4. See generally DAVID B. WEXLER & BRUCE J. WINICK, *LAW IN A THERAPEUTIC KEY: DEVELOPMENTS IN THERAPEUTIC JURISPRUDENCE* xvii (David B. Wexler ed. 1996) [hereinafter *LAW IN A THERAPEUTIC KEY*] (briefly explaining therapeutic jurisprudence ideas); Michael S. King, *Should Problem-Solving Courts be Solution-focused Courts?*, 80 *REV. JUR. U.P.R.* 1005, 1009 (2011) (giving a brief overview of the beginning of the drug courts and the subsequent other problem-solving courts).

Therapeutic jurisprudence is the school of thought which looks at how the legal system affects the emotional and psychological well being of a party in a legal suit, whether a civil plaintiff or defendant, or a criminal defendant.⁵ The therapeutic jurisprudence movement hopes to raise and address questions concerning the effects of the legal process on those involved, but also hopes for the production of healthier individuals after his or her legal dilemma has concluded by promoting therapeutic interactions throughout the legal process.⁶ Additionally, it looks to reduce recidivism⁷ and create a behavioral change in those who are in the revolving door of the criminal justice system.⁸ With practitioners, judges and scholars advocating for the practices of therapeutic jurisprudence to seep into our

5. See LAW IN A THERAPEUTIC KEY, *supra* note 5; BRUCE J. WINICK & DAVID B. WEXLER, JUDGING IN A THERAPEUTIC KEY: THERAPEUTIC JURISPRUDENCE AND THE COURTS 7 (Bruce J. Winick & David B. Wexler eds., 2003) [hereinafter JUDGING IN A THERAPEUTIC KEY]; King, *supra* note 5. See generally David B. Wexler, *Therapeutic Jurisprudence: An Overview*, 17 T.M. COOLEY L. REV. 125, 125 (2000) [hereinafter *Therapeutic Jurisprudence: An Overview*] (giving a basic overview of therapeutic jurisprudence and the different areas of the law it may be applied to). The Wexler article breaks down the “law” into three categories, all of which therapeutic jurisprudence can be applied: (1) the legal rule (or law); (2) the legal procedure (the actual adversarial interactions); and (3) the role of legal actors such as judges and attorneys. *Therapeutic Jurisprudence: An Overview, supra*, at 126.

6. See King, *supra* note 5, at 1006 (stating therapeutic jurisprudence looks to decrease the negative effects and increase the positive effects of legal proceedings on those involved); see also Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W.L. REV. 15, 30 (1997) (discussing how an attorney can lessen the negative effects of divorce litigation on the parties involved as well as the children); Daniel W. Shuman, *Therapeutic Jurisprudence and Tort Law: A Limited Subjective Standard of Care*, 46 SMU L. REV. 409, 410 (1992) [hereinafter *Therapeutic Jurisprudence and Tort Law*] (explaining how sometimes an apology can have the greatest effect on a party’s view of the outcome in fault based tort law litigation). See generally LAW IN A THERAPEUTIC KEY, *supra* note 5 (explaining how the law itself can be a therapeutic agent, whether it is intended to be or not, in a vast array of fields including criminal law, worker’s compensation, fault-based tort, and contract law).

7. BLACK’S LAW DICTIONARY 628 (19th ed. 2010) (“A tendency to relapse into a habit of criminal activity or behavior”).

8. See ALAN FEUER, OUT OF JAIL, INTO TEMPTATION: A DAY IN A LIFE (2002), reprinted in JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 13–19 (providing commentary on a New York Times article detailing the release of an offender and all the circumstances he dealt with that will likely lead to him being incarcerated again); see also Charity Scott, Book Review, 25 J. LEGAL MED. 377, 383 (2004) (stating the courts are the crucial first step in the behavior changing process). See generally Gregory Baker, *Do You Hear the Knocking at the Door? A “Therapeutic” Approach to Enriching Clinical Legal Education Comes Calling*, 28 WHITTIER L. REV. 379, 388 (2006) (mentioning the “revolving door” of courthouses through which the same people come in and out). This “revolving door” phenomenon refers to the continued pattern of criminals to commit a crime, be arrested, charged and convicted, and then once released, continue the same cycle only to end up in jail again. Baker, *supra*.

basic civil⁹ and criminal¹⁰ courts, as well as the law school setting,¹¹ certain applications need additional analysis and reform.¹² One area that would benefit from review is the crucial time period after an inmate is released from incarceration and begins a parole sentence.¹³

In 2012, 408,186 inmates were released from prison and put on a conditional release program such as mandatory parole.¹⁴ Sadly, statistics

9. See WILLIAM G. SCHMA, *JUDGING FOR THE NEW MILLENNIUM* (2000), reprinted in *JUDGING IN A THERAPEUTIC KEY*, *supra* note 6, at 87–89 (discussing the benefits of therapeutic discussions in a medical malpractice suit); see also *Therapeutic Jurisprudence and Tort Law*, *supra* note 7 (explaining fault based tort law and therapeutic jurisprudence both seek to reduce injury and restore the injured).

10. See Tamar M. Meekins, *You Can Teach Old Defenders New Tricks: Sentencing Lessons from Specialty Courts*, 21 CRIM. JUST. 28, 31 (2006) available at http://www.americanbar.org/content/dam/aba/publishing/criminal_justice_section_newsletter/crimjust_cjmag_21_2_youcanteacholddefenders.authcheckdam.pdf (discussing the benefit of having a deferral period after sentencing in a court of general jurisdiction so the defendant may complete certain treatment, secure housing, or take other measures to show the court he or she is making efforts to reform); see also SCHMA, *supra* note 10, at 88 (explaining the effects of accepting a “nolo” plea in a criminal court versus applying therapeutic jurisprudence tactics and making the defendant admit and acknowledge his or her crime). See generally Stephen E. Vance, *Federal Reentry Court Programs: A Summary of Recent Evaluations*, 75 FED. PROBATION 64, 64 (2011) (stating federal judges and probation officers, among others, have expressed a growing interest in incorporating problem-solving methods into post-release parole courts and programs).

11. See Baker, *supra* note 9, at 386–87 (looking at the changes to the American Bar Association (“ABA”) section of legal education and admissions to the bar standard and how some law schools are incorporating this standard through more exposure to therapeutic jurisprudence practices). William and Mary Law School started an externship clinic in 2003 which allows students extensive interaction in a problem solving court, which includes meeting with and interviewing the different members of the problem-solving court team (judge, prosecutor, defense counsel, probation officer, therapist, etc.), as well as a class component to discuss and evaluate their experiences in those courts. *Id.* at 392–400.

12. See generally Hoffman, *supra* note 3 (criticizing the application of therapeutic jurisprudence practices by the judicial branch because it gives judges dangerous and intrusive power to control a defendant); Christopher Slobogin, *Therapeutic Jurisprudence: Five Dilemmas to Ponder*, 1 PSYCHOL. PUB. POL’Y & L. 193 (1995), reprinted in *LAW IN A THERAPEUTIC KEY*, *supra* note 5, at 783–84 (discussing the continuously evaded issue of balancing the other goals of the legal system (due process, autonomy, and community safety) with the therapeutic jurisprudence practices and what are truly feasible solutions).

13. See Vance, *supra* note 11 (reviewing statistical findings from evaluations of three different reentry courts and concluding it is too early for reentry courts to show significant advantages or disadvantages and more studies need to be done); see also DEBBIE BOAR & CHRISTOPHER WATLER, CTR. FOR COURT INNOVATION, REENTRY COURT TOOL KIT: A GUIDE FOR REENTRY COURT PRACTITIONERS, 9 (2012), available at www.courtinnovation.org/sites/default/files/documents/reentry_toolkit.pdf (explaining how a person who is released from prison can be very overwhelmed at all the new and immediate freedom as well as immediate obligations he or she must fulfill, including past debts and family responsibilities).

14. See E. Ann Carson & Daniela Golinelli, *Prisoners in 2012: Trends in Admissions and Releases, 1991–2012*, BUREAU OF JUSTICE STATISTICS 4 (Sept. 2, 2014), available at

show two-thirds of those parolees will be arrested again for another offense within the next three years.¹⁵ Several judicial districts across the country have implemented reentry courts in attempts to address this problem.¹⁶ These courts assist parolees in reintegrating into society by empowering and encouraging the participants in hopes of increasing adherence to parole guidelines and reducing recidivism.¹⁷ However, the effectiveness of these courts is still questionable, and, based on the small amount of available research, they need additional reform.¹⁸

This comment will focus on one of the first established reentry courts—the Harlem Reentry Court (“HRC”)—by evaluating its effectiveness with the basic principles of therapeutic jurisprudence.¹⁹ Section II provides general background on all the relevant topics: therapeutic jurisprudence, problem-solving courts, and reentry courts.²⁰ Section III specifically focuses on the background, formation, and

www.bjs.gov/content/pub/pdf/p12tar9112.pdf.

15. See Matthew R. Durose et al., *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, BUREAU OF JUSTICE STATISTICS 1 (Apr. 2014), available at www.bjs.gov/content/pub/pdf/rprts05p0510.pdf (showing recidivism rates of prisoners released between 2005 and 2010: 67.8% were arrested again within three years and 76.6% were arrested again within five years). These numbers reflect both parole violations, such as a positive drug test result, and also arrests for new charges. *Id.*

16. See Shadd Maruna & Thomas P. LeBel, *Welcome Home? Examining the “Reentry Court” Concept from a Strengths-based Perspective*, 4 W. CRIMINOLOGY REV. 91, 91–92 (2003), available at www.westerncriminology.org/documents/WCR/v04n2/article_pdfs/marunalebel.pdf (listing pilot sites for reentry courts: California, Colorado, Delaware, Florida, Iowa, Kentucky, New York, Ohio and West Virginia); Vance, *supra* note 11 (discussing reentry courts in Oregon, Massachusetts, and Michigan); ZACHARY HAMILTON, CTR. FOR COURT INNOVATION, *DO REENTRY COURTS REDUCE RECIDIVISM?*, 8 (2010), available at http://www.courtinnovation.org/sites/default/files/Reentry_Evaluation.pdf (stating the HRC was one of nine pilot programs implemented in the late 1990’s to address the needs of released offenders).

17. See Maruna & LeBel, *supra* note 17 (stating reentry courts have the ability to incorporate therapeutic jurisprudence practices in the same way drug courts do); Terry Saunders, *Staying Home: Effective Reintegration Strategies for Parolees*, 41 JUDGES’ J. 34, 34 (2002) (explaining the HRC uses drug court structure and practices to help successfully integrate released prisoners back into society).

18. See generally HAMILTON, *supra* note 17, at 11 (stating there is a mix between positive and negative results from the effectiveness of reentry courts).

19. See AMY D. RONNER, *LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE* 23 (2010) [hereinafter *LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE*] (suggesting the “three V’s” to a successful therapeutic approach: “voice, validation, and voluntary participation”); see also *LAW IN A THERAPEUTIC KEY*, *supra* note 5, at 7–9 (giving basic background information on the theory of therapeutic jurisprudence); *JUDGING IN A THERAPEUTIC KEY*, *supra* note 6, at 7–9 (explaining the application of therapeutic jurisprudence approaches by judges); discussion *infra* Parts IV–V.

20. See discussion *infra* Part II.

strategies of the HRC.²¹ Section IV gives an in-depth analysis of HRC's process, and how recognizing and further incorporating therapeutic practices could increase its success.²² Finally, Section V will conclude the argument by advocating for nationwide exposure and implementation of reentry courts for parolees around the country with a greater emphasis on therapeutic jurisprudence.²³

II. BACKGROUND

A. THERAPEUTIC JURISPRUDENCE

Therapeutic jurisprudence sees the law as a social force that can emotionally affect those involved in legal proceedings.²⁴ This field of study looks at how the interactions a person has with the legal system may later impact, either positively (therapeutically) or negatively (anti-therapeutically), his or her behavior and mental state.²⁵ The theory does not consider the therapeutic aspect to be more important than other consequences and goals of the legal system (e.g., punishment, justice, due process and deterrence);²⁶ however, it “does suggest that the law [has a] role as a potential therapeutic agent [which] should be recognized and systematically studied.”²⁷

21. See discussion *infra* Part III.

22. See discussion *infra* Part IV.

23. See discussion *infra* Part V.

24. See LAW IN A THERAPEUTIC KEY, *supra* note 5 and accompanying text; see also Baker, *supra* note 9, at 382 (stating therapeutic jurisprudence asks how the law could be used as a therapeutic agent). Therapeutic Jurisprudence embodies and promotes ideas and practices from multiple disciplines such as psychology, sociology, criminology, social work, and public health. Baker, *supra*.

25. See LAW IN A THERAPEUTIC KEY, *supra* note 5 and accompanying text; see also Baker, *supra* note 9, at 382 (exploring the introduction and education of therapeutic jurisprudence in law schools; specifically William & Mary Law School's Therapeutic Courts Practice externship).

26. See James L. Nolan, Jr., *Redefining Criminal Courts: Problem-Solving and the Meaning of Justice*, 40 AM. CRIM. L. REV. 1541, 1547 (2003); see also *Therapeutic Jurisprudence: An Overview*, *supra* note 6 (stating therapeutic jurisprudence does not seek to replace other values of the courts such as due process and justice). See generally David B. Wexler, *Therapeutic Jurisprudence and the Criminal Courts*, 35 WM. & MARY L. REV. 279, 280 (1993) [hereinafter *Therapeutic Jurisprudence and the Criminal Courts*] (proposing the balancing of introducing behavioral science to the law without infringing upon the basic principles of justice).

27. Glenn Took, *Therapeutic Jurisprudence and the Drug Courts: Hybrid Justice and Its Implications for Modern Penalty*, INTERNET J. CRIMINOLOGY, 2005, at 2, , <http://www.internetjournalofcriminology.com/Glenn%20Took%20-%20Therapeutic%20Jurisprudence.pdf>; see *Therapeutic Jurisprudence and the Criminal Courts*, *supra* note 27; *Therapeutic Jurisprudence: An Overview*, *supra* note 6, at 128–29.

David B. Wexler²⁸ and Bruce J. Winick²⁹ developed the theory of therapeutic jurisprudence in the late 1980's.³⁰ Wexler and Winick believe the law is a “social force that produces behaviors and consequences.”³¹ Through this belief, they saw an opportunity to apply the law in a way that produces a therapeutic outcome for the parties involved.³²

While therapeutic jurisprudence does not promote paternalism, it does encourage the actors in the legal arena to participate in a dialogue to ensure understanding,³³ engage in active listening, and allow the defendant to play an active role.³⁴ The actors of the court can include anyone involved: the parties, judge and attorneys, jury members, and even clerks and bailiffs.³⁵ Theorists have identified three “core components” which have a role in producing a therapeutic outcome: voice, validation, and voluntary participation, otherwise known as “The Three V's.”³⁶ Voice is when the

28. See *Faculty Profile of David B. Wexler*, UNIV. OF ARIZ., <http://law2.arizona.edu/faculty/facultyprofile.cfm?facultyid=91> (last visited May 11, 2015) (explaining that David B. Wexler is a Distinguished Research Professor of Law at Rogers, College of Law in Tucson, Arizona, and is also Professor of Law and Director of the International Network on the Therapeutic Jurisprudence at the University of Puerto Rico in San Juan).

29. See *UM Law Professor Bruce J. Winick Passes Away*, UNIV. OF MIAMI, www.miami.edu/index.php/news/releases/um_law_professor_bruce_j_winick_passes_away/ (Aug. 26, 2010) (explaining that Bruce J. Winick was a professor of law and scholar in residence at the University of Miami School of Law before passing away in 2010).

30. See Scott, *supra* note 9, at 379–80 (discussing problem-solving courts, the role a judge can play in producing a more positive lifestyle for defendants in a criminal court, as well as the view of critics of therapeutic jurisprudence).

31. *Therapeutic Jurisprudence: An Overview*, *supra* note 6, at 125; see also JUDGING IN A THERAPEUTIC KEY, *supra* note 6 (explaining the “bedrock” of therapeutic jurisprudence is that the tools of behavioral sciences can be used in the legal setting).

32. See *Therapeutic Jurisprudence: An Overview*, *supra* note 6, at 128 (stating the adversarial process encourages parties to reveal the worst possible things about the other party and therapeutic jurisprudence practices may lessen this negativity and lead to more cordial interactions).

33. See *id.* at 130 (suggesting the judge have a dialogue with a defendant concerning what will occur after the courtroom interaction has ceased, and concluding that this dialogue may lead to greater understanding and compliance).

34. See King, *supra* note 5, at 1012–13 (stating research shows when an individual has a more active role and is intrinsically motivated, there is “greater performance, health, and wellbeing”). See generally *Therapeutic Jurisprudence and the Criminal Courts*, *supra* note 27, at 296 (describing how the practices health care professionals engage in to increase patient compliance can be transferred to criminal courts in helping with insanity acquittees compliance with conditional probationary release).

35. King, *supra* note 5, at 1019 (recognizing all players involved in the legal system can affect the individual).

36. See LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE, *supra* note 20 (identifying the three core components of a successful therapeutic jurisprudence experience as voice, validation, and voluntary participation); Amy D. Ronner, *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*, 71 U. CIN. L. REV.

parolee has “an opportunity to tell [his or her] story to a decision maker.”³⁷ Validation occurs when the individual feels like those in authority, the judge, parole officer, or case manager, listened to and considered what he or she said.³⁸ Voluntary participation, while it does not require a completely optional choice for the parolee, is when the individual perceives the process as less coercive.³⁹ These concepts shape a participant’s view of the legal situation and can either make him or her feel psychologically and emotionally worse, or better, after the situation has come to a conclusion.⁴⁰

This school of thought has a wide range of applicable settings, both in courtrooms and before and after the legal procedures, such as in hearings, trials, and sentencing, which occur within those courtrooms.⁴¹ Although the theories and practices therapeutic jurisprudence promotes have long been integrated and explored in the problem-solving courts, many scholars are now seeing the potential benefits of applying these ideas to courts of general jurisdiction.⁴² And, with the expansion of problem-solving courts,

89, 94 (2002) [hereinafter *Songs of Validation, Voice, and Voluntary Participation: Therapeutic Jurisprudence, Miranda and Juveniles*] (applying the three V’s to the juvenile justice system); see also Amy D. Ronner & Bruce J. Winick, *Silencing the Appellant’s Voice: The Antitherapeutic Per Curiam Affirmance*, 24 SEATTLE U. L. REV. 499, 501–02 (2000) [hereinafter *Silencing the Appellant’s Voice: The Antitherapeutic Per Curiam Affirmance*] (explaining how a per curiam affirmance can produce antitherapeutic results because the defendant does not get any explanation and is unable to have a voice, validation, or the feeling of voluntary participation).

37. LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE, *supra* note 20; see David B. Wexler, *Therapeutic Jurisprudence and the Rehabilitative Role of the Criminal Defense Lawyer*, 17 ST. THOMAS L. REV. 743, 748 (2005) [hereinafter *Therapeutic Jurisprudence and the Rehabilitative Role of the Criminal Defense Lawyer*] (finding the defendant feels he has a voice when he is able to tell his story without the worries of the legal consequences).

38. LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE, *supra* note 20.

39. *Id.*

40. See *id.* at 23–24 (explaining when a defendant feels like he or she has a voice (or is able to express his or her side of the story), has validation (that he or she was actually listened to by the decision maker), and has the voluntary option for participation, the defendant feels better about the process). See generally Tom R. Tyler, *The Psychological Consequences of Judicial Procedures: Implications for Civil Commitment Hearings*, 46 SMU L. REV. 433, 442 (1992) (stating what influences most a person’s overall view of the legal situation he or she experienced is the actual judicial process itself).

41. See Bruce J. Winick, *Therapeutic Jurisprudence and the Role of Counsel in Litigation*, 37 CAL. W. L. REV. 105, 109–10 [hereinafter *Therapeutic Jurisprudence and the Role of Counsel in Litigation*] (discussing how an attorney can lessen the stress and pain of the litigation process by being thorough and informing the client step by step). See generally *Therapeutic Jurisprudence and the Criminal Courts*, *supra* note 27, at 284–86 (recognizing the benefits of therapeutic practices in a sex offender plea process as well as the conditional release process).

42. See Meekins, *supra* note 11 (discussing the benefits of a deferral period after sentencing in a criminal court); SCHMA, *supra* note 10, at 88–89 (applying therapeutic jurisprudence to medical malpractice suit and “nolo” pleas in criminal suits); *Therapeutic Jurisprudence and the Role of Counsel in Litigation*, *supra* note 42, at 109–12 (discussing therapeutic jurisprudence

therapeutic jurisprudence practices are benefiting new areas of the legal system.⁴³

B. PROBLEM-SOLVING COURTS

Around the same time therapeutic jurisprudence emerged, the first problem-solving court—drug court—was established in Dade County, Florida.⁴⁴ The drug court movement has now spread across the country, in every state, to almost 3,000 drug courts nationwide.⁴⁵ However, the drug court was not created in light of the therapeutic jurisprudence movement.⁴⁶ In fact, the two schools of thought had “been growing and evolving on parallel courses, yet independent of one another” for almost a decade before practitioners and scholars recognized their relationship.⁴⁷ Initially, the purpose of the drug court was to “address the needs of offenders with substance abuse problems,” not provide a therapeutic aspect or make

practices during the litigation process); *Therapeutic Jurisprudence and Tort Law*, *supra* note 7 (explaining fault based tort law and therapeutic jurisprudence both seek to reduce injury and restore the injured). See generally *Therapeutic Jurisprudence and the Criminal Courts*, *supra* note 27, at 285 (recognizing the benefits of therapeutic practices in a sex offender plea process as well as the conditional release process).

43. See discussion *infra* Part IV.

44. King, *supra* note 5, at 1006–07; Scott, *supra* note 9, at 381 (stating the first problem-solving court was a drug court in Miami-Dade County in 1989 by then district attorney Janet Reno).

45. See Gloria Hayes, *Breaking the Cycle of Addiction: Officials Seek to Spread the Word on Drug Treatment Courts* (2000), reprinted in *JUDGING IN A THERAPEUTIC KEY*, *supra* note 6, at 23 (stating there is at least one drug court in every 50 states); Shannon Lafferty, *Terry Emphasizes Counseling in San Jose* (2001), reprinted in *JUDGING IN A THERAPEUTIC KEY*, *supra* note 6, at 27 (stating not only has the drug court movement spread across the nation, but also has moved internationally into Canada, Australia, New Zealand, England, Ireland, and Scotland); *Drug Court History*, NAT’L ASS’N OF DRUG COURT PROF’LS, www.nadcp.org/learn/what-are-drug-courts/drug-court-history (last visited May 11, 2015).

46. See generally King, *supra* note 5, at 1007 (recognizing the drug court was not created in light of the therapeutic jurisprudence movement, but rather to focus on the addiction and substance abuse problems so many offenders had).

47. Hon. Peggy Fulton Hora et al., *Therapeutic Jurisprudence and the Drug Treatment Court Movement: Revolutionizing the Criminal Justice System’s Response to Drug Abuse and Crime in America*, 74 NOTRE DAME L. REV. 439, 440–41 (1999) (recognizing therapeutic jurisprudence was confined to the world of academia while the drug court movement did not borrow any of those ideals until the late 1990’s); see also King, *supra* note 5, at 1007 (explaining the connection between the two ideas arose a decade later and after many more problem-solving courts, such as mental health courts, community courts and domestic violence courts, were created and implemented); Nolan, Jr., *supra* note 27, at 1550 (stating some of the first drug court judges to recognize the connection between the drug court movement and therapeutic jurisprudence were Peggy Hora and William Schma).

positive behavioral changes in defendants.⁴⁸ The drug court sought to find and remedy the root of the problem that led the offender to commit crimes.⁴⁹ In the drug court, the prosecutor and defense attorney work together with a judge to devise a personalized plan for each offender and maintain close supervision throughout the process.⁵⁰

The concepts utilized in the personalized plans can include anything from continuous drug screening, ankle monitoring, and curfews, to obtaining a General Education Diploma (“GED”), maintaining a steady job, and attending therapy sessions.⁵¹ One major departure from a court of general jurisdiction is in drug court. In drug court, when offenders admit to a relapse or test positive for a controlled substance they are not automatically criminally convicted.⁵² The judge has the ability to sentence the offender to incarceration, but she also has the discretion to hand down lesser sanctions such as an increase in therapy sessions, require additional drug screening, increase monitoring, and even make the offender write an essay on what he or she feels caused the relapse.⁵³

After the initial drug court was established, other problem-solving courts began to emerge.⁵⁴ Due to the revelation that the drug court concept and therapeutic jurisprudence are intertwined, not only have the problem-solving courts incorporated therapeutic jurisprudence, but some states have even codified it in their problem-solving court programs.⁵⁵ Some drug

48. King, *supra* note 5, at 1007 (stating problem-solving courts did not view the offender as a central player in collaboratively deciding a method of treatment; rather the court solved the problem itself).

49. Hayes, *supra* note 46, at 23.

50. *Id.*

51. *See id.*; *see also* King, *supra* note 5, at 1033 (discussing how the strategy drug courts use in engaging the defendant is also used in developing a treatment plan that includes securing housing, continuing education, and finding a job).

52. *See* Vance, *supra* note 11, at 66 (stating the issuing of parsimonious sanctions is a major departure from a traditional violation hearing as they are intended to encourage the offender without disrupting any progress already made). *See generally* Lafferty, *supra* note 46, at 25 (recounting a drug court appearance by a defendant who reported a relapse and Judge Terry gave the defendant a pep talk and increased supervision and treatment).

53. *See* Vance, *supra* note 11, at 66 (finding that when the participants’ violation is not so severe as to dismiss him or her from the program, the judge can issue a sanction, which is proportional to the offense).

54. *See* JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 55, 67 (stating domestic violence courts have been established to address spousal battering and other unmarried couples’ domestic issues that tend to involve an underlying addiction problem and also the more recent emergence of the reentry courts); *see also* King, *supra* note 5, at 1023 (mentioning the implementation of mental health courts as well as domestic violence courts).

55. FLA STAT. § 397.334(4) (2013) (laying out ten key components based on therapeutic jurisprudence practices that the treatment-based drugs courts shall include and adhere to, such as

courts have produced staggeringly high success rates,⁵⁶ and the financial benefits can be significant.⁵⁷ However, the problem-solving court movement does not stop at drug courts.⁵⁸ Across the country there are now mental health courts,⁵⁹ juvenile courts,⁶⁰ domestic violence courts,⁶¹ and reentry courts,⁶² all of which can be viewed through a therapeutic jurisprudence lens.⁶³

C. REENTRY COURTS

Reentry court is a unique type of problem-solving court, which focuses on the critical time period immediately following the release of an inmate who is then placed on parole and must reintegrate into society.⁶⁴ The idea began in the late 1990's and was initially implemented in 2000.⁶⁵

using a nonadversarial approach and having judicial interaction with the participants). *See generally* JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 111–27 (surveying the “Preliminary ‘Codifications’ of Therapeutic Jurisprudence Principles”). The different situations where incorporating therapeutic jurisprudence principles was discussed and/or adopted are the Conference of Chief Justices and the Conference of State Court Administrators Resolution, the District Court of Clark County, Washington, and Maryland’s Family Divisions Performance Standards. JUDGING IN A THERAPEUTIC KEY, *supra*.

56. *See, e.g.*, Hayes, *supra* note 46, at 22 (citing a study of a Philadelphia drug treatment court that showed only six percent of those who graduated from the program were re-arrested and almost seventy-two percent of participants stayed enrolled or successfully graduated).

57. *See id.* at 23 (stating the cost of incarceration for a drug-offender is anywhere from \$25,000 to \$50,000 annually where even the most comprehensive drug-court program costs \$3,000 annually).

58. *See* JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 55, 67 (stating domestic violence courts have been established to address spousal battering that tends to involve an underlying addiction problem and also the more recent emergence of the reentry courts); King, *supra* note 5, at 1023–24 (mentioning the implementation of mental health courts as well as domestic violence courts).

59. King, *supra* note 5, at 1023 (discussing mental health courts).

60. Hora et al., *supra* note 48, at 499–500 (discussing the Florida juvenile drug court that was established in 1996).

61. King, *supra* note 5, at 1023–24.

62. JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 67.

63. *See generally* King, *supra* note 5, at 1008–09, 1022–23 (finding the behavioral changes sought in the problem-solving courts can be examined through therapeutic jurisprudence in terms of promoting internal change and the usage of external motivation from the courts).

64. *See* BOAR & WATLER, *supra* note 14 (describing time period right after release as a “risky” time period); *see also* HAMILTON, *supra* note 17 (finding the initial period following release is the first opportunity to start building a support network for the parolee); Maruna & LeBel, *supra* note 17, at 92 (stating the reentry court oversees the reintegration process of a released offender).

65. *See generally* Maruna & LeBel, *supra* note 17, at 91–93 (stating there were proposals for a “revamping” of the reentry procedure during both the Clinton Presidential administration as well as the following Bush Presidential administration). Pilot sites were launched in California,

These courts incorporate practices of the typical problem-solving courts such as heightened levels of judicial supervision and interaction, drug treatment programs, and educational programs to obtain a GED or other specialized skill.⁶⁶ These programs are designed with the hopes that they will provide parolees an easier and more successful transition back into society, resulting in a decreased rate of recidivism.⁶⁷

One of the first reentry courts was established in 2001 in Manhattan's East Harlem neighborhood.⁶⁸ It was placed there in response to the high volume of parolees continuously returning to that neighborhood,⁶⁹ and its basic principle is to successfully reintegrate the parolee with society through a judge supervised program, similar to a problem-solving court model.⁷⁰ This court put the "drug court principles to the back end of the

Colorado, Delaware, Florida, Iowa, Kentucky, New York, Ohio, and West Virginia. *Id.* at 92. Each one has a slightly different focus based on regional issues and demographics. *Id.* All involve concepts borrowed from drug courts and other problem-solving courts. *Id.*

66. See HAMILTON, *supra* note 17, at 1 (explaining the reentry court uses many different social services including addiction treatment as well as vocational and employment services); Saunders, *supra* note 18, at 34–35 (finding that, like the problem-solving courts, the reentry court makes the parolee attend court hearings frequently and uses sanctions and rewards to encourage positive behavioral change); Vance, *supra* note 11 (stating the drug court model of increased supervision, sanction and rewards, and therapy and treatment service, has been adopted by other problem-solving courts such as the reentry courts). See generally Att'y Gen. Janet Reno, Remarks at John Jay College of Criminal Justice on the Reentry Court Initiative 4 (Feb. 10, 2000), available at www.usdoj.gov/archive/ag/speeches/2000/doc2.htm (stating the reentry courts would use the same "carrot and stick" tactic as the drug courts including smaller, but increasing sanctions for failures and close court monitoring of the defendant); Maruna & LeBel, *supra* note 17, at 92 (listing six core elements of the reentry court set out by the Office of Justice Programs: (1) assessment and strategic reentry planning; (2) regular status assessment meetings; (3) coordination of multiple support services; (4) accountability to community; (5) graduated and parsimonious sanctions; and (6) rewards for success); THE NATIONAL INSTITUTE OF JUSTICE'S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 2 (stating the initial sites for the reentry courts tailor their programs to their area but must incorporate the six core elements set out by the Office of Justice Programs).

67. See HAMILTON, *supra* note 17, at 1 (noting the reentry court concept is geared towards reducing recidivism by assisting in the transition from prison back to the community through a vast array of services and treatment programs similar to those used by problem-solving courts); Saunders, *supra* note 18 (stating the reentry court tries to address the needs of released offenders during the transition back into the community).

68. HAMILTON, *supra* note 17, at iii. See generally Vance, *supra* note 11 (discussing the initial idea for reentry courts by Jeremy Travis and the help he received from Attorney General Janet Reno). In 1999, Jeremy Travis, then-director of the National Institute of Justice, first proposed the idea of an integration program for post-release inmates. Vance, *supra*. He and then-Attorney General Janet Reno collaborated to gain federal and local support for pilot programs. *Id.*

69. HAMILTON, *supra* note 17, at iii.

70. See JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 67.

criminal justice system.”⁷¹ Since Harlem’s reentry court began, many other jurisdictions across the country have followed suit, implementing reentry courts from the same mold.⁷² It may be too early to determine whether these reentry courts are really achieving the desired result—reduced recidivism and better assimilation by parolees back into society;⁷³ however, we can analyze the data currently available and critique the practices the HRC employs through a therapeutic jurisprudence lens.⁷⁴

III. HARLEM REENTRY COURT

In the late 1990’s, the United States Department of Justice (“DOJ”) and the Office of Justice Programs (“OJP”) officially recognized the issues parolees face after release and sought to address the obstacles that often led to recidivism by implementing the Reentry Court Initiative (“RCI”).⁷⁵ In 2000, the HRC began operations as one of nine pilot locations for a reentry program through the technical assistance of the DOJ.⁷⁶ The court was strategically placed in the “corridor for reentry” in the upper Manhattan

71. Vance, *supra* note 11.

72. See Jeremy Travis, *But They All Come Back: Rethinking Prisoner Reentry*, 7 SENT’G & CORRS.: ISSUES FOR THE 21ST CENTURY 1, 5 (2000), available at <http://www.ncjrs.gov/pdffiles1/nij/181413.pdf> (discussing Delaware’s post-release supervision program); see also Vance, *supra* note 11 (reviewing studies done on the following reentry courts: District of Oregon, District of Massachusetts, and Western District of Michigan).

73. See Vance, *supra* note 11 (presenting studies and statistical findings from reviews of three different reentry courts which show some statistical significant results but conclude, due to its infancy, the reentry theory has yet to show its effectiveness).

74. See generally LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE, *supra* note 20 and accompanying text.

75. See BOAR & WATLER, *supra* note 14, at 3 (stating the reentry court initiative was created to provide an alternative to traditional parole); HAMILTON, *supra* note 17, at 7 (finding in response to an increasing problem with needs of released prisoners, the idea of reentry courts emerged and was initially implemented through the DOJ and OJP).

76. See BOAR & WATLER, *supra* note 14, at 3 (stating the HRC was one of the first established reentry courts under a DOJ grant program); CHRISTINE LINDQUIST ET AL., NAT’L INST. OF JUSTICE, REENTRY COURTS PROCESS EVALUATION (PHASE 1) ES-1 (2013), <http://www.ncjrs.gov/pdffiles1/nij/grants/202472.pdf> [hereinafter REENTRY COURTS PROCESS EVALUATION (PHASE 1)] (listing New York’s Harlem area as one of the test sites for the reentry program called the Reentry Court Initiative (“RCI”)); THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 2 (stating the RCI’s goal was to provide an easier transition for released prisoners back into society and it provided technical assistance but no direct financial support). The RCI initially identified nine locations for pilot programs. REENTRY COURTS PROCESS EVALUATION (PHASE 1), *supra*. These locations include: San Francisco, CA; El Paso County, Colorado; two sites in Delaware; Broward County, Florida; Cedar Rapids, Iowa; two locations in Kentucky; Harlem, New York; Richland County, Ohio; and West Virginia. *Id.* All but the San Francisco location became operational, and seven of the remaining eight continue to function. *Id.* at ES-2.

neighborhood of East Harlem.⁷⁷ Here, over 2,000 prisoners are released each year, and “within a seven block stretch from 126th to 119th street, 1 in 20 men have been incarcerated.”⁷⁸ The neighborhood was the epitome of the “revolving door”—circulating parolees in and out of the criminal justice system.⁷⁹ With that density of ideal candidates who could benefit from the processes and programs of a reentry court, this seemed like the perfect place to implement this new initiative.⁸⁰ The HRC has been in operation since 2001, with the exception of part of 2007, and each year has been possible through government grants and assistance.⁸¹ In 2009, the DOJ awarded the court a Second Chance Act grant.⁸² The new funding came with new requirements,⁸³ but it allowed the HRC, as well as other sites, to continue operation.⁸⁴

The actual selection process for participation in the reentry court

77. See HAMILTON, *supra* note 17, at 7 (explaining the area from 126th Street to 119th Street has been termed the “corridor for reentry”); ROBERT V. WOLF, CTR. FOR COURT INNOVATION, REENTRY COURTS: LOOKING AHEAD: A CONVERSATION ABOUT STRATEGIES FOR OFFENDER REINTEGRATION 4 (2011), http://www.courtinnovation.org/sites/default/files/documents/Reentry_Courts.pdf. See generally Saunders, *supra* note 18 (discussing the HRC as centered in the heart of the community, where parolees live, which provides the resources necessary for success to be very accessible).

78. See HAMILTON, *supra* note 17, at 7 (explaining the demographics of the area and why this location was ideal for a reentry program).

79. See generally *id.* (discussing the high concentration of individuals living in a relatively small area in Harlem are on parole or probation).

80. See HAMILTON, *supra* note 17, at 7 (explaining Harlem represented the perfect example of the disproportionate ratio of released offenders to the rest of the community and fifty percent of all released prisoners in Manhattan returned to the East Harlem neighborhood); Saunders, *supra* note 18 (stating Harlem had been dealing with the growing issue of reintegrating offenders back into the community). See generally THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2 (stating the reentry courts emerged as a response to the increasing needs of individuals after being released from incarceration).

81. See HAMILTON, *supra* note 17, at 14 (explaining the court went on a short “hiatus” in 2007 due to a lack of funding).

82. See BOAR & WATLER, *supra* note 14, at 3 (noting the existence of a twelve-month enhancement planning process where staff engaged in retooling workflows, hiring and training of new staff, and securing the necessary approvals for the evaluation plan).

83. See THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 2 (explaining the Second Chance Act grant recipients are subjected to additional requirements). Programs given funding under the Second Chance Act of 2007 are required to incorporate evidence-based treatment practices, reentry strategic planning, and create and utilize a Reentry Task Force. *Id.*

84. BOAR & WATLER, *supra* note 14, at 42 (stating the Second Chance Act makes the HRC possible). See generally HAMILTON, *supra* note 17, at 14 (stating there was trouble with funding at the Harlem court in 2007).

begins prior to an individual even being released from incarceration.⁸⁵ Tools such as the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS), or the Level of Service Inventory-Revised (LSI-R), are used to assess the risk of re-offending after release.⁸⁶ Shortly before their conditional release, the prison gives inmates this assessment, and Harlem only accepts those who are a medium to high risk.⁸⁷ After qualification for the program, the inmate is mandatorily entered into the program and the “pre-release engagement” phase begins.⁸⁸

“Pre-release engagement” is supposed to occur one to two months prior to the inmate being released.⁸⁹ This allows the case manager and parole officer to begin to build a trusting relationship with the inmate during a time when he or she is likely to be the most receptive to help.⁹⁰ This also allows for an assessment as to what programs and treatments are necessary and will be the most beneficial to the inmate once he or she is

85. See BOAR & WATLER, *supra* note 14, at 7 (explaining prisoners are assessed prior to release to determine if they are medium to high risk, as those are the only participants the HRC accepts); HAMILTON, *supra* note 17, at 10 (stating prisoners are screened and assessed at a pre-release facility). *But see* THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 12 (finding some sites identify participants at his or her initial sentencing, others identify during incarceration but prior to release, and still others identify participants after release and when the individual is in the community).

86. See BOAR & WATLER, *supra* note 14, at 7–8; Jennifer L. Skeem & Jennifer Eno Loudon, *Assessment of Evidence on the Quality of the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS)*, CAL. DEP’T OF CORRECTIONS & REHABILITATION 3 (2007), available at http://www.cdcr.ca.gov/adult_research_branch/Research_Documents/COMPAS_Skeem_EnoLouden_Dec_2007.pdf (describing COMPAS and its purpose). See generally THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2 at 11 (discussing how the Second Chance Act emphasizes the usage of validated risk assessment tools such as COMPAS and LSI-R). COMPAS is a risk assessment tool that quantifies and qualifies the likelihood of re-offending. Skeem & Eno Loudon, *supra*. It looks at criminogenic factors such as needs and social factors, personality, cognitions and social isolation, as well as when the offender responds defensively or carelessly. *Id.*

87. See BOAR & WATLER, *supra* note 14, at 7 (finding HRC uses two screening tools to determine eligible participants which are medium- and high-risk offenders).

88. See BOAR & WATLER, *supra* note 14, at 8 (stating the pre-release engagement should happen after selection and one to two months prior to the offenders release); DONALD J. FAROLE, JR., CTR. FOR COURT INNOVATION, THE HARLEM PAROLE REENTRY COURT EVALUATION: IMPLEMENTATION AND PRELIMINARY IMPACTS 13 (2003), available at www.courtinnovation.org/sites/default/files/harlemreentryeval.pdf (discussing HRC has mandatory participation once selected); HAMILTON, *supra* note 17, at 10 (stating selection occurs at one of two pre-release facilities and, once selected, participation is mandatory).

89. BOAR & WATLER, *supra* note 14, at 8.

90. *Id.* (finding that pre-release engagement is when the parole officer can start building a relationship with the parolee and this is the time when the parolee is most open to receiving help).

released.⁹¹ The inmate fills out a pre-release questionnaire that asks about his or her housing situation, work or school experience, and prior drug treatment.⁹² The case manager and parole officer, along with the inmate, then begin to create a plan.⁹³ This can include anything from addressing the specific skills the inmate has and what would be a fitting job for him or her, to determining whether substance abuse treatment, mental health treatment, or anger management is necessary.⁹⁴ The case manager or parole officer can also begin to set up referrals and register the inmate for programs and treatment to begin upon release.⁹⁵

Once released, the six-month reentry program begins.⁹⁶ After initially meeting with his or her parole officer, the parolee reports to an intake meeting.⁹⁷ This meeting consists of the parolee, case manager, parole officer, and other staff completing the risk assessment and finalizing the individualized plan—identifying different stages and goals.⁹⁸ There is no cookie-cutter plan.⁹⁹ The program tailors each plan to the specific parolee based on the needs assessment evaluations and the intake questionnaire.¹⁰⁰ What is important to the parolee is taken into consideration and is included in the focus of the plan if at all possible.¹⁰¹

91. *See id.* at 9 (explaining how this time allows the case manager to get to know the parolee, understand his or her needs and concerns, and also begin to connect him or her to treatment programs).

92. *See id.* at 23–26 (providing a sample “pre-release questionnaire”).

93. *Id.* at 10.

94. *Id.* at 9. *See generally* FAROLE, *supra* note 89, at 40 (stating one of the reentry court’s top priorities is connecting the parolee to the necessary services); Saunders, *supra* note 18 (discussing how the program allows the judges and staff to get to know the parolees more personally, which allows them to better address the individual’s needs with the appropriate programs).

95. *See* BOAR & WATLER, *supra* note 14 (recognizing the parolee can feel very overwhelmed right after release, and by the case manager setting up and enrolling the parolee in the programs to start immediately, he or she will stay focused and occupied).

96. *See id.* at 10 (stating that immediately upon release, the parolee reports to an intake meeting where his or her plan is finalized and the program commences); HAMILTON, *supra* note 17, at 10 (stating the program is designed to be six months, however, it is not uncommon for it to last longer).

97. BOAR & WATLER, *supra* note 14, at 10.

98. *See id.* (reflecting the procedure participants will engage in when beginning the program post-release).

99. *See id.* (“A one size fits all reentry model is not effective.”).

100. *See id.* (recognizing that participants are extremely diverse and individual needs vary greatly from person to person).

101. *See id.* (stating the individual program is tailored around necessary treatment, but also reflects the parolee’s answers on the intake questionnaire and during meetings). If the parolee says “his kids are most motivating, . . . [the plan may] include[] parenting training and family outings.” *Id.*

The HRC offers most programs and treatments in-house; however, community involvement is key to the overall success.¹⁰² Not only does the program utilize different treatment and therapy services in the community, but also overall community acceptance is necessary for a parolee to have a truly successful reentry into society.¹⁰³ The HRC is partnered with the New York State Division of Criminal Justice Service, the New York State Division of Parole, the Center for Employment Opportunities,¹⁰⁴ Palladia,¹⁰⁵ and other local service providers.¹⁰⁶ The partnerships with the community combined with the treatment programs offered through the reentry court, give the participants a diversified pool of services.¹⁰⁷

After the parolee and staff create an individualized plan, execution of that plan commences.¹⁰⁸ The program is divided into two phases.¹⁰⁹ In the first phase, the court has more strict oversight of the parolees, requiring weekly reporting to the parole officer and attendance at bi-weekly hearings before the Administrative Law Judge (“ALJ”).¹¹⁰ The parolee is required to go to his or her treatments and programs and adhere to other agreed upon

102. See BOAR & WATLER, *supra* note 14, at 11 (placing heavy dependence on a “network of community providers”); *Parole Reentry Court*, CTR. FOR COURT INNOVATION, www.courtinnovation.org/project/parole-reentry-court (last visited May 12, 2015) [hereinafter CTR. FOR COURT INNOVATION: *Parole Reentry Court*] (listing the community partners which include the New York Division of Criminal Justice Services, the New York State Division of Parole, the Center for Employment Opportunities, and Palladia).

103. See generally BOAR & WATLER, *supra* note 14, at 11 (stressing the importance of community involvement and how the program invites community leaders to be involved in the process); HAMILTON, *supra* note 17, at 8 (recognizing one of the goals of the program is to address the needs of the community, and one of the six core elements of the program is accountability to the community).

104. See *About*, CTR. FOR EMPLOYMENT OPPORTUNITIES, www.ceoworks.org/about (last visited May 12, 2015). The Center for Employment Opportunities is a resource for people with a criminal record, particularly those in “the most at-risk populations,” which not only gives skill training, but also helps to find short-term and full-time job placement. *Id.*

105. See *Fact Sheet*, PALLADIA (2014), www.palladiainc.org/wp-content/uploads/2014/07/Palladia-Fact-Sheet-June-2014.pdf. Palladia is an organization in which provides behavioral health services, homeless shelters, and even permanent housing to New Yorkers. *Id.*

106. See CTR. FOR COURT INNOVATION: *Parole Reentry Court*, *supra* note 103.

107. See generally BOAR & WATLER, *supra* note 14, at 11 (stating parolees can be enrolled in multiple treatment programs and groups); HAMILTON, *supra* note 17, at 10 (identifying some of the available treatments such as “drug treatment, mental health treatment, and vocational and/or educational training”).

108. See BOAR & WATLER, *supra* note 14, at 9–10 (discussing how the pre-release questionnaire, together with the post-release intake meeting, helps to sculpt the parolee’s individualized program, at which point he or she begins the implementation of that program and the six-month reentry process).

109. HAMILTON, *supra* note 17, at 10 (identifying the two phases of the reentry program).

110. *Id.*

conditions.¹¹¹ During the meetings with the parole officer and ALJ, the parolee reports his or her progress, or mistakes and relapses, if that has occurred.¹¹²

Upon a successful completion of the first phase, the parolee will enter phase two which has more relaxed supervision and requirements.¹¹³ In phase two, the parolee only reports to his or her parole officer every other week and the ALJ once a month.¹¹⁴ Throughout both these phases, the parolee is continually involved in different treatment and programs, which can include drug abuse treatment, mental health treatment, skills training, and GED courses.¹¹⁵ The court also assists the parolee with other administrative services such as obtaining proper identification (state issued ID, birth certificate, social security card),¹¹⁶ initiating the necessary steps to regain parental rights over children put into foster care,¹¹⁷ and paying past debts.¹¹⁸ If the parolee maintains a successful path through the six-month process and adheres to the guidelines of the program, he or she will receive

111. *Id.*

112. *Id.*

113. *See id.* (noting that a successful phase one should last approximately two months). *See generally* THE NATIONAL INSTITUTE OF JUSTICE'S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 13 (describing multiple reentry courts and stating that most have formal phases to the program).

114. HAMILTON, *supra* note 17, at 10 (stating that phase two is where the parolee is expected to secure full-time employment and assume other responsibilities such as paying child support).

115. *See generally* BOAR & WATLER, *supra* note 14, at 15 (stating that at the status hearings, the ALJ will praise and recognize achievements in therapy and treatment or other milestones, such as obtaining a GED); HAMILTON, *supra* note 17, at 10 (discussing how parolees are mandated to attend treatment and therapy for their identified needs).

116. *See generally* BOAR & WATLER, *supra* note 14 (explaining how helping the parolee obtain necessary paperwork, such as identification cards, assists in stabilizing the parolee). In the pre-release paperwork, the questionnaire asks which identifying documents the parolee needs to secure, including social security card, birth certificate, passport, and legal alien registration card. *Id.* at 29.

117. *See* HAMILTON, *supra* note 17, at 6 (stating that the parolee may have lost parental rights while in custody and that the program assists in working towards regaining custody); Saunders, *supra* note 18, at 35 (providing a story of a parolee who lost custody of his child while incarcerated and the court worked with him to try to regain parental rights). *See generally* CHRISTINE LINDQUIST ET AL., NPC RESEARCH, THE NATIONAL INSTITUTE OF JUSTICE'S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS: STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, 16 (2014), *available at* http://npcresearch.com/wp-content/uploads/NIJ_Second_Chance_Act_Year_2_summary_report_0814.pdf [hereinafter STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2] (stating case managers help parolees with family court custody issues).

118. *See* HAMILTON, *supra* note 17, at 4 n.1 (stating most states require parolees, as part of their compliance, to meet their financial responsibilities, which include paying restitution or child support).

a certificate of completion at a graduation ceremony where each individual is recognized and congratulated.¹¹⁹ After graduation, the program transfers the parolee to traditional parole to finish out the remainder of his or her parole sentence.¹²⁰

Much like the drug courts and other problem-solving courts, the reentry court gives graduated sanctions for a relapse or failure to have a successful appearance before the ALJ or parole officer.¹²¹ Each sanction, and when the court will enforce it, is set out at the beginning of the program.¹²² But more importantly, the court must enforce the specific and appropriate sanction, not just threaten it.¹²³ The situation, what the relapse or poor appearance entails, and the circumstances of the parolees personalized plan, help determine what an appropriate sanction will be.¹²⁴ For example, when a parolee fails his first drug test the ALJ may give him a more stringent curfew, or increase the weekly drug treatment classes.¹²⁵ The ALJ does not have to immediately order reincarceration for a parole violation.¹²⁶ For subsequent drug test failures, the ALJ may send the parolee to a residential recovery program.¹²⁷ The main focus is to give the

119. *Id.* at 10 (stating that upon successful completion of phase two, there is a graduation ceremony where the parolee gets a certificate, family and friends are welcome, and the parolee is allowed to speak publicly about his or her journey and success).

120. *Id.*

121. See BOAR & WATLER, *supra* note 14, at 42 (explaining that the reentry court uses graduated sanctions and incentives for achievements and violations); HAMILTON, *supra* note 17 (stating that based on the drug court model, the reentry court seeks to produce a long lasting effect of positive behavior through the use of graduated sanctions); Maruna & LeBel, *supra* note 17, at 92 (stating reentry courts use graduated sanctions similar to drug courts); Travis, *supra* note 73, at 8 (finding the reentry court borrows from the drug courts in many aspects including the usage of graduated sanctions for violations or infractions); REENTRY COURTS PROCESS EVALUATION (PHASE 1), *supra* note 77, at 38 (stating graduated sanctions can include fines, a writing exercise, community service, or jail).

122. FAROLE, *supra* note 89, at 8 (explaining that the successful programs communicate expectations to the parolee, which includes a schedule of sanctions that will be implemented upon violations).

123. See *id.*

124. See generally BOAR & WATLER, *supra* note 14, at 15 (explaining that sanctions should be proportional to the violation and consistently applied); FAROLE, *supra* note 89, at 8, 12 (stating that reentry court planners, as well as community representatives, discuss what are appropriate and effective sanctions and incentives; and also that the sanctions should be relevant to the offender).

125. BOAR & WATLER, *supra* note 14, at 15.

126. See *id.*; FAROLE, *supra* note 89 (recognizing that the reentry staff together with community leaders discuss the graduated sanctions and what the appropriate point will be for revocation). The discussion of graduated sanctions, which only lead to revocation at a certain point, signifies reincarceration is not the appropriate first response to a violation. FAROLE, *supra*.

127. BOAR & WATLER, *supra* note 14, at 15.

parolees the chance to make the changes and learn from their mistakes, and studies show graduated sanctions are more likely to give that result.¹²⁸

On the alternative side, the reentry court, just like drug court, rewards successes.¹²⁹ Throughout the program, the ALJ and the rest of the reentry court staff will make public recognitions of the parolee's positive progression.¹³⁰ The rewards can be anything from applause, permission for weekend leave, to a monetary gift card, or certificate.¹³¹ At the end of the six-month program, the court holds a graduation ceremony for all the parolees who successfully complete the program.¹³²

Not all participants graduate though.¹³³ And the question remains as to whether these courts truly are effective.¹³⁴ There is conflicting data, and the relative infancy of these programs makes it even more difficult to analyze.¹³⁵ One study, and to date the most detailed on the HRC, reveals those who participate in the reentry court are significantly less likely to be reconvicted after being released.¹³⁶ At the same time though, those who participate in the reentry court are significantly more likely to have their parole revoked.¹³⁷ Some of the most head turning statistics are the

128. See FAROLE, *supra* note 89, at 8 (stating contracts between the parolee and the court that outline the graduated sanctions are a characteristic of a successful program).

129. See BOAR & WATLER, *supra* note 14, at 31 (providing a detailed incentive chart for the HRC, which includes verbal congratulations, gift certificates, and a weekend travel pass); FAROLE, *supra* note 89, at 11 (identifying incentives as a core element of the reentry court model); HAMILTON, *supra* note 17, at 8 (stating incentives is one of the six core elements to a reentry court).

130. FAROLE, *supra* note 89, at 39 (finding that parolees value public recognition of their accomplishments); HAMILTON, *supra* note 17, at 9 (stating recognition of accomplishments as a key element of reentry courts, and a characteristic borrowed from the drug courts).

131. BOAR & WATLER, *supra* note 14, at 31 (giving a detailed list of incentives utilized by the HRC).

132. HAMILTON, *supra* note 17, at 10 (stating when a parolee successfully completes the program, which is typically about six months, a formal graduation ceremony is held). The graduation ceremony is public recognition of the parolee's achievements and his or her family and friends are encouraged to attend. *Id.*

133. *Id.* at 24 n.13 (revealing that fifty-four percent of reentry court participants received less than 180 days, indicating those individuals did not successfully complete the program).

134. See *id.* at 11 (stating there is a mix between positive and negative results).

135. See FAROLE, *supra* note 89, at 56 (suggesting additional research should be conducted to better understand the impact of the reentry courts); HAMILTON, *supra* note 17, at iii, 30–31 (stating little is known about the reentry courts operations and effects, and suggesting additional research is necessary in regards to the success rate of parolees with substance abuse history).

136. HAMILTON, *supra* note 17, at 20–21 (finding forty-three percent of reentry court participants were reconvicted within a three year period compared to fifty-two percent of a non-participants control group).

137. See *id.* at 20 (showing a finding of fifty-six percent of reentry participants versus thirty-eight percent of non-participants were revoked within a three-year period). Hamilton explains the

differences between those reentry court participants who are involved in the program for 180 days or more, and those who are involved in the program for 179 days or fewer.¹³⁸ If being in the program for more than 180 days is a strong indicator of the individual graduating, then what are the significant factors or differences between these two groups?¹³⁹ How can the program continue to evolve to produce a higher rate of success, and does a successful evolution include a greater use of therapeutic jurisprudence practices?¹⁴⁰

IV. HARLEM THROUGH A THERAPEUTIC JURISPRUDENCE LENS

Although the reentry courts borrow the drug court model, they do not recognize therapeutic jurisprudence as a basis for the program.¹⁴¹ However, looking at the HRC, we see the ideas of therapeutic

reason for the higher percentage of revocation in reentry court participants is because of the much greater level of supervision and involvement by the case managers and parole officers. *Id.* at 29.

138. *See id.* at 24 (stating a participant who received 180 days or more is a general indication of graduation). Results show that in the three-year period after release, forty-four percent of reentry participants who received 180 days or more were rearrested, compared to sixty-two percent of reentry participants who received less than 180 days. *Id.*

139. *See generally id.* at 26–27 (discussing those who complete the program do statistically better than those who do not complete the program). The study looked at several factors to try to identify indicators of graduations. *Id.* at 27. Some possible predictors of graduation include the parolee being married, having a high school education or GED, and having prior drug treatment. *Id.*

140. *See generally* BOAR & WATLER, *supra* note 14, at 12 (noting the reentry court attempts to create a therapeutic environment for participants); Maruna & LeBel, *supra* note 17, at 106 n.6 (stating the Clinton administration originally recognized that these programs should include a therapeutic process); *Therapeutic Jurisprudence and the Rehabilitative Role of the Criminal Defense Lawyer*, *supra* note 38, at 760 n.81 (noting the reentry court process can start a client on a cognitive and behavior change of course).

141. *See* BOAR & WATLER, *supra* note 14, at 5 (defining evidence-based practices as “the application of empirical research to professional practice”); MICHAEL REMPEL, CTR. FOR COURT INNOVATION, EVIDENCE-BASED STRATEGIES FOR WORKING WITH OFFENDERS 1 (2014), *available* at www.courtinnovation.org/sites/default/files/documents/Evid%20Based%20Strategies.pdf (stating social science research has challenged the idea that nothing works to rehabilitate offenders); WOLF, *supra* note 78, at 8 (explaining the “evidence-based” strategies employed by the reentry courts). *See generally* FAROLE, *supra* note 89, at 11 (recognizing the reentry court has its roots in the drug court, and borrows such practices as intense judicial oversight, graduated sanctions, and rewards); HAMILTON, *supra* note 17 (stating that the reentry court initiative is based on the drug court model). Evidence-based strategies combine the basic principles of rehabilitation with methods geared towards deterrence and procedural justice. REMPEL, *supra*. These include validated screening and assessment tools to determine risks and needs of the offenders, providing treatment in response to those needs, maintain consistent consequences for noncompliance in order to deter, establish fair procedures and treat offenders with respect, and collaborate with not only other criminal justice agencies, but also the community. *Id.* at 1–6.

jurisprudence—voice, validation, and voluntary participation—in each stage of the reentry process.”¹⁴² By acknowledging the benefits a true therapeutic jurisprudence model would give to the reentry courts, and even codifying the practices, the HRC and others could improve their success rates.¹⁴³

Beginning with the initial selection, Harlem, like many other reentry courts, has mandatory participation once the individual is selected.¹⁴⁴ Although this process does not comport with the voluntary participation aspect, those reentry sites that do have voluntary participation have comparatively low enrollment.¹⁴⁵ The voluntary participation, however, does not mean placement in the program must be completely at the parolee’s discretion.¹⁴⁶ Again, it is whether the individual feels coerced.¹⁴⁷ Given the structure of the court and the offered benefits of the program, it is less likely the parolee will feel coerced even though his or her participation is mandatory.¹⁴⁸ Either way, the individual will be on parole, this program is just an alternative (albeit mandatory if selected) to traditional parole.¹⁴⁹ When compared, the parolee in the reentry court gets opportunities and benefits not offered or so readily available in traditional parole.¹⁵⁰ Once selection occurs, the process, in theory, truly conforms to a

142. See LAW, LITERATURE, AND THERAPEUTIC JURISPRUDENCE, *supra* note 19 (detailing the three components Professors Amy Ronner and Bruce Winnick term “the three V’s”); BOAR & WATLER, *supra* note 14, at 8 *passim* (detailing the different phases of the reentry court process).

143. See generally JUDGING IN A THERAPEUTIC KEY, *supra* note 6, at 111 (discussing the benefits and value of incorporating therapeutic jurisprudence practices in judging specifically, but also in codifying the practices); Hayes, *supra* note 46, at 24 (stating the early results of drug courts have shown a break in the cycle of addiction and a reduced rate of recidivism).

144. See FAROLE, *supra* note 89, at 13 (stating once selected, participation in the Harlem reentry is mandatory). See generally BOAR & WATLER, *supra* note 14, at 33 (providing a sample letter to a selected reentry program participant which states enrollment in the program is mandatory); THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 12 (listing the reentry courts evaluated and identifying four as having mandatory participation).

145. REENTRY COURTS PROCESS EVALUATION (PHASE 1), *supra* note 77, at 12 (identifying voluntary participation as one factor that results in low reentry court enrollment).

146. STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra* note 118, at 10 (giving a statement of one participant who at first felt “forced into it[.]” but then he learned of the benefits and was “more inclined to take part”).

147. *Id.*

148. *Id.*

149. HAMILTON, *supra* note 17, at 8 (stating the reentry court initiative provided “additional resources” and an “extra layer of oversight” to the traditional parole system).

150. See FAROLE, *supra* note 89, at 29 (stating the reentry court provides support and additional participation partners which are not available in traditional parole). See generally STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra* note 118, at 10 (providing a quote by a participant which states the structure and consequences of the reentry

therapeutic jurisprudence model.¹⁵¹ Through the intake questionnaire and meetings with the parole officer and case manager during the pre-release phase, the parolee has the opportunity to influence his or her personalized plan to include necessary and important things in his or her life.¹⁵² The parolee participates in most of the program's construction.¹⁵³ Both of these aspects give the parolee "voice" in the process.¹⁵⁴

This is how the program is supposed to work; however, it is not always executed with this precision.¹⁵⁵ In fact, there is evidence the pre-release process is not as detailed nor as timely as envisioned and outlined in the program's structure.¹⁵⁶ Because this time period is so crucial to the parolee and his or her potential success, the court must place more emphasis on fully executing this phase.¹⁵⁷ It is essential to make sure to connect the soon-to-be parolee with his or her case manager at least one, but optimally two months prior to the scheduled release.¹⁵⁸ As outlined by the HRC, this is the ideal schedule for the pre-release phase.¹⁵⁹ It ensures the court identifies the particular needs of the individual parolee and the specific issues that person is, and will be, dealing with once released.¹⁶⁰ Probably the most important part of this pre-release phase is not just to identify the needs of the parolee, but also to begin the arrangements for treatment programs, education or skills training, and potential

court were the benefits he or she needed).

151. See generally FAROLE, *supra* note 89, at 11 (giving an overview of the Harlem reentry program and the different core elements, with the basic ideas of the drug court model). The core elements outlined include offender involvement, treatment and training, active communication between the court staff and offender, and graduated sanctions and rewards. *Id.*

152. See BOAR & WATLER, *supra* note 14, at 23–26 (providing a sample intake questionnaire that each participant completes at the beginning stages of the program). This questionnaire includes questions such as "[w]ho are the important people in your life?," and "[w]hat are your current work goals?" *Id.* This questionnaire, along with the face-to-face meetings between the parolee and case manager, help shape and finalize the parolee's individualized plan. *Id.* at 10.

153. *Id.* at 9–10 (detailing the involvement of the parolee during the pre-release phase and the construction of the plan).

154. See *supra* notes 34–38 and accompanying text.

155. See FAROLE, *supra* note 89, at 24–33 (stating several problems with implementation including the planned two month pre-release engagement is typically only a few weeks, and difficulty in identifying eligible participants).

156. *Id.*

157. See *supra* note 65 and accompanying text.

158. BOAR & WATLER, *supra* note 14, at 8 (stating it is important to have enough time to identify the parolees need and typically thirty to sixty days are necessary).

159. *Id.* at 8–9.

160. *Id.* (finding the case manager or parole officer should use this time to begin connecting the parolee to specific treatment programs, skills training, and housing to alleviate some of the stress and uneasiness the parolee will experience when released).

employment.¹⁶¹

Applying more emphasis on this aspect of the program will not only give the parolee a more firm structure, but it will also give the parolee some “validation” of his or her worth.¹⁶² So often, the incarceration and parole process is completely impersonal.¹⁶³ The incarcerated or paroled individual typically feels like just another number in the system.¹⁶⁴ Addressing the needs and interacting with an individual makes a person feel like the judicial system actually does care about his or her success.¹⁶⁵ And, when a person feels like the ALJ, parole officer, or case manager listens to his or her “voice” and actually considers his or her situation, there is a greater chance of compliance with the terms of the program.¹⁶⁶ This combination of “voice,” with the authority figures respecting such, gives the parolee a sense of worth, or “validation” of his or her worth.¹⁶⁷

Additionally, as has been suggested, the court must place greater emphasis on identifying and establishing the residency of the parolee.¹⁶⁸ A basic foundation consisting of a stable place to live would alleviate stress from the parolee, and also give the parolee’s case manager a better understanding of the parolee’s day-to-day surroundings.¹⁶⁹ Palladia is one of the many partners of the HRC.¹⁷⁰ It offers housing for the homeless

161. *Id.*

162. *See id.*; *see also supra* notes 34–37, 39 and accompanying text.

163. *See generally* FAROLE, *supra* note 89, at 5 (stating parole officers spend a majority of their time giving drug testing and verifying curfews rather than focusing on treatment and rehabilitation). The individuals on traditional parole typically have “less than two, fifteen-minute meetings with . . . [his or her] parole officers each month.” *Id.*

164. *See id.*

165. *See generally* STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra* note 118, at 12 (providing several statements of participants concerning the personal feel of the reentry court). One participant recounts the judge knew him personally and remembered him by name. *Id.* He continues by saying “[h]e knows you’re going through some stuff. He doesn’t look down on you like you’re another drug addict.” *Id.*

166. *See id.* at 10–11 (finding the reentry court system affected the participants willingness to change); *supra* Part II.a. The participants described the reentry court staff with words such as “helpful,” “caring,” and “fair.” STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra*.

167. *See supra* Part II.a; *see also* STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra* note 118, at 12 (giving several statements by participants discussing the personal feel and positive feedback from the reentry court judges).

168. FAROLE, *supra* note 89, at 41–42 (stating housing is the single most difficult problem to deal with and suggesting HRC seek additional partners in the community to address this concern).

169. *See generally* BOAR & WATLER, *supra* note 14 (recommending the court stabilize the housing of the parolee prior to release); FAROLE, *supra* note 89, at 41–42 (stating housing is the “single most difficult problem” parolees face once released).

170. CTR. FOR COURT INNOVATION: *Parole Reentry Court*, *supra* note 103.

including participants in the reentry program.¹⁷¹ The HRC should seek out additional partnerships that are similar to Palladia in that respect.¹⁷² It is naïve to think all reentry participants will need to, or agree to, live in that type of housing, and when that is the case, the permanent residency identified by the parolee should be inspected and approved.¹⁷³ In either situation, if the court takes a further interest in the housing situation of the parolee, it would only increase the parolee's sense of worth, adding to the "validation" aspect and increasing the likelihood of compliance while decreasing the rate of recidivism.¹⁷⁴

The post-release phase is when therapeutic aspects shine through in the reentry programs.¹⁷⁵ Immediately upon release, the parolee meets with the reentry team to finalize his or her program.¹⁷⁶ The involvement of the parolee in decision making and giving input not only satisfies the "voice" aspect of therapeutic jurisprudence, but also the "validation" aspect, as seen with the pre-release parolee involvement.¹⁷⁷ The parolee sees the program is individualized to his or her situation and needs.¹⁷⁸ The frequent court appearances before the ALJ and the weekly visit with the parole officer or case manager should also be, and typically are, more than just a quick status update meeting.¹⁷⁹ The ALJ, parole officer, and case manager all

171. See PALLADIA, *supra* note 106.

172. See FAROLE, *supra* note 89, at 42 (suggesting the HRC should seek additional housing partners and options for the parolees); PALLADIA, *supra* note 106 (listing all the available services offered by Palladia, including housing—both temporary shelters and permanent residences).

173. See generally ELIZABETH GAYNES, ANNIE E. CASEY FOUNDATION, REENTRY: HELPING FORMER PRISONERS RETURN TO COMMUNITIES 40 (2005), available at <http://www.aecf.org/m/resourcedoc/aecf-ReentryHelpingFormerPrisoners-2005.pdf> (stating that having the parolee live with a family member or a spouse is the first option for the reentry courts).

174. See BOAR & WATLER, *supra* note 14 (recognizing that finding housing is one of the first priorities after a parolee is released); FAROLE, *supra* note 89, at vii (stating one of the biggest barriers faced by parolees is finding suitable housing); STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra* note 118, at 19 (finding participants stated the need which is most often not met is housing).

175. See generally BOAR & WATLER, *supra* note 14, at 12–16 (detailing the hearings before the ALJ and the participation opportunities given to the parolee); HAMILTON, *supra* note 17, at 8 (outlining the core aspects to the reentry court, which focus on parolee interaction, personal support and rehabilitation).

176. BOAR & WATLER, *supra* note 14, at 10 (stating upon release, there is an intake meeting where the parolee and his or her parole officer and case manager complete the risk and needs assessment and then collectively finalize the personalized plan for the parolee).

177. *Id.* (stating the parolee provides input and is given the opportunity to say what is most important and worrisome to him or her); see *supra* notes 34–38 and accompanying text.

178. See BOAR & WATLER, *supra* note 14, at 10 (detailing how the parolee participates in the development of his or her program).

179. FAROLE, *supra* note 89, at 35–36 (explaining that in the typical hearing, direct interaction between the parolee and ALJ constituted eighty-nine percent of the total time).

interact with the parolee.¹⁸⁰ They ask questions and show a genuine interest in the well-being and progress of the individual.¹⁸¹ This constantly reinforces the “validation” aspect.¹⁸² These interactions provide a great opportunity for the reentry staff to treat the parolee with respect, ask for his or her input and concerns, and give encouragement.¹⁸³ All are practices found within a therapeutic jurisprudence model, which would make the parolee feel like someone believes in him or her, that he or she deserves a better life, and a better life is possible.¹⁸⁴

The treatment programs, skills training, and other assistance provided by the reentry court all encompass a general therapeutic aspect.¹⁸⁵ They all attempt to uncover and address the underlying issues that led to the initial criminal behavior.¹⁸⁶ This quintessential core is crucial to the therapeutic jurisprudence movement.¹⁸⁷ Understanding the individual, surfacing the source of the problems, and attempting to redress those issues all seek to make the individual come out of the process a mentally stronger and more productive person.¹⁸⁸ The only addition to putting this into the reentry context is adding the hope that it will also produce a more law-abiding citizen.¹⁸⁹

Coupled with the treatment and training are sanctions and rewards.¹⁹⁰ Also an aspect of the drug courts, these components allow the court to

180. *Id.*

181. *Id.*

182. *Id.* (stating that personalized interaction makes the parolee feel like the ALJ cares about his or her progress); *supra* notes 34–37, 39 and accompanying text.

183. FAROLE, *supra* note 89, at 36 (explaining the personal interaction between the ALJ, reentry staff, and the parolee which include direct conversation, eye contact, and even physical contact in a handshake or pat on the back).

184. *See supra* Part II.a.

185. *See generally* Maruna & LeBel, *supra* note 17, at 96 (stating therapy is designed to help the participant internalize healthier, moral values); BOAR & WATLER, *supra* note 14, at 10 (stating the treatment programs are designed to change thoughts and attitudes that lead to criminality to healthier behavioral patterns); HAMILTON, *supra* note 17, at 1 (listing the general social services available through the reentry court).

186. *See generally* Hora, *supra* note 48, at 463 (stating the drug courts look at curing the underlying problem, or the addiction); BOAR & WATLER, *supra* note 14, at 10–11 (stating therapy looks to identify the thoughts and attitudes that lead to the criminal behavior); HAMILTON, *supra* note 17, at 3 (giving a brief summary of the reentry court which states that the goal of the program is to stabilize and reintegrate the parolee back into society).

187. *See discussion supra* Part II.a.

188. *See* BOAR & WATLER, *supra* note 14, at 10–11; *see also* discussion *supra* Part II.a.

189. *See* BOAR & WATLER, *supra* note 14, at 4 (stating the reentry court’s focus is reducing recidivism); HAMILTON, *supra* note 17, at 2 (acknowledging if the underlying risk factors are not addressed, recidivism and reincarceration will likely occur).

190. HAMILTON, *supra* note 17, at 7.

gradually reward or reprimand the parolee.¹⁹¹ While the beneficial aspect of the rewards is apparent, the benefits provided from the parsimonious sanctions are also present and important.¹⁹² Typical sanctions include a stricter curfew or an increase in treatment sessions, but some of the more beneficial sanctions include the occasional writing exercises ordered by the ALJ when the parolee has a relapse or poor progress report.¹⁹³ There is little analysis or detail on writing exercise sanctions in the current literature on reentry courts.¹⁹⁴ However, utilizing this practice makes the parolee think about what caused the relapse or misstep and—hopefully—assume some personal accountability for the occurrence.¹⁹⁵ Additionally, this is a good way for the parolee to evaluate what happened and think about ways in which he or she can prevent it from happening again.¹⁹⁶ By incorporating more sanctions that focus on the reflection and outward admittance of fault, the reentry court could further push the parolee into accepting responsibility for his or her actions.¹⁹⁷ All of these steps relate to the “validation” aspect of therapeutic jurisprudence by continuing to give the parolee that sense of self-worth.¹⁹⁸

The other sanctions provide therapeutic benefits as well, as they are distributed sparingly and in lieu of immediate revocation of parole.¹⁹⁹ This gives the parolee the opportunity to reflect on the relapse and continue to

191. *Id.* at 8.

192. *Id.* at 11 (finding sanctions are beneficial because they help avoid immediate revocation and attempt to get the parolee back to compliant behavior).

193. FAROLE, *supra* note 89, at 18 (listing some of the graduated and parsimonious sanctions); HAMILTON, *supra* note 17, at 11 (stating sanctions typically begin with increased court appearances, but other sanctions can be utilized); THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 16 (listing sanctions which include: restrictive monitoring, writing assignments, and jail time). *See generally* Vance, *supra* note 11 (stating the Massachusetts recovery court uses writing assignments on why the individual relapsed as a sanction).

194. THE NATIONAL INSTITUTE OF JUSTICE’S EVALUATION OF SECOND CHANCE ACT ADULT REENTRY COURTS, *supra* note 2, at 16 (mentioning writing assignments as a sanction some ALJs issue).

195. *See* Erin McGrath, *Reentry Courts: Providing a Second Chance for Incarcerated Mothers and Their Children*, 50 FAM. CT. REV. 113, 121 (2012) (explaining a writing assignment gives the parolee an opportunity to reflect on the causes of his or her relapse).

196. *See generally id.* (adding that these types of sanctions result in fewer revocations).

197. *See id.* By writing out and actually acknowledging the issues that led to the relapse, the parolee will take more accountability for his or her action. *Id.*

198. *See* discussion *supra* Part II.a.

199. *See* FAROLE, *supra* note 89, at 18 (stating graduated sanctions are used as an alternative to revocation in hopes of deterring reoffending); HAMILTON, *supra* note 17, at 11 (finding parsimonious sanctions are issued instead of immediate revocation to attempt to get the parolee to adhere to compliant behavior).

work on progressing.²⁰⁰ However, research shows a staggeringly high disparity in revocation rates between reentry and non-reentry participants.²⁰¹ Although this may seem like conflicting data, there seems to be a completely logical answer as to the cause.²⁰² The “supervisory effect” which many attribute to this data comes into question.²⁰³ Due to the structure of the program, the parolees have stricter supervision than those on standard parole, and therefore have a greater chance of the parole officer or case manager discovering an infraction.²⁰⁴ The court should take this into account when handing down a revocation by having this sanction as the last resort in the reentry program.²⁰⁵ And, although we cannot discount this statistic, the “supervisory effect” must be understood to be partially—if not fully—the reasoning behind these skewed numbers.²⁰⁶

Finally, at the successful completion of the program, the court holds a graduation ceremony to publicly acknowledge the parolee’s

200. See Vance, *supra* note 11 (“the sanctioning process ‘encourages the participant to reflect on his or her mistake and correct it, without irreversibly interrupting progress toward the eventual goal of reentry success’”). See generally STAFF AND CLIENT PERSPECTIVES ON REENTRY COURTS FROM YEAR 2, *supra* note 118, at 15 (finding most participants felt the sanctions helped them succeed). One participant stated receiving a sanction of jail time and ninety meetings in ninety days was “the best thing they could do to [him].” *Id.*

201. HAMILTON, *supra* note 17, at 20 (finding at year three, fifty-six percent of reentry participants had their parole revoked while only thirty-eight percent of non-reentry participants were revoked).

202. *Id.* at 29 (stating the high rate of revocation can be attributed to what is known as a “supervision effect”). Because parolees in the reentry program are subjected to much stricter supervision by a judge, parole officer and case manager, there is more opportunity for a slip-up to be noticed and addressed. *Id.* Also, the community programs and treatments groups tend to stay in close communication with the supervising officers and can easily contact him or her when the parolee fails to attend treatment or in some way is non-compliant with the program. *Id.*

203. See generally *id.* at 32 (discussing the difficulty in evaluating the “supervisory effect” due to the fact that information on the type and reason for revocation is rarely collect, some parolees fight the revocation and this can drag out the process, and some parolees even abscond when his or her parolee is revoked resulting in further delays of processing the actual revocation and reporting it).

204. See FAROLE, *supra* note 89, at 5 (explaining due to decreases in funding have resulted in large caseloads for parole officers); GAYNES, *supra* note 174, at 33 (stating parole officers tend to have large caseloads and are unable to focus on rehabilitative efforts); HAMILTON, *supra* note 17, at 29 (finding the closer supervision of parolees provides the parole officer more opportunity to “catch” the parolee committing a violation).

205. See generally HAMILTON, *supra* note 17, at 33 (stating other jurisdictions should be aware of the “supervisory effect” and use alternative sanctions in lieu of revocation for technical violations).

206. *Id.* at 29–30 (explaining service providers and parole officers have a closer relationship in the reentry court programs and so information about a parolee travels quicker which results in more violations and therefore more revocations).

achievement.²⁰⁷ This exemplifies “validation” for the parolee because it gives the individual a concrete, actual event, which solidifies his or her successful acclamation back into society.²⁰⁸ The parolee sees the fruits of his or her efforts come to fruition in a successful ending that gives a stronger platform to create a new beginning.²⁰⁹

V. CONCLUSION

The current reentry courts across the nation show success in the early years of operation.²¹⁰ These courts have slowly gained recognition in their benefits to released offenders; however, with small adjustments and the acknowledgment and incorporation of therapeutic jurisprudence ideas, the success could be even greater.²¹¹ Hopefully, like the drug courts, this new problem solving court will continue to gain nationwide exposure and result in reentry courts in all jurisdictions.²¹² Until we, as a nation, address the issues and behaviors resulting in criminal behavior, and deal with them in a caring fashion, what we send in the prison doors is what will continue to come out the other end.²¹³

207. FAROLE, *supra* note 89, at 19; HAMILTON, *supra* note 17, at 9–10.

208. See FAROLE, *supra* note 89, at 39 (finding public acknowledgement of the participant’s success is gratifying); see also *supra* notes 34–37, 39 and accompanying text. By the ALJ and other reentry court staff recognizing the parolee’s hard work and successful completion of the program, the parolee receives the validation that his or her life is meaningful and the ALJ and other staff truly care. FAROLE, *supra*.

209. See FAROLE, *supra* note 89, at 39.

210. *Id.*, at 70 (finding twenty-two percent of reentry court participants had new convictions after one year compared to thirty percent of non-reentry court participants on standard parole); HAMILTON, *supra* note 17, at 25 (showing forty-four percent of reentry court participants who completed the program were rearrested within three years of release compared to fifty-one percent of non-reentry court participants on standard parole).

211. HAMILTON, *supra* note 17, at iii (stating at the time of publication in March of 2010, there were only two dozen reentry courts operating nationwide); see also discussion *supra* Part IV.

212. See generally *supra* note 42 and accompanying text (suggested AE parenthetical: noting that therapeutic practices are effective and can be applied in many different settings throughout the legal process).

213. See generally *supra* notes 3, 9 and accompanying text (suggested AE parenthetical: describing the revolving door phenomenon in the criminal justice system as the continued pattern of criminals to be convicted of a crime, placed in jail, and then to commit another crime upon release, ending up back in jail).