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Recovery-Oriented Justice Initiatives & The Pivotal Role of the Prosecutor

The crisis created by the COVID-19 pandemic is not solely concentrated in the public health sphere. The isolation and economic devastation of COVID are further fueling an already existing addiction crisis and simultaneously creating adverse conditions across the justice system as well. (NCSL, 2020). As lives lost to addiction continue to rise, there is a growing awareness that we must improve our responses across both public health and criminal justice domains.

Despite the current dire situation, there are reasons for optimism and some silver linings have emerged. Over the past several years, there have been explosive advances in the science surrounding addiction and recovery. The 2016 groundbreaking report on “Facing Addiction in America: The Surgeon General’s Report on Alcohol, Drugs and Health” (USDHHS, 2016) highlighted the most recent science and best practices across the entire spectrum, from prevention through to recovery support.

While the chronic nature of addiction can be analogized to other chronic conditions such as hypertension and diabetes, this should not be taken as grounds for pessimism. In fact, research reveals that like other chronic conditions, addiction is treatable and the earlier the intervention, the better the prognosis with an estimated 57% of those with a lifetime drug and alcohol dependence achieving stable recovery (Sheedy and Whitter, 2009). This has generated a huge population as living evidence of recovery.

In a representative population sample of 39,809 adults from across the US, Kelly et al (2017) reported that 9.1% of respondents reported that they had resolved an alcohol or other drug problem, with 46.1% having done so without any engagement with specialist help or treatment. Of the 53.9% who had sought help, only around half (27.6%) had used professionally supported services, with the most common forms of help used being mutual aid groups (such as Alcoholics Anonymous and Narcotics Anonymous) and peer-based recovery support services.

Given the correlation between substance use and offending, the emergence of recovery-oriented policies and practices have the potential to deliver enormous benefits across the entire justice system. Research confirms the criminal justice system can serve as the platform to initiate behavior change, to support treatment retention, to improve rates of remission, and to decrease relapse and re-arrest over the long-term (Kelly, Finney and Moos, 2005). Through incorporation of such strategies, the leverage of the justice system can be used not only to hold offenders accountable, but to provide the scaffolding necessary to make and sustain positive and lasting changes in their lives. Bridging the gap between public health and public safety concerns, “**Recovery-Oriented Justice Initiatives**” (ROJI), offer innovative ways to reduce recidivism while at the same time build resiliency.

The paradigm shifts in the recovery field have coincided with recent efforts to reform the criminal justice system. From diversion alternatives at arrest to tailoring re-entry efforts, there have been tremendous strides in moving away from the get-tough policies of the 1990's. As with the recovery advances, the focus is turning more toward earlier identification of problems and connection with supportive and positive peers and mentors who can provide the social support that is critical to maintaining behavioral change. This is part of a larger transition to a strengths-based approach in justice that is exemplified in the restorative justice movement, positive criminology, therapeutic jurisprudence, and the desistance movement. All of them are based on a community-focused, hope-based approaches to building long-term and collective wellbeing and all share elements in common with recovery – they are all socially focused, future-oriented and predicated on building strengths to overcome adversity.

Research has also confirmed that there are many parallels between recovery from addiction and reduced recidivism (Best, Irving and Albertson, 2015). Very often, the roads to recovery and to desistance require changes not only in the individual's behavior, but also in the peers, places, and activities that surround their lives. There is growing recognition that focusing exclusively on risks and deficits is not enough. Research has confirmed that for long-term behavior change (the holy grail of both recovery and desistance), there must be an emphasis on the identification and cultivation of assets and strengths (White and Cloud, 2008).

Key principles of the emerging recovery literature center on the concepts of recovery capital. This refers to the sum of resources that an individual can draw upon to support and enhance their recovery wellbeing, and has been categorized into three areas (Best & Laudet, 2010): (1) Personal recovery capital – the internal qualities and strengths that are needed such as coping and resilience skills (2) Social recovery capital – the positive networks the individual can draw upon and feels a sense of commitment and belonging to (3) Community recovery capital – the access to recovery communities and more broadly to resources in the community such as reasonable housing, education, and job opportunities.

The identification and cultivation of recovery capital is instrumental in shaping the intensity and duration of support needed to initiate and sustain recovery, as recovery is widely recognized as a personalized and individual journey of growth (White, 2009). Another critical element of this emerging work is the importance of connections with positive social and community activities. Concepts such as Asset Based Community Development (to identify the assets that exist in the community; Kretzmann and McKnight, 1993) and Assertive Linkage (to assist individuals in engaging with such assets; Manning et al, 2012) to train family members in supporting the active engagement of their person in prison with positive social activities and groups. What this means is that there is a need to identify resources that can provide meaningful activities surrounded by positive and prosocial groups; and that for people to access such groups often requires considerable support and encouragement. Best (2019) has argued that, in order to build the key personal recovery capital resources (such as self-esteem, coping skills and resilience), many individuals will require the 'scaffolding' of social and community capital resources, and this model is predicated on supporting access to the resources that will support this process of change. So while only the individual can recover, they cannot do it alone, particularly in those early stages.

This emerging research around recovery-oriented justice policies is a critical component in reducing both relapse and recidivism, yet still relatively unknown to those in the justice system.

The stakeholders in the criminal justice system are aware of the problems that drugs and alcohol pose in society and the challenges they can pose for the justice system, as they deal with them daily. It is now time to focus on the solutions. While these topics are rarely, if ever, covered in law school, the current addiction crisis has demonstrated the urgent need to raise awareness within the justice system about the unique leverage of that can be utilized to initiate and sustain long-term behavior change.

The concept of ROJI has enormous potential with the decision-makers, especially prosecutors. The role of the prosecutor is arguably one of the most powerful in the entire justice system. As gatekeepers to the system, prosecutors have the untapped potential to identify and respond to substance use issues at the earliest decision point in the system. Prosecutors make the critical initial charging decisions that often determine the outcome of cases. Historically, these decisions have been guided by risk and other criminogenic factors, with little if any consideration of strengths and assets. Moving forward, it is important that these decisions are supported by the emerging evidence base around ROJI, and that whatever that decision is, there are recovery-oriented options available within and outside the justice settings.

Prosecutors are also community leaders. They can raise awareness and galvanize support for recovery-oriented justice principles across the justice continuum. Prosecutors are uniquely situated to identify and collaborate with key community partners who would be able to provide community treatment and support. In sum, prosecutors have a great, yet untapped, potential to contribute to the process of diverting substance-involved offenders to addiction treatment and recovery pathways, reducing the burden on the justice system and initiating pathways to wellbeing for individuals at a key life transition point. Yet at the moment we are relying on their intuitive knowledge or opportunistic awareness, and we need to do much more to increase knowledge and awareness of the recovery model in this population.

We know more than ever about addiction and recovery. Addiction is not only preventable, but as with other disorders, the earlier the intervention, the better the prognosis. Both recovery from addiction and reduced reoffending involve the need to change people, places and things within one's life and community. There is growing recognition that to maintain behavior change over the long-term, the concept of recovery capital must be recognized on the individual, societal and community level. Given the prevalence of substance use disorders within this population, and the parallels between recovery from addiction and desistance from offending, there is a critical need to bring the research and these practices to the front lines.

We stand at a pivotal moment in time. The current conversation around criminal justice reform is often centered around second chances and re-entry practices from the back end of the system, yet as the recovery research has proven, the earlier we intervene, the better the prognosis. The growing evidence base around ROJI can and must be incorporated across the entire justice system. From diversion decisions to re-entry planning, the ROJI approach offers an unprecedented opportunity to incorporate policies and practices that are strength-based and research-driven. They offer great hope at every interception of the justice system and will not only reduce recidivism and save millions of dollars in unnecessary system costs, but most importantly it will transform lives.

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