

## CRACKS IN THE PENAL HARM MOVEMENT: EVIDENCE FROM THE FIELD\*

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### **Research Summary**

*For more than three decades, the penal harm movement, which involves “get tough” ideology and policies, has held sway over U.S. corrections. Scholars have justifiably detailed and decried this movement, but in so doing, they have also inadvertently contributed to the view that a punitive worldview is hegemonic. In contrast, we detail four major “cracks” in the penal harm movement’s dominance: the persistence of rehabilitative public attitudes, the emergence of second thoughts about the wisdom of harsh sanctions, the implementation of progressive programs, and the increasing legitimacy of the principles of effective intervention for guiding correctional practices.*

### **Policy Implications**

*Taken together, these “cracks” comprise evidence that ideological space and political will exist to fight the penal harm movement and to map out a more efficacious and progressive response to crime. Because of the persistence of social welfare sentiments and growing challenges to the legitimacy of “get tough” policies, the potential to continue, if not expand, this countermovement is present. Taking advantage of this opportunity, however, will require forfeiting the belief that there is no escape from a punitive future and undertaking systematic efforts to devise correctional strategies that are based on solid science, improve offenders’ lives, and protect public safety.*

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Over the past three decades, a well-documented “penal harm” movement has developed—to use Todd Clear’s (1994:xiv) poignant descriptive label. This movement has trumpeted a “get tough” ideology that has legitimated the infliction of pain on offenders through mass incarceration and tight surveillance in the community. In this era, we have witnessed a transformation in language in which notions of treatment and corrections have been replaced with such phrases as “supermax prisons,” “prison overcrowding,” “three-strikes-and-you’re out,” “boot camps,” “chain gangs,” “intensive supervision,” and “community control.”

However, more than a new lexicon is involved. Since the early 1970s, the numbers under correctional surveillance have increased seven-fold, with daily counts reaching more than 2.3 million people behind bars and nearly 5 million people on probation or parole (Harrison and Beck, 2006; Sabol, Couture, and Harrison, 2007). De Parle (2007:33) refers to this development as “the American prison nightmare.” It has been estimated that 1 in every 100 adults is behind bars, with this statistic climbing to 1 in every 9 African-American men ages 20 to 34 years (Warren, 2008). The epitome of penal harm is the supermax prison. This institution functions as a “waste management prison,” observes Simon (2007:153), in that it “uses its architectural and technological capacities not to transform the individual but to contain his toxic behavior properties.” These facilities increased in the 1990s, finding their way into as many as 42 states; it is estimated that upward of 40,000 inmates are in administrative segregated housing of some sort (Abramsky, 2007; Briggs, Sundt, and Castellano, 2003). Research suggests that these living arrangements can contribute to mental health problems (Haney, 2003; see also Irwin, 2005).

Studies also indicate that mass imprisonment is having untoward collateral consequences, diminishing offenders’ bonds to families, undermining future employment, and contributing to community disorganization and crime (Clear, 2007; Mauer and Chesney-Lind, 2002; Pattillo, Weiman, and Western, 2004). Corrections undermines the capacity of government to serve other needs of its citizens. It consumes 1 in every 15 dollars in state general funds; the total bill is \$49 billion annually (Warren, 2008). Furthermore, beyond continued restrictions on voting (Manza and Uggen, 2006), legislatures across the nation have increased “invisible punishments” on offenders by limiting their access to an array of government benefits (e.g., housing, food stamps, and college loans), certain occupations, and drivers’ licenses (Travis, 2002). Indeed, punitive thinking has become so ingrained in the nation’s “sensibilities” that these developments have acquired a disquieting banality (Tonry, 2004).

Notably, scholars have been diligent in detailing the enormity, persistence, sources, and deleterious effects of this punitive campaign (see, e.g.,

Beckett, 1997; Currie, 1985, 1998; Garland, 2001; Gottschalk, 2006; Irwin and Austin, 1994; Lynch, 2007; Pattillo et al., 2004; Simon, 2007; Tonry, 2004; Wacquant, 2001; Whitman, 2003). Taken together, their works have been invaluable in challenging the wisdom of the “get tough” rhetoric and policies expounded by elected officials of virtually all political orientations. There is a risk, however, that scholars’ critical commentaries—however true—can have the ironic, unanticipated consequence of reinforcing the hegemony of the penal harm movement (see Matthews, 2005). In assessing the policy elephant in the living room—so to speak—they treat its presence as virtually inevitable and its removal as impossible.

Of course, these writings occasionally contain glimmers of hope (see, e.g., Simon, 2007) and examples of alternative policy initiatives (see, e.g., Currie, 1998; Jacobson, 2005). Nevertheless, across the many books and essays on this subject, these discussions are dwarfed by descriptions and analyses of penal harm. Indeed, the very nature of their intellectual project—to document the “American furies” that have resulted in an “age of mass imprisonment” (Abramsky, 2007)—necessarily leads them to give short shrift to contemporaneous policy developments of a more progressive nature.

However, despite the wildly punitive shift that has occurred in U.S. corrections, ideological and policy space exists to bring about alternative initiatives that emphasize social welfare and challenge the effectiveness of inflicting pain on offenders. This was manifested most recently in New Jersey’s decision to eliminate the death penalty, but it can be observed in numerous other examples across the nation (State of New Jersey, Office of the Governor, 2007). Opportunities for “doing good” rather than for “doing harm” exist because the correctional enterprise is extensively decentralized—by states, by counties, by towns, and by cities. Those with a different vision of corrections can, and do, make a difference.

In short, we propose that several important “cracks” have developed in the penal harm movement. By a “crack,” we mean cultural beliefs, correctional knowledge, and policy shifts that are progressive in orientation. These “cracks” are sensibilities (Tonry, 2004), or ways of thinking about crime, and initiatives that reflect a more optimistic view of offenders and of their treatment by the state. Especially in the area of policy, we recognize that some progressive proposals might not come to fruition. Those proposals that do become policy may be corrupted to serve punitive goals or may be watered down so that their effects are more symbolic than substantive (see Cullen and Gilbert, 1982; Platt, 1969; Rothman, 1980). Furthermore, we cannot supply finely calibrated data to show that punishment levels are in decline or will do so in the immediate future. Still, the key observation is that, at this juncture, a variety of developments seem to

have occurred that signal a possible weakening of the penal harm paradigm.

In this context, we attempt to document four important fissures that reveal that punitive thinking and policies are not hegemonic and beyond challenge. First, based on opinion surveys, we show that the American public is open to a range of policy initiatives with regard to crime control. Second, we review policy developments that represent a retreat from punishment policies that have failed to achieve their promise. Third, we consider developments that emphasize the rehabilitation rather than the punishment of offenders. Finally, we explore how the “principles of effective intervention” are providing a salient paradigm that combats the notion that offenders are “super predators” beyond redemption and worthy only of lengthy incarceration (DiIulio, 1995).

### **Crack #1: The Myth of the Punitive Public**

Voluminous literature shows that the public in the United States is punitive. Most people express support for capital punishment, harsher courts, and the use of prison as a central response to crime (for reviews, see Cullen, Fisher, and Applegate, 2000; Cullen et al., 2008; Roberts and Stalans, 2000; Unnever, Cullen, and Jonson, 2008b). These findings, however, should not be used to portray U.S. citizens as constituting a rigidly “punitive public.” This conclusion mistakenly nourishes the idea that the penal harm movement is a mere expression of the public will—a case of democracy at work or of “penal populism” (Cullen et al., 2000; Cullen et al., 2008; see also Hutton, 2005). In turn, it lends credence to the view that progressive responses to crime face the dismal prospect of having to overcome insurmountable opposition from the nation’s electorate.

In fact, the notion that the public is exclusively punitive is a “myth.” Again, an ample reservoir of punitive sentiments exists in the United States. These sentiments are real and can be incited to support “getting tough” with offenders. Even so, this punitive worldview is not hegemonic. In two ways, its grasp on the public’s criminological imagination is slippery (see also Hutton, 2005).

First, research suggests that many traditional opinion polls capture only global attitudes—the first-impulse views that respondents have when asked what to do about crime (e.g., do you support the death penalty for convicted murderers?). These attitudes tend to be punitive. However, when focus groups or more sophisticated survey questions are used that probe attitudes more deeply, the allegiance to punitive crime-control options is attenuated. For example, upward of 70% of respondents say that they favor the death penalty when given a “yes” or “no” choice. However, when asked whether they favor capital punishment as opposed to the

option of life in prison without the possibility of parole, support for the death penalty is split evenly. If restitution to victims is added to the “no parole” option, then most people now select this sanction. This finding has been demonstrated repeatedly (Cullen et al., 2008) and is not idiosyncratic. Thus, although many people endorse punishing crimes with imprisonment, research shows that they are willing to consider community sanctions, especially for nonviolent offenders (Cullen et al., 2000). Polls also reveal that support for three-strikes laws is strong. Still, when given a concrete case in which an offender has committed three crimes and asked whether they would sentence this person to life in prison, few respondents select this option (Turner, Cullen, Sundt, and Applegate, 1997).

Second and perhaps more consequential, 25 years of evidence shows that the U.S. public strongly endorses the correctional goal of rehabilitating offenders (Cullen et al., 2000). Support for rehabilitation is especially strong for juvenile offenders and youths at risk for crime (Cullen, Vose, Jonson, and Unnever, 2007; Nagin, Piquero, Scott, and Steinberg, 2006). Even so, correcting offenders is embraced for adults as well. In a 2001 national survey, 55% of U.S. citizens stated that rehabilitation should be the “main emphasis” of prisons. Furthermore, 88% agreed with the item, “It is important to try to rehabilitate adults who have committed crimes and are now in the correctional system” (Cullen, Pealer, Fisher, Applegate, and Santana, 2002:136–137).

These findings are salient because they illuminate that ample ideological space exists in which more progressive policies might take hold and grow. Admittedly, the public is not clamoring for initiatives to reform rather than punish offenders; heinous crimes can spike the sentiment to “throw away the key.” Still, public opinion is not so punitive as to serve as an impenetrable barrier to correctional reform. In fact, we have found a large crack in that ideological wall. The public is open to, and in some cases clearly supportive of, reasonable efforts to intervene productively in the lives of offenders.

### **Crack #2: Second Thoughts about “Punishing Smarter” Ideas**

During the penal harm movement (see Clear, 1994) and under the guise of public safety, many states sought to enact “get tough” strategies and intermediate punishments (Morris and Tonry, 1990). Politicians implemented a myriad of so-called “punishing smarter” strategies (Gendreau, Cullen, and Bonta, 1994:77). Some of the more popular strategies included boot camps and tougher sentencing laws, such as three-strikes laws and mandatory minimums.

Over the last two decades, however, the wisdom of these approaches has come into question (see Gendreau and Paparozzi, 1995), which generated doubts about the penal harm movement. Two factors contributed to these cracks in the punitive policy hegemony. First, empirical research developed that consistently found that these approaches were ineffective. Second, these programs failed to be as cost effective as promised and in some cases were at the center of legal battles that resulted from inhumane or unfair treatment. Each of these approaches will be discussed in terms of the impetus for the strategy as well as evidence of how they are currently being rejected.

### ***Boot Camps***

The increase in the popularity of the boot-camp model during the “get tough” era was not surprising. The concept of a physically and mentally challenging sanction for offenders met the standard of the “common sense” correctional style during this time (Cullen, Blevins, Trager, and Gendreau, 2005; Gendreau, Goggin, Cullen, and Paparozzi, 2003). The typical boot camp was highly structured, in which participants wore uniforms and engaged in strenuous physical activities. The discipline instilled by the boot camp, which was intended to redeem one’s character, seemed to satisfy the desire for deterrence—for both offenders and would-be offenders. Advocates found comfort in a program model that promised to “break down” offenders and “rebuild” them into productive citizens.

Boot camps spread quickly across the United States. For example, in 1993, Washington State initiated a Work Ethic Camp for adults and a Juvenile Offender Basic Training Camp, both with a regimented work and military-style approach (Poole and Slavick, 1995). In 1995, Oregon, through Senate Bill 1, authorized the Oregon Youth Authority to construct military-based Youth Accountability Camps (Oregon Youth Authority, 1997). Finally, in 1996, the Ohio Department of Rehabilitation and Corrections proudly announced that it was one of two states to receive federal funding to construct several large-scale boot-camp facilities (Ohio Department of Rehabilitation and Corrections, 1996). Given its popularity, early research that challenged the model’s effectiveness was ignored (see Bourque et al., 1996). Twenty years later, however, we know that this ill-conceived model was destined to produce dismal outcomes—outcomes that would largely rob boot camps of their legitimacy.

The literature that surrounds the effectiveness of boot camps is clear: They have failed to produce appreciable effects (Austin, 2000; Bottcher and Ezell, 2005; Cowles, Castellano, and Gransky, 1995; Cullen, Wright, and Applegate, 1996; Henggeler and Shoenwald, 1994; Jones and Ross, 1997; MacKenzie and Souryal, 1994; MacKenzie, Wilson, and Kider, 2001;

Parent, 2003; Stinchcomb and Terry, 2001). Even creative attempts to find value in the model have fallen short. For example, although some evidence suggests that boot camps that incorporate a therapeutic element are more effective (MacKenzie, Brame, McDowall, and Souryal, 1995), a study by Mitchell, MacKenzie, and Perez (2005) concluded that the treatment services, not the structure inherent in the boot-camp model, were responsible for the positive results.

Two factors seem to have caused states to move away from their boot-camp models as a favored correctional intervention. First, the negative evaluation results have become too clear to ignore, which casts boot camps as a sanction that “does not work.” For instance, citing both the empirical research and the internal research conducted by its Department of Corrections, Wisconsin voted in 2001 to eliminate its juvenile boot-camp programs (Legislative Fiscal Bureau, 2001). Second, and potentially more important, were revelations of physical and emotional abuse experienced by youthful camp participants. The public outcry and resultant lawsuits created by these deaths and documented cases of abuse and neglect prompted some states to abandon this approach. Specifically, a 1996 Department of Justice investigation into Georgia’s juvenile justice system found abuse and neglect of participants in several boot camps (Schnurer and Lyons, 2006). Other states, such as Maryland, closed their boot camps after finding evidence of physical and mental abuse. The state was forced to pay nearly 900 former delinquents more than \$4 million in a class-action lawsuit that alleged widespread abuse (Leary, 2006).

Florida has also grappled with this issue. The Florida legislature voted in 2006 to cease funding for all boot-camp programs and gave the Department of Children and Family Services investigative jurisdiction over correctional officers employed by the Florida Department of Juvenile Justice (Florida Bar Association, 2007). The legislation was in response to the beating death of 14-year-old Martin Lee Anderson. The Department of Juvenile Justice and several boot-camp guards faced lawsuits or criminal charges (Newborn, 2006). Although some states may continue to hold steadfast in their support for boot camps, it now seems that this ineffective and, at times, dangerous fad has run its course.

### ***Three-Strikes Laws***

Cracks in the dominance of the penal harm movement are also observed in the recent backlash against three-strikes laws. The passage of these statutes was spurred by the national publicity given to heinous, violent crimes, such as the cases that ended in the tragic deaths of Kimber Reynolds and Polly Klass. From 1993 to 1995, 24 states rapidly drafted and enacted three-strikes laws (Schiraldi, Colburn, and Lotke, 2004; Tonry, 2004). At

the time, this policy was recognized as a “punishing smarter” strategy that targeted the worst repeat offenders by subjecting them to longer prison sentences. We now know that three-strikes laws encompassed a wide array of offenders and led to lengthy incarceration terms for many nonviolent offenders (see Cowart, 1998; Vitiello, 2002).

Second thoughts have developed regarding this once-popular policy. Since 1995, no state has enacted a three-strikes law. It is instructive that despite what is “on the books,” many jurisdictions are not strictly following their three-strikes laws. A decade after passage, 14 states with three-strikes laws have used the law to incarcerate fewer than 100 people; only three states (California, Florida, and Georgia) have incarcerated over 400 people (Schiraldi et al., 2004; Werner, 2004). Even in California, where over 42,000 offenders have been incarcerated under three-strikes laws, prosecutors are using the law in only 10% of eligible cases (Kasindorf, 2002). The Los Angeles District Attorneys Office requires “that if a potential third strike is not a serious or violent felony, it will not be treated as a third-strike case except in unusual circumstances” (Cooley, 2006b:1).

Along with prosecutors, judges may not always follow the three-strikes laws. As a result of *People v. Superior Court of San Diego-Romero* (1996), California judges have the discretion to disregard or ignore prior strikes “in the interest of justice” and impose a sentence that more accurately matches the crime (Cooley, 2006a:1, 2006b; Harris and Jesilow, 2000). Although difficult to estimate, Walsh (2004) claims that judges may disregard prior “strikeable” offenses in up to 45% of eligible cases.

Currently in California, the three-strikes law—which was passed in 1994 with 72% of the votes—mandates that any person previously convicted of a serious or violent crime automatically receive a 25-years-to-life sentence with no possibility of parole if convicted of any third felony (California Penal Code §1170.12c; Sze, 1995; Wood, 2006). The third felony does not need to meet the condition of being a violent or serious crime. This explanation indicates that minor felonies, drug offenses, or petty theft can result in a life sentence for someone who has two prior strikes. As a result, the three-strikes law has been challenged as cruel and unusual punishment under the Eighth Amendment. In 2003, the United States Supreme Court ruled that California’s three-strikes law was not unconstitutional (Brooks, 2003; *Lockyer v. Andrade*, 538 US 63 [2003]; Vitiello, 2002; Will, 2003). However, the margin was narrow (5 to 4), which indicates a split over the support for this policy.

Additional doubts about the three-strikes law in California were apparent in the voter initiative known as Proposition 66. Proposition 66, which was prepared by a group called Citizens Against Violent Crime (CAVC), was on the California ballot in 2004 (Lyons, 2004). This proposition sought



to amend the three-strikes law by restricting the criteria for strikeable offenses. For example, the law would permit a 25-years-to-life sentence only if the third strike was a serious and violent crime. The law also allowed for harsher sentences for child sex offenders. Moreover, the law required that each case be tried separately and that judges resentence offenders if their third-strike conviction was the result of a nonserious or nonviolent offense (FACTS, 2004; Proposition 66, 2004).

A poll conducted in June 2004 found that 76% of the respondents in California statewide (80% of Democrats, 74% of Republicans, and 74% of nonpartisans) approved Proposition 66 (DiCamillo and Field, 2004). However, in the week before the election, Governor Schwarzenegger, along with California's Attorney General and 58 district attorneys, vigorously campaigned against Proposition 66 using both public appearances and television advertisements. Proposition 66 was ultimately defeated but only with 53.4% of the vote. This narrow margin demonstrates that the punitive ideology behind three-strikes laws may be waning (Figuroa, 2004). Two more initiatives, the Three Strikes Reform Act of 2008 and The Repeat Criminal Offender/Three Strikes Fair Sentencing Act of 2006, attempt to amend the current three-strikes law; however, they have yet to reach the ballot.

#### ***Mandatory Minimum Sentencing Laws***

Cracks in the penal harm movement have also been observed through recent reforms to mandatory minimum sentencing laws. In the 1980s, Congress enacted a variety of mandatory minimum sentences, especially statutes that disproportionately targeted drug offenses. Mandatory minimum sentence laws would typically remove much judicial discretion used at the point of sentencing, which ensures that offenders would be sent to prison.

These policies, however, are losing support. In fact, 18 states either have passed legislation or are in the process of considering legislation to decrease the length of sentences for drug and/or low-level nonviolent offenders (Greene, 2003). For example, in the state of Washington, the Early Release Bill was passed in 2003. This bill increased the eligibility for earned early release from 33% to 50% of time sentenced. This bill applies to both current offenders already incarcerated and to future offenders who have no history of violent or sex offenses (StoptheDrugWar.org, 2003b; Washington Senate Bill 5990). Importantly, 61% of U.S. citizens are opposed to mandatory prison sentences (Greene and Schiraldi, 2002).

In 2004, New York passed the Drug Law Reform Act of 2004 to lessen the impact of the Rockefeller Drug Laws enacted in 1973 that imposed harsh, mandatory sentences for any drug crime. The statute reduced the

mandatory minimum sentence for first-time class A-1 drug offenders from 15 years to 8 years and doubled the threshold weight needed to be eligible for the mandatory 8-year sentence. The Drug Law Reform Act also allows for offenders who are currently incarcerated under the Rockefeller Drug Laws to apply for resentencing under the new law and to earn an additional merit time reduction of one sixth off their minimum sentence (New York State Department of Correctional Services, 2004).

Many states also have given discretion back to the judges, which allows them to take into account criminal history and other offender characteristics in their sentencing decisions. Michigan reformed its "650 Lifer" law that required a mandatory life sentence without parole for individuals convicted of delivering 650 grams or more of heroin or cocaine in 1998. Although still punitive, the reformed law allows for a 20-years-to-life sentence instead of a mandatory life sentence (Families Against Mandatory Minimums [FAMM], 2007; Greene, 2003; Greene and Schiraldi, 2002; StoptheDrugWar.org, 2002). In 2002, Michigan repealed the use of mandatory minimum sentences that were based only on drug weight as well as on a policy of lifetime probation for drug offenses (FAMM, 2007; StoptheDrugWar.org, 2002).

Many other states have decreased the sentence length for certain drug offenses. For example, Delaware decreased the mandatory sentence for trafficking cocaine from 3 years to 2 years and increased the weight that would result in the 2-year minimum from 5 to 10 grams of cocaine (Greene, 2003). In an effort to decrease the volume of probation violations, Delaware also capped probation terms at 2 years. Missouri's mandatory sentences for least serious felonies have been reduced from 5 years to 4 years. Also, offenders incarcerated for these least-serious felonies can apply for early release after serving 120 days. The amount of a sentence that must be served for nonviolent second-time offenders has also been reduced from 40% to 30% (StoptheDrugWar.org, 2003a).

Still other states, which include Connecticut, have relaxed mandatory minimums for drug felons (Greene and Schiraldi, 2002). Indiana has repealed the mandatory 20-year sentence for drug offenders who possess 3 or more grams of cocaine (Greene, 2003; Greene and Schiraldi, 2002). Louisiana abolished mandatory minimum sentences for dozens of nonviolent drug offenses; cut minimum sentences for drug distribution in half; and restored parole, probation, and suspension of sentences for nonviolent crimes (Greene, 2003; Greene and Schiraldi, 2002). North Dakota repealed a 1-year mandatory minimum prison sentence for first-time offenders convicted of drug possession (Greene and Schiraldi, 2002). Mississippi has amended its "Truth in Sentencing" law and has allowed nonviolent first-time offenders to be eligible for parole after serving one

quarter of their sentence (Greene, 2003; Greene and Schiraldi, 2002). Maine has even reformed sentences for violent crime by reducing the mandatory sentence of 25 years for murder to 20 years (Greene, 2003).

### **Crack #3: Progressive Policy Developments**

In short, it is significant that many jurisdictions are reconsidering the prudence of criminal justice policies that seek to deal with crime through mere discipline, harsh punishment, and rigidly imposed prison sentences. Equally salient, however, is that state and federal legislatures are also introducing and implementing new policies that focus on the rehabilitation and support of offenders. These new progressive policies call into question the common misconception that the United States is strictly a punitive society.

#### ***Literacy, Education, and Rehabilitation Act***

One piece of legislation geared toward offender change is the Literacy, Education, and Rehabilitation Act. The act, which was introduced in both the U.S. House and Senate in 2005 (H.R. 3602; H.R. 4752), proposed that inmates who satisfactorily participate in designated educational, vocational, treatment, assigned work, or other developmental programs be given credit or “good time” of up to 60 days per year on their sentence (H.R. 3602; H.R. 4752; The November Coalition, n.d.-a, n.d.-b). Specifically, the number of days that an inmate is credited is based on the difficulty of the program, time required to complete the program, level of responsibility associated with the program, and benefits the program provides for the inmates and the Bureau of Prisons. This act is valid for any incarcerated individual who serves more than 1 year and less than life in prison (The November Coalition, n.d.-a, n.d.-b).

Rather than eliminating literacy, educational, vocational, and treatment programs, and “good time” as put forth by a punitive ideology, this policy would actually increase the number of programs available to inmates that focus on rehabilitation and treatment; it would reward offenders for participation. This policy also provides a cost-effective way of implementing these programs. For example, the act proposed that incarcerated individuals who had successfully completed a program would then teach the aspects of the program to fellow inmates (DeBlasio, 2005). This policy explicitly focuses on teaching inmates the skills that are necessary for successful reentry into society.

#### ***RECLAIM Ohio***

In a deinstitutionalization effort, Ohio legislation created incentives for counties to reduce the number of juveniles sent to the Department of

Youth Services for incarceration. House Bill 152, which is also known as the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM) Program, was passed in 1993 (Lowenkamp and Latessa, 2005b). Rather than punishing and incarcerating juveniles, RECLAIM's main goal was to divert juveniles from institutionalization by developing local, community-based alternatives for at-risk youth (Lowenkamp and Latessa, 2005b). RECLAIM focused on the youth that were already in trouble with the law by encouraging judges to sentence these young offenders to community-based services as an alternative to prison. By 1994, nine counties had implemented the program, and in 1995, RECLAIM was implemented statewide (Latessa, Turner, Moon, and Applegate, 1998; Ohio Department of Youth Services, 2006; see also Moon, 1996).

To provide incentives for counties to keep their youth in the community, the RECLAIM Program makes counties financially responsible for each juvenile incarceration that is not the result of an adjudication of murder, aggravated murder, or rape (Moon, Applegate, and Latessa, 1997). In other words, counties' allocation of RECLAIM dollars is reduced each time a county incarcerates a juvenile in a state facility. Concurrently, the RECLAIM Program allocates money to counties to create and provide a range of local, community-based sanction options that give judges alternatives to incarceration (Bilchik, 1997). Examples of such community-based sanctions are day treatment centers, alternative schools, intensive probation, electronic monitoring, restitution and community service programs, and residential treatment programs (Ohio Department of Youth Services, 2006).

Consequently, RECLAIM had two major positive outcomes. First, by decreasing the number of juveniles sent to the Ohio Department of Youth Services institutions, the institutions are less crowded and can better supervise and provide services to those incarcerated. Second, by diverting youth from incarceration, the program allows juveniles to participate in treatment programs while remaining in the community and avoiding the adverse effects (i.e., stigma or being exposed to dangerous conditions) associated with incarceration. Therefore, rather than focusing on harsh punishment of juvenile offenders, the RECLAIM Program seeks to sanction juveniles to local, treatment-based programs that focus on the rehabilitation of the offender.

### ***Nonviolent Drug Offender Treatment***

Another area that illustrates cracks in the penal harm movement is in policies that seek to impose treatment rather than prison sentences on nonviolent drug offenders. Thus, in November 1996, two thirds of Arizona

voters supported Proposition 200, which made Arizona the first state to pass legislation that requires treatment for nonviolent drug offenders (Drug Policy Alliance, 2004). Proposition 200, or the Drug Medicalization, Prevention, and Control Act of 1996, mandates that nonviolent offenders convicted of a drug charge be placed on probation and undergo court-supervised, mandatory drug-treatment programs (National Families in Action, 2001). Only when a nonviolent drug offender is convicted for a third time can he or she be given a prison sentence.

In 2000, 61% of California voters passed Proposition 36, which is also known as the Substance Abuse and Crime Prevention Act of 2000 (Jett, 2001). Similar to the Arizona reform, this policy attempts to divert nonviolent first-time and second-time drug offenders from prison, and it only allows a prison sentence for a third-time nonviolent drug offense (Riley, Ebener, Chiesa, Turner, and Ringel, 2000). Proposition 36 requires that the state offer all eligible offenders up to 1 year of community-based drug treatment and 6 months of aftercare (California Department of Alcohol and Drug Programs, 2006; Longshore, Hawken, Urada, and Anglin, 2006). If the offender successfully completes the treatment, then the charges are dismissed and the arrest is deemed to have never occurred (Rusche, 2000; Wittman, 2001).

Maryland also implemented a drug-offender diversion policy in 2004 that was similar to the drug reforms in Arizona and California. The policy in Maryland attempted to divert nonviolent drug offenders from prison. Furthermore, it allowed offenders who successfully completed the drug-treatment program to petition to have the charges dismissed and removed from their record (Applied Research Center, 2004).

### ***Serious and Violent Offender Reentry Initiative (SVORI)***

Although parole and reentry have long represented a serious concern for public safety, the difficulties offenders face after release from prison received little systematic attention from scholars and policy makers. The neglect occurred despite hundreds of thousands of inmates who return to society annually (more than 600,000 now) and despite high recidivism rates. Indeed, a 15-state study indicated that two thirds of prisoners released in 1994 were arrested during a 3-year follow-up period (Hughes, Wilson, and Beck, 2001; Langan and Levin, 2002). Related, an examination of parole trends by Travis and Lawrence (2002:24) found that “over the past 20 years, as the number of people sent to prison on new convictions has increased threefold, the number sent to prison for parole violations increased sevenfold. We now send as many people back to prison for parole violations as the total number of prison admissions in 1980.”

Recently, however, the issue of prisoner reentry has developed increasing interest (Lattimore et al., 2004; Listwan, Cullen, and Latessa, 2006; Petersilia, 2003). Importantly, the focus of these efforts has not been to heighten surveillance but to provide increased services to offenders. One such example, which was funded through the U.S. Department of Justice, is the Serious and Violent Offender Reentry Initiative (SVORI). The SVORI is a large-scale program that originally provided over \$110 million to 69 grantees nationwide with the intent of developing programming and “best practice”-driven reentry strategies within communities. The SVORI programs are intended to reduce recidivism and to improve the outcomes of participating released prisoners. Since its inception in 2003, 89 adult and juvenile programs have been developed (Lattimore et al., 2004).

Instead of focusing on reentry in the broader context of parole, the funds are dedicated to serious and violent offenders who will be released into the community. The government’s willingness to focus on a high-risk population shows recognition of the need to dedicate intensive services instead of relying on failed punishment-based strategies of the past. This approach is aligned with empirical research finding that most intensive services should be reserved for the highest risk/highest need offenders (see Andrews et al., 1990).

The Research Triangle Institute International (RTI) and the Urban Institute were contracted to provide a nationwide evaluation of state-level reentry programs. As a result, they have provided a “national portrait” of the SVORI programming (Lattimore et al., 2004:4), which is summarized as follows:

[T]he goals of the initiative are to improve quality of life and self sufficiency through employment, housing, family and community involvement; improve health by addressing substance use (sobriety and relapse prevention) and physical and mental health; reduce criminality through supervision and by monitoring noncompliance, reoffending, rearrest, reconviction, and reincarceration; achieve system change through multi-agency collaboration and case management strategies.

To assess the initiatives’ staying power, researchers from the RTI and the Urban Institute surveyed program directors and asked whether they planned to continue their programs once the federal grant funding ceased. They found that most directors (95%) “reported planning to continue or expand SVORI, and 88 percent reported that the political climate in their communities was favorable to re-entry programming” (Winterfield, Lindquist, and Brumbaugh, 2007:1). Although developed on a state level, these programs represent a national effort to provide appropriate services to clients in order to increase public safety.

***Second Chance Act***

The Second Chance Act of 2007 (H.R. 1593) builds on the success of the SVORI policy. This multifaceted initiative sought to expand reentry services to all offenders regardless of charge type. Like SVORI, the Second Chance Act is designed to provide treatment programs to those reentering the community. Services include aftercare treatment programs to inmates who completed an in-patient mental health and/or substance abuse program, family-based treatments that focused on comprehensive treatment of the entire family and on keeping the family unit intact, adult-education programs, workplace-training programs, and nonprofit mentoring programs that assist offenders in their reentry (Nolan, 2006; Open Society Policy Center, 2005; Therapeutic Communities of America, 2006). The Second Chance Act encourages local community colleges, technical schools, and employers to work with former prisoners; it allocates grant money for postrelease transitional housing for offenders (National Alliance to End Homelessness, 2006); and it provides grant money for research on effective reentry programs (Campaign for Youth, n.d.; Nolan, 2006; Open Society Policy Center, 2005; Re-Entry Policy Council, 2007; Therapeutic Communities of America, 2006).

Although passed only recently, provisions of the Second Chance Act of 2007 already have been implemented in the community. The act authorizes the existing Prison Reentry Initiative discussed in President Bush's 2004 State of the Union Address. According to the Office of the White House Press Secretary (2008:1), the program has observed successes in its first 2 years of operation given that "more than 12,800 offenders have enrolled in the prisoner reentry program. More than 7,900 offenders have been placed in jobs. Only 18 percent of those enrolled in the program have been arrested again within 1 year—less than half the estimated national average." This act, which received bipartisan support, reveals a consensus that it is irresponsible to release offenders back into communities without a clear strategy to guide their reintegration.

***Public Safety and Offender Rehabilitation Services Act of 2007***

Assembly Bill 900, also known as the Public Safety and Offender Rehabilitation Services Act of 2007, is a prison management reform with a focus on rehabilitation and accountability. Governor Schwarzenegger stated that the legislation will:

add 53,000 prison and jail beds in two phases. . . will also help move more than 16,000 prisoners out of "bad beds" located in prison libraries, gymnasiums and day rooms, freeing up these spaces for rehabilitation programs. No longer will we build giant warehouses in remote locations that produce criminals who are more dangerous the

day they are released than on the day they came in. We are finally facing up to the fact that most California inmates are someday eligible for parole and that we must do everything we can to make sure those who are released don't commit new crimes (Office of the Governor of the State of California, 2007:1).

The legislation will also provide "16,000 beds in Secure Re-Entry Facilities, small and secure centers that provide offenders with job training, mental health and substance abuse counseling, housing placement, and other programs in the critical few months just prior to their release" (Office of the Governor of the State of California, 2007:1).

Again, this bill is being touted by state officials as a fundamental change in how the California Department of Corrections and Rehabilitation handles offenders. Of course, in a state that already spends \$8.8 billion on corrections, the construction of additional prison beds can be viewed as anything but progressive (Warren, 2008). Nonetheless, it is instructive that the rationale for adding space is not to warehouse offenders but to provide conditions more conducive to offender treatment. This discourse might prove more symbolic than substantive, but it is premature to assert that the officials' expressed intent to do good is mere rhetoric masking penal harm.

### ***Early Intervention Programs***

Buoyed by the findings of life-course criminology that the roots of serious criminality extend to the earliest stages of life, a growing interest has developed in implementing early intervention programs (Farrington and Welsh, 2007). These programs are progressive because they seek to extend human services to youngsters either at risk of offending or who have experienced early onset into a criminal career. One of the most influential programs is multisystemic therapy (MST) that has served more than 10,000 youths in more than 30 states and 11 nations. Developed by Scott Henggeler (1999), MST brings evidence-based family treatment services into the homes of high-risk youngsters aged 12–17 years who might otherwise be placed into residential or secure facilities. Staff members provide 2–15 hours of intervention over a 4–6-month period. Evidence suggests that this intervention reduces problem behaviors and is cost effective (Drake, Aos, and Miller, 2008; Greenwood, 2006). Another prominent example is the nurse home-visitation program developed by David Olds (see Olds, Hill, and Rumsey, 1998). This intervention, in which nurses visit and give guidance to high-risk, first-time mothers, targets prenatal care and very early criminogenic risk factors (e.g., substance abuse by expectant mothers and dysfunctional parenting of newborns). The program has achieved promising results in reducing later arrests and in being cost-



effective (Drake et al., 2008; Farrington and Welsh, 2007; Greenwood, 2006). It also now serves more than 12,000 mothers in nearly 150 sites across 22 states (Howard, Husain, and Velji, 2005).

In sum, recent policies have sought to either replace harsh sentences with treatment or provide resources, services, and support to facilitate an offender's transition into society or away from crime. Progressive thinking and policies persist and continue to offer a counterpoint to the penal harm movement. This theme is illustrated extensively in the section to follow.

#### **Crack #4: Principles of Effective Treatment Put into Practice**

Current research supports the notion that rehabilitation can work for offenders (e.g., see Cullen and Gendreau, 2000). A consistent theme in much of the research on effective interventions is the identification of a guiding theoretical framework, which is referred to as the "principles of effective intervention" (see Gendreau, 1996). The empirical research clearly shows that the ability to change offenders' behavior effectively varies based on whether these principles are followed (Andrews et al., 1990; Gendreau and Ross, 1987; Izzo and Ross, 1990; Lipsey, 1992; Van Voorhis, 1987). The principles suggest that effective programs are more likely to rely on behavioral and cognitive approaches, occur in the offenders' natural environment, be multimodal and sufficiently intensive, encompass rewards for prosocial behavior, target high-risk and high-criminogenic-need individuals, and be matched with the learning styles and abilities of the offender (Allen, MacKenzie, and Hickman, 2001; Andrews and Bonta, 2006; Cullen and Gendreau, 2000; Gendreau, 1996; Lipsey, 1992; Lipsey and Wilson, 1998; Wilson, Bouffard, and MacKenzie, 2005).

Notably, over the past decade, these principles increasingly have been put into practice in the field of corrections. This movement toward the development of what many refer to as "what works" or "best practices" can be recognized across numerous federal- and state-level agencies. For example, on a national level, we see training and technical assistance organized around the principles of effective intervention, and on a state level, we recognize the adoption of legislation that requires treatment agencies to be accountable for adopting these approaches. A variety of ways are employed that demonstrate how correctional programs are mindful of these principles; however, we will focus specifically on the areas of assessment, treatment type or delivery, and evaluation.

#### ***Classification and Assessment***

Nationally, probation and parole agencies have come to recognize the importance of assessment. In 1999, a nationwide sample of probation

departments' case classification practices revealed strong support for the use of standardized and objective instruments for assessing both risk and need. Moreover, 81% of the agencies that responded indicated that they currently used standardized, objective case-classification procedures (Jones, Johnson, Latessa, and Travis, 1999). Notably, these procedures should become the basis for supervision and service delivery.

Risk assessment also has undergone a shift related to rehabilitation and service-based approaches, particularly those related to the risk principle, which states that the risk level should be used to dictate supervision level as well as treatment intensity (Andrews et al., 1990; Lowenkamp and Latessa, 2002). In addition to risk level, the field has come to recognize the importance of focusing treatment efforts on criminogenic needs, such as antisocial attitudes and associates (Andrews and Bonta, 2006), in an effort to decrease the likelihood of future criminal behavior (Gendreau, Little, and Goggin, 1996).

Because of the research on the risk and need principles, we have observed an increased emphasis on what is referred to as a third-generation risk and need assessment. Namely, it is an assessment tool or process that not only takes into consideration a client's prior history and offense characteristics but also is centrally geared toward treatment planning around a client's criminogenic needs.

Similarly, the newest fourth-generation assessment tools concentrate on service delivery even more by focusing on the client's fluctuating risks and needs over time. These tools not only allow agencies to identify the client's particular areas of need for treatment but also focus on reassessment, treatment planning, and ultimately risk reduction. The continued concentration on treatment and case management through reassessment allows for enhanced public safety via the achievement of relevant intermediate outcomes (Andrews, Bonta, and Wormith, 2006).

In addition to these general surveys of risk and need, significant advances have been made in the development and implementation of sex-offender assessment tools. The Rapid Risk Assessment for Sexual Offense Recidivism (Hanson, 1997), and subsequently the Static 99 (Hanson and Thornton, 1999), are widely adopted measures of risk for sex-offender populations. As the name implies, the tools primarily rely on static predictors of recidivism, namely criminal history, victim characteristics, age, and current offense. These second-generation type assessments, however, become less useful as the offender progresses through treatment and supervision in the community. The far more advantageous approach is to focus on dynamic or changeable factors that can be used in treatment planning.

As noted by Harris (2006), the development of sex-offender assessment with a focus on dynamic factors is still in its infancy; however, many strides have been made in this area. Specifically, the Sex Offender Needs Assessment Rating (SONAR) (Hanson and Harris, 2000) has begun to bridge this gap. Ideally used in conjunction with the Static 99, the SONAR incorporates both stable and acute factors. The stable factors are viewed as dynamic risk factors (e.g., social influences, intimacy deficits, and attitudes) that require long-term treatment planning to exact change. The acute factors are those that potentially require more immediate intervention (e.g., access to victims, emotional collapse, sexual preoccupations, and negative supervision outcomes) and can fluctuate quickly (Harris and Hanson, 2003). By incorporating both types of risk factors into the supervision and treatment plans, agencies can better address the offenders' needs and maintain public safety.

We observed evidence of the desire to use standardized assessment protocols on a state level as well. In Ohio, all community corrections and institution-based programs must administer an assessment tool within 5 days of intake, and all programs must develop a service-delivery model based on the assessment results. In addition, the state funded a project through the University of Cincinnati to develop a statewide assessment protocol to improve the placement and treatment of offenders in the adult system. A similar study is under way with the juvenile system to develop an assessment process to assist jurisdictions in the placement and treatment of youth.

Many states have spent considerable resources adopting standardized risk and need instruments to use with their offending populations. Specifically, correctional agencies, such as those in North Dakota, South Dakota, Iowa, Indiana, Oklahoma, Oregon, Nevada, and Pennsylvania, have adopted versions of the Level of Service/Case Management Inventory (Andrews, Bonta, and Wormith, 2004) or the Youth Level of Service/Case Management Inventory. Both instruments focus on important criminogenic risk factors, such as education, employment, financial stability, family, housing, peers, substance abuse, personality, and cognitions. The tools also provide areas to note responsivity considerations and recommend supervision levels. Many other states also rely on standardized tools, such as the Wisconsin Risk and Need Assessment Tool, the Case Management Classification System, the Correctional Offender Management Profiling for Alternatives Sanctions, the Youth Assessment and Screening Instrument, the Risk Management System, and the Positive Achievement Change Tool, just to name a few.

### *Treatment Services*

Treatment services are a central part of the development and sustainability of effective interventions. The research clearly shows that certain therapeutic models are more effective than others. Specifically, social learning and cognitive skills-oriented models are the most effective, with effect sizes as high as 30% (Andrews and Bonta, 2006; Andrews et al., 1990; Antonowicz and Ross, 1994; Lipsey, 1992). Although these models leave significant room for improvement, we clearly notice a commitment on the part of many local and state agencies to pay attention to the empirical research on treatment effectiveness or “what works.”

The National Institute of Corrections (NIC), which was formed in 1974, was developed to provide training, technical assistance, and policy developments to correctional agencies. In the late 1990s, the NIC embarked on a training and technical assistance effort centered on the topic of “what works.” One such training that was led by some leading scholars in the field was called “Effective Interventions with Offenders: What Works and Why.” Hundreds of practitioners from across the country attended the workshop to gain exposure to the principles of effective intervention. The NIC also provides technical assistance to agencies as they begin to implement the principles into practice, often in the form of assessment training and program evaluation. In addition to training and technical assistance, the NIC provides access—free of charge—to the cognitive curriculum “Thinking for a Change” (Bush, Taymans, and Glick, 1998). The NIC continues to provide services in this area and others.

The NIC also selected Illinois and Maine as pilot sites for the implementation of the principles of effective intervention. The efforts in Illinois are geared toward the improvement of probation practices and outcomes through the implementation of evidence-based practices. Changes include improved case management, actuarial offender assessment, and the introduction of evidence-based services. Maine is working with the NIC to implement fully the principles of effective intervention in community-based corrections facilities as well as institutions, within both their adult and juvenile systems. Maine also appointed a commission to improve the sentencing, supervision, management, and incarceration of offenders through “what works” principles. The NIC collaborates closely with these states to bring together all stakeholders with the hope of expanding the program to other states.

Also on a national level, the Center for the Study and Prevention of Violence (CSPV) at the University of Colorado, Boulder launched a violence-prevention initiative that has identified 11 model or “blueprint” programs (Mihalic, Fagan, Irwin, Ballard, and Elliott, 2002). The CSPV also provides monitoring and oversight to ensure a high degree of fidelity

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for sites that choose to replicate a blueprint program. The goal of this initiative is to identify not only effective programs but also collect detailed information for dissemination regarding implementation difficulties and successes.

On a state level, many agencies are committed to developing effective supervision and treatment protocols. In 2003, researchers completed the largest study ever conducted on residential, community-based correctional facilities. This study was followed in 2005 by an equally large study of non-residential, community-based correctional programs operated through local probation departments (Lowenkamp and Latessa, 2005a). In 2005, researchers also completed a study that involved over 14,000 youths placed in community, residential, and institutional programs (Lowenkamp and Latessa, 2005b). The findings from these recent studies have resulted in some important changes in Ohio's correctional system. For example, the Ohio Department of Rehabilitation and Corrections has enacted many policy changes with regard to residential programs. Specifically, programs are required to target criminogenic needs through cognitive-behavioral modalities and related programming. For the nonresidential programs, three counties were selected as pilot sites to implement evidence-based practices. The counties have been charged with the task of studying their populations and implementing better assessment practices and treatment planning around criminogenic risk factors. Finally, work is being done with the juvenile release authority to develop release processes more aligned with the principles of effective intervention.

Maryland is another state that leads the field in this area. The Maryland Division of Parole and Probation, in conjunction with the University of Maryland's Bureau of Governmental Research, has developed a proactive community supervision (PCS) approach (Taxman, Yancey, and Bilianin, 2006). Through the process of problem solving, this approach calls for the probation or parole officer to be a key partner in the process of offender change. These goals are accomplished through the following five major components of PCS:

1. Identify criminogenic traits using a valid risk and need tool.
2. Develop a supervision plan that addresses criminogenic traits employing effective external controls and treatment interventions.
3. Hold the offender accountable for progress on the supervision plan.
4. Use a place-based strategy wherein individual probation/parole office environments are engaged in implementing the strategy.
5. Develop partnerships with community organizations that will provide ancillary services to supervise (Taxman et al., 2006:1).

This approach is considered more proactive than traditional reactive supervision. Some practices include implementing the Level of Service

Inventory-Revised to identify risk and need, teaching the offender the importance of identifying triggers (e.g., people and places), and using a continuum of behavioral rewards and sanctions. According to evaluations conducted by the University of Maryland, the rates of rearrest for offenders exposed to this model were lower than those who experienced traditional supervision strategies (Taxman et al., 2006).

Florida's juvenile justice system provides another example of a state-wide initiative to adhere to the principles of effective intervention. Specifically, the Florida Department of Juvenile Justice has embarked on a "what works" initiative that is a comprehensive program-improvement project to increase the effectiveness of juvenile justice services throughout the state. The department is attempting to incorporate only empirically supported treatment models and techniques through pilot-testing curriculums and techniques throughout their system. Specifically, "they include cognitive-behavioral treatments designed to confront and change criminal thought processes, relapse prevention techniques that include rehearsal of positive behaviors in increasingly difficult situations, and family based treatments" (Chapman, 2005:2). As part of this system, they assign "coaches" to the programs to assist and train staff on the implementation of the treatment protocols.

Indiana provides funding to local community corrections for training and implementation of standardized assessment instruments, cognitive-behavioral curriculums, countywide evaluations of programs and systems, and the identification of pilot counties to serve as models for others. Finally, assisted by the research efforts of the Washington State Institute for Public Policy, Washington has sought to ensure that the correctional programs offered throughout the state are based on evidence and adhere to the principles of effective intervention.

Although the examples presented above represent only a portion of the types of initiatives that occur throughout the country, they illustrate the significant strides that have been made in this area.

### *Evaluation and Quality Assurance*

In a "what works" framework, programs should have a system in place for the internal evaluations of both staff and service delivery as well as external evaluations of program outcomes. Evaluations can assist in program planning and improve effectiveness by indicating to staff and stakeholders the outcomes of the program. In addition to indicating whether the program is effective, evaluations should also identify which specific components are effective.

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Many state-level examples illustrate how agencies are recognizing the importance of quality assurance. For example, the Des Moines, Iowa Probation Department chose to hire a staff member to facilitate training and a treatment coordinator instead of traditional officers. The agency also implemented a behavioral interview process for hiring new staff. The interviewee is required to demonstrate motivational interviewing skills, complete a small group demonstration, and review and interpret assessment results. Finally, the department developed a system of rewards for employees that includes granting promotions, providing verbal/e-mail praise, lowering caseloads, assigning specialized caseloads, and offering flexible schedules.

Iowa also recognizes the importance of auditing current assessment protocols and results. Organizers have launched a statewide effort to increase the reliability of the assessments in use by tracking scores and performing periodic audits. They also have appointed an Evidence-Based Practices Committee, which continues to develop policies that concern the structure of case plans and assessments. Finally, the state has increased communication and treatment planning by granting institutions instant access to presentence investigation reports via the Iowa Corrections Offender Network system for treatment planning.

Many states have created benchmarks of accountability for the programs funded with state monies. In 2004, the Oregon Legislature passed SB 267, which required prevention, treatment, and intervention programs to be based on evidence. By 2009, 75% of programs that received funds from the Department of Corrections, Youth Authority, Department of Human Services, the Criminal Justice Commission, and the Commission on Children and Families for the treatment of offenders will be required to show proof that the programs are rooted in evidence-based practices. Because of this legislation, Oregon also has initiated processes to evaluate and assess programs throughout the state to determine the degree to which they meet evidence-based policies.

Related, the Oklahoma Department of Corrections requires all programs it funds to be assessed regularly to determine the degree to which they comply with the principles of effective intervention. Over the last several years, they have eliminated or improved programs through this process. Finally, the Florida Department of Juvenile Justice is piloting the Correctional Program Assessment Inventory as a measure of how well a program has incorporated “what works” into their model for treatment. Then technical assistance is provided to help providers modify models, improve service delivery, and help workers retain their sense of purpose and direction and improve community support (Chapman, 2005:2).

Other examples include Indiana, which follows a similar model and has been working to implement programming based on the principles of effective intervention. Local jurisdictions that receive state funding for community-based correctional programs are required to demonstrate that their programs are based on evidence. Ohio audits will be performance based, and program evaluations will be conducted every 3 years. Finally, the Nevada legislature also requires that programs be evaluated every 3 years.

A final example of how evaluation efforts are being used to affect policy development can be observed in Washington State. The Washington State Institute for Public Policy (WSIPP) has been disseminating empirically-based, policy-oriented research for several decades. Their recent research on the cost-benefit of using effective interventions led the Washington State legislature to reconsider their prison-construction strategy. Specifically, research found that “if Washington successfully implements a moderate-to-aggressive portfolio of evidence-based options, a significant level of future prison construction can be avoided, taxpayers can save about two billion dollars, and crime rates can be reduced” (Aos, Miller, and Drake, 2006:1). The legislature agreed with this assessment and decided to dedicate resources originally slated to construct a new prison into community-based drug-offender treatment programs identified as effective by WSIPP.

### **Conclusion: Beyond the Penal Harm Movement**

Most scholars have grown up academically, if not personally, in the midst of a pervasive, seemingly unstoppable movement to “get tough” with crime, which includes the use of mass incarceration as the preferred means to sanction offenders. Understandably, scholars have paid close attention to the sources, magnitude, and deleterious consequences of this movement. Only infrequently, however, have they questioned the hegemony of this punitive paradigm. As Matthews (2005:175) argues, “there has been a one-sided, exaggerated focus on punitiveness in recent times.” Indeed, Downes (2007:108) suggests that those who explain the expansion of penal control in recent decades tend to ignore “variation”—or what we have called “cracks.” “So is the story one of doom and gloom?” he asks. “Is there no escape from the looming prospect of Max Weber’s ‘iron cage?’” (2007:119). Recognizing the daunting challenges, Downes nonetheless observes that “there *are* clear alternatives”—even if they “are that much more difficult to retrieve in societies that are seemingly locked into penal expansion and still experiencing a ‘heart of darkness’ sense of mortal, not just moral, panic” (2007:119, emphasis in the original).



Legitimately, then, the very power of the penal harm movement promotes the view that there is “no escape” from a future of harsh rhetoric and expanding imprisonment (DiIulio, 1991). Still, correctional futures are not fully determined; turning points in how we treat offenders do occur (Cullen and Gilbert, 1982). It would be speculative, however, to claim that the penal harm movement has exhausted itself and that a new era of progressive penology is on the horizon. Take, for example, prison statistics for 2006. During this year, nine states showed a decline in prison inmates as did the federal system—which is a hopeful sign. Yet overall, prisoners under state jurisdiction rose 2.8%, which is a faster pace than the 1.5% annual increase in the previous 5 years (Sabol et al., 2007).

Nonetheless, our analysis reveals that important “cracks” exist in the penal harm movement. Progressive ideas are flourishing, and policy makers and practitioners across the United States are rolling back punitive interventions and experimenting with progressive interventions. In short, although not denying that the correctional glass is half empty, the purpose of this project has been to illuminate that the glass is half full—and perhaps it is filling up more quickly than imagined.

More attempts to catalog efforts to oppose the penal harm movement and to implement progressive initiatives are sorely needed (e.g., faith-based correctional initiatives, restorative justice, innocence projects, and the suspension of executions). As Tonry (2007:39) has cautioned with regard to the analyses of the penal harm movement, “much of the armchair ‘theoretical’ writing on changes in penal policy is useless, assuming that a ‘punitive turn’ has occurred, which it then in turn tries to explain without bothering to establish whether such policies and practices have changed and in what ways.” In this context, the job of continuing to document the relative balance of punitive versus more progressive policies assumes importance. This enterprise is of practical importance. Envisioning a different correctional future depends on being presented with models of humane and effective programs that can show concretely what an alternative approach to corrections would entail. As a result, the challenge that awaits is to construct a countermovement that presents correctional strategies that do less harm, are based on solid science, improve offenders’ lives, and protect public safety.

The larger issue is why the cracks have emerged and are widening in the penal harm movement. This task would be facilitated if we knew more definitively the key sources of the penal harm movement and could assess whether they were being undermined. Nevertheless, as Tonry (2007:38) notes, the “determinants of changes in penal policies are complex and contingent. Most broad explanatory claims are wrong” (see also Tonry, 2004). Tonry (2007) suggests that a more promising strategy in studying penal

policy would be to examine the “risk factors” that contribute to and the “protective factors” that mitigate against punitiveness. Within this framework, we can suggest four protective factors that might be operating to create cracks in the penal harm movement. We do so with appropriate caution. “Risk and protective factors are no more destinies for countries than for individuals,” observes Tonry (2007:41). “We could understand a good bit more about these things than we now do.”

First, research suggests that a government’s commitment to social welfare is related inversely to rates of imprisonment (Downes, 2007; Downes and Hansen, 2006). Consistent with this finding, commentators have suggested that one important source of punitiveness in the United States has been diminished support for social welfare (see, e.g., Beckett and Western, 2001; Garland, 2001). Despite the dominance of the market economy and the ascendancy of the penal harm movement, a persistent social welfare orientation still exists in the United States (Beckett, 2001; see also Dionne, 1996, 2007). In fact, the market economy may be creating strains on the everyday lives of Americans who serve to increase support for welfare policies (e.g., health care and protections of jobs). In particular, Beckett (2001:919) notes that evidence exists “that welfarist approaches to crime control that Garland suggests are incompatible with late modern culture enjoy widespread support.” Studies show, for example, that the public does not attribute crime simply to individual choice but also to “root causes” (Unnever, Cullen, and Jones, 2008a). As a result, an ideological basis is used for endorsing policies that address a broad approach to crime control that includes reformist programs.

Furthermore, the incomplete hegemony of the culture of control means that many of those who have self-selected into “corrections” work do not simply wish to exert control but want to help others (see, e.g., Blevins, Cullen, and Sundt, 2008; Sundt and Cullen, 2002). Thus, even when broader trends are in a penal harm direction, they may find ways to deliver human services. Bishop (2000) recounts one relevant illustration. “Despite the punitive rhetoric of juvenile justice in Florida in 1997, the juvenile institutions we visited were clearly treatment oriented,” she observes. “The Florida facilities were organized around a therapeutic model—most often, a cognitive-behavioral one—which provided core principles that governed staff behavior and staff-resident interactions” (2000:141).

Second, the U.S. penal harm movement has been driven in part by explicit attempts to racialize crime (Beckett, 1997, 2001; see also Human Rights Watch, 2008). Starting in the late 1960s, part of the Republicans’ “southern strategy” and broader effort to wean white-ethnic voters away from the Democratic Party entailed a “law and order” campaign informed by racial imagery. “Some conservative political strategists,” observes

Beckett (1997:41), “frankly admitted that appealing to racial fears and antagonisms was central to this strategy.” Studies show that racial animus continues to be a significant predictor of punitiveness (Unnever and Cullen, 2007; Unnever et al., 2008b). Politicians have capitalized on these sentiments to put forth harsh policies that have had disproportionate impacts on minorities (Clear, 2007; Miller, 1996; Tonry, 1995). However, these policies also have come at the cost of alienating minorities and of provoking challenges to the legitimacy of the state. Research shows clearly, for example, that whereas whites express that the legal system is mostly egalitarian, African Americans believe that the system is permeated with injustice (Johnson, 2008). When instances of racial injustice occur, the risk of substantial protest and insurgency exists. To sustain legitimacy, elected officials thus have an incentive to endorse more progressive policies that ostensibly show a concern for legal and social justice. The recent action of the Federal Sentencing Commission in reducing the sanction disparity between crack and powder cocaine—and in making this action retroactive—is one example of the continuing salience of racial injustice as an issue to be addressed (The Sentencing Project, 2007). Similarly, in April 2008, Iowa passed the nation’s first bill requiring that, prior to passage, all new sentencing laws must be reviewed for their potential racial and ethnic impact (The Sentencing Project, 2008).

Third, at the core of the penal harm movement was the rejection of the rehabilitative ideal as a legitimate goal of guiding corrections (Cullen and Gilbert, 1982). In so doing, however, this rejection was framed in specific terms. Citing Martinson’s (1974) celebrated review of treatment programs, they noted that “nothing works” to change offenders. In *Thinking About Crime*, for example, James Q. Wilson (1975:193) reviewed Martinson’s study and then proposed viewing “the correctional system as having a very different function—namely to isolate and to punish . . . it is also a frank admission that society really does not know how to do much else.” That is, how could anyone embrace rehabilitation if it did not work? This convenient attack has had ironic consequences. Once effectiveness was the evaluative standard, it gave more progressive scholars the opportunity to turn science against penal harm—to show that many punitive interventions, such as boot camps and intensive-supervision programs, did not reduce recidivism (MacKenzie, 2006). Alternatively, these scholars were inspired to amass empirical evidence confirming that treatment interventions were effective (Andrews and Bonta, 2006; Cullen, 2005; Cullen and Gendreau, 2000). This shift in scientific knowledge creates pressure to do “what works”—that is, more human services-oriented correctional interventions (Lipsey, 2009).

Finally, in an illuminating analysis, Simon (2007) shows how the penal harm movement has provided politicians with the chance to “govern through crime.” By inspiring a culture of fear, officials can demonstrate political efficacy by defending “innocent victims” through exclusionary policies, most notably imprisonment. This strategy amasses political capital because it shows action being taken in defense of the supposedly endangered social order. Its weakness, however, is that it is used often to mask the failure of government to address more fundamental social needs, such as a crumbling infrastructure, growing inequality, and the horrors of catastrophe (e.g., Hurricane Katrina). Simon suggests that these failures may be creating conditions whereby governing through crime is losing its hold on public policy. We have argued that this is especially the case in local jurisdictions where the limits of penal harm are more obvious, and the wisdom of addressing the human-service needs of offenders is difficult to ignore. Writ large, this ongoing conversation about how to govern—whether through crime and in defense of the market economy or through reformist social policies—is likely to be at the heart of political debate in the near future. If so, opportunities to create more cracks in the penal harm movement are likely to grow more plentiful and politically legitimate.

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Washington Senate Bill 5990 (2003–2004).

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