

THE MASSACHUSETTS PES PROGRAM

The Director of Programs and Reentry for the MA DOC, Christopher Mitchell, in the Fall of 2013, addressed an auditorium full of prisoners at MCI-Norfolk, myself included. His objective was to pitch a new program - PES. What is PES, you ask? It is the Performance Engagement Strategy Program. According to Director Mitchell, PES is designed to lower recidivism by addressing the programmatic needs of prisoners who are high risks to return to prison once released. That is, of course, a laudable goal with which few could argue. But, how is this goal to be accomplished? Easy, according to Mitchell, those prisoners designated as high risks will be forced to enter programs supposedly designed to "correct" them. And, Mitchell added, "The program is research based." Presumably, for the DOC, that was sufficient to prove PES would work.

I raised my hand and inquired: "Which research studies have shown that forcing a person in prison to undergoing programming will reduce recidivism?" I make no claim to be an expert on all behavioral studies on prisons. But, I have spent a significant amount of time researching recidivism. As I pointed out, I have never come across one linking forced program participation to reducing recidivism. After a brief back and forth on this point, Director Mitchell agreed to send me a copy of the studies they relied upon in developing the PES Program.

The next question was: Who would be the first set of prisoners to be "PES'd"? The answer was that: 1) the program would begin with sex-offenders, i.e., those whom the DOC had deemed to have any actual or even hint of a sexual aspect in their cases. Prisoners so designated would have to participate in the Sex Offender Treatment Program. Next would come those whom the DOC determined had substance abuse issues. Those prisoners would be required to participate in the Correctional Recovery Academy Program.

Another prisoner then asked: "What will happen to anyone who refused to be 'PES'd'? The answer: "They would lose their jobs, their single cell status, be transferred to the Probation Unit [a fifty-two prisoner unit with double bunk beds in an open space] and be unable to participate in other programs since they would be given a disciplinary ticket for refusing a direct order." Obviously, the MA DOC does not see value in the concept of positive reinforcement, better to punish than correct. Voluntary participation, often an indication of a willingness to at least try to change, would not be a part of PES.

After the presentation ended, I must admit, I was skeptical of receiving any response to my request for the "research" studies. I was intrigued, however, to see this research which, if valid, would contradict much of what I believed and had studied about promoting behavioral change. Could forcing a prisoner to participate in a program in a prison environment which he/she did not feel was necessary really produce a significant reduction in recidivism? The MA

DOC has pointedly shied away from studying the impact any of its programs have had on recidivism since they researched what was known as The Transition Program, purportedly designed to assist prisoners to reenter society. One can understand this reluctance to put their other programs to the recidivism test when the results showed that those who had completed The Transition Program had a higher recidivism rate than those who had not participated at all.

Two weeks after the PES Program introductory presentation, I received from the Deputy Superintendent of Programs at MCI-Norfolk a copy of "an abbreviated survey of the substance abuse treatment literature regarding the effectiveness of various levels of coercion"¹ authored by Douglas Angelin, Michael Pendergast, and David Farabee who had presented their findings at a conference in Washington, DC before the Office of National Drug Control Policy in 1996. The survey reviewed eleven "Coerced Treatment Articles" dating from 1976 to 1996, seven having been published in the 1980's.

Significantly, none of the studies had been conducted in a prison environment. Rather, the studies involved options offered in drug court type proceedings of either entering treatment programs or going to prison. Only five "found a positive relationship between legal coercion and substance misuse treatment."² Four found coercion made no difference in the outcomes,³ and two found a negative relationship between coercion and positive outcomes.⁴ Angelin and his colleagues noted that: "High internal motivation for change prior to treatment is predictive of two-fold increases in the likelihood of positive outcomes for substance abuse and criminality."⁵ The authors also concluded that: "Programs must undergo regular evaluation to determine their level of effectiveness and to detect changes in the client population they serve."⁶

Drug court interventions are a far cry from forcing program participation in a prison. A choice of either entering a treatment program or going to prison makes sense. One can easily see why that could provide positive results. There is clearly a reward for participation - get clean and keep one's freedom. Contrast that with the Hobson's Choice of entering programs one believes inapplicable and not necessary or lose most everything one has achieved after years of incarceration. The MA DOC has ignored the two significant points made by Angelin, et al., cited above. Namely, that internal motivation is critical to success and that programs should undergo regular evaluations. Undaunted, however, by the paucity of research support, no positive reinforcement for prisoners to participate, and no studies in place for evaluating the results, the MA DOC marches on seeking to: "Continue to utilize and expand Program Enhancement Strategy (PES) as a means of ensuring inmates participate in programming."⁷ Now, PES threatens all prisoners, not just the "high risk offenders" the program had been designed to motivate to change their behavior.

Kimberly A. Kaiser and a colleague studied whether the drug court model could successfully be applied elsewhere, particularly in prisons. Their conclusion: " ... there has been

little empirical evidence as to whether this model can successfully be adopted to other offenses or offender populations."⁸

It is hardly surprising that the PES Program has met with outcries from prisoners as being unfair and unjust, not to mention nonsensical. Those who have resisted have indeed lost all privileges. Procedural Justice Theory postulates that "perceptions of procedural justice increase evaluations of legitimacy [by prisoners] and make people less likely to break the law."⁹ Applying that theory to prisons, Karin A. Beijersbergen and her colleagues studied 1,241 Dutch male prisoners who had been released. The results showed that: "Although the effect was small, prisoners who felt treated fairly and respectfully by correctional authorities during imprisonment were less likely to get reconvicted in the 18 months following release."¹⁰

Kristine Murphy and her colleagues studied data collected from 359 tax offenders in Australia. While not involving a prison setting, once again, how subjects had been treated by the authorities affected the subjects' future behavior. As stated by Murphy, et al., "One important aspect of procedural justice theory is the role legitimacy plays in the procedural justice/compliance relationship."¹¹

The initial motivation for the PES Program was allegedly to force those prisoners the administration had classified as high risks to reoffend into programs to decrease the recidivism rate. That objective has now morphed into a program which forces prisoners, regardless of their risk to reoffend assessments, into participating in programs they neither want nor require, at least as they have evaluated their own needs. A crucial issue underpinning successful behavioral change in prison is, as has been cited above, that prisoners perceive they have been treated fairly by the authorities. Using that standard, the PES Program is destined to fail. Apparently, the MA DOC does not consider how their actions are interpreted by prisoners to be of importance. It should not be surprising that prisoners forced to lose single cells, their only means of financial support, and who are denied participation in programs they feel are relevant and necessary for effecting rehabilitative change would conclude that the actions of the MA DOC are neither fair nor just. Not a good prescription for the success of the PES Program.

Correctional programs like PES often take on lives of their own. Correctional administrators invest too much time, space, resources, and egos into pet programs to ever consider that one of their programs could be counter-productive, let alone an abject failure. To risk evaluating the PES Program is to risk discovering it is and has been as unsuccessful in reducing recidivism as The Transition Program was. That is a result those who covet their job security and high salaries will never allow to happen. Better to expand the PES Program than to test whether or not it is meeting the objectives for which the program was introduced in the first place.

SOURCES

- ¹ Angelin, M. Douglas, Michael Pendergast, David Farabee. *The Effectiveness of Coerced Treatment for Drug-Abusing Offenders*. Presented at the Office of National Drug Control Policy's Conference of Scholars and Policy Makers. Washington, DC. March 25-28, 1998 at 2.
- ² *Id.* at 6.
- ³ *Id.* at 8.
- ⁴ *Id.* at 9.
- ⁵ *Id.* at 18.
- ⁶ *Id.* at 17.
- ⁷ Mici, Carol, Christopher Mitchell, Jamie Camacho. *Performance Based Plan - July 2015 to July 2017*. MA Department of Correction - Classification Programs Reentry Department. Undated. at 8.
- ⁸ Kaiser, Kimberly A. and Kristy Holtfreter. *An Integrated Theory of Specialized Court Programs: Using Procedural Justice and Therapeutic Jurisprudence to Promote Offender Compliance and Rehabilitation*. *Criminal Justice and Behavior*, Volume 43, Number 1, January 2016. Ed. Kristy Holtfreter. at 47.
- ⁹ McLean, Kyle and Scott E. Wolfe. *A Sense of Injustice Loosens: The Moral Bind of Law*. *Criminal Justice and Behavior*, Volume 43, Number 1, January 2016. Ed. Kristy Holtfreter. at 27.
- ¹⁰ Beijersbergen, Karin A., Anja J.E. Dirkzwager, and Paul Nieuwbeerta. *Reoffending After Release: Does Procedural Justice During Imprisonment Matter?* *Criminal Justice and Behavior*, Volume 43, Number 1, January 2016. Ed. Kristy Holtfreter. at 77.
- ¹¹ Murphy, Kristina, Ben Bradford, and Jonathan Jackson. *Motivating Compliance Behavior Among Offenders: Procedural Justice or Deterrence?* *Criminal Justice and Behavior*, Volume 43, Number 1, January 2016. Ed. Kristy Holtfreter. at 105.