A PROSECUTION REENTRY PROGRAM TO REDUCE RECIDIVISM AMONG THE FORMERLY INCARCERATED

Charles J. Hynes* with Maria F. Brailsford**

I. INTRODUCTION

In 2014, over 1.5 million persons were serving time in state and federal correctional facilities, according to the U.S. Department of Justice. This means, “612 people per 100,000 residents age 18 or older were imprisoned.” Although the imprisonment rate is down 1% from 2013, this number is astonishing when compared to incarceration rates of other countries. According to the Hamilton Project, the U.S.

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2 Id.
3 Id.
4 MELISSA S. KEARNEY ET AL., THE HAMILTON PROJECT: TEN ECONOMIC FACTS ABOUT CRIME AND INCARCERATION IN THE UNITED STATES 10 (2014), http://www.brookings.edu/~media/research/files/papers/2014/05/01-crime-facts/v8_thp_10crimefacts.pdf (The Hamilton Project was established in 2006 at the
Incarceration rate is six times more than any other developed country.5 In April 2014, the U.S. Department of Justice released a Special Report on recidivism of prisoners in thirty states over a five-year study.6 The study shows that approximately two-thirds of state prisoners released from state prisons were re-arrested with a new crime within three years from their release date.7 Within five years of their initial release date, the re-arrest rates were even higher, at approximately three-quarters.8 Recognizing that recidivism is a problem, the Congressional Research Service issued a report addressing recidivism and potential reentry programs.9

In November of 1989, I was elected District Attorney of Kings County,10 also known as Brooklyn, New York, one of the five boroughs that make up New York.11 In 1999, the Kings County office undertook an internal study of recidivism among the formerly incarcerated who were previously Brooklyn residents and who returned to live in Brooklyn after their release from prison.12 The immediate concern was the negative impact on public safety to the residents of Brooklyn

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5 Id. at 8.
7 Id.
8 Id.
resulting from a high level of criminal behavior by the formerly incarcerated. While some of the formerly incarcerated were returned to prison for parole violations, most committed crimes that were serious enough to require a prison sentence. Traditionally, prosecution is reactive; for example, a police officer makes an arrest, the prosecutor decides whether the facts support a crime, and if so, proceeds to prosecute the defendant. If there is a conviction, a judge imposes a sentence. We decided that a traditional prosecution's reactive approach to crime was not effective given the statistical predictability of the alarmingly high recidivism rates of the formerly incarcerated. Therefore, we committed significant office resources to find a solution through a proactive approach to deal with this continuing hazard to public safety. Thus, the Community and Law Enforcement Resources Together ("ComALERT") program was created.

This Article addresses the prosecution model developed in Kings County for the formerly incarcerated to reduce rates of recidivism after release from prison. Part II of this Article addresses the history of recidivism on a national scale, as well as within the limits of Brooklyn, New York. Part III addresses the ComALERT program first envisioned in 1999. Part IV introduces the different reform approaches taken by other states. Finally, Part V discusses how the principles of ComALERT can apply to various criminal justice systems across the country.

II. BACKGROUND

The rate of recidivism has been and continues to be a current

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13 Research, supra note 10.
14 See generally DUROSE ET AL., supra note 6 (showing a drastic increase in recidivism rates among detainees incarcerated for serious to nonserious crimes).
15 See infra Sections II.A-B.
16 See infra Sections II.A-B.
17 See JACOBS & WESTERN, supra note 12, at 3.
18 See generally id. at 1 (stating that the ComALERT program provides a comprehensive array of services to its clients, such as substance abuse counseling and transitional housing and employment for up to a year).
19 Id.
20 See infra Part V.
issue on a national scale. In a recent interview on PBS discussing sentencing reform, Attorney General Loretta Lynch stated, “[Recidivism] is just as vital and important a part as how we deal with sentences at the front end.” Recidivism is defined as the “rearrest, reconviction, or reincarceration of an ex-offender within a given time frame.”

The U.S. Department of Justice published a five-year recidivism

![Recidivism of prisoners released in 30 states in 2005, by time from release to first arrest that led to recidivating event](image)

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Note: Prisoners were tracked for 5 years following release in 30 states. Some states were excluded from the specific measures of recidivism. See Methodology.

a Based on time from release to first arrest among inmates released in 30 states.

b Based on time from release to first arrest that led to a prison sentence or first prison admission for a technical violation without a new sentence among inmates released in 23 states.

c Based on time from release to first arrest that led to a conviction among inmates released in 29 states.

Source: Bureau of Justice Statistics, Recidivism of State Prisoners Released in 2005 data collection.


22 Id.

23 JAMES, supra note 9, at 5.
study for adult prisoners, ages eighteen and older. The study was conducted between 2005 and 2010 and measured any recidivism patterns, such as arrest, adjudication, conviction, and incarceration of 404,638 prisoners released from state prisons in thirty states. The report measured prisoners patterns for a five-year period following their release from prison. The study found that “67.8% of released prisoners, within a year after release from state prisons, were re-arrested.” The study further found that the rate of re-arrest was higher, at approximately 76.6% within five years after their initial release. In the figure listed below, the data indicates that 49.7% returned to prison within three years after initial release and 55.1% within five years after initial release. The prison percentages relate to violations of parole or probation. In addition, the study found that 45.2% of new arrests resulted in convictions—not associated with their first crime—within three years from the release date. After five years from their release date, 55.4% were convicted of a new crime.

The study indicated that three out of five prisoners released were re-arrested at least once in the five years following their initial release. The study also indicated that a “sixth (16.1%) of released prisoners were responsible for almost half (48.4%) of the nearly 1.2 million arrests that occurred in the 5-year follow-up period.” A third of the arrests occurred within six months after the prisoner is released.

A. Even the Mighty Brooklynites are not Immune to Recidivism

Brooklyn, once home to the iconic Brooklyn Dodgers baseball
franchise beloved by Brooklynites as “Dem Bums,”36 had so many houses of worship that it was known as the “City of Churches.”37 However, by 1990 there were 2,245 homicides in New York City.38 At the time I was elected District Attorney of Kings County, better known as Brooklyn, its population was 2.5 million people and “had approximately 158,000 index crimes annually.”39

In the late 1980s and the early 1990s, the murder rate increased to 17.8% from 1989.40 While larceny and burglary slightly declined at that time, “car theft[s] and robberies increased sharply.”41 The former police commissioner, Lee P. Brown, stated that the increase stemmed from the “‘twin evils’ of drugs and guns.”42 At that time, Brooklyn “had become the fifth most violent municipality per capita in the United

41 James, supra note 40.
42 Id.
In 2011, the Division of Criminal Justice Services, a New York state agency, conducted a recidivism study for probationer felony re-arrest. The report reviewed re-arrest rates during 1999 and 2008. This report only reviewed probationer felony re-arrest, did not break down New York City by boroughs, and reviewed felony and misdemeanor probationers. According to the study, in 1999 the total percent of arrests within one year from release was 21.1%. Since 1999, the total percent within one year has decreased to 15.7% in 2008. Similarly, in year two and three, the percentage decreased for probationer felony re-arrest after sentencing. Within two years from release, the rate was 30.9% then decreased to 24.8%. Within three years, the re-arrest rate decreased from 36.7% in 1999 to 30.8% in 2006.

In 1994, the Bureau of Justice Statistics completed a three-year study of recidivism for fifteen states. The report followed 272,111 inmates released in New York and fourteen other states. The study found that 67.5% of prisoners were re-arrested within three years after

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45 Id. at 5.
46 Id.
47 Id.
48 Id.
49 Id.
50 Id.
51 Id.
53 Id. The fourteen other states included are Arizona, California, Delaware, Florida, Illinois, Maryland, Michigan, Minnesota, New Jersey, North Carolina, Ohio, Oregon, Texas, and Virginia. Id.
release. Additionally, 49.6% of the re-arrests stemmed from a new crime, while 51.8% of the re-arrests stemmed from parole or probation violations. Thus, the highest rate of recidivism derived from the same crime. Given the high rate of re-arrest, one generally will ask the question, why? Unfortunately, understanding the reasons for recidivism is complicated, but studies have identified a few key factors that create the inescapable cycle.

B. The Inescapable Cycle

Once released from prison, the newly released inmate’s reality of freedom differs from the normal person’s understanding of freedom. After incarceration, the prisoner enters probation, which has stringent rules and requirements that “make it virtually impossible for ex-offenders to integrate into the mainstream society and economy upon release.” Michelle Alexander in her book, The New Jim Crow, argues that the newly released inmate lacks certain rights akin to the “freed slave or a black person living ‘free’ in Mississippi at the height of Jim Crow.” These newly released felony inmates with the “scarlet F” in today’s society have “precisely the forms of discrimination we supposedly left behind—discrimination in employment, housing, education, public benefits, and jury service.”

Lack of employment is one of the greatest reasons for recidivism. In 2000, Joan Petersilia, Professor of Law at Stanford University and former Director of the Criminal Justice Program at RAND Corporation, examined the issues relating to prisoners

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54 Id. at 3.
55 Id. at 1.
56 Id.
57 Id. at 14-15.
59 Id. at 143.
60 Id. at 141.
61 Id.
62 See JAMES, supra note 9, at 14 (“The conventional wisdom is that post-release employment is one of the most important elements for an ex-offender to successfully transition back into the community.”).
reintegrating back into society. In her article, Ms. Petersilia discussed how employment and recidivism correspond with one another. Once the prisoner is released and thrown back into society, the newly released prisoner discovers that he or she lacks job skills, unemployment benefits, and recent work history. Furthermore, the newly released prisoner lacks any worthy job prospects because of the reasons stated above and because employers are less likely to hire a person that has been convicted of a crime. Her article also states that “[u]nemployment is closely correlated with drug and alcohol abuse. Losing a job has similar effects. It can lead to substance abuse, which in turn is related to child abuse and family violence.”

In The New Jim Crow, Michelle Alexander describes the lack of employment—especially with regard to African Americans—as being “boxed in.” Ms. Alexander’s reference to the “box” effect relates to the standard questions asked on most applications: “Have you ever been convicted of a crime? Check yes or no.” These check boxes create extraordinary problems for people recently released from prison to find gainful employment because the employer can discriminate based upon whether a person has a conviction on their record.

Compounding the problem of discrimination from employers, the newly released prisoners generally have low levels of education. Studies have shown that prisoners with a postsecondary degree are more likely to reduce their chances of returning to prison. Without employment capabilities, coupled with little to no education, the newly

64 See PETERSILIA, supra note 63, at 4.
65 Id. at 3.
66 Id.
67 Id. at 4.
68 See ALEXANDER, supra note 58, at 151.
69 Id. at 149.
70 Id.
71 See JAMES, supra note 9, at 15.
72 Id.
released prisoner has a lower chance of success and greater chance of returning to prison.\textsuperscript{73}

Two prime examples of real people who lacked proper employment illustrate how difficult it is for the newly released to integrate back into society.\textsuperscript{74} Anthony is a young African American male.\textsuperscript{75} When he was seventeen years old, he and a group of individuals were involved in multiple burglaries in an unoccupied dwelling\textsuperscript{76} and one carjacking.\textsuperscript{77} Anthony was arrested at eighteen years old and sentenced to fifteen years in a Florida state prison.\textsuperscript{78} He served thirteen of his fifteen-year prison term and was released at the age of thirty-one.\textsuperscript{79} Anthony had difficulty finding a job, but a year after his incarceration, he found employment as a landscaper making minimum wage.\textsuperscript{80} Within two years after his prison release, Anthony was arrested again and charged with three counts of distributing controlled substances.\textsuperscript{81} The backstory to his recent arrest demonstrates

\textsuperscript{73} Id. at 14-15.
\textsuperscript{74} Anthony Thompson, \textit{Navigating the Hidden Obstacles to Ex-Offender Reentry}, 45 B.C. L. REV. 255, 255, 276 (2004).
\textsuperscript{75} Case heard before Judge Waddell Wallace, III, Fourth Judicial Circuit Court, Jacksonville, Fla. (2015). The names have been changed to protect the confidentiality of clients. The case information is a culmination of the Authors' individual observations and experiences.
\textsuperscript{76} FLA. STAT. § 810.011 (2007) (defining a dwelling as “a building or conveyance of any kind, including any attached porch, whether such building or conveyance is temporary or permanent, mobile or immobile, which has a roof over it and is designed to be occupied by people”).
\textsuperscript{77} FLA. STAT. § 812.133 (1993) (defining a carjacking as “taking of a motor vehicle which may be the subject of larceny from the person or custody of another, with intent to either permanently or temporarily deprive the person or the owner of the motor vehicle, when in the course of the taking there is the use of force, violence, assault, or putting in fear”).
\textsuperscript{78} Case heard before Judge Waddell Wallace, III, Fourth Judicial Circuit Court, Jacksonville, Fla. (2015). The names have been changed to protect the confidentiality of clients. The case information is a culmination of the Authors' individual observations and experiences.
\textsuperscript{79} Id.
\textsuperscript{80} Id.
\textsuperscript{81} Id.; FLA. STAT. § 893.13 (2013) (stating that a person may not perform the following prohibited acts, including but not limited to: “sell, manufacture, or deliver, or possess with intent to sell, manufacture, or deliver, a controlled substance”).
how susceptible felons have assimilating back into society after released.\textsuperscript{82} Prior to his recent arrest, undercover police officers confronted Anthony to act as a broker for them to obtain illegal drugs.\textsuperscript{83} When the officers first confronted him, Anthony instructed the undercover officers that he did not possess the drugs but knew someone in the neighborhood who could help.\textsuperscript{84} The total of the drug transaction was $120, of which he only received $20 to $30.\textsuperscript{85} His mandatory minimum sentence for the crime plus his status as a habitual felony offender required a sentence of ten years to life.\textsuperscript{86} The State requested thirty-five years, but the judge, using his limited discretionary powers, only sentenced Anthony to ten years.\textsuperscript{87}

Carl is a forty-six-year-old Caucasian man.\textsuperscript{88} He served twenty years for robbery in the Florida prison system and was released in January 2014.\textsuperscript{89} Carl was part of a prisoner release reoffender program.\textsuperscript{90} Carl had a low paying job working on computers. The program helped him find a job and assigned him a mentor.\textsuperscript{91} In April 2014, Carl found himself in trouble again. He began drinking and robbed a convenience store—without a deadly weapon—because his family pressured him to make more money.\textsuperscript{92} The mandatory minimum sentence, plus an enhanced sentence due to being a prison release reoffender, required a sentence of at least fifteen years.\textsuperscript{93} The judge

\textsuperscript{82} Case heard before Judge Waddell Wallace, III, Florida Fourth Judicial Circuit Court, Jacksonville, Fla. (2015).
\textsuperscript{83} \textit{Id}.
\textsuperscript{84} \textit{Id}.
\textsuperscript{85} \textit{Id}.
\textsuperscript{86} \textsc{Fla. Stat.} \textsection 775.084(4) (2012).
\textsuperscript{87} Case heard before Judge Waddell Wallace, III, Florida Fourth Judicial Circuit Court, Jacksonville, Fla. (2015).
\textsuperscript{88} \textit{Id}.
\textsuperscript{89} \textsc{Fla. Stat.} \textsection 812.13 (2013).
\textsuperscript{91} \textit{Id}.
\textsuperscript{92} \textit{Id}; \textsc{Fla. Stat.} \textsection 775.082(9)(a)(1)(g) (2014).
\textsuperscript{93} \textsection 775.082(9)(a)(3)(c). In Florida, a robbery committed without a deadly weapon is a felony in the second degree. \textsc{Fla. Stat.} \textsection 812.13(2)(c) (2013).
sentenced him to twenty years.

Another issue that newly released prisoners find difficult is lack of housing.94 Newly released prisoners have limited options for public housing and, as stated above, lack employment options, which can lead to lack of financing capabilities.95 "As one young man with a felony conviction explained in exasperation, 'I asked for an application for Section 8 [housing].' They asked me if I had a felony. I said, 'Yes.' . . . They said, 'Well, then this application isn't for you.'"96 The lack of housing and employment now leads to several other problems, such as inability to care for a family97 and following the requirements of parole—paying court fees and, if applicable, restitution back to the victims.98

Newly released prisoners also face issues with substance abuse and mental illness.99 The issues facing employment, housing, and education are also compounded with substance abuse and mental illness.100 Thus, the lack of employment and other problems lead to issues with substance abuse and depression, which in turn creates a perpetual cycle of lack of employment and housing issues.101 “A significant number of prisoners have problems with mental illness, and

94 See JAMES, supra note 9, at 15.
96 ALEXANDER, supra note 58, at 149.
97 See id. at 147; see also JEREMY TRAVIS, BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY 143 (2005), reprinted in 69 FED. PROB. 31, 39 (2005) (“When prisoners return home, they face multiple hurdles, many of which relate directly to the functioning of their families.”).
99 JAMES, supra note 9, at 14-15.
101 JAMES, supra note 9, at 14-15.
these problems might co-occur with substance abuse or a physical health problem."\(^{102}\)

Studies have shown that effective treatment of substance abuse issues, opportunities for gainful employment, remedies for housing barriers, and continual care of mental illness can lead to lower recidivism rates.\(^{103}\) There are three types of preventative programs designed to help reduce recidivism rates: (1) programs during prison, (2) programs after release from prison, and (3) long-term programs.\(^{104}\) This Article addresses the second and third prongs—programs that address released prisoners.\(^{105}\)

### III. Brooklyn's Response: A Prosecutor Collaborative Model for Reducing Criminal Recidivism

Recognizing a growing problem with recidivism,\(^{106}\) the Brooklyn District Attorney's Office, in conjunction with other partnerships with the New York State Division of Parole, developed a reentry model.\(^{107}\) The New York State Division of Parole officers supervised those formerly incarcerated individuals during their post-prison parole.\(^{108}\) Initially the model included a small number of parolees who were required to participate in the program by parole officers, but the program later expanded to 100 clients once other partnerships were developed.\(^{109}\) The design of the program was geared toward dealing with the principal reasons for the high failure rate among the formerly incarcerated.\(^{110}\) The principle factors include substance abuse of both alcohol and drugs, high unemployment, and difficulty within the family.\(^{111}\) Thus, ComALERT addresses several

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\(^{102}\) *Id.* at 15.

\(^{103}\) *Id.* at 14-15.

\(^{104}\) *Id.* at 4.

\(^{105}\) See infra Part III.

\(^{106}\) See supra Part I.

\(^{107}\) See Jacobs & Western, supra note 12, at 7.

\(^{108}\) *Id.* at 8-9.

\(^{109}\) See generally *id.* at 7 (stating that after incorporating the Doe Fund, the clients increased to 100).

\(^{110}\) *Id.* at 1.

\(^{111}\) See *id.*; see also supra Section II.B.
services for the client, including employment, housing, substance abuse, and family.\footnote{See JACOBS \& WESTERN, supra note 12, at 1.}

Because the program contemplated significant community involvement with law enforcement to find a path to success—including job training and job placement—the program was called Community and Law Enforcement Resources Together, using the acronym ComALERT.\footnote{See id. at 7.} In addition, it was found that the loss of family support was a contributing factor in high recidivism rates.\footnote{Id. at 1.} Frequently, the released prisoners’ families were fed up with the recurring criminal conduct and periodic imprisonment stents.\footnote{See id.}

ComALERT’s unique approach at the time was coordinated by a counselor with a masters in social work and directly supervised by its Chief Counsel, who was one of top four deputies in the Brooklyn District Attorney’s Office.\footnote{See id. at 9 (stating that ComALERT is unique by having a staff member onsite to streamline the process).} The program was unique because staff personnel were readily available to conduct interviews and quickly address needs by streamlining the process.\footnote{See id.}

To prepare clients for the workplace, ComALERT offered job interview and resume writing tips, computer training, and transitional employment.\footnote{See Jacobs \& Western, supra note 12, at 10.} One of the main transitional employment partners was the Doe Fund’s “Ready, Willing and Able” (“RWA”) program.\footnote{See DOE FUND, http://www.doe.org/what_we_do.cfm (last visited Dec. 31, 2015).} RWA operates on the simple premise that “work works.”\footnote{Jacobs \& Western, supra note 12, at 9-10.} While RWA’s principal work is street cleaning, it requires participants to work full-time, with the main goal of teaching discipline to those not accustomed to mandated schedules and therefore providing excellent preparation for joining the mainstream workforce full time.\footnote{See Jacobs \& Western, supra note 12, at 10.} To overcome the employment problem, ComALERT was able to draw on
the positive record of accomplishments the program and RWA established among a base of employers who hired the recovering drug-addict graduates from the drug treatment program.\(^{122}\) RWA also handles housing issues by providing housing for clients who are in need.\(^{123}\) In conjunction with employment and housing opportunities, the program also teaches clients how to be fiscally responsible and requires them to place a portion of their funds into a savings account.\(^{124}\) These life skills, among other things, help the client after graduating from the program.\(^{125}\) Once a client graduates, RWA Doe Fund provides the client with a $200 subsidy to help support him or her for five months.\(^{126}\) In addition, ComALERT offers vocational opportunities—currently through obtaining a commercial driver’s license and other vocational programs.\(^{127}\)

To deal with the client’s substance abuse issues, ComALERT collaborated with Counseling Service of Eastern District New York.\(^{128}\) With the additional partnership, the program was able to offer substance abuse treatment.\(^{129}\) To help the client’s success, the program also includes mandated alcohol and drug counseling and requires the participants to submit to random weekly urine testing.\(^{130}\) The clients are required to participate in the program between three and six months.\(^{131}\) In addition to extensive drug counseling, Counseling Service of Eastern District New York also addresses other issues, such as anger management.\(^{132}\) No insurance is required for the counseling, which is another unique part of ComALERT.\(^{133}\) If the clients need additional services, the staff will work with them to obtain referrals for

\(^{122}\) See generally id. at 9 (showing the employment rates of graduates from the drug treatment program).

\(^{123}\) Id. at 10-11.

\(^{124}\) Id. at 10.

\(^{125}\) Id.

\(^{126}\) Id.

\(^{127}\) Id.; DOE FUND, supra note 120.

\(^{128}\) JACOBS & WESTERN, supra note 12, at 7.

\(^{129}\) Id.

\(^{130}\) Id. at 9.

\(^{131}\) Id. at 9-10.

\(^{132}\) Id. at 9.

\(^{133}\) Id.
outside services, such as housing options, mental-health treatment, and vocational opportunities.\textsuperscript{134}

Professor Bruce Western of Harvard University evaluated the effectiveness of the program.\textsuperscript{135} He released the results of his twenty-two-month study in 2007.\textsuperscript{136} Among the more impressive findings was that the program was significantly less expensive than the cost of incarceration.\textsuperscript{137} ComALERT's cost per client was $2,200 for one year versus the annual cost of $60,000 per inmate in the New York prison system.\textsuperscript{138} Perhaps his most important finding was that the graduates were re-arrested at significantly lower rates within two years of release than the national rate during that same period.\textsuperscript{139} Professor Western found that "ComALERT clients are 15% less likely to be re-arrested after two years from release from prison than a comparison group with a similar criminal history."\textsuperscript{140} Moreover, he found that "[ComALERT] clients that graduate from the program [more than two years after release] are more than 30% less likely to be arrested than the comparison group."\textsuperscript{141} This finding is significant because of the work history of ComALERT clients.\textsuperscript{142} Professor Western highlights this important achievement with this finding: "The survey data show[s] very high employment rates among ComALERT clients and graduates, more than twice as high as a comparison matched on criminal history and demographic characteristics. Graduates of ComALERT's Ready Willing and Able program [RWA] have especially high rates of employment."\textsuperscript{143} Professor Western concluded by observing that

\textsuperscript{134} Id. at 11.
\textsuperscript{135} Id. at 1.
\textsuperscript{136} Id.
\textsuperscript{138} See id.
\textsuperscript{139} See JACOBS & WESTERN, supra note 12, at 67 tbl.8.
\textsuperscript{140} Id.
\textsuperscript{141} Id.
\textsuperscript{142} Id. at 1-2.
\textsuperscript{143} Id.
"[w]hile these results are extremely promising, a stronger evaluation is needed. Such an evaluation would involve some kind of random assignment to the program, to eliminate systematic selection as a source of the difference between the program and comparison groups."  

But quite aside from this caution one would expect from an academic with Professor Western’s reputation, ComALERT’s reduced recidivism rates for the formerly incarcerated and its positive effect on public safety should provide an ample incentive for replication by other criminal justice systems around the country.  

In 2008, ComALERT was serving 639 clients and “now [has] the capacity to offer services to 1,200 participants per year.” Given the positive evaluations of the Harvard study and the cost efficiencies of the program, ComALERT meets its expectations to reduce recidivism by collaborating with other organizations and addressing the root causes. In conjunction with ComALERT, the Kings County District Attorney’s Office also directly addressed substance abuse issues as another tool to bring the recidivism rate down.  

IV. OTHER RECIDIVISM PREVENTION, RESOLUTIONS, AND ALTERNATIVE PROGRAMS  

A. Drug Diversion Programs  

Drug diversion programs are excellent preventive programs to address recidivism for nonviolent crimes because substance abuse is a key factor affecting recidivism. Of course, the principal cause of high rates of violent crime in Brooklyn and throughout the United States directly relates to the drug problem, which had reached epidemic levels by the late-1980s. When I assumed office in 1990—aside from Miami-Dade County, Florida, with its progressive Drug Court—

144 Id.  
145 See infra Part IV.  
146 Hynes, supra note 39, at 19-20.  
147 Id. at 20.  
148 Id. at 17.  
149 See supra Part II.  
150 See James, supra note 40. See generally Hynes, supra note 39 (discussing the relationship between crack cocaine use and the increase of crime in Brooklyn).
alternative to traditional prosecution, drug treatment was not readily available in the federal, state, or local criminal justice systems anywhere in the United States.\textsuperscript{151} While our solution to drug-related crime in Brooklyn is not the primary subject of this Article, reviewing summaries of the program and the five-year academic study shows that it is another effective program to help reduce the rate of recidivism.\textsuperscript{152}

In efforts to address substance abuse and recidivism for nonviolent crimes, Brooklyn’s District Attorney’s Office, prior to ComALERT, created a drug treatment program called Drug Treatment Alternative to Prison (“DTAP”), which is a diversion program offered only to nonviolent felony offenders.\textsuperscript{153} The District Attorney’s Office, along with the DTAP’s warrant enforcement team, evaluates the case file to determine if the candidate qualifies for this program.\textsuperscript{154} To qualify, the candidate must be dependent and that dependency must be related to the charged crime.\textsuperscript{155} Once the candidate qualifies, the sentence is deferred and the new client “undergoes an intensive residential drug treatment program and a period of aftercare.”\textsuperscript{156} If successfully completed, the charges will be dismissed by the prosecution.\textsuperscript{157} As of 2009, 2,691 defendants took part in the program, in which 1,155 of the participants successfully completed the program and had their charges dismissed.\textsuperscript{158} At that time, 345 participants remained in the program.\textsuperscript{159} DTAP also assisted the participants in finding gainful employment.\textsuperscript{160}

In 2003, the Center on Addiction and Substance Abuse ("CASA") at Columbia University conducted a five-year academic

\textsuperscript{152} Hynes Statement, supra note 137, at 117-18.
\textsuperscript{153} Id.
\textsuperscript{154} Id. at 118.
\textsuperscript{155} Id. at 117.
\textsuperscript{156} Hynes, supra note 39, at 17-18.
\textsuperscript{157} Hynes Statement, supra note 137, at 118.
\textsuperscript{158} Id.
\textsuperscript{159} See id.
\textsuperscript{160} See id.
validation study of DTAP. The CASA report, entitled “Crossing the Bridge,” and its positive findings led to DTAP’s replication in many counties of New York state. The findings indicated that participants in DTAP had a 26% lower re-arrest rate and were 67% less likely to return to prison.

Thus, in recognition of the futility and the injustice of incarcerating sick drug addicts, virtually all prosecutor’s offices in the United States now offer some form of drug treatment as an alternative to traditional prosecution. While these alternative programs directly and positively affect public safety by reducing drug abuse and drug related crimes, there remains a high rate of recidivism found among the formerly incarcerated.

B. Other State Programs

Given the high rates of recidivism and different programs offered to combat these high rates, Saint Louis University conducted a comprehensive study to determine which recidivism programs worked. The study evaluated different programs addressing recidivism across the country by considering those programs that fell within the study’s definition of “prisoner reentry programs” and that

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162 See Hynes, supra note 39, at 18-19.

163 See CROSSING THE BRIDGE, supra note 161, at 5-6.


165 See DUROSE ET AL., supra note 6, at 1, 8, 12; see also Stevenson, supra note 164, at 6-7.

had previously been evaluated by a separate study. The Saint Louis study defined “prisoner reentry programs” as programs “that had correctional programs that focus on the transition from prison to the community” and initiated a treatment program, such as substance abuse, life skills, etc., “in a prison setting and have linked with a community program to provide continuity of care.” Thirty-two different programs were evaluated. The initiative programs were linked to “(a) vocational training and work, (b) drug rehabilitation, (c) educational programs, (d) sex/violent offender programs, (e) halfway house programs, and (f) prison prerelease programs.” The study did not evaluate the efficiency of the processes used, only the evaluations of the outcomes of the programs.

The study found, in conclusion, that vocational and work programs were effective in reducing recidivism. In addition, drug rehabilitation, in the form of in-and-out of prison programs, were effective in “easing the transition from prison to the community.” Education, sex offender, and violent crimes programs were not as effective and had weak showings. Education programs, however, did increase former inmates’ reading and math skills by three grade levels during a six-week period. Furthermore, halfway houses and prison release programs did show some sign of effectiveness in preventing recidivism.

Interestingly, the programs identified as effective programs are the same programs that ComALERT and DTAP address: employment,

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167 Id. at 370.
168 Id. at 368.
169 Id. at 372.
169 Id. at 372.
170 Id. It is important to note that the program looked at three different programs: work release while in prison, vocational programs in prison and postconviction, and postconviction employment programs. Id. at 373-74.
171 Id. at 372.
172 Id. at 371.
173 Id. at 373-74.
174 Id. at 376.
175 Id. at 376-78.
176 Id. at 378-79.
substance abuse counseling, and life training skills. ComALERT’s program collaboration is one of the key components of success because the core of the program’s design incorporates solutions from the prosecution to the community.

V. CONCLUSION

In Brooklyn the combination of DTAP and ComALERT have produced significant results. For example, in 2012 the NYPD reported 414 murders in New York City with 36% of these murders (140) committed in Brooklyn. This figure is down from an average of 770 murders in the late 1980s and the early 1990s. In 2013 and 2014, there were even fewer murders in Brooklyn. In addition, from 2012 through 2014 the number of serious felonies averaged less than 25,000 annually compared to the average of 165,000 in the late 1980s and the early 1990s. By 2013, only one out of ninety Brooklyn residents were victims of serious felonies, compared to the earlier indexes, which showed that one out of fifteen Brooklyn residents were victims of serious felonies.

The common theme, based on the Harvard study and the Saint Louis study, is that programs created to combat recidivism do work. It is unrealistic to assume that prosecutors or other community leaders

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177 See supra Part III.
178 See supra Part III.
179 See supra Part III; see also supra Section IV.A.
181 Press Release, Mayor Bloomberg, supra note 38.
184 Id.; supra Section II.A.
185 See supra Section II.B.
can rid recidivism completely; however, research has shown that the numbers can significantly decrease.\textsuperscript{186} This is not just a human interest cause, adding meaning to a person’s life; the programs offered in Brooklyn have shown to have significant economic impacts, favorable to the taxpayers and the government.\textsuperscript{187} If ComALERT and DTAP can prove effective in a largely populated area such as Brooklyn, arguably the program can have similar effects in other large urban developed cities.\textsuperscript{188} The creation and success of these programs start with prosecutors, law enforcement personnel, and existing agencies willing to work together to tackle the inescapable circle of recidivism.\textsuperscript{189}

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\textsuperscript{186} See \textit{supra} Section II.B.
\textsuperscript{187} See KEARNEY ET AL., \textit{supra} note 4, at 12-13.
\textsuperscript{188} See \textit{supra} Part III.
\textsuperscript{189} See JACOBS & WESTERN, \textit{supra} note 12.
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