

Issue Commentary

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The Language of Criminal Justice Reform

CHANGING OUR APPROACH TO IMPROVE OUTCOMES

OVERVIEW

Sometimes strategic change in public policy requires a change in our traditional vocabulary - or at least a clearer understanding of the terms used to discuss the issue. This is certainly the case with criminal justice reform initiatives. **There is a large bipartisan base advocating for significant reform in our criminal justice system.** One positive aspect of the current reform movement is that good ideas for improving criminal justice do not necessarily decry the dysfunction of the existing system. Encouraging reforms being sought include:

- sentencing reform;
- re-entry programs for inmates returning to their communities following incarceration;
- diversion programs; and
- special courts for veterans and defendants who are mentally ill.

These are all valuable changes to a system that has become more focused on maintaining existing processes and the associated revenue that is generated, than ensuring individual justice is carried out.

THE TIMES (AND TERMS) THEY ARE A-CHANGIN'

While the term 'justice' is often used, it has come to mean punishment - akin to the term 'corrections,' which has come to mean incarceration. When someone breaks a law, justice demands accountability and consequences for the offender. Within the traditional criminal justice system that means taking the offender's money in the form of a fine or their freedom by placing them in jail or prison. **The true definition of justice should also include the concepts of**

fairness, mercy, and dare we say it, redemption. Justice, fairness, mercy and redemption are not mutually exclusive terms. They exist together outside the criminal justice system and we need to bring them back into the lexicon.

The term 'justice' has become skewed by several decades of political correctness, which demanded ridding whatever remotely appeared to be anything but hard on crime from the public policy and public safety debate - read 'hard on crime' as meaning punishment. Terms like mercy, intervention, and redemption were brushed off as representative of everything that was "soft" on criminals. During the 2016 Florida Legislative Session, a bill sponsor in the House of Representatives actually had the courage to describe the successful prearrest diversion program in Leon County, Florida, as demonstrating 'mercy.' How the times are changing!

CONSEQUENCES OF ARREST RECORD CAN LAST A LIFETIME

The criminal justice system has been described as a well-oiled machine that keeps millions of people out of the economic mainstream. **Being arrested for a simple nonviolent misdemeanor - not convicted, just arrested - results in lost jobs and a lifetime of reduced employment opportunities.** Young adults who are arrested today are often branded as a threat to society and have a criminal record that follows them throughout their lives. This is one of the primary reasons why advocates for criminal justice reform are pushing for reforms to the frontend of the criminal justice system.

Significant reform initiatives are seeking ways to effectively divert low-level offenders away from the criminal justice system. Diversion programs are widely accepted,

but not all diversion programs are created equal. While it may sound like a nuanced difference in terminology, the difference between a 'pretrial diversion' program and a 'prearrest diversion' program is significant.

Most criminal justice jurisdictions have had **pretrial diversion** programs for years. However, research studies show inconclusive outcomes for pretrial programs. And those successfully going through the program still have an arrest record.

The critical difference with **prearrest diversion** is for those who successfully complete the intervention program an arrest record is avoided. Initial outcomes for the first-in-the-nation prearrest diversion program in Leon County include a 6 percent re-arrest rate - this is compared to an estimated 40 percent re-arrest rate for first-time misdemeanor offenders who are prosecuted in the traditional criminal justice system.

Why should arrest records be of interest to the general public and policymakers? With an estimated 30 percent of the U.S. population having an arrest record, there is significant economic erosion that, until recently, has been invisible to the public. **A study by the Center for American Progress estimated that during 2008 our national gross domestic product was lowered by \$65 billion because of reduced employment opportunities for those with an arrest record.** The *Wall Street Journal* published an article in 2014, "As Arrest Records Rise Americans Find Consequences Can Last a Lifetime," documenting the economic damage for young adults with an arrest record. The national survey

record had a college degree compared to 37 percent of young adults studied that were never arrested. Again, having an arrest record, even without having been convicted, is a major factor in the pursuit of attainment when it comes to a college degree or economic stability.

ALTERNATIVES TO CRIMINAL ARREST

Central for policymakers and reform advocates seeking alternatives to criminal arrest is the use of citations. Similar to the critical differences for how the term 'diversion' is used are the differences for the meaning of 'citation.' This term is used for:

- citations in-lieu of arrest - meaning a criminal charge along with prosecution that results in an arrest record even if not convicted;
- civil citations - meaning a ticket and a fine related to a criminal offense without a related arrest record;
- traffic citations - meaning non-criminal traffic violations; and, in Florida,
- juvenile and adult civil citations - meaning referral to a prearrest diversion program, that if successfully completed, does not result in an arrest record.

The front door to the criminal justice system is the most dangerous door anyone can pass through. Millions of people each year are introduced to the criminal justice system when they are shuffled through a local misdemeanor court. Because of the workload associated with these courts, prosecutors most likely will not have spent more than a few minutes looking at a police report before deciding how to proceed. Additionally, the time the defendant has in front of the judge can be measured in seconds. In Florida, a University of Tampa study found that the average misdemeanor defendant gets less than three minutes - 180 seconds - with a judge, as well as the fact that the vast majority of defendants are not represented by legal counsel.

Every industry and profession has its jargon. Now is the time for "clear speak" and elimination of bureaucratic parsing of words. Public safety is too important for deliberate or unintended obfuscation. Common terminology with contrasting meaning leads to poor public policy decisions. **The outcome of criminal justice reform measures is too important to risk misunderstandings or unintended consequences because criminal justice professionals and policymakers lack a mutual understanding of the terminology in use.** Policymakers can't afford to make public safety policy decisions based on political rhetoric. Good policy comes from a clear understanding of the facts and the logical weighing of pros and cons.

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it referenced indicated "being arrested by the age of 23, regardless of whether convicted, correlates with negative outcomes in one's life." Those who were arrested, but not convicted, reported income levels that were almost 10 percent lower than those who had never been arrested. The survey data also showed 14 percent of those with an arrest

