

Plenty of Science, Just Not Enough Passion Accelerating the Pace of Felony Decarceration

At the current rate of progress, The Sentencing Project estimates that it will take until the year 2098 for the United States to effectively end mass incarceration.² This news calls to mind The Sentencing Project's 25th anniversary celebration over a decade ago, at which then-President of John Jay College of Criminal Justice Jeremy Travis urged the field to “summon the assistance of two powerful superheroes” to advance meaningful change across the criminal legal system: “science—the quest for empirical truth—and passion—the human impulse to seek justice.”³ Fast forward to 2023, our science is arguably better than ever, but our passion has not kept pace. In particular, the paucity of alternatives to incarceration for people facing felony charges provides a lesson on the limitations of science without the requisite passion—or will—to decarcerate.

The science, for example, is clear that reducing incarceration and increasing community safety can be mutually reinforcing. A recent analysis of over a hundred research studies concludes as a matter of “criminological fact” that incarceration has “no effect on reoffending or slightly increase[s] it when compared with noncustodial sanctions.”⁴ Nor does it take much time behind bars to increase one's future risk. A 2022 study found that “any length of time...is associated with a higher likelihood of a new arrest pending trial.”⁵ These findings, combined with the well-documented harms and inhumanities of confinement and “sky high” recidivism rates,⁶ provide strong public safety and moral justifications for alternative approaches.⁷

Science not only illustrates the failures of incarceration, but also provides actionable guidance for implementing alternatives. There are currently two evidence-based yet rarely utilized strategies to expand alternative-to-incarceration programs (ATIs) and reduce recidivism rates. The first is to abandon categorical exclusions based on charge type alone. ATIs frequently limit participation to people facing misdemeanor or nonviolent felony charges, regardless of the underlying facts and circumstances of the case.⁸ The second is to ensure that ATIs are not limited to people with substance use or mental health treatment needs. There are precious few ATIs to complement the relatively vast network of drug and mental health courts.

Categorical exclusions based on charge type alone run counter to the “risk principle,” one of the most robust and replicated empirical findings of criminological research. It holds that the intensity of intervention (e.g., treatment, social services, supervision) should be commensurate with a person's risk of recidivism, not necessarily their charge.⁹ In other words, programs should not exclude based on charge, but should calibrate their interventions according to a person's risk. Rigorous studies and meta-analyses also repeatedly conclude that “intensive correctional programs are more effective when delivered to higher risk offenders.”¹⁰

The risk principle works in concert with the “need principle,” which holds that recidivism risk can be reduced by targeting the specific needs most closely associated with it (often described as “criminogenic needs”). Strikingly, researchers have found that the bulk of these needs are not those traditionally associated with either drug or mental health treatment. They include the need for prosocial peers and activities, familial support, and stable employment or educational opportunities; all needs that can only be meaningfully addressed in the community. The need principle makes clear that a broad range of people can benefit from ATIs, regardless of whether they meet criteria for a traditional clinical intervention.

In New York City, a small group of practitioners are testing a new model based on this science, and, in doing so, showing the power of passion and science in tandem. For years, Manhattan has successfully implemented both drug and mental health courts. These courts demonstrated the impact of the problem-solving model, but they excluded many defendants because of their charge or because they did not have conventional treatment needs. Judges, prosecutors, and defense attorneys would consistently identify people who were good candidates for services, but they had limited options to divert these cases.

Launched in 2019, the Manhattan Felony Alternative to Incarceration Court seeks to fill this gap. The ATI Court, an initiative of New York County Supreme Court, incorporates the core principles of drug and mental health courts: it has a dedicated judge and clinical team, mandates participants to community-based services in lieu of incarceration, and rigorously monitors engagement in programming. However, it has no charge- or need-based eligibility criteria, intentionally applying problem-solving practices to all types of felony cases, including those involving violent offenses.

To implement this model, the Court leverages the science. It is guided by individualized assessment of risks and needs. With the assistance of an independent clinical team, the Court develops tailored treatment plans with the type and intensity of services calibrated to each participant’s unique needs and risk factors. In some instances, this means focusing on mental health and substances use, but in many others, it means focusing on gaining employment, securing housing, strengthening family ties, or building a new social support system. For example, a young person charged with gun possession is connected to a credible messenger and a job training program that leads to union employment, or a trans person is connected with housing and gender-affirming mental health services. In all instances, the goal is to serve the whole person and to build stability across multiple areas of their life.

The Court is also guided by passion—namely, its stakeholders’ conviction that there is often a better outcome than incarceration. On each case, the presiding judge, prosecutor, and defense attorney advance an approach that is more collaborative than adversarial. While each maintain their standard role, they also work towards shared goals: ensuring that participants are connected to the right services and engaging successfully.

This inclusive, collaborative, and flexible model has expanded the ATI universe. After four years of implementation, the Court has over a hundred graduates and an active caseload of over 360 participants. Along with numeric growth, the court has evolved to serve increasingly serious charges. The majority of participants are charged with violent offenses, such as robberies, assaults, and burglaries. The impact of this approach has been significant. Given that the average participant faces between 2 and 7 years in prison in the absence of diversion, a few short years of work have prevented, at minimum, 200 years of incarceration. Along with eliminating harms, the Court’s successes include countless positive changes in people’s lives, from jobs and housing secured, to progress in treatment, to relationships rebuilt or strengthened.

The ATI Court is powerful, but it's a single intervention, in a single jurisdiction. Its existence does not address the broader dearth of alternatives, which raises an obvious question: where do we go from here? The answer is simple: back to our superheroes. While an all-purpose ATI court builds on well-established science, this pioneering intervention itself needs to be studied. We must look at its impact in the conventional sense (effect on recidivism) and its more holistic impacts (changes in health, financial stability, and other indicia of well-being). And if the science holds, we will need more passion, reform-minded government officials, court administrators, judges, prosecutors, and advocates from across the country with the vigor to launch similar models in their own contexts. No one, neither the communities impacted by crimes, nor the people who commit them, is well-served by our status quo. The normalization of ATIs as a response to serious offenses marks an important—and deeply practical—step in the right direction.

1. Julian Adler is the Chief Innovation and Strategy Officer at the Center for Justice Innovation (Center), and Joe Barrett is the Project Director of Manhattan Justice Opportunities, a program of the Center. This article was written for "The Felony ATI Court: Manhattan and Beyond," a convening co-hosted by the Center and Columbia University Justice Lab. Many thanks to Olivia Kramer for research support and to Hon. Ellen Biben, Lael Chester, and Matt Watkins for feedback on earlier versions of the article.
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