Creating a Reentry Court by Wagging the 'Probation Tail'

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A recent Blog (March 8, 2017) (https://ssrn.com/abstract=2926512) spoke of the Louisiana Reentry Court spearheaded by Judge William (“Rusty”) Knight, and encouraged others to consider whether that innovation had some “exportable elements” worthy of consideration in other jurisdictions.

That invitation encouraged us to consider how the Arizona device known as a “probation tail” could be tweaked in a way that would enable an interested judge to create his or her own reentry court, one case at a time. Here’s our tweak:

1. In a lengthy textual footnote (footnote 8) in his New Wine in New Bottles paper, (https://ssrn.com/abstract=2065454), Wexler quotes a detailed description by Professor/Judge Michael Jones of a “probation tail.” Basically, the probation tail was devised to provide a more rigorous form of parole after incarceration for a serious offense. By agreement, the defendant pleads to a serious offense that would lead to a term of incarceration, and would simultaneously plead to a second, probation-eligible offense that would lead to a consecutive sentence of probation. The probationary term would begin upon physical release from incarceration, and was created in order for offenders to be supervised by superior court probation officers (well-educated and often specialized) rather than seriously overloaded and underfunded parole officers.

2. Jones explains that, in contrast to the underfunded parole officers, “our probation departments … are experienced in coordinating jobs/housing/treatment programs for drugs, alcohol and mental health issues, which are exactly the types of major issues for people just released from prison.” These are, of course, the very issues about which Louisiana Judge Knight has been concerned.

3. One major difference, however, between Judge Knight’s innovation and the Arizona probation tail is that the tail has been employed simply to shift post-incarceration supervision from parole officers to probation officers. The Knight approach does much more: it relies as well on meaningful judicial monitoring and supervision: a series of follow-up hearings.

4. Accordingly, our tweak would suggest that, in appropriate cases, judges sentencing to incarceration followed by a probation tail take on the additional task of regular judicial monitoring. In essence, they would be creating their own reentry court, one appropriate case at a time.

5. In these appropriate cases, the judge would regularly hold visits(by video if necessary) during the incarceration period, and case management would seek a seamless transition from incarceration to probation, helping to arrange housing and employment, and scheduling the first probationary hearing to be held the day after prison release, at the same location where sentence imposition occurred.

6. Toward the end of a successful probationary period, the judge could take advantage of a TJ-friendly legal provision and decide to terminate the probationary period early. This
could be accompanied by inviting family and friends to the final court session, where an informal “graduation” ceremony could be held.

We hope this short piece will contribute to the reentry discussion, even in situations where split-sentencing itself may be unavailable (e.g., mandatory incarceration provisions, or limitations to certain charges or to durational limits on confinement periods). In an earlier piece, Wexler and Jones discussed creative uses of Criminal Settlement Conferences, another aspect of the law where Jones has been heavily involved. (https://ssrn.com/abstract=2208050). That earlier piece did not discuss whether Probation Tails and reentry matters might be the subject of such conferences. Now, we wonder if they just might be.