

## SYMPOSIUM NOTE: IMPLEMENTING JUSTICE REINVESTMENT AT THE STATE LEVEL

Alternative incentive structures and competing economic interests served as primary themes in the *Denver Law Review*'s symposium panel discussing the implementation of justice reinvestment at the state level. In spite of the unfortunate absence of Denise Maes of the ACLU of Colorado, a two-person panel consisting of Professor David Ball of Santa Clara Law and Liz Ryan, president and CEO of Youth First!, proved to be among the most salient presentations in this year's symposium. Moderated by Hannah Proff of Johnson, Brennan & Klein, each panelist discussed obstacles to justice reform and opportunities for reform at the state level.

Professor Ball started the presentation with a discussion of his forthcoming article to be published in the *Denver Law Review*, which challenges current conceptions of financing in the criminal justice system. Specifically, Prof. Ball likens our current system to the healthcare industry and the "fee-for-service system," in which healthcare providers are compensated not on the basis of successful outcomes, but on services performed. This approach, Ball argues, is an economic distortion that leads to increased costs without necessarily improving the health of patients. Generally, Prof. Ball noted, the same is true in the criminal justice system. Because states generally pay for incarceration of convicted individuals, local justice officials tend to commit individuals to the state prison system instead of incurring the costs of mitigating underlying problems that led the individual to the criminal justice system. In response to a question addressing lack of treatment of Colorado's sex offenders,<sup>1</sup> Ball went a step further to note that, in most cases, treatment during incarceration is highly ineffective at best and, citing *Kansas v. Crane*,<sup>2</sup> suggested that treatment is often nonexistent. In response to these problems, Ball suggested a need to gauge and assess the returns on the economic investment into the criminal justice system.

Ms. Ryan quickly followed suit by assessing the economic justifiability of youth incarceration. Citing a 2014 report by the Justice Policy Institute,<sup>3</sup> she suggested costs, disparate impacts, and collateral consequences of juvenile incarceration couldn't justify states' financial investment into the system. As opposed to punitive responses to delinquent behavior, which often lead juveniles into the adult criminal justice system, Ms. Ryan argued an approach that allows juveniles to

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<sup>1</sup> Christopher N. Osher, Colorado Wasting as much as \$44 Million a Year in Sex-Offender Program, Audit Says, DENV. POST, Jan. 17, 2017.

<sup>2</sup> 543 U.S. 407 (2002).

<sup>3</sup> JUSTICE POLICY INST., STICKER SHOCK: CALCULATING THE FULL PRICE TAG FOR YOUTH INCARCERATION (2014).

correct their mistakes and become productive members of society is a more economically rational approach. Ms. Ryan noted, however, that obstacles to such an approach are formidable. In describing her ideal justice reinvestment legislation, she suggested closing all youth prisons. Doing so, however, would require taking on the institutions themselves, the communities in which they are located, and the legislators that respond to the economic cries of the community. In Ms. Ryan's home state of Virginia, 31% of the Department of Juvenile Justice's annual budget goes solely to the Beaumont and Bon Air Juvenile Correctional Centers, amounting to more than \$64 million that flows into local communities.<sup>4</sup> Thus, closure of these facilities would require substantial steps to assure local communities that they could restructure their economies absent the stimulation provided by the juvenile correction centers. In response to these issues, Ms. Ryan suggested the possibility that local jurisdictions be given the closed facility with additional funding to repurpose its use in other economically viable manners.

Each panelist had a number of suggestions for alternative incentive structures to help remedy the inefficiencies of the criminal justice system in its current state. Prof. Ball made reference to pilot programs in King County, Washington and Los Angeles County, California, in which police officers are provided incentives for transporting them to their respective county's social services department, as opposed to the typical law enforcement approach that incentivizes arrests.<sup>5</sup> Ms. Ryan echoed this approach, suggesting a system of disincentives for school police officers who choose to detain and process youth in the juvenile criminal justice system while providing bonuses to officers that instead choose to divert youth into programs for treatment. At the judicial level, Prof. Ball further noted that states such as Colorado and Missouri have in place systems that allow judges to consider costs of incarceration in sentencing proceedings. This allows a sort-of cost-benefit analysis in making sentencing determinations. Prof. Ball argued, however, that this is merely a "first step," as it fails to consider efficacy to incarceration itself.

Although convincing in their arguments that the criminal justice system is in desperate need of reform, Prof. Ball and Ms. Ryan's panel discussion made clear that considerably complex and numerous obstacles stand in the way of reform. Each topic of discussion suggested strong economic and ideological dependency on mass incarceration at the state level. At the conclusion of panel discussion, Ms. Proff addressed the panelists on their views of potential changes to the criminal justice system in the Trump presidential era. Underlying each response were

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<sup>4</sup> VIRGINIA DEPARTMENT OF JUVENILE JUSTICE, BUDGET (2016), <http://www.djj.virginia.gov/pages/admin/budget.htm>

<sup>5</sup> City of Seattle, Study: Innovative Seattle/King County Diversion Program Shows Success, SEATTLE CRIME NEWS, <http://spdblotter.seattle.gov/2015/04/08/study-innovative-seattleking-county-diversion-program-shows-success/> (last visited Feb. 6, 2017).

recognitions of substantial threats and calls for diligence and ongoing consideration of how Americans conceptualize public safety in order to promote a more effective criminal justice system.

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