

For the past two and half decades a new approach to addressing criminal behavior has spread across the U.S, and indeed, across the Pacific Ocean to Guam. Today, all the states and territories have introduced specialty courts, frequently referred to as “problem solving” or “therapeutic” courts, to supplement the more traditional judicial approach to prosecuting criminal behavior. These specialty courts target crimes associated with drug addiction, mental health problems, family violence, and veteran’s issues, among others.

The seed to this new approach was first planted in 1989 by a Florida judge who had become frustrated and disillusioned with the traditional manner of adjudicating cases involving drugs and drug addiction. He kept seeing the same drug offenders over and over again in his courtroom. Obviously, prisons weren’t addressing the underlying root causes of addiction.

So, rather than keep jailing repeat offenders, he and a like-minded team of experts employed a “carrot and stick” approach to encourage addicts to break the vicious cycle of drug abuse. Eligible offenders who pled guilty to certain drug crimes could avoid long prison sentences if they agreed to seek treatment, avoid drugs, and to participate in intensive counseling services. Willing participants were closely monitored and regularly drug tested. Those who tested positive were immediately sent back to jail for a short time, perhaps only a day or a week, then released to continue the program. For some, this approach was successful and the team started seeing positive results.

This new approach caught on. By 1999, there were nearly 500 drug courts throughout the U.S. Today, the number is approaching 3,000!

To be candid, benevolence wasn’t the only force driving the growth of specialty courts. A bloating prison population exerted tremendous financial incentives to reduce the number of inmates across the country. In the 1980’s, beginning under the Reagan administration, the U.S. declared war on drugs. Congress and many state legislatures passed tough anti-drug laws that sent drug offenders to prison for increasingly longer periods of time. In some states, simple possession of marijuana could land an offender in prison for 10 to 20 years.

This drive to “get tough on crime” spread to other areas as well. For example, many states passed laws requiring judges to sentence those convicted of certain types of crimes to mandatory minimum terms of imprisonment. These laws frequently focused on crimes involving drugs, guns, pornography, and economic offenses.

In addition, both the federal government and twenty-four states have passed “three strikes” laws. Those convicted of three separate criminal incidents are automatically sentenced to a mandatory minimum sentence.

As a result of these and other forces, prison populations across the nation swelled. Although the U.S. prison population peaked in 2008, the statistics continue to be staggering. The following statistics are from a variety of sources compiled between 2008 through 2015:

- According to the International Centre for Prison Studies, the United States has the highest prison rate in the world, at 743 prisoners per 100,000 people. Others in the top five include Rwanda (595), Russia (568) Georgia (547) and the U.S. Virgin Islands (539).

- Within the U.S., Louisiana has the highest prison rate at 1,420 prisoners, followed by Oklahoma (983), Mississippi (962), Alabama (951), and Georgia (916). The states with the lowest incarceration rate are Minnesota and Maine at 285 and 287, respectively.

- According to one index, Guam’s incarceration rate is 469.

- In the U.S., there are 2.3 million people confined in 1,719 state prisons, 102 federal prisons, 2,259 juvenile correctional facilities, 3,283 local jails, and 79 Indian County Jails, and varying numbers in military prisons, immigration detention facilities, and civil commitment centers.

- 57% of U.S. prisoners have been convicted of violating state laws and are imprisoned in state prisons; 30% are confined in local jails pending prosecution; and 10% have been convicted for violating federal laws and are housed in federal prisons.

- There are 850,000 people on parole (conditional release from prison).

- There are 3.9 million people on probation (a type of alternative sentence).

As a nation, we must ask ourselves if our “get tough on crime” movement has made us safer? If not, are federal and state legislators, prosecutors, and judicial officials motivated to find other alternatives to mass incarceration? What are viable alternatives?

Many states are currently grappling with these questions. So is Guam.