Twelve Steps, You're Out (Of Prison): An Evaluation of Anonymous Programs as Alternative Sentences

Ethan G. Kalett
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by
ETHAN G. KALET*T

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* J.D. Candidate, 1997; B.A. Vassar College, 1991. The author would like to thank the members and Central Offices of Alcoholics Anonymous and Narcotics Anonymous for their honesty and assistance.
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"So are we going to condone every drunk who sits here and comes around and says okay, here's how I beat it? . . . [A]re [we] supposed to sit here and everyone is supposed to feel sorry for him . . . ."
People v. Donald,1 quoting the trial judge and vacating and remanding the trial court's failure to consider defendant's remorseful attitude and addiction to alcohol.

Introduction

During the 1980s, America declared a "War on Drugs," and incarcerated drug sellers and drug users alike, causing prisons to swell beyond capacity.2 Public concern over alcohol-related offenses, such as drunk-driving, also rose dramatically in the 1980s,3 along with prosecution of such crimes.4 Today, the courts face ever-increasing numbers of drug and/or alcohol-addicted offenders, and the criminal justice system has been forced to seek alternatives to incarceration, such as parole and probation, in order to save money and conserve prison space.5 But, parole and probation are not effective for many

2. Lois G. FORER, A RAGE TO PUNISH 65, 67 (1994); see also infra notes 20-37 and accompanying text.
4. In the 1980s, state legislatures enacted or revised statutes to facilitate the prosecution of D.U.I. offenders. Steps taken included lowering the blood alcohol content (BAC) definition of intoxication, impounding the vehicles of D.U.I. suspects, suspending or revoking the license of a driver who fails or refuses to take a breath or urine test, etc. See, e.g., ALA. CODE § 32-5-192 (1996) (suspending license for refusal to take blood, breath or urine test, enacted in 1983); CONN. GEN. STAT. ANN. § 14-227b(c) (West 1996) (suspending license for failure to submit to test and lowering statutory BAC levels in 1989); FLA. STAT. ANN. § 316.193(6)(c) (West 1996) (increasing D.U.I. penalties in 1982); LA. REV. STAT. ANN. § 14:98(3)(b)(1)(b) (West 1996) (increasing penalties in 1987 and 1988); WASH. REV. CODE ANN. § 46.20.308 (West 1996) (in 1986 revoking and/or suspending license for failure to submit to test).
5. See, e.g., Billie S. Erwin & Lawrence A. Bennett, New Dimensions in Probation: Georgia's Experience With Intensive Probation Supervision, NAT'L INST. JUST., RES. IN BRIEF, Jan. 1987, at 1, 5-6 (comparing the costs of jailing an offender ($30.43/day), to placing one on probation ($0.76/day)).
offenders, who are soon rearrested for technical violations, or for committing new crimes.\(^6\)

The failure of standard court-ordered supervision has led to the creation of intermediate sanctions, also called alternative sentences, such as intensive probation/parole supervision.\(^7\) Although these harsher programs are generally promising,\(^8\) they are frequently too expensive to meet current needs.\(^9\)

As a result of the need for new alternatives, the practice of sending addicted offenders to "Anonymous" Twelve Step programs,\(^10\) such as Alcoholics Anonymous (A.A.), is gaining popularity in state and

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\(^6\) See, e.g., Majority Break Their Probation, Study Says, NEwsDAY, Jan. 25, 1989, at 35 (citing a study which showed that due to lack of funding and to inadequate supervision, over one half of all probationers in New York city commit crimes); see also, Joan Petersilia & Susan Turner, Evaluating Intensive Supervision Probation/Parole: Results of a Nationwide Experiment, Nat’l Inst. Just., Res. in Brief, May 1993, at 1-2 (stating 43% of felons on state probation were rearrested for another felony within three years).

\(^7\) Michael J. Russell, Nat’l Inst. Just., Res. in Brief, May 1993, at 1 (describing the goal of intermediate sanctions is to fill the gap between prison and probation with more restrictive release conditions, so as to reduce pressure on correctional institutions while still ensuring the safety of the community).

\(^8\) Petersilia & Turner, supra note 6, at 2.

\(^9\) Erwin & Bennett, supra note 5, at 5 (stating that Georgia’s ISP program costs $4.37/day, as compared to $0.76/day for regular probation).

\(^10\) The Anonymous programs are called “Twelve Step” programs because they utilize a Twelve Step procedure in their rehabilitative process. The Twelve Steps of A.A. are:

1. We admitted we were powerless over alcohol—that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God as we understood him.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed, and became willing to make amends to them all.
9. Made direct amends to such people wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God as we understood him, praying only for knowledge of His will for us and the power to carry that out.
12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics and to practice these principles in all our affairs.

federal courts. The A.A. program is more attractive than other intermediate sanctions because it is generally approved of by addiction treatment professionals, is of virtually no financial cost to the criminal justice system, and is available anywhere in the United States.

Yet despite the increasing number and variety of convicts being referred to A.A., not much has been written on whether diversion to Twelve Step programs as a criminal sanction actually furthers the primary goals of the criminal justice system: punishment of the offender, protection of society through incapacitation, rehabilitation, and deterrence of further misbehavior by the individual and other potential offenders. This Note undertakes such a discussion.

This Note focuses primarily on Alcoholics Anonymous because it is the first, largest, and most widely-accepted program of its kind, and because it is utilized by both alcoholics and the “dually addicted” (those who abuse both alcohol and drugs). Other Twelve Step programs exist, such as Cocaine Anonymous (C.A.), Marijuana Anonymous (M.A.) and Narcotics Anonymous (N.A.). The various

11. See, e.g., Cortes-Castillo v. Immigration and Naturalization Serv., 997 F.2d 1199 (7th Cir. 1993) (considering A.A. attendance as a mitigating factor in deportation hearing); U.S. v. Green, 22 M.J. 711, 712 (ACMR, 1986) (affirming lower court's sentence of mandatory A.A. meeting attendance); Striplin v. City of Dothan, 607 So. 2d 1285 (Ala. Crim. App. 1991) (sentencing D.U.I. offender to one A.A. meeting per week); In re Scott, 52 Cal. 3d 968, 979-80 (1991) (viewing attendance at A.A. as factor militating against disbarment of attorney).


13. A.A. is operated by volunteers and is “fully self-supporting, declining outside contributions.” TWELVE AND TWELVE, supra note 10, at 160. See also infra note 64 and accompanying text (discussing contributions by A.A. members as sole source of A.A. funding).

14. In 1994 there were over 90,000 A.A. groups worldwide. ALCOHOLICS ANONYMOUS WORLD SERVICES, INC., ALCOHOLICS ANONYMOUS COMES OF AGE: A BRIEF HISTORY OF A.A. 31 (1994) [hereinafter A.A. COMES OF AGE].

15. See, e.g., WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., HANDBOOK ON CRIMINAL LAW § 5 (1972); State v. Hunnell, 125 Idaho 623, 626-27 (1994) (stating the objectives of the criminal justice system). The reader may note that the Twelve Steps (see supra note 10) almost read like an ideal criminal sentence; they begin with capture and submission, proceed through confession and restitution, and conclude with reentry into society.

16. See infra, note 32.


18. N.A. is the second-largest anonymous program; it was established in Southern California in 1953. There are over 8,000 N.A. groups registered in at least 40 countries. N.A. World Service estimates that the organization has 300,000 members who regularly attend N.A. meetings. Janet Goetze, Ex-addicts celebrate freedom, recovery, PORTLAND OREGONIAN, Sept. 3, 1990 at E1, E3.
emphases of these other programs may be more appropriate for certain offenders. This Note’s focus on A.A. is not intended to slight other Twelve Step programs which, if they exist to the same extent as A.A. in certain communities, may provide another resource for the courts to consider.

Part I presents an overview of the problems faced by our prisons, followed by a brief explanation of how addiction differs from criminality, establishing that treatment is a necessary element of sentencing addicted offenders. Part II offers background on A.A., including a brief history of the organization, a discussion of its success rate, and a profile of its membership; the goal of Part II is to familiarize the reader with the A.A. program in order to help the reader determine whether an individual offender is likely to respond to a Twelve Step program. Part III discusses what A.A. offers to the criminal justice system, by decreasing costs and furthering the general goals of the system. Part IV deals specifically with practical ways to determine who should be sent to A.A. Finally, Part V suggests techniques to facilitate supervision of a Twelve Step sentence.

I. The Problem: Incarcerating Addicted Criminals Has Produced Prison Overcrowding and a High Recidivism Rate.

A. The Effect of the War On Drugs.

The war on drug offenders is a result of national frustration over the problem of drug and alcohol addiction. Alcohol addiction afflicts 15 million Americans. The illegal drug trade has killed over 100,000 Americans and cost the nation $300 billion. Alcohol is highly disruptive as well; in 1990, drunk driving accidents cost $57 billion across the United States. Alcohol is a major factor in motor vehicle accidents.


dents, homicides, suicide, violent crime, child abuse, heart disease, cancer, and mental illness.22 “In fact, [a]lcohol related arrests out-number arrests for any other type of crime [and] alcohol is more consistently linked to violent crime” than any other drug used for recreational purposes.23

National intolerance of drug offenders is manifested in our laws and in our drive to incarcerate addicted offenders. It appears in anti-drug campaigns24 and in the attitudes of individual decision-makers within the criminal justice system at all levels, from politicians to judges, who often perceive providing drug or alcohol treatment as inappropriately non-punitive, and instead treat addicted offenders as they would any other criminal.25

America's incarcerated population has increased 55% since 1981,26 largely due to an influx of non-violent drug users (as opposed to drug traffickers).27 Today's prisons can no longer contain all of the drug offenders.28 "Much of this prison crowding pressure is directly due to public outrage regarding drug-related crime and the resultant tougher sentencing practices that have been enacted for repeat offenders and criminals committing drug-related crimes . . . ."29 The inclusion of drug offenses as “strikes” in “three strikes, you’re out”

22. Statement of the Research Society on Alcoholism, supra note 19 at 612; Drunk Driving & Liquor Liability, supra note 3, at 2 (stating “alcohol was present in the blood of 41.3% of people who died in traffic crashes in 1995” and that “[t]here is an alcohol-related traffic fatality every thirty minutes”).


24. For example, the author observed one such promotion which featured a person's wrists in handcuffs under the legend, “What the casual drug user will be wearing this season.” Advertisement, Mariposa County Demand Reduction Program (1989).

25. See, e.g., Russell, supra note 7, at 420.


27. “[Two-hundred and twenty-thousand] persons were incarcerated for drug-related offenses in 1993,” 80% of whom were convicted of non-violent drug-related activities. Forer, supra note 2, at 65.

28. The nation's federal prisons are designed to hold 31,000 inmates, but currently contain 56,500. Similarly, in state prisons, cells for 436,000 hold 533,000. Lipton et al., supra note 26, at 9-10.

29. Id. at 10.
legislation, and the increasingly aggressive stance of state legislatures towards certain types of alcohol- and drug-related offenses have also added to the number of incarcerated addicts, placing an unprecedented financial strain on the prison system. For example, today forty percent of jail inmates are drunk drivers. At first, the system responded to the prison crisis with intensive probation and early parole, but today these programs are as overburdened as our prisons.

Despite our best efforts to win the drug war, drug use continues to rise, and there are clear links between addiction and criminal activity. The majority of America’s arrestees test positive for drugs and/or alcohol. Even before committing crimes, America’s criminals tend to drink and/or use illegal drugs more often than does the general

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30. See, e.g., 18 U.S.C. § 3559(c)(1)(A) (West 1994) (requiring life imprisonment upon conviction of a serious violent felony when the offender has two prior convictions for either drug trafficking or another serious violent felony).


32. For the purposes of this Note, the word “alcoholic” and the word “addict” will be used interchangeably. Both terms refer to “pure alcoholics” as well as those who take drugs and alcohol together (a.k.a., the “cross-addicted”). Drug and alcohol use frequently go together, which is why A.A. now opens its doors to cross-addicted persons. See, e.g., CHARLES BUFE, ALCOHOLICS ANONYMOUS: CULT OR CURE? 52 (1991) (citing statistic that from 1977 to 1989 the percentage of A.A. members also addicted to drugs rose from 19% to approximately 46%). See also RICHARD B. SEYMOUR ET. AL., DRUGFREE: A UNIQUE, POSITIVE APPROACH TO STAYING OFF ALCOHOL AND OTHER DRUGS 80 (1987); cf. DR. EARLE M., PHYSICIAN, HEAL THYSELF! 35 YEARS OF ADVENTURES IN SOBRIETY BY AN AA ‘OLD TIMER’ 227-228 (1989) (discussing long-term A.A. members who left A.A. because of discomfort with polyaddicted members, and concluding that in the modern A.A. group “pure alcoholics” are now a minority).

33. Between 1981 and 1988, federal spending on drug control tripled from $1.2 billion to $3.9 billion. See Lipton et al., supra note 26, at 8.

34. FORER, supra note 2, at 170. In Ohio alone, for example, about one-third of its state prisoners are drug and alcohol offenders, many of whom were convicted of crimes involving only the personal use of drugs and/or alcohol. Mary Anne Sharkey, Leaders Decide Jail Not A Cure For Addiction, THE PLAIN DEALER, June 13, 1993, at 1C.

35. “Intermediate sanctions are intended to expand sentencing options . . . and offer the potential to reduce pressure on correctional institutions . . . .” Russell, supra note 7, at 1.

36. David Freed, System Overflows With A Flood of Probationers, L.A. TIMES, Dec. 21, 1990 at A1 (stating that nearly 67,500 probationers are unsupervised by probation officers); Editorial, SACRAMENTO BEE, June 28, 1993, at B14 (“[O]nly 53% of Sacramento probationers or jail parolees are supervised today . . . .”).

37. A recent national survey of booked arrestees who voluntarily submitted to drug testing showed that many, if not most, had illegal drugs in their system at the time of their arrest. The numbers ranged from the low of 44% in San Antonio to the high of 85% in Manhattan testing positive for illegal drugs (not including alcohol). Joyce A. O’Neil,
population. Once imprisoned, most inmates are able to maintain their preexisting drug use and/or acquire new addictions. Thus, an addict may be released from prison in the same addicted state she was in before becoming a criminal.

The link between addiction and criminal behavior indicates that it is necessary to deal with the addiction itself, rather than simply the crimes committed by addicted offenders. Otherwise the addict will be convicted, serve her time, and be released in the same addicted state, thereby being prone to reoffend.

B. The Nature of Addiction.

An understanding of the physical nature of addiction is necessary to an acceptance of the utility of alternative sentencing. If the causes of criminal behavior (such as poverty, a conscious choice, a moral failing, etc.) and addiction are the same, treating non-addicted and addicted criminals differently serves no purpose. Only if the causes of criminality differ from the causes of addiction is differential treatment reasonable.

The medical and scientific communities began viewing addiction as something other than a merely social phenomenon in the middle of this century. In 1956, the American Medical Association called alcoholism “an illness which justifiably should receive the attention of physicians.” Since then, growing bodies of research indicate that alcoholism and drug addiction have genetic components and may even be medically treatable in some circumstances. A recent Congressional study of scientific research concluded that “the existence of in-

38. According to the 1979 Survey of Inmates of State Correctional Facilities, 40% of property offenders and 35% of violent offenders were heavy drinkers during the year before their convictions. Kevin N. Wright, Alcohol Use By Prisoners, 17 Alcohol Health & Res. World 157 (1993).
39. In 1991, 59% of America’s incarcerated had a diagnosable substance abuse disorder despite the fact that they were behind bars. Roger H. Peters, Drug Treatment in Jails and Detention Settings, in Drug Trmt. & Crim. Just., 44, 45 (James A. Inciardi ed., 1993) (noting also that this number is increasing).
40. Of course, not every person who tests positive for drugs requires drug treatment. Judges and prosecutors will need a detailed screening process to differentiate between those who are genuinely addicted and therefore could benefit from drug treatment, and those whose use is incidental to the commission of illegal acts. Suggestions for such a screening process are detailed in Gregory P. Falkin, et. al., Drug Treatment in the Criminal Justice System, 58 Fed. Probation 31, 31 (Sept. 1994).
42. See, e.g., Addictive Behaviour: Molecules to Mankind, Perspectives on the Nature of Addiction (Adrian Bonner & James Waterhouse eds., 1996); Genetics & Biology of Alcoholism (C. Robert Cloninger & Henri Begleiter eds., 1990) (collection of papers presented at conference debating genetic predispositions to alcoholism);
hereditary differences seems likely" when comparing alcoholics to non-alcoholics, but that it is "unclear" exactly what is inherited through this genetic predisposition. Many scientific studies and medical professionals now refer to alcoholism and drug addiction as "diseases" with genetic and social components.

Courts and legislatures are also adopting the medical model of addiction. Modern state and federal statutes may treat alcoholism as a mental illness, disease, or disability, and have been supported by the courts in doing so. Many cases discuss the "disease concept" of alcoholism, which views addiction as a mental illness rather than as a conscious choice. Others recognize the lack of conscious choice which addicts encounter once they become addicted by characterizing defendants as "victims of the habit" who need a "cure." Addictions has roots other than those that cause general criminal behavior. An addicted offender, then, differs from a non-addicted of-

AVRAM GOLDSTEIN, ADDICTION: FROM BIOLOGY TO DRUG POLICY 85-95 (1994) (discussing whether addicts are "born or made").


fender. Therefore, some purpose may be served by treating the cause of the deviancy rather than simply punishing the criminal behavior. It is this assumption upon which alternative sentencing to Twelve Step programs is founded.

C. Providing Treatment to Addicted Prisoners Lowers Recidivism.

When a convict is released from prison, she often faces numerous obstacles in transitioning from prison to mainstream society. Typical problems include readoption of social skills, obtaining housing, handling debts (whether legal or illegal) incurred prior to or as a result of incarceration, and lack of "straight" friends and employment. These obstacles increase the likelihood that she will commit a new offense rather than adapt to life outside of prison.

The addicted ex-convict faces the double bind of being both an ex-con and an addict. Her addiction increases her inability to adapt to a socially acceptable, noncriminal lifestyle. For those addicted to controlled substances, simply being addicted to an illegal drug often induces the addict to engage in criminal activity in order to obtain the substance for personal use. This greater burden in adapting to life outside of prison may explain why the threat of future incarceration does not deter addicts from using illegal drugs in the future, and why the standard tools of rehabilitation, such as vocational training, parole, and probation, fail to reform the majority of drug offenders.


49. For example, a study of 40-year-old heroin addicts in New York showed they had spent only 20% of their lives addicted, but 80% of their lives unemployed. George E. Vaillant, What Can Long-Term Follow-Up Teach Us About Relapse and Prevention of Relapse in Addiction?, 83 British J. of Addiction 1147, 1150 (1992).

50. See, e.g., Kirkpatrick, supra note 48, at 5-6 (explaining that punitive deterrence is rational but criminal behavior and mental illness are often irrational); H. Laurence Ross, Confronting Drunk Driving 42-76 (1992) (finding swift punishment more likely to deter drunk driving behavior than actual severity of the sanction); Sharkey, supra note 34, at 1C ("There has been little or no deterrence [to drug abusers] in the in-and-out-and-in-and-out of jail approach."); Vaillant, supra note 49, at 1152-54 (showing one year of standard parole was 68% more effective than short term imprisonment in preventing future drug abuse).

51. Sheldon B. Peizer et al., Correctional Rehabilitation as a Function of Interpersonal Relations (1956), reprinted in Behavioral Science and Modern Penology, supra note 48, at 101, 103 (emphasizing that without training in social skills, "vocational skill has little adjustment value").

52. A recent study of Texas probationers and parolees found that those convicted of D.U.I. and drug dealing are among the most likely to commit a similar offense while on parole or probation. United Press International, Study finds increased recidivism rates for Texas inmates, May 21, 1992, available in LEXIS, Regional News section. See also Lipton et al., supra note 26, at 11 (noting evidence that 60-75% of untreated heroin and/or cocaine...
Yet most studies show that while traditional parole/probation has failed to decrease recidivism in addicted offenders, placing such offenders in drug and alcohol treatment programs does decrease recidivism. A number of studies assert that offering some treatment is better than offering none at all, perhaps because it forces the substance abuser to acknowledge her problem at some level. As both medical and legal professionals become increasingly aware of the scientific explanation of addiction, drug treatment is gaining recognition as a necessary component in the sentencing of addicted offenders. The question is, then, what is the most effective and cost-efficient manner to provide such treatment?

II. What is Alcoholics Anonymous?

A. A Brief History of the Organization

"The spark that was to flare the first A.A. group was struck on June 10, 1935, in Akron, Ohio, when "Dr. Bob" and "Bill W." first tried their new "cure" for alcoholism on former deacon and chronic alcoholic "Bill D." The group's philosophies sprang from an organization known as the Oxford Group Movement whose founder was an evangelical Lutheran, and from the theories of Dr. Robert Silsworth, who believed alcoholism was a disease characterized by an "obsession of the mind that compels us to drink and an allergy of the body that condemns us to go mad or die." It was Dr. Silsworth who

53. See, e.g., Erwin & Bennett, supra note 5, at 6 (stating ISP program requiring its members to be drug free has a 90% successful reduction in recidivism for both parolees and probationers); Gary Field, The Effects of Intensive Treatment on Reducing Criminal Recidivism of Addicted Offenders, 53 Fed. Probation at 51, 55 (Dec. 1989) ("Addicted offenders who receive little or no treatment show an accelerating pattern of criminal activity over time."); Peters, supra note 39, at 75-76 (stating that drug-involved arrestees are likely to relapse into drug use or to commit drug-related crimes in the absence of substance abuse treatment).

54. Buie, supra note 32, at 110 (discussing a mid-1970s study which found that "treatment of any kind was preferable to no treatment at all").

55. See supra Part I.B.

56. A.A. Comes of Age, supra note 14, at 72.

57. Id.

58. Although many of A.A.'s Twelve Steps can be traced to the Oxford Group Movement, which provided a Seven Step program designed to instill morals and God-fearing values in its members, today's A.A. groups resemble the Oxford Groups only in a very superficial manner. Dr. Frank Buchman, the controversial founder of the Oxford Group Movement, later went on to create the Moral Re-Armament campaign (MRA) in Britain in the late 1930s. A member of MRA founded the Up with People! organization in 1965, which exists to this day. See Buie, supra note 32, at 16-33.

first diagnosed Bill W. as an alcoholic. And Bill W. credits Dr. Silkworth as being instrumental in his recovery.

A.A. broke from the Oxford Group in 1937 in order to focus exclusively on alcoholism, and because the religious nature of the Oxford Group offended some A.A. members. Today, A.A. is an independent organization, fully self-defining, self-funding and self-governing. In 1994, A.A. claimed over 90,000 groups worldwide to-

60. A.A. Comes of Age, supra note 14, at 52.
61. Id. at 76.
62. The story of A.A.'s need for generic spirituality is told in Alcoholics Anonymous World Services, Inc., Alcoholics Anonymous 238-50 (3d ed., 1990) [hereinafter Alcoholics Anonymous]. The A.A. program emphasizes the individual's need to recognize a higher power or God of her own understanding (see steps two, three and eleven, supra note 10), rather than focusing on any particular religious conception. One A.A. "old-timer" describes his conception of God as "that healing power in each of us." Dr. Earl M., Physician, Heal Thyself 14 (1989) (italics omitted). The group's literature compares the higher power to electricity, a "strange energy so few people understand [but which] meets our simplest daily needs, and our most desperate ones, too," and even suggests that the A.A. group itself could serve as a higher power for the irreligious member. Twelve and Twelve, supra note 10, at 36, 37. When sentencing an addicted offender to attend A.A., a judge must certainly consider the spiritual aspects of the program and whether the offender's faith will be unconstitutionally abridged by the A.A. program. This consideration, however, is beyond the scope of this Note.
63. The preamble read before every meeting defines A.A.:

[A] fellowship of men and women who share their experience, strength and hope with each other that they may solve their common problem and help others to recover from alcoholism. The only requirement for membership is a desire to stop drinking. There are no dues or fees for A.A. membership; we are fully self-supporting through our contributions. A.A. is not allied with any sect, denomination, organization or institution; does not wish to engage in any controversy, neither endorses nor opposes any causes. Our primary purpose is to stay sober and help other alcoholics to achieve sobriety.

Maxwell, supra note 12, at xiii.
64. A.A.'s Seventh Tradition states, "[e]very A.A. group ought to be fully self-supporting, declining outside contributions." Twelve and Twelve, supra note 10, at 160. In its infancy, the group's board of trustees made a vow of "corporate poverty." It declined a much needed financial gift of $10,000, and risked the ruination of the organization, lest A.A. become tempted "to invent all kinds of schemes to do good with such funds and so divert A.A. from its primary purpose" of helping individual alcoholics through the Twelve Steps. A.A. Comes of Age, supra note 14, at 113-14. To this day, the organization accepts donations only from A.A. members, and has placed a $1,000 ceiling on the amount it will accept from any one individual. Alcoholics Anonymous World Services, Inc., The A.A. Serv. Manual 129 (1987) [hereinafter A.A. Serv. Manual].
65. A.A.'s traditions stress that each individual group should remain as autonomous as possible, declining professional affiliations and remaining independent of outside causes and pressure groups. See generally Twelve and Twelve, supra note 10, at 132-180. Not one piece of A.A. literature contains an advertisement, nor is outside literature sold at its meetings. Furthermore, the organization sells its own literature at cost, often providing books to impoverished newcomers free of charge.
taling over 2 million alcoholics and drug addicts. The ranks of Twelve Step Program members have also grown due to hundreds of "offshoot" programs utilizing the Twelve Steps, such as Narcotics Anonymous (N.A.) and Cocaine Anonymous (C.A.).

A.A. has a long tradition of serving the incarcerated. It first brought its message into lock-down mental health facilities in the late 1930s. A.A. ventured into prisons in 1942, at the invitation of the warden of San Quentin, who felt that convicts needed help in order to deal with the root causes of their drinking. Warden Duffy "looked upon Alcoholics Anonymous as a tool to help us rebuild [the inmates'] lives." Due largely to the perceived success of Duffy's program, A.A. now has over 2,000 groups in correctional facilities and over 1,000 groups in treatment facilities in the U.S. and Canada.

Although the program is loosely organized at the group level, the A.A. corporation, which serves to link all of the individual groups together, had offices in 114 countries in 1988. These offices are linked to A.A.'s central office in New York through a tight governmental structure led by elected trustees and general service board.
In addition to holding large governmental meetings, the A.A. organization hosts regular conventions for its members which often include dances and dinners, and can involve thousands of A.A. members from all over the world.75

The size and structure of the A.A. organization provides a dual function for the recovering addict; first, it provides a quick and easy way for A.A. members to find a familiar support system virtually anywhere in the country. Second, the sheer size of A.A. means that it must rely on many volunteers in order to continue to function.76 This gives new members, who are often socially isolated from nondrinkers, the opportunity to meet other sober people and to take responsibility for their recovery within the program by participating in activities ranging from making coffee at a local meeting to becoming a national officeholder. Researchers have found that successful inmate programs tend to implement strategies that give participants a stake in the success of the program as a whole, as well as in their own rehabilitation.77

B. The A.A. Group

The heart of the A.A. program is not its governing structures, but rather its group meetings.78 It is difficult to fully understand the program without going to an open meeting; those who would sentence offenders to A.A. would be well advised to attend a few meetings and gain a basic familiarity with the program.79

Each A.A. group varies in size,80 but the format is essentially the same. At a typical meeting, a “speaker,” usually sober for at least 90 days, tells “what [her life] used to be like, what happened, and what [it

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74. For details on the structure of the A.A. corporation, see A.A. SERV. MANUAL, supra note 64, at 94-120.
76. This is especially true in light of its tradition of nonprofessional involvement. See TWELVE AND TWELVE, supra note 10, at 166 ("Alcoholics Anonymous should remain forever nonprofessional . . .").
78. In fact many A.A. members are ignorant as to the intricacies of the governmental structure and history of the program.
79. MAXWELL, supra note 12, at ix (noting A.A. literature is “no substitute for personal contacts with A.A. members and groups”).
80. In San Francisco, for example, the “Love the Haight” group typically has ten or less attendees while the “Tuesday Downtown” meeting might have several hundred members in one night. Information provided by San Francisco Central Office.
is] like now." After the speaker "shares" her story, individual members discuss their problems as they relate to alcoholism. For example, at one meeting attended by the author the members discussed fear of losing their jobs, how to gracefully leave a party where drinking was occurring, and how to cope with a friend's relapse. The idea is for members to relate common experiences to the twelve steps of the program.

C. The Individual Members

An A.A. member is defined as someone who has "a desire to stop drinking." Accurate data describing A.A. members is difficult to obtain due to the program's emphasis on anonymity. One study claims that a typical A.A. success story is a middle class white male over forty years old. Another states that the program is most effective with high school graduates from the lower middle class who have "remained open to spiritual values." A.A.'s own surveys indicate a rise in the number of women and young persons (even teenagers) in the program.

It may not be necessary to have an accurate profile of typical A.A. members. One of the goals of intermediate sanctions is to treat the criminal, not the crime. Sentencing an offender to A.A. should be based on whether the needs of the individual offender will be met by participation in a Twelve Step program, i.e., is the offender herself likely to benefit from the program in a way that will decrease her likelihood of reoffending? Since the system is sentencing an individual

81. ALCOHOLICS ANONYMOUS, supra note 62, at 58.
82. See BuFE, supra note 32, at 13-15. See also ALCOHOLICS ANONYMOUS WORLD SERVICES, INC., INFORMATION ON ALCOHOLICS ANONYMOUS (1988).
83. TWELVE AND TWELVE, supra note 10, at 139 ("Tradition Three: The only requirement for A.A. membership is a desire to stop drinking."); MAXWELL, supra note 12, at xiii.
84. BuFE, supra note 32, at 113.
85. Young & Lawson, supra note 23, at 132.
86. Although only three of the first 100 A.A. members were women, by 1968 A.A. was 22% women, and by 1980 31% of A.A. members were women. Also by 1980, 26% of A.A. members were under 35-years-of-age. MAXWELL, supra note 12, at 3. By 1989, 3% of A.A.'s members were teenagers. BuFE, supra note 32, at 104. But see SEGAL, supra note 59, at 318-9 (stating that younger males from lower socioeconomic groups may have trouble getting involved in A.A.'s social activities, and therefore the program may not work for them, and noting that A.A. may be most effective for older drinkers from middle- or upper-socioeconomic levels). Note, however, that these surveys only indicate a particular population's general success rate; they do not mean that individual members of any class or population are doomed to fail or guaranteed to succeed in the program.
87. See, e.g., HARRY ALLEN, PROBATION AND PAROLE IN AMERICA 82 (1985) ("[G]ranting probation is a highly individualized process that usually focuses on the criminal rather than the crime.").
88. The primary purpose of probation is rehabilitation. Roberts v. United States, 320 U.S. 264 (1943).
offender rather than a class of offenders, generalizations regarding typical A.A. members should be used cautiously and must be tempered with judicial discretion and an assessment of the specific offender's character. The profile of a typical member is useful only as an indicator of others who have succeeded in the past, but may not be an effective predictor of a particular individual's success.

D. Is A.A. Successful?

Like an accurate profile of the typical A.A. member, statistical information about the program's success rate is hard to come by. The faith of treatment professionals in A.A.'s ability to help alcoholics and addicts indicates at least that it is perceived to be effective, but there is little objective data on whether A.A. members stay sober for any length of time. The studies that have been done show dramatically different results, ranging from fewer than one-third of A.A. members staying sober for more than five years to a 75% overall success rate, with 50% succeeding on the first try and the rest succeeding on subsequent attempts.

Many of these studies are further complicated by the assumptions and cultural biases of the researchers, and the lack of consistency in defining how many meetings one must attend to be an "A.A. member." Since regular attendance at A.A. is strongly linked to contin-

89. See supra note 40 (noting that offenders who test positive for drugs and/or alcohol are not necessarily suited for A.A. sentencing and therefore individual assessments will be required).

90. See generally Mark Alan Schuckit, Limits to Generalizability in Treatment Research, in Drugs, Alcohol, & Tobacco: Making the Science and Policy Connections 252 (Griffith Edwards et al. eds., 1993) (study of treatment research supporting the need for individual assessments); Young & Lawson, supra note 23, at 132 ("The advantages and limitations of A.A. as they relate to the biological, psychological, and sociological profile of the offender must always be weighed when considering such a referral.").

91. See Bufe, supra note 32, at 106-07 (citing a 1965 article which found that 38% of 393 A.A. members surveyed had stopped attending meetings ("member" defined as one who attended 10 or more meetings a year); and analyzing a 1989 A.A. membership survey which revealed that while 65% of members had been sober at least one year, only 29% had at least five years' sobriety).

92. A.A. itself claims that 50% of its members get sober on the first try, and 25% get sober "after some relapses." Alcoholics Anonymous, supra note 62. See also Arnold M. Ludwig, Understanding the Alcoholic's Mind: The Nature of Craving and How to Control It 65 (1988) (confirming the "general effectiveness of A.A."); Young & Lawson, supra note 23, at 133-34 (indicating that 66% of A.A.'s "regular attenders" were drinking at the end of a 12 month period).

93. See Young & Lawson, supra note 23 at 134 (citations omitted) (concluding A.A. may be inappropriate for Native Americans, who are "encultured not to display public emotions," and for Hispanics, who find it difficult to admit helplessness in the face of alcohol due to the "cultural emphasis on assertive masculinity").

94. Interviews of A.A. members conducted by the author showed that the common suggestion is that newcomers attend ninety meetings in their first ninety days, but after that
ued abstinence, this lack of definition significantly impedes accurate measurements of the program's success.

Many other factors can influence an individual's chances of success within an Anonymous program, such as the type of drug to which an individual is addicted, and philosophical differences which may cause individuals to fail at the A.A. program. Most studies do not account for these differences.

Another factor which may influence an individual's ability to stop abusing drugs and/or alcohol is whether the individual seeks recovery on her own behalf, or whether she is compelled to do so by an outside agency. Although some experts assert that compulsion reduces the effectiveness of drug treatment, there is no widespread agreement on

point there is no general consensus on how many meetings one should attend in order to maintain sobriety. One A.A. member told the author, "Keep coming until you want to come, and then come because you want to." In the official literature, however, there is no requirement for A.A. membership except "a desire to stop drinking," indicating that there is no minimum number of meetings required. TWELVE AND TWELVE, supra note 10, at 139.

95. See, e.g., J. Michael Polich et al., THE COURSE OF ALCOHOLISM FOUR YEARS AFTER TREATMENT 150 (1980) ("Current and regular attendance at A.A. is strongly linked to current abstinence."); Vaillant, supra note 49, at 1154-55 (noting link between number of meetings attended and ability to achieve and maintain abstinence from drugs and alcohol).

96. See SEYMOUR ET AL., supra note 32, at 79-83 (describing different treatments for different types of drug addictions); Young & Lawson, supra note 23, at 133 (stating those with a "biological predisposition toward alcoholism may benefit from A.A. since it prescribes complete abstinence," and that research indicates that controlled drinking would be unwise for "this type of alcoholic"). There are also studies indicating that certain drugs are more likely to cause violent behavior than others, which may mean that diverting such addicted offenders from incarceration may be more dangerous to society. See, e.g., Jefferey A. Roth, Psychoactive Substances and Violence, NAT'L INST. JUST., RES. IN BRIEF, Feb. 1994, at 1, 2 (showing that alcohol has been strongly linked to violent behavior).

97. A.A.'s own literature states that those who are "constitutionally incapable of being honest" will not succeed at the program. ALCOHOLICS ANONYMOUS, supra note 62, at 58. See also LEWIS YABLONSKY, THE TUNNEL BACK: SYNONON 54-55 (1965) (discussing the philosophical break between the Synanon program and A.A.). Additionally, some persons may find A.A. to be a "religious" program. A.A. members strenuously object to such a classification, many of whom told the author that the program is "spiritual" not "religious." However, this distinction is subtle, and may not satisfy all who attend the program. The courts and commentators have struggled with this issue as well, noting that certain constitutional rights may be implicated by a sentence to A.A. One court recently ruled that a probationer's religious freedoms were violated by requiring him to attend A.A. meetings. A central issue in the case was whether the system provided the petitioner with other alternatives to A.A. Warner v. Orange County Dep't of Probation, 870 F. Supp. 69, 173 (S.D.N.Y. 1994). See also Boyd v. Coughlin, 914 F. Supp. 828, 834 (N.D.N.Y. 1996) (requiring A.A. or N.A. attendance bears rational relationship to government interest and no wholly secular alternatives are available without undue burden); Christopher K. Smith, Note, State Compelled Spiritual Revelation: The First Amendment and Alcoholics Anonymous as a Condition of Drunk Driving Probation, 1 WM. & MARY BILLS RTS. J. 299 (1992). Since only a few courts have found that sentences to Twelve Step programs violate the First Amendment, a discussion of this topic is beyond the scope of this Note.
the subject.98 Recent studies have indicated that voluntariness is not a necessary element of a successful drug treatment program.99

A.A. itself has tried compelled treatment; when the program was in its infancy and desperately needed members, Alcoholics Anonymous members were known to pursue prospects quite aggressively. "Besides dropping in uninvited on hospitalized alcoholics, they would call on alcoholics at their homes .... [T]he founder of A.A. in Cleveland [] is even reported to have hauled prospects off their barstools."

A final issue which complicates an accurate appraisal of A.A.'s ability to help its members stay sober is the phenomenon of relapse (when an addict returns to drinking or uses drugs after a period of abstinence), which is one of the most troubling aspects of addiction

98. See, e.g., Goldstein, supra note 42, at 217 ("Legally mandated supervision has been found, in several research studies, to be an extremely effective method of ensuring abstinence."); Raymond C. Hodge, The Rehabilitation Process: A Prisoner's Point of View (1964), reprinted in Behavioral Science and Modern Penology: A Book of Reading 160, 160 (William H. Lyle, Jr., Ph.D. & Thetus W. Horner eds., 1973) (stating that a prisoner "must be led, never forced" into rehabilitation); Jaime M. Levine, Comment, "Join the Sierra Club": Imposition of Ideology as a Condition of Probation, 142 U. PA. L. REV. 1841, 1846-47 (1994) (arguing that imposing "probation conditions that require an offender to associate with a particular ideology," like compulsory membership in Alcoholics Anonymous, is counter-productive because it robs the offender of self-discovery, obstructing complete rehabilitation); Bruce J. Winick, The Right to Refuse Mental Health Treatment: A First Amendment Perspective, 44 U. MIAMI L. REV. 1, 80-90 (asserting that court-ordered counseling, group therapy, and other psychotherapeutic approaches to reforming offenders "are ultimately dependent upon the subject's cooperation and willingness to change"). Cf. Carl G. Leukefeld & Frank M. Tims, Compulsory Treatment: A Review of Findings, in Nat'l Inst. on Drug Abuse Res. Monograph Series No. 86: Compulsory Trmt. of Drug Abuse: Res. and Clinical Practice, 236, 238-46 (Carl G. Leukefeld & Frank M. Tims eds., 1988) (stating that compulsory treatment, including civil commitment, works well for certain groups of chronic drug abusers and intravenous drug users).

99. See, e.g., M. Douglas Anglin, The Efficacy of Civil Commitment in Treating Narcotic Addiction, in Nat'l Inst. on Drug Abuse Res. Monograph Series No. 86: Compulsory Trmt. of Drug Abuse: Res. and Clinical Practice 8, 29-31 (Carl G. Leukefeld & Frank M. Tims eds., 1988) (asserting that legal coercion doesn't change the overall efficacy of the treatment provided); James J. Collins & Margaret Allison, Legal Coercion and Retention in Drug Abuse Treatment, 34 Hosp. & Community Psychiatry 1145 (1983) (claiming that legal threat can actually improve the results of treatment by keeping offenders constructively involved with a treatment program while under the court's supervision, and that this coercion does not adversely affect the offender's chances at long-term treatment); Robert L. Hubbard et al., The Criminal Justice Client in Drug Abuse Treatment, in Nat'l Inst. on Drug Abuse Res. Monograph Series No. 86: Compulsory Trmt. of Drug Abuse: Res. and Clinical Practice 57, 76 (Carl G. Leukefeld & Frank M. Tims eds., 1988) ("[C]riminal justice clients do as well or better than other clients in drug abuse treatment.").

100. Bufo, supra note 32, at 43.
Most studies of A.A.'s effectiveness differ in their consideration of relapse (for example, whether it represents total failure or a mere setback), and few discuss whether the person who has "failed" returns again to A.A. after relapsing. If a daily drinker who has been abstinent for one year has one drink and then returns to sobriety, is that to be deemed a failure? Lack of agreement over what constitutes relapse also complicates assessment of an offender's compliance with terms of probation: will drinking in and of itself be a parole violation, or will violations consist only of actual criminal activity?

While evidence indicates that A.A. works for its members, future research is clearly needed. Studies will need to clarify what constitutes success, failure, and relapse, and determine how many meetings are necessary to secure consistent sobriety. Finally, studies must address whether A.A. helps sentenced offenders as well as it does its more typical, non-criminal members.

101. Relapse is almost universally seen by medical professionals as the most beguiling problem of alcoholism and addiction. See, e.g., Leukefeld & Tims, supra note 99 (summarizing studies indicating need to accept that drug dependence is a chronic condition and repeated interventions will often be required).

102. A.A. itself views slips as (often inevitable) setbacks, not failures. See ALCOHOLICS ANONYMOUS WORLD SERVICES, INC., AS BILL SEES IT: THE A.A. WAY OF LIFE (SELECTED WRITINGS OF A.A.'S CO-FOUNDER) 99 (1967) [hereinafter AS BILL SEES IT] ("The 'slipper' needs understanding."). See also ALCOHOLICS ANONYMOUS, supra note 62, at 210-21, 230-37, 238-50 (several members tell of their repeated relapse before eventually becoming able to maintain sobriety).

103. Violations of parole are an important issue and a common occurrence. See Fox Butterfield, Crime Panel Fears New Wave of Violence: Justice System Urged to Improve Parole Oversight, S.F. CHRON., Jan. 6, 1996, at A7 ("About a third of all violent crimes in the United States are committed by people who . . . are on probation, parole, or pretrial release. . . ."); Majority Break Their Probation, Study Says, supra note 6 ("More than half of all criminals on probation in the city commit crimes while they are under court-ordered supervision . . . ."). But drinking would be a technical violation, not a new crime, since consuming alcohol is not illegal. The real issue may be whether sentencing to A.A. can reduce the frequency of nontechnical violations (i.e., the commission of new criminal acts), and/or reduce the workload of probation officers. If diversionary sentencing to A.A. can accomplish either of these goals, it could be seen as successful. The only way to discover the answer to these questions is to experiment with diversion to A.A., and to carefully track the success of those diverted offenders. This issue is further complicated when the offender is addicted to illegal drugs as opposed to alcohol, since in order to obtain the drug the offender must engage in illegal activities independent of a term of probation. An alcoholic who drinks engages in a technical violation, whereas the purchase of illegal drugs constitutes a new offense. In dealing with relapse, decisions on whether to violate an addict and return her to prison will require a great deal of consideration on the part of the supervising party.
III. What Anonymous Programs Offer to the Criminal Justice System

A. Potential Cost and Ease of Administration Benefits

Despite the large number of addicts within our criminal population, and despite studies indicating that even minimal treatment is preferable to none at all, only a small number of imprisoned, paroled, or probationed addicts receive any sort of treatment. What treatment the system does provide is often in the form of Alcoholics Anonymous meetings.

A.A. is an attractive treatment tool for the criminal justice system for three reasons. First, because it is inexpensive to provide, is run by volunteers, and is independent of the criminal justice system, A.A. relieves the system of many financial expenses and administrative burdens associated with treatment programs (such as hiring counselors and purchasing materials and insurance). Furthermore, A.A.'s vol-

104. See supra Part I.A.
105. See supra Part I.C.
106. It was estimated that in 1991 only 5% of addicted inmates were receiving any treatment for their addiction. Peters, supra note 39, at 46. Cf. LYNN S. BRANHAM, USE OF INCARCERATION IN THE UNITED STATES: A LOOK AT THE PRESENT AND THE FUTURE 14 (1992) (stating that in 1987 11.1% of inmates were in drug treatment programs); Bernardette Pelissier & Dan McCarthy, Evaluation of the Federal Bureau of Prisons' Drug Treatment Programs, in NAT'L INST. ON DRUG ABUSE RES. MONOGRAPH SERIES No. 118: DRUG ABUSE TRMT. IN PRISONS AND JAILS 261, 261 (Carl G. Leukefeld & Frank M. Tims eds., 1992) (50% of all state prisoners used drugs regularly prior to arrest but received NO treatment while in jail); Wellisch, supra note 77, at 5-6 (although most women who are arrested test positive for drugs, only about 10% of all women in prison receive any drug treatment).
107. See David Freed, System Overflows With a Flood of Probationers, L.A. TIMES, Dec. 21, 1990, at A1 ("There are 16,400 adults on probation who, by court orders, are supposed to be periodically tested for illegal drugs. Nearly half are not."); Stephen Labaton, Probation Overload: Glutted Probation System Puts Communities in Peril, N.Y. Times, June 19, 1990, at A1, A16 (citing experts who estimate that 70-75% of probationers are addicted to drugs or alcohol, yet only a “fraction” are receiving drug treatment).
108. See BURDE, supra note 32, at 52 ("[P]articipation in A.A. is either a voluntary or mandatory aspect of virtually every institutional alcoholism program in the country."); Lip- ton et al., supra note 26, at 12 (44 states allow N.A., C.A. or A.A. meetings once or twice per week); Peters, supra note 39, at 48 (stating only 60% of the nation's jails offer treatment and among those that do A.A. is most common); David L. Winett et al., Amity Right-urn: A Demonstration Drug Abuse Treatment Program for Inmates and Parolees, in NAT'L INST. ON DRUG ABUSE RES. MONOGRAPH SERIES No. 118: DRUG ABUSE TRMT. IN PRISONS AND JAILS 84, 90 (Carl G. Leukefeld & Frank M. Tims eds., 1992) (stating all therapeutic treatment communities (which are isolated wings of prisons designed to provide drug treatment to select inmates) utilize Twelve Step programs).
109. See supra notes 13, 64-65 and accompanying text.
110. The fact that A.A. is independent of the criminal justice system may serve an indirect rehabilitative function by encouraging program participants to socialize with persons outside of the penal system. Further, positive interpersonal relationships can be fos-
unteers are willing to work with ex-convicts and within prisons: the A.A. corporation has established a Hospitals & Institutions Committee which brings A.A. meetings into prisons, hospitals, and mental institutions,¹¹¹ and some A.A. groups provide an A.A. Secretary to sign court slips to verify a sentenced offender’s attendance at a meeting.¹¹² A.A. itself claims to have lowered recidivism among criminal alcoholics by 60%.¹¹³ through its own, independent work, and through programs like those instituted by Warden Duffy.¹¹⁴

Second, A.A. is widely accepted by professionals as an effective way to combat the disease of alcoholism.¹¹⁵ Finally, the program interacts neatly with the goals of the criminal justice system: punishment, incapacitation, rehabilitation, and deterrence.¹¹⁶ The next section examines this interaction in detail.

B. A.A. and the Goals of the Criminal Justice System¹¹⁷

(1) Punishment and Incapacitation of the Offender

Does A.A. truly punish an offender? A choice between A.A. and prison would not appear to be difficult for most criminals; A.A. seems more appealing than time behind bars. But an effective alternative sentence need not rely solely on A.A. Rigorous programs have included other terms of release, such as drug testing, meetings with a

111. See A.A. SERV. MANUAL, supra note 64, at 21.
112. See INFORMATION ON ALCOHOLICS ANONYMOUS, supra note 82.
113. A.A. COMMS OF AGE, supra note 14, at 90. This figure is not cited for its truth, but rather as in indication of A.A.’s willingness and pride to work with sentenced offenders.
114. See notes 68-70 and accompanying text.
115. See Wilcox v. Wilcox, 24 N.W.2d 237, 241 (1946) (“The association known as Alcoholics Anonymous has been of great aid to those who have become victims of the habit.”); BUFE, supra note 32, at 9 (“[Alcoholics Anonymous] is commonly believed to be the most effective treatment for alcoholism; many believe it is the only effective treatment for alcoholism.”); GOLDSMITH, supra note 42, at 131 (“There is a shared impression among most professionals that Twelve Step programs are best for most alcohol addicts.”); SEGAL, supra note 59, at 288 (noting widespread acceptance of A.A. by drug treatment professionals); Harry K. Wexler, Progress in Prison Substance Abuse Treatment: A Five Year Report, 24 J. DRUG ISSUES 349, 354 (1994) (“Of all the self-help approaches, Alcoholics Anonymous . . . is the most widely accepted and is considered by many to be effective.”).
116. See supra note 15.
117. A probation condition must be reasonably related to a purpose of the criminal law. United States v. Tonry, 605 F.2d 144, 148 (5th Cir. 1979).
parole officer, full employment, drivers license revocation for D.U.I. offenders, victim impact panels, public apologies, community service, or a sentence to A.A. which is longer (perhaps years longer) than imprisonment. These programs are often resisted by offenders who prefer the simpler, and often more familiar, punishment of prison. For example, the Treatment Alternatives to Street Crimes program (TASC) offers offenders the opportunity for treatment instead of incarceration, but if the offender fails at treatment she is sent to prison with the time spent in treatment not considered towards her term length. Therefore, A.A. coupled with other terms of release may sufficiently punish the offender.

In addition to providing a regimented and disciplined lifestyle, a sentence to A.A. would require complete abstinence from drug and alcohol use, as well as behavior modification. Both would be harsh and appropriate punishments for an addicted offender. Sentencing an addict—especially one convicted of a crime for which an essential element involves being addicted—to rehabilitation may be the most appropriate punishment available since it treats the cause of the addict’s criminal behavior, i.e., her addiction. Furthermore, treatment may deter future recurrence of the addiction after the sentence is completed. If the disease is left untreated and the offender is merely sentenced to jail time or standard probation, the individual will be punished but she may be unable to change her future behavior if she is still addicted.

118. See Nat’l Ass’n of State Drug Abuse Program Coordinators, Inc., TASC: An Approach for Dealing With the Substance Abusing Offender 7 (1978). Many offenders will turn down TASC because they know they will be eligible for other less vigorous and less conditional release programs within a relatively short time. See also, Nancy Blodgett, Alternative Sentencing, A.B.A.J., Nov. 1, 1987, at 32 (discussing alternative sentencing plans, such as “sentencing nonviolent criminals to do community work, live under electronic detention or apologize for their crimes in the local newspaper.”); Petersilia & Turner, supra note 6, at 5 (discussing Oregon’s intensive parole supervision program which was so much more rigorous than prison that 25% of offenders given the option to take the IPS program chose prison instead).

119. See Twelve and Twelve, supra note 10 at 47 (“[W]e needed to change ourselves to meet conditions, whatever they were.”); Alcoholics Anonymous, supra note 62, at 58-71 (explaining the requirements of taking a personal inventory and seeking to be rid of prior bad habits and bad behaviors).

120. Examples of such crimes could include D.U.I., public drunkenness, or purchase or possession of drugs or paraphernalia for personal use, among others. Whether the individual offender is actually addicted so that treatment would be appropriate would require individual assessment.

121. The punitive philosophy of probation and parole is to attack the crime rather than the criminal, and treatment attacks the crime of addiction, therefore making it a sentence truly tailored to fit the crime it punishes. See Allen, supra note 87.

122. See, e.g., Morris R. Cohen, Moral Aspects of the Criminal Law, 49 Yale L.J. 987, 1013 (1940) (“If the causes of crime are determined by the life of certain groups, it is
The goal of incapacitating the criminal is also met by Twelve Step sentencing. If A.A.'s program of abstinence is adhered to, the offender will be drug- and alcohol-free for the duration of the sentence. For those for whom intoxication is an essential element of their offense, abstinence provides complete incapacitation. Furthermore, if the treatment works to reform the offender, and she remains abstinent after her sentence, incapacitation could continue indefinitely on a voluntary basis.

(2) Rehabilitation and Deterrence of Future Misbehavior

Alcoholics and addicts may be antisocial. In order to treat the alcoholic's antisocial tendencies, A.A. models appropriate social behavior for alcoholics through its meetings and its sober members. A.A. meetings provide "real life" examples of sober responses to the daily problems which tend to confound and plague practicing addicts. Criminal offenders, who are also typically antisocial, will benefit doubly from the presence of sober role models; A.A.'s emphasis on socialization addresses the diverted offender's alcoholic and criminal antisocial tendencies.

Many recovering alcoholics in A.A. have themselves been institutionalized, which strengthens the position that A.A. will function effectively to deter antisocial behavior in the newly sentenced offender. The fact that offenders have more in common with an A.A. member than with a court-ordered supervision officer will decrease the chances of secondary deviation by the offender, which occurs when the offender views the supervisor as a "square," and thus act-

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123. The most practical method of enforcing abstinence is drug testing, described infra Part IV.
124. A.A.'s potential as a successful incapacitator depends on how well it prevents relapse absent supervision by the courts (i.e. in its "regular" members).
125. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 275 (1987) (stating "[a]lcohol ... reduces the inebriant's ability to control ... anti-social impulses").
126. A.A. literature offers advice about how to deal with the practical aspects of life which many alcoholics have trouble dealing with. For example, in repayment of debts, the A.A. literature says "[w]e can pay, or promise to pay, whatever obligations, financial or otherwise, we owe." TWELVE AND TWELVE, supra note 10, at 84. The program also suggests that when admitting past wrongs to victims full disclosure may not always be appropriate, especially past digressions of infidelity to a spouse. ALCOHOLICS ANONYMOUS, supra note 62, at 81. The book As BILL SEES IT, supra note 102, is devoted entirely to practical advice for daily living.
127. Pan, supra note 110, at 34 (noting that an incarcerated offender's antisocial thoughts and acts are perpetuated by the prison subculture, which is typically violent and racially divided, and often involves heavy drug use).
ally prefers to do the opposite of what the supervisor suggests. A.A. reduces the problem of neutralization of its therapeutic message by directly identifying with the criminal offender, rather than ordering its members to perform in a specific manner. Furthermore, A.A. members tend to live in and around the site of the meeting, so the offender will encounter persons familiar with his or her present surroundings.

In addition to providing a model non-criminal community identity for its members, A.A. offers an opportunity to choose a more selective social circle as well. In addition to its regular meetings, open to all members, the program holds “specialized” meetings restricted to women, racial minorities, or homosexuals. The wide variety of opportunities for social connections can further help an offender establish a non-criminal lifestyle.

Finally, providing role models who are independent of the criminal justice system may help break down the polarization between the offender and society which typically perpetuates antisocial activity and which can be worsened by a stay in prison. Offering an offender a program of peers may hasten the development of a new value system, different from the prison ethics which were necessary for the inmate’s survival while in jail but which are maladaptive for life outside of prison walls.

129. DONALD R. CRESSEY, SOCIAL PSYCHOLOGICAL FOUNDATIONS FOR USING CRIMINALS IN THE REHABILITATION OF CRIMINALS (1965), reprinted in BEHAVIORAL SCIENCE AND MODERN PENOLOGY: A BOOK OF READINGS 312, 320-25 (William H. Lyle Jr. & Thetus W. Horner eds., 1973). An example of a successful program which uses ex-convicts to reform convicts is Synanon, which provides a community living situation for addicted ex-cons seeking to go straight. See generally YABLONSKY, supra note 97.

130. See ALCOHOLICS ANONYMOUS, supra note 62, at 164 (“Our book is meant to be suggestive only.”).

131. The variety of meetings serves a dual rehabilitative function. First, it provides increased ease of identification, a characteristic of successful rehabilitation programs. See, e.g., Wellisch et al., supra note 77, at 21 (recommending that a treatment program’s staff “should reflect the ethnic mix of the program participants.”). Second, by providing local meetings, A.A. allows the offender to learn to live in areas replete with alcoholic and environmental triggers. See infra note 158 and accompanying text.

132. San Francisco has A.A. meetings designed for men or women only, gays, young people, meetings providing child care, Spanish-speaking meetings, meetings for Native Americans, transsexuals, etc. It lists hundreds of meetings in every neighborhood, occurring from six in the morning to midnight, seven days a week, thus ensuring that the offender will not have to travel more than a few blocks from her home in order to attend A.A. ALCOHOLICS ANONYMOUS MEETINGS IN SAN FRANCISCO (The Inter-County Fellowship of Alcoholics Anonymous, 1995).

133. See generally KIRKPATRICK, supra note 48 (describing the polarization process and showing why breaking down the polarization is critical for an ex-convict’s successful transition back into society).

134. Id. at 8-13.
Exposing an offender to A.A. while she is still in custody may further ease her transition into society from prison.\textsuperscript{135} Having a similarly structured program waiting in her home community can help provide familiarity and support for the recently released offender. Consistency of routine is an asset of most rehabilitation programs,\textsuperscript{136} and may decrease recidivism.

Future misconduct may also be deterred through the A.A. program's insistence on requiring alcoholics to acknowledge their "powerlessness over alcohol."\textsuperscript{137} Alcoholics often misperceive themselves as "normal drinkers," and courts can help shock these alcoholics out of denial by requiring offenders to acknowledge their problem.\textsuperscript{138} Advocates of A.A. believe that the repeated admission serves both a rehabilitative and a punitive function,\textsuperscript{139} much as a parole officer's weekly visits remind the parolee that she has broken the law and that she can be returned to prison if she does so again.\textsuperscript{140}

Many critics of A.A. dispute the value of the admission of powerlessness. They believe that repeated admissions of powerlessness—
ness damage the rehabilitative process by making individuals dependent on the A.A. program and by decreasing self-esteem.\textsuperscript{141} This could be especially threatening to criminal offenders, who typically suffer from low self-esteem and may even commit criminal offenses such as rape to gain respect from their peers.\textsuperscript{142} Ideally, then, a sentence to A.A. would include supervision, especially in the early stages of the sentence, to ensure that the offender is responding to the program. If the offender appears to be experiencing a desire to reoffend in order to gain a sense of power, A.A. may not be working for her.\textsuperscript{143}

In addition to the admission of powerlessness over alcohol, the Twelve Steps also require the admission of specific misdeeds\textsuperscript{144} and specific, often financial, reparations for harms done in the past.\textsuperscript{145} A.A.'s emphasis on admission may prove difficult for many individuals,\textsuperscript{146} but it is a concept which should appeal to both advocates of rehabilitation and those who demand punishment.\textsuperscript{147} Most professionals agree that an admission of wrongdoing can be itself rehabilita-

\begin{enumerate}
\item \textsuperscript{141} \textit{Boffe, supra} note 32, at 65 ("[I]f there's one common denominator among those who do harmful things to themselves...it's that they have a low opinion of themselves.").
\item \textsuperscript{142} \textit{See, e.g., Wilbert Rideau, The Sexual Jungle, in Life Sentences 73, 74 (Wilbert Rideau and Ron Wikberg eds., 1992) ("[A] prisoner leads a life of acute deprivation and insignificance...The psychological pain involved in such an existence creates an urgent and terrible need for reinforcement of his sense of manhood and self-worth."); KirKPATRICK, supra note 49, at 19 (describing the problem of "immediacy," in which an ex-convict seeks to get a "good front" to impress friends and thus commits a crime to secure and exhibit material symbols of success).}
\item \textsuperscript{143} Of course, a goal of a Twelve Step sentence is to decrease the amount of supervision required, because therein lies the economic benefit of the sentence. A comprehensive intermediate sanction could still serve this function, as less would be required of a supervisor than would be of standard parole/probation officers. \textit{See infra} Part V.
\item \textsuperscript{144} \textit{See Step Five, reprinted supra} note 10.
\item \textsuperscript{145} \textit{See Step Nine, reprinted supra} note 10.
\item \textsuperscript{146} In teaching members how to perform the fourth step, the A.A. literature is sympathetic to the difficulty of the process. \textit{See Twelve and Twelve, supra} note 10, at 43-46 (describing how to perform self-evaluation).
\item \textsuperscript{147} Admission may present problems for prison inmates who fear admitting past misdeeds for which they can still be prosecuted. In an interview with an inmate who participated in A.A. meetings held at Fishkill Minimum Security Prison, the author was told that the inmate would not perform his fourth step because his friend admitted to past misdeeds and was prosecuted for them. Interview with inmate at Fishkill Prison, Fishkill, New York, Spring, 1990. Thus, there is a need for either legislation or discretionary power on the part of the courts not to permit use of an inmate's step work against them, lest the treatment provided become simply a tool for the prosecution. Problems such as these, compounded by the inherent stressfulness of prison life, may indicate that A.A. will be more effective for the offender who is no longer behind bars or whose remaining time is minimal. \textit{See, e.g., Wellisch et al., supra} note 77, at 21 ("Most authorities agree that too early enrollment [in drug treatment programs] may erode the gains made in treatment because the prisoners will remain in an environment—the prison—that is conducive to relapse.").
\end{enumerate}
Furthermore, the restitution of victims forces the offender to gain a perspective of her place in society,\textsuperscript{149} which in turn decreases the odds of her lashing out against society due to a feeling of separation or alienation from it.\textsuperscript{150} As for punishment, retribution is served by forcing the offender to make the victim whole through financial restitution at a cost to the offender, similar to victim's indemnity funds already in place through statute in many states.\textsuperscript{151}

In theory, A.A. can reduce the administrative costs and burdens of providing treatment to addicted offenders while still serving to punish the offender and protect society. This is not to suggest, however, that every addict who commits a crime should be sentenced to A.A. Whether offering a candidate pretrial release, alternative sentencing, parole or early release from prison, numerous factors must be considered.

\textbf{IV. How to Determine Who Should be Sentenced to A.A.}

\textbf{A. Factors for Individualized Assessment}

Some individuals will fare better than others in A.A.\textsuperscript{152} In order to determine which individual offenders are most likely to benefit from a Twelve Step sentence, courts and parole boards should conduct an individualized assessment considering specific factors including information personal to the defendant and information specific to the instant offense. This section will discuss some of these factors in detail, but it is not intended to provide an exhaustive list; other factors may exist in particular cases, and future research identifying additional factors is necessary.

\begin{footnotesize}
\begin{enumerate}
\item See, e.g., Gollaher v United States, 419 F.2d 520, 530 (9th Cir. 1969), cert. denied, 396 U.S. 960 (1969) ("It is almost axiomatic that the first step toward rehabilitation of an offender is the offender's recognition that he was at fault."); Jon A. Brilliant, \textit{Note: The Modern Day Scarlet Letter: A Critical Analysis of Modern Probation Conditions}, 1989 \textit{DuKE LJ.} 1357, 1363 (1989) (noting Judge Jeffrey Ford of the Champaign Circuit Court forces drunk drivers to place apologies in their hometown newspapers because he feels that "[a]n open admission makes it more likely a defendant won't commit a crime again").
\item A.A. describes Step Eight, the listing of persons whom the alcoholic has harmed, as "the beginning of the end of isolation from our fellows . . . ." \textit{TWELVE AND TWELVE, supra} note 10, at 82.
\item EDGARDO ROTMAN, \textit{BEYOND PUNISHMENT} 77-78 (1990) (describing a "humanistic model of rehabilitation" which increases the offender's awareness of her connection to society and attempts to replace suspicion of the criminal justice system with respect for it).
\item See supra Part II.D and infra Part IV. See also Falkin, \textit{supra} note 40 (noting that not everyone who tests positive for drugs is in actual need of drug treatment; one should consider whether the individual admits to using drugs regularly, has been in treatment before, or states that she wants treatment).
\end{enumerate}
\end{footnotesize}
(1) Factors Specific to the Offender

First, the sentencing official should consider the individual offender's personality, demeanor, prior record, and prior performance in rehabilitation programs (when applicable). The offender's personality is important because A.A.'s program rests heavily upon an honest and open admission that the member is powerless over alcohol.153 Therefore, a person who will not make such an admission may not succeed in the program.154 Compelling an offender to make the admission may not prove effective; some research indicates that compulsion decreases the efficacy of treatment for violent or habitual criminals, in particular those who committed criminal acts prior to becoming addicts.155 However, compelled treatment does reduce later criminal activity in those who committed crimes infrequently prior to their addiction and for those who are addicted to "softer" drugs.156

Another consideration personal to the offender is whether she has a record of criminal or addictive behavior, and whether she is a repeat offender or has relapsed after participation in a drug treatment program. Relapses into drug use, however, should not be an automatic determinant that the offender will not benefit from participation in a Twelve Step program. The court should consider the circumstances of the relapse, and whether A.A. might work to prevent future relapses.

A.A. attempts to guard against relapse through repeated admissions of one's status as an alcoholic, and through frequent attendance at A.A. meetings. There are indications that A.A.'s relapse prevention techniques may help prevent the commission of new illegal acts as well.157 By providing a drug-free social environment, A.A. decreases the environmental pressures which often trigger relapses into both alcoholic and criminal behavior.158 For inmates who become involved with the program while in prison, A.A. can provide an aftercare link for those who utilize the program as a condition of release,159 which

153. See A.A.'s First Step, supra note 10.
154. But see supra note 100 and accompanying text (discussing how A.A. began by compelling its members to join).
156. Id.
157. But see supra notes 147-48 and accompanying text (discussing how the process of admission may be unhealthy).
158. See, e.g., Jeffrey A. Roth, supra note 96, at 5 (suggesting that people in bars drink to "fit in" and then may behave violently or commit violent crime); Vaillant, supra note 49, at 1151-56 (citing A.A. and parole as "external interventions that restructure the patient's life in the community"); Young & Lawson, supra note 23, at 132 (stating that A.A. removes the offender from slippery risk areas and reduces the influence of sociological factors that might lead to drinking).
159. See supra note 136 and accompanying text (noting that consistency of routine is an important aspect of successful rehabilitation programs).
could both prevent relapse and address other problems faced by the ex-convict reentering society.\footnote{160}

The size, formal structure and widespread availability of the A.A. program offer additional benefits. Wherever a prisoner is released, a relatively familiar program will exist. For offenders who return to their old communities, A.A. can reduce the effectiveness of the conditioned reinforcers (such as other addicts, drug-dealers, etc.) which encourage the addict to return to her former criminal lifestyle. The reinforcers will continue to occur, but will lose their power because the addict will not be taking drugs in the presence of those reinforcers.\footnote{161}

(2) Factors Specific to the Instant Offense

Use of a Twelve Step program as a sentence or term of release must also consider the instant offense. This should require an evaluation of the potential causes of the misbehavior as well as the nature of the crime itself.

Perhaps the most important factor in considering the source of the deviant behavior is that A.A. only treats addiction;\footnote{162} other deviant behaviors will require different treatment. The courts must guard closely against oversimplification and reductionism, whereby all of the offender’s problems are blamed upon her addiction while overlooking her other causes of criminal behavior.\footnote{163}

Thus, certain offenses which clearly involve addiction as a catalyst for criminal behavior are ones for which A.A. is more appropriate. For example, if an essential element of the substantive offense is actually being intoxicated, A.A. should be considered as an appropriate option.\footnote{164} A clear example of such an offense would be a law which punishes being intoxicated or drinking alcohol in a public place.

Another example of crimes for which it is appropriate to consider a Twelve Step sentencing component are those offenses which are necessarily committed while intoxicated, such as driving under the influ-

\footnote{160}{See supra note 131 and accompanying text.}
\footnote{161}{Thus, it may actually be most therapeutic for offenders to give up drugs and criminal activity in situations which are similar to those which supported their past bad behaviors. See Vaillant, supra note 49, at 1156.}
\footnote{162}{A.A. only claims to treat chronic alcoholism, not to reform criminals (although its texts and meetings are rife with tales of criminals who are reformed through becoming sober). See, e.g., supra note 62.}
\footnote{163}{See, e.g., Young & Lawson, supra note 23, at 135 (warning that sentencing some offenders to A.A. may actually be damaging).}
\footnote{164}{It bears repeating again that not every offender who commits a crime for which being under the influence of drugs and/or alcohol is an essential element is necessarily an addict. See Brennan, supra note 140, at 40 (noting that not all D.U.I. offenders are alcoholics).}
ence (D.U.I.). Many states have found that while jailing D.U.I.
offenders does little to prevent subsequent recommission of the same
crime,\textsuperscript{165} a sentence involving A.A. and/or drug treatment can be suc-
cessful.\textsuperscript{166} Some of these programs reduce the burden on the courts
by offering D.U.I. arrestees diversion to A.A. prior to trial.\textsuperscript{167}

“Mixed” offenses, which involve both addiction and other misbe-
behavior, should require greater consideration of factors specific to the
individual, discussed supra. For example, an offender who commits a
robbery to obtain money to buy drugs may be too dangerous for con-
ditional release based on her prior record and/or any violence in-
volved in the instant offense. However, a drunk offender convicted of
disturbing the peace or possessing a controlled substance for personal
use might benefit from A.A., since drug and/or alcohol use were nec-
essarily involved in the offense. Even in these cases, the individual's
personal characteristics must be considered. Simply classifying an of-
fense as an “A.A. offense” clearly will not serve society, the offender,
or the criminal justice system.

Other offenders, especially those who commit violent crimes
while under the influence, may find a Twelve Step component to their
sentence valuable but insufficient by itself. A.A. does not aim to treat
violent behavior, only to treat alcoholism.\textsuperscript{168} Thus the sentence must
account for the cause and magnitude of the violent behavior. For ex-
ample, a vehicular manslaughter offender who was under the influ-
ence may benefit greatly from drug or alcohol treatment. However, a
rapist who committed his crime while under the influence would
clearly require more than mere diversion to A.A., because the pro-
gram does not address the subject of sexual deviancy. In fact, sentenc-
ing such an offender to A.A. may enable the alcoholic rapist to blame

\textsuperscript{165} Studies have shown that jailing a first-time D.U.I. offender has little to no effect
on deterring that individual from committing the same offense post-incarceration. Ralph
Hingson, \textit{Prevention of Alcohol-Impaired Driving}, 17 \textit{Alcohol Health \& Res. World}

\textsuperscript{166} Drug treatment is most efficacious when it is combined with other sanctions as
well; for example, seven states allow impoundment of vehicles, fifteen allow confiscation,
and one state, Maine, mandates confiscation of a D.U.I. minor's license for one year. See
\textit{id.} at 31.

\textsuperscript{167} Oregon, for example, instituted a deferred prosecution program which offers A.A.
and probation instead of prison to first-time D.U.I. arrestees who have not participated in
a treatment program within ten years of their conviction. The program has a 1.1% recidi-
ivism rate, down from 4.8% before the program went into effect. New York has a similar
program which has lowered recidivism for second-time offenders from 25% to 11% being
rearrested for D.U.I within three years of their first arrest. Lea L. Fields, \textit{Pretrial Diver-
sion: A Solution to California's Drunk-Driving Program}, 58 \textit{Fed. Probation} 20, 21-24
(Dec. 1994); \textit{but see} Hingson, \textit{supra} note 165, at 31 (showing that one year of treatment in
lieu of license revocation did not decrease recidivism).

\textsuperscript{168} See, e.g., \textit{supra} note 64.
his behavior solely on his being drunk, ignoring the impulses which caused him to commit rape.\(^{169}\)

Further inquiry into which offenders tend to succeed in Twelve Step sentences is clearly necessary. Some crimes, such as murder, are clearly inappropriate for mere A.A. sentencing. However mixed offenses and those which involve addiction as a critical component of the offense should be considered for Twelve Step sentencing, especially where other components may be added to make the sentence fit the offender. These additional components are discussed in the last section of this Note.

B. Methods to Obtain Information Determination for Individualized Assessment

The ideal screening process for determining which offenders should be sent to A.A. would combine epistemological data about alcoholism and A.A. with specific information about drug use within the relevant community, as well as personal and scientific data about the offender (such as her pretrial drug-test results and prior record).\(^{170}\)

This section discusses two tools courts and sentencing officials can use to engage in individual assessments: pretrial drug testing and increased judicial specialization in the form of drug courts.

(1) Pretrial Drug Testing

Pretrial drug testing offers vital information about the offender and has cost-benefits as well.\(^{171}\) Economically, testing arrestees for alcohol or drugs could enable the court to offer pretrial diversion, which would save the court the time and costs of a trial. When A.A. participation is used as a condition of pretrial release (rather than diversion), the court can evaluate the individual's progress in the program prior to trial to assess whether A.A. will be viable as a part of

\(^{169}\) See Young & Lawson, supra note 23, at 134 (suggesting sex crimes are particularly inappropriate for A.A. referrals).


\(^{171}\) The Author acknowledges the privacy concerns associated with drug testing, but a comprehensive discussion of the issue is beyond the scope of this Note. For discussions of the arguments for and against drug testing of criminal offenders, see In re York, 9 Cal. 4th 1133 (1995) (finding that drug testing does not violate the statutory provisions governing release on recognition or various constitutional guarantees). See also Richard B. Abell, Pretrial Drug Testing: Expanding Rights and Protecting Public Safety, 57 GEO. WASH. L. REV. 943 (1989); Charles J. Cooper, The Constitutionality of Drug Testing, 35 FED. B. NEWS & J. 359 (1988).
her sentence if and when she is convicted. There is also evidence that pretrial drug testing may in and of itself decrease pretrial misconduct.

Pretrial drug testing results can simultaneously be used to help communities ascertain trends in local drug use. Some jurisdictions have used the data to create Drug Use Forecasting procedures ("DUFs"), which help determine what a specific community's needs are in terms of intervention, rehabilitation, and criminal sentencing. Focused Offender Disposition programs (FODs) and referral programs like Treatment Alternatives to Street Crime (TASC) use the results of pretrial drug tests to create Offender Profile Indexes (OPIs), which attempt to determine what types of individuals are most likely to succeed in treatment based on the types of drugs used, previous criminal record, etc. The OPI has been praised for its objectivity and easy-to-use methods, and was recently adopted as a screening method by TASC. Both TASC and the OPI offer useful methods to determine whether an individual should be sentenced to A.A.

(2) Drug Courts

Many states have established special "drug courts" to help determine who should be sentenced to A.A. These specialized courts offer a unique opportunity to utilize and assess A.A. as a component of an addicted offender's sentence. By specializing in addicted offenders, attorneys and judges become familiar with the problems and re-

172. For an example of such a program and a discussion of its utility, see generally Christy A. Visher, Pretrial Drug Testing, NAT'L INST. JUST., RES. IN BRIEF, Sept. 1992, at 1, 1-7.
174. See Charles C. Foti, Jr., The Effect of Drug Testing in New Orleans, NAT'L INST. OF JUST., RES. IN BRIEF, Jan. 1993, at 1 (noting that DUFs have been successfully used to increase understanding of the drug problem in many urban areas, including New Orleans and Baltimore).
175. FODs are designed to develop and test "an initial classification system that would provide courts with reasonable criteria for deciding on the broad type of treatment needed by any given drug offender." Inciardi et al., supra note 173, at 151.
176. The OPI is a questionnaire which ascribes point values to various characteristics of an offender, such as prior arrests, drug test results, duration of addiction, willingness to seek treatment, economic status, etc. The OPI then makes recommendations based on the offender's "score." For an example of a OPI, see id. at 178-93.
178. Inciardi et al., supra note 173, at 162.
179. Id. at 144.
sources available to addicts and alcoholics, and, through experience, will presumably become better able to determine who may succeed in alternative sentencing programs.

In addition to providing expertise, drug courts offer a more efficient and successful sentencing system in general. For example, the King County Drug Diversion Court in Seattle, a two-year old program, boasts a 25% success rate, as measured by the number of offenders complying with the sentence of the court. Similar programs exist around the country. Most of these programs include random drug testing and meetings with parole officers, and/or regular court appearances, and do not accept drug traffickers or violent offenders. Many also make release from the court's jurisdiction contingent upon success in the program, providing for imposition of a jail sentence should the offender fail to meet the conditions of the program.

Finally, drug courts enable local experimentation with various forms of alternative sanctions. The presentation of these alternatives to the offender may decrease potential problems attendant to compelled drug treatment by allowing the offender to choose between various, equally rigorous forms of punishment. For example, an offender might be able to choose from combinations of house arrest, a tracking collar, intensive probationary supervision, community service, a short prison sentence, and so on. The list of components in a sentence can be as great as the creativity of the probation department, judges, prosecutors, defense attorneys, and the offenders themselves.

V. How to Construct an Alternative Sentence to A.A.

Due to its novelty and lack of formal ties to the criminal justice system, unsupervised sentencing to A.A. is probably inappropriate for most offenders at this time, and therefore additional conditions


181. While a one-in-four success rate may not seem high at first blush, it is far better than the rate of parolees and probationers who fail on standard release programs, as well as the recidivism rate for criminals in general. See, e.g., supra notes 52-53 (discussing the rates of failure on parole and probation, and the national recidivism rate).

182. Norman Green, Making it Work: Choosing Hugs Not Drugs, Seattle Times, Aug. 2, 1996, at B3 (describing the program, which requires regular urine tests and does not accept violent offenders or dealers).


184. See supra note 99 and accompanying text.

185. Since A.A. has no institutional ties, some form of supervision of diverted offenders is necessary to assure compliance with the sentence. For some, this supervision may
must be imposed. Furthermore, community supervision combined with treatment is widely viewed as the most effective way to control future drug use,\(^{186}\) indicating that moderate supervision combined with the community-based nature of a Twelve Step program may be an ideal form of rehabilitation. This final section will focus on increasing the efficiency of existing supervision programs through integration with Twelve Step programs.

Ideally, A.A. should be combined with intensive probation/parole supervision programs,\(^{187}\) which are called IPS programs. Most IPS programs combine drug treatment with regular contacts with a probation officer, random drug testing, and community service or employment. More importantly, most IPS programs are less expensive than prison and have a higher success rate than standard probation/parole programs.\(^{188}\)

Studies indicate that increasing the treatment component of IPS programs can reduce recidivism under such programs by 10-20%.\(^{189}\) Using A.A. as the treatment component will not increase the costs of IPS programs,\(^{190}\) which will help offset the greater expense of IPS as compared to standard probation.\(^{191}\) The key to these programs will be the effective monitoring of offenders to ensure attendance at A.A. and compliance with other terms of the sentence.\(^{192}\)

Under the model proposed here, the parole/probation system would provide a case manager to direct clients to treatment, rather than actually supplying treatment or services itself. Case management has proven effective in breaking the relapse cycle and increasing occupational functioning of alcoholics released from hospital treatment.

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\(^{186}\) See Anglin, supra note 99, at 16-17.

\(^{187}\) See Winett et al., supra note 108, at 90.

\(^{188}\) Erwin & Bennett, supra note 5, at 5 (jailing offenders costs $30.43/day, compared to IPS at $4.37/day and citing general increased effectiveness of IPS over standard parole/probation).

\(^{189}\) Petersilia & Turner, supra note 6, at 9.

\(^{190}\) See supra Part II.A-II.C. (A.A. poses no costs to the criminal justice system).

\(^{191}\) See supra note 5 (comparing the costs of IPS to standard release programs).

\(^{192}\) Truly effective monitoring may enable the supervisor to prevent parole violations if the supervisor is able to recognize the warning signs of a relapse. See Petersilia & Turner, supra note 6, at 9. It is the author's opinion that in order to function at such a level the supervising officer will require training and a manageable caseload.
Twelve Steps, You're Out (of Prison)

centers, and may prove similarly effective for ex-convicts as they reenter society.\textsuperscript{193}

The case manager will help the offender choose which meetings to attend, plan her schedule, see if any specialized meetings\textsuperscript{194} are appropriate, and so on. Using A.A. to provide addiction treatment for the offender will save the criminal justice system the attendant burdens of establishing its own treatment facilities and will encourage independence, creativity, and teamwork between the case manager and the offender.\textsuperscript{195} Successful utilization of the A.A. program within the penal system must involve tracking persons who are sent to A.A. in order to discover how many meetings successful probationers and parolees attend, and caseworkers could provide an invaluable research tool.

This proposed system will rely heavily on the skills of the case manager, who must be well-versed in the practical needs of the offender. One author recommends, for example, that probation officers for D.U.I. offenders be capable of instructing the probationer in practical ways to function in society without a car.\textsuperscript{196} The supervisor should be someone who can identify with the offender, and who perhaps has attended open meetings herself to become knowledgeable about the program's requirements.\textsuperscript{197} By being familiar with alcoholism, and the treatment method provided by A.A., the supervisor will be less easily manipulated by the addict who claims to have her drink-

\textsuperscript{193} Steven S. Martin & James A. Inciardi, \textit{Case Management Approaches for Criminal Justice Clients}, in \textit{Drug Trmt. and Crim. Just.} 81, 92 (James A. Inciardi ed., 1993) ("If case management is combined with legal sanctions to enforce participation . . . the potential for retention in treatment . . . can be greatly increased . . . . At the same time, the general premises of case management can facilitate relationship building, and trust . . . ").

\textsuperscript{194} For example, the case manager and the offender should consider whether the offender should try Cocaine Anonymous or Narcotics Anonymous, or whether she should attend women-only meetings, or meetings which provide child care, etc. See supra note 132 (discussing specialized Twelve Step meetings).

\textsuperscript{195} This in turn may break down some of the hostility between the offender and the criminal justice system and will encourage the offender to take part in her own recovery, an important element of a successful rehabilitation program. See supra note 128-134. Furthermore, forcing the offender to actively participate may neutralize any decreased effectiveness of the rehabilitative message which may come about due to the offender's being compelled, rather than volunteering, to attend A.A. (see supra notes 98-99 and accompanying text), since through her participation she will invest energy and thought into the conditions of her treatment. Such energy may offset her feelings of lack of control over her treatment or fate, a key criticism of compelled treatment.

\textsuperscript{196} See Brennan, supra note 140, at 44.

\textsuperscript{197} See George Killinger & Paul F. Cromwell, Jr., \textit{Corrections in the Community: Alternatives to Imprisonment} 212 (1974) (recognizing that probation officers need to be genuine and compassionate in relating to their clients lest the offender sense insincerity and resist the officer).
ing "under control." Thus, the supervisor will be in a better position to assess whether a particular relapse into alcohol or drug use should be considered a violation sufficient to deprive the offender of her liberty, or whether psychiatric treatment or some other alternative would be more appropriate.

Much will be demanded of the supervisor in order for A.A. to function ideally within the criminal justice system. Thus, it is important to examine possible ways to decrease the supervisor's workload and increase their efficiency.

First, the abstinence portion of the sentence can be enforced through random drug testing. If a central drug testing site is established, the caseworker herself need not be present to administer the test, freeing her to perform other functions. The criminal justice system can decrease administrative costs by farming out drug testing to independent organizations, or by using some of the newer methods such as hair testing, which requires less frequent administrations.

The workload of supervisors can be further reduced by the principles of A.A.'s twelfth step. Under the twelfth step, the A.A. member works to help other alcoholics achieve sobriety. Within the

198. See Edward M. Read, The Alcoholic, the Probation Officer, and A.A.: A Viable Team Approach to Supervision, 51 Fed. Probation 11, 13 (Mar. 1987) (emphasizing that a well-trained probation officer should be able to insist on abstinence by the offender, regardless of how convincing that offender might be).

199. The supervisor should have some discretion in the area of reporting a probationer/parolee for relapsing. Strict rules could make tailoring the release program to the needs of the offender impossible, thus defeating the purpose of intermediate sentencing. See Leukefeld & Tims, supra note 101, at 247 (recognizing need to accept that drug dependence is chronic and repeated interventions may be required); Carradine v. U.S., 420 A.2d 1385, 1391 (D.C., 1980) ("[A]lthough [a] judge may be inclined to probation, he or she may be reluctant to risk it unless the court has an effective alternative, short of revocation, in the event the probationer should develop a need for inpatient psychiatric care.").

200. Blood and urinalysis testing is no longer the best method of detection for certain drugs. For example, cocaine and opiates are water soluble and pass through the body as quickly as three days; these same drugs are detectable in the user's hair, however, for weeks or months (as long as the offender does not cut her hair). Furthermore, since hair growth rate is measurable, it is possible to use hair samples to determine the frequency and duration of the user's drug use as well. See Tom Mieczkowski et al., Testing Hair for Illicit Drug Use, in Nat'l Inst. Just. Res. Brief 1-2 (Jan. 1993). But see James D. Baer, Hair Analysis for the Detection of Drug Use in Pretrial, Probation, and Parole Populations, 55 Fed. Probation 3, 3-4 (Mar. 1991) (noting, however, that hair testing requires a greater concentration of drugs to detect and can take days to show up, whereas urine analysis will detect much smaller amounts within hours of ingestion by the user).

201. Step Twelve of A.A. emphasizes the need for a sober alcoholic to help suffering alcoholics become sober. The A.A. literature frequently states that in order to stay sober, the A.A. member must carry the message to others. See, e.g., Alcoholics Anonymous, supra note 62, at 89 ("Practical experience shows that nothing will so much insure immunity from drinking as intensive work with other alcoholics.").

penal context, this could mean having the offender lead an A.A. meeting at a prison203 or work with other offenders to help them transition into a non-criminal lifestyle.204 If the offenders meet at a particular location, such as a prison, parole office, or police station, a penal system official who is already present at the location can check them in, perform drug testing, etc., and so the caseworker need not be present. Or, if the offenders meet their caseworker at an A.A. meeting, the caseworker could supervise several offenders simultaneously instead of meeting each individually.205 This would decrease the number of regular meetings required with individual offenders, enabling the caseworker to spend more time with violent or troublesome cases.206

**Conclusion**

The overcrowding of America's prisons, parole, and probation departments as a result of the war on drugs has necessitated new and creative forms of alternative sentencing. Moreover, providing rehabilitation through alternative sentencing reduces recidivism. Ideally, a Twelve Step sentence can begin prior to actual sentencing with pre-trial drug testing and diversion to A.A. Although A.A. alone is insufficient to meet all the requirements of an effective sentence, Twelve Step programs can be combined with other sanctions and/or forms of supervision such as drug testing, pretrial diversion, community service, etc. Drug courts and specialized case managers can help determine which offenders are best suited for alternative sentencing, and can become vital tools to measure the success of A.A. as a form of addiction treatment. As more localities experiment with Twelve Step sentencing, more information will become available, further enabling the criminal justice system to reduce the prison population and to ease supervision of offenders in conditional or early release programs at a time when the need for such programs is most acute.

203. Such meetings may be held under the auspices of A.A.'s Hospitals and Institutions Committee, or the prison can start its own group and invite paroled or alternatively sentenced offenders to speak at the meetings. According to A.A.'s central office in San Francisco, any A.A. member can start an A.A. group at any location—no contributions to any central A.A. agency are required (although they are encouraged).

204. In this manner, the offender could act as a sort of "sponsor." Sponsors are A.A. members who have "made some progress in the recovery program" and who share that experience with another, less sober alcoholic. Sponsorship is considered a cornerstone of the A.A. program, benefiting both the sponsor and the sponsee. *See Questions & Answers on Sponsorship* 7-8 (Alcoholics Anonymous World Services, Inc., 1983).

205. Of course, such meetings should not substitute entirely for all face to face meetings.

206. Other examples of ways to reduce the supervisory burden are tracking collars, house arrest, etc., discussed in earlier sections of this Note.