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## Experts say prison sentence often last resort

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*Tribune Staff Writers*

St. Joseph County Prosecutor Michael Dvorak thought Dion M. Berry Jr., whose street name is "Hellboy," deserved 30 years in prison for dealing cocaine near Riley High School.

But Superior Judge Jerome Frese cut the 20-year-old a break, letting him off with eight years of probation and no prison at all.

Was Frese's decision earlier this month an anomaly — one tailored to Berry's circumstances — or was it indicative of the judge's overall sentencing philosophy?

The judge declined to comment on a specific case. But in recent interviews with The Tribune, he and two other St. Joseph Superior judges made one thing clear: Except for very violent crimes, they often regard prison as a last resort.

No matter how much the public clamors for it, they do not believe prison rehabilitates many people. On the contrary, the judges think it often leaves defendants worse off.

"You take a mean puppy and put him in prison and he comes out a mean dog," Judge Roland W. Chamblee Jr. said. "Unless you're going to sentence somebody for life, they're going to come back into the community, so what can you do short of sending somebody to prison if they're a first-time offender?"

Because the vast majority of those sentenced to prison or jail time will be back on the street, scholars and policy analysts promote the need for more effective prison alternative programs that provide offenders the tools they need to break a drug habit, land a job or change a mindset.

One of those scholars is Ann Chih Lin, an associate professor of public policy and political science at the University of Michigan and author of the book "Reform in the Making: The Implementation of Social Policy in Prison."

"Prison can be a perfect option when people learn new skills, rethink their criminal background and have an opportunity to prepare for a different way of life," Lin said. "But it's very unlikely that being incarcerated by itself is going to do that for anybody."

It is paramount, Lin said, that communities or prisons invest in programs that can address specific issues for convicted criminals, whether it is treatment directed for sex offenders or programs meant for habitual drug users.

"It's really important for people both within and outside the criminal justice system to realize that ... alternatives to prison don't mean a lack of safety," Lin said. "They are working to ensure the quality of safety to the community."

A lack of prison alternatives, Lin said, hurts the level of safety in the long term.

'Crime schools'?

In sentencing Berry, Frese said in court that he did not believe sending him to prison was going to help rehabilitate him or help him turn his life around.

Frese frequently orders prison sentences that fall below the penalty range spelled out in state law, according to a Tribune computer-assisted analysis of his sentencings from July 2005 through June 2006. For instance, his average executed sentence for Class D felonies, the least severe types of felonies, was three months in jail.

State law calls for six months to three years in prison for those crimes, which range from arson and battery to theft and welfare fraud.

Frese said he sees prison as the proper place for people who he believes threaten public safety. And sometimes, society's need for fairness and punishment requires incarceration.

But he doubts prison is much of a crime deterrent. People commit crimes because they think they won't be caught, not because they wouldn't mind going away to prison if they are nabbed, he said.

"We used to call them reform schools, for younger people, because they went to school and they were to reform," Frese said. "Many people will now talk about our prison system as crime schools, in which gangs run it."

St. Joseph Superior Judge John Marnocha agrees.

"I don't believe that there is rehabilitation in prison," Marnocha said. "I don't know that there ever was. I think that what you're doing when you put somebody in prison is you're simply warehousing them and keeping them separate from society, period."

Chamblee said he prefers to impose "split" sentences, giving the defendant a little prison time followed by probation. Ideally, he keeps the prison time short enough that the convict's life isn't ruined but long enough to give him a taste of life behind bars to deter future crimes.

But Andy Pazera, assistant superintendent of re-entry for the Westville Correctional Facility, emphasizes that the Indiana prison system is more than a warehouse for criminals.

At Westville, offenders can choose from an offering of 10 vocational classes — from auto body to culinary arts — and the facility offers two substance abuse programs, including the 24-hour "Therapeutic Community," which has an enrollment of 270.

A basic level reading and writing program, GED classes and the "Thinking for Change" program, which challenges offenders to evaluate their past and alter their behavior for the

future, are available to prisoners.

“We’re doing constructive and creative things and providing positive options for offenders,” Pazera said. “Re-entry is our No. 1 focus.”

Officials are attacking idle time, steering prison away from the old “pumping iron” stereotypes.

#### A need for prisons

The judges’ views on prison take into account a number of studies released over the last decade that show prison’s limited effect in lowering crime rates and rehabilitating offenders.

Proponents of prison alternatives — substance abuse programs, work release, home detention, probation — often cite reports from the U.S. Bureau of Justice Statistics: Two-thirds of released prisoners are rearrested within three years.

About 47 percent of all released prisoners are reconvicted of other crimes, the study shows, and an estimated 50 percent were back in prison, either on a new crime or because of a parole violation, within three years.

David Muhlhausen, a senior policy analyst at the Heritage Foundation, a conservative think tank in Washington, agrees that prison should be reserved for the worst offenders.

But he does not agree that prison is worthless, or with judges who don’t want to sentence anyone to prison.

“Clearly there’s a need for prisons,” Muhlhausen said. “When you put the worst offenders behind bars, they can’t rob, shoot or rape you. It’s just that simple.”

Muhlhausen points to studies that have shown that as incarceration rates go up, the crime rate heads down.

“When you remove violent offenders from society, you reduce violent crime,” Muhlhausen said.

Studies such as the Justice Department’s report on reoffender numbers simply show the criminal justice system has not figured out ways to rehabilitate everyone, Muhlhausen said.

#### The cost of punishment

Although they try not to let cost drive their sentencing decisions, the St. Joseph judges said state prison officials make them well aware of how costly and crowded prisons are. Chamblee said judges periodically receive a report via e-mail that lists the capacity and population figures for Indiana prisons.

Judges also have been informed that it costs the state about \$60 a day to house each prisoner.

Tim Brown, director of legislative services for the Indiana Department of Correction, said state law requires the agency to send judges a quarterly status report that includes prison capacity.

The judges said they hate to see a defendant who has come before them and received a break commit a new crime while on probation. But they don't feel responsible.

"Sometimes it works and sometimes it doesn't," Marnocha said of probation. "People all the time appear in front of me and they tell me that they found God and they've changed their life, blah blah blah. ... I tell them, if just 50 percent of the people meant that, and if another 50 percent of people who meant it, did it, the world would be a better place.

"But hey, here's the deal. A defendant who gets probation or a defendant who gets a light sentence and commits another crime ... it's that person's fault for committing another crime. I think we tend to look at those and say, 'Well gosh, if you had put him in jail he wouldn't have committed the crime.' Well, maybe not that crime then, but maybe some crime later."

Frese noted that the Indiana Constitution says the correctional system should be rehabilitative, not punitive.

"Should we take that seriously? We shouldn't throw it out the window unless we're going to amend it," Frese said. "My problem with prisons is, just for working out a mechanistic retribution: You've done a D felony, you should get 18 months in prison. Doing that, I think, is not doing justice. I think it is against everything we stand for."

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