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Therapeutic Approaches to Remorse in Sentencing Recommendations: A Qualitative Study of
Probation Officers

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Biography

Colleen M. Berryessa is an Assistant Professor at the Rutgers University, School of Criminal Justice. Her research examines how psychological and social contexts impact the criminal justice system, specifically in courts. She received her Ph.D. in Criminology from the University of Pennsylvania, her B.A. from Harvard University and was also a research fellow at the Center for Biomedical Ethics at Stanford University.

Abstract

Stemming from interviews with 151 probation officers in the United States, this study produces a qualitative model that illuminates the extent to and ways in which probation officers draw from principles of Therapeutic Jurisprudence to consider remorse as evidence of a client's potential for rehabilitation (remorse shows "therapeutic guilt" through which an individual being sentenced acknowledges wrongdoings, takes responsibility, and shows behavioral changes) and reconciliation (remorse is a device for "rebalancing power" by shifting responsibility for bad acts away from victims and community, as well as allows the individual being sentenced to seek and receive forgiveness via apologies and "payback") during sentencing. Correspondingly, the model further suggests how these officers use their therapeutic views of remorse in order to inform their pre-sentencing recommendations for sentencing plans that prioritize community reintegration. Finally, this paper discusses the model's implications and the potential adoption of Therapeutic Jurisprudence approaches in sentencing.

Keywords: remorse, therapeutic jurisprudence, sentencing, probation officers, qualitative

Expressions of remorse, which can convey the extent to which a person appreciates and denounces the consequences of his bad acts, have long been argued as having prolonged consequences for the well-being and healing of individuals facing criminal charges, victims, and the larger community after a criminal offense has occurred (Daicoff, 2013; Etienne & Robbennolt, 2007). As such, the Therapeutic Jurisprudence approach has suggested that legal decision-makers should use remorse, as evidence of a person's rehabilitation potential, likelihood for reconciliation with victims and the community, and subsequent community reintegration, as a tool in determining how he should be punished and how sentencing can be used to achieve more therapeutic outcomes (Berryessa & Balavender, 2021; Erez, 2004; Wexler, 2004).

Yet, although this approach also reconsiders the roles of decision-makers involved in sentencing as those of "therapeutic agents" (Birgden, 2004; Dewhurst, 2012; Evans & King, 2012; Wexler, 2006), to date there has been no empirical work to examine whether legal actors may already draw from the Therapeutic Jurisprudence approach to inform their perspectives and choices during the sentencing of individuals who have shown remorse. This study, using a grounded theory approach with probation officers, produces a qualitative model that illuminates the extent to and ways in which officers recognize the remorse of a person being sentenced as therapeutic for the sentencing process and how they draw from principles of Therapeutic Jurisprudence when making sentencing recommendations. Ultimately, implications of these findings and the adoption of these approaches toward remorse in sentencing are discussed.

Remorse in Criminal-Legal Contexts

Remorse is a feeling of recognition and acknowledgement that shows accountability for causing damage to another person (Zhong, 2015). Normative ways of how people most often express or display remorse fall into two categories (Corwin et al., 2012). First, cues of remorse

can be non-verbal, most commonly via emotional displays of body language, including crying, frowning, not making eye contact, or hunched shoulders. However, paying forms of financial or material restitution to victims to replace destroyed property, making donations to those that have been affected by one's bad actions, volunteering in the community, or other similar behavioral gestures have also been considered key non-verbal displays of remorse (Weisman, 2009; 2014). Second, cues of remorse can be verbal, including direct apologies to and requests for forgiveness from those that have been affected, indirect apologies about one's behavior and feelings of regret to a third party, or verbal offers of aid to make-up for one's bad acts (Corwin et al., 2012).

In the context of the criminal–legal system, by exhibiting remorse displays like these, a person facing criminal charges is said to denounce his actions and, correspondingly, indicate the potential for change and long–term positive outcomes (Weisman, 2009; 2014). Remorse also indicates genuine atonement toward those that have been harmed; when those that have been affected by a wrongdoing acknowledge an individual's expressions of remorse for those actions, they may choose to forgive him (van Stokkom, 2002). Scheff and Retzinger (2000) suggest that forms of remorse and forgiveness are a two–step process that helps to successfully resolve conflicts in the criminal-legal system and allows amends to be made between a wrongdoer and his victims. Amends may be material, but non-material reparation is often considered more important to reductions in recidivism, reconciliation, and restoring moral-social ties (McAlinden, 2021). Particularly, remorse can suggest that the person being sentenced has a positive moral orientation—such that he is not lost and possesses the ability to transform himself in ways that rationalize, or even necessitate, a lesser or alternative punishment (Bibas & Bierschbach, 2004).

Although potentially having great utility for the court, victims, and those individuals being sentenced expressions are real or heart-felt, the notion of using remorse to ensure later

sentencing discounts has been discussed as potentially muddying more positive effects of remorse, such as achieving forgiveness and mending relationships (Bibas & Bierschbach, 2004). Etzioni (2000) notes that the nature of sentencing can be performative and coercive, in so that it can teach individuals to misuse or fabricate remorse as a self-serving attempt to reduce their punishments (O’Hear, 1997). Specifically, hollow remorse expressions, which have no utility for wrongdoers or those harmed, may be most prevalently expressed by those who continue to offend but have learned to look “rehabilitated” or “noble,” from prior justice contact, in order to potentially discount future sentences (Daicoff, 2013; Etienne & Robbennolt, 2007; Smith, 2013a)

Further, there have been discussions that traditional sentencing processes can create barriers for effectively using remorse (Bibas & Bierschbach, 2004). Some suggest that face-to-face interactions between individuals who are facing criminal charges and those that have been harmed outside of criminal-legal contexts can provide a more intimate, natural way for remorse to provide closure, positive long-term consequences, and healing of victims and the larger community (Etienne & Robbennolt, 2007; O’Hara & Yarn, 2002). Evidence suggests that individuals facing criminal charges are more likely to show remorse when they are face-to-face with victims in more informal settings and, even if remorseful, may be hesitant to show it during traditional sentencing procedures because they are in public and may feel disingenuous as they are, in effect, apologizing to the court, rather than to their victims (Poulson, 2003). Indeed, remorse may be most valuable when it is unprompted, while sentencing specifically commodifies remorse and prompts its expression; this may not only cheapen its emotional weight, but can stimulate those being sentenced to falsify it in instances in which they are not actually remorseful (Bibas & Bierschbach, 2004).

Finally, fully assessing the weight and utility of a person’s remorse for sentencing

purposes requires careful evaluation, fact-finding, and time (Bibas & Bierschbach, 2004). Yet sentencing processes most often occur within a short time period and with limited information about the individual facing criminal charges and his future behavior; this provides little time for the court to gauge remorse, its meaning, and how it should be considered within sentencing contexts (Weisman, 2014). Substantiating the sincerity, or power, of a person's remorse displays for sentencing is also hampered by this limited timeframe. Remorse, without earnest apologies or changing future behavior, is pointless and it can be difficult to evaluate its sincerity and whether it will lead to real change or victim reconciliation until an individual's behavior is observed later, after sentencing, or when he has returned to the community (Daicoff, 2013; Etzioni, 2000; Smith, 2013b). Thus, time restrictions may inherently check the ways in which remorse can be considered during sentencing processes (Bibas & Bierschbach, 2004).

Remorse as a Therapeutic Device for Criminal Sentencing

Remorse has been discussed by several related legal movements that focus on the sentencing and more general legal processes as a positive long-term force in individuals' lives and society-at-large, including restorative justice (see van Stokkom, 2002) and procedural justice (see Hayes, 2006). In these movements, remorse is particularly encouraged, although not always, in alternative sentencing processes, such as problem solving courts or circles, in which expressions and acceptance of remorse are used to resolve conflict via collaboration and empathy, rather than through more traditional social control (Martel, 2010). Yet the socio-legal movement of Therapeutic Jurisprudence has more often conceptualized remorse as a potential therapeutic device that can also be harnessed by decision-makers during traditional sentencing processes in order to foster a person's rehabilitation, reconciliation with victims, and reintegration into the community (Daicoff, 2013; Erez, 2004; Feigenson, 2010; King, 2008;

Lurigio & Snowden, 2009; Petrucci, 2002; Scheff, 1998; Winick, 1999).

Therapeutic Jurisprudence views legal processes as mechanisms for improving the welfare of those facing criminal charges and their communities, with legal decision-makers involved in these processes acting as “therapeutic agents” to maximize positive outcomes for all involved and affected by the law (Birgden, 2004; Dewhurst, 2012; Evans & King, 2012; Wexler, 2006). Although tacitly adopting a model that a person being sentenced requires therapeutic treatment offered and supplied by the court, this approach still relies on authority stemming from the adversarial criminal-legal process to implement such treatment (Hunter et al., 2016). Yet, rather than believing individuals should attune their behavior to directives set by more traditional punishments, Therapeutic Jurisprudence encourages legal decision-makers to use the law to develop therapeutic sentencing plans for them in order to reduce offending, increase their likelihood for community reconciliation, and prioritize therapeutic objectives for both those being sentenced and the larger community in considerations and decisions during sentencing (Dewhurst, 2012; Evans & King, 2012; Wexler 2004; 2006; Wiener et al., 2010; Winick, 1999).

Drawing from this socio-legal philosophy, remorse has been conceptualized as a device that can be used to better provide therapeutic outcomes during sentencing in two ways. First, termed “therapeutic guilt” by Daicoff (2013), remorse can be conceptualized as a type of self-reproach that allows individuals being sentenced to move past any rejection of their responsibility, to recognizing and holding ownership for their criminal acts, which increases their amenability for reform and reintegration back into their communities (Berryessa & Balavender, 2021; McMichael, 2018; Scheff, 1998). Daicoff (2013) notes that this process is similar to Braithwaite (1989)’s concept of reintegrative shaming, through which remorse can lead a person being sentenced to be reaccepted by his community. However, Tangney (1995) suggest that

shaming may actually be more related to the disapproval of the person himself, rather than of his behavior. Thus, in sentencing contexts, Daicoff (2013) suggests that the most imperative signal of therapeutic guilt is the exhibition of, or intention to exhibit, prosocial behavior and future abstention from committing similar bad actions. This suggests that affective remorse displays and spoken apologies alone may be less important to or impactful for sentencing unless paired with behavioral transformation (Smith, 2013a). According to this perspective, sentencing plans and opportunities that allow individuals to show their rehabilitated behavior are needed in order for them to be truly forgiven and accepted back into their communities (Weisman, 2014).

Second, when the trust in and integrity of a relationship between two parties is violated, it can become imbalanced, with one party having more “power” over the other; remorse has been considered a way to rebalance, and reestablish, the integrity, stability, and positive emotions in relationships between the person being criminally sentenced and those that have been harmed by his actions (Schuman, 2000). Specifically, remorse displays by the wrongdoer signal that he is wholly accountable for any bad behavior and allow victims and the community to let go of any responsibility or self-blame that they may have for what has occurred, and instead, that they should “let go” of guilt and shame associated with its commission (Daicoff, 2013). The community and victims do not bear responsibility for the offense, so allowing them to let go of any blame for their victimization can cultivate their emotional recovery and compassion for the wrongdoer (Scheff, 1998). Further, this increases the likelihood that their relationships with him will be repaired and that he will be able to rejoin his community once the relationship has been reestablished (Berryessa & Balavender, 2021; Braithwaite, 2002). During sentencing, the criminal–legal system uses its authority to represent law–abiders that have been wronged, suggesting that legal decision–makers represent the interests of victims and the community when

weighing punishment (Wringe, 2012). Thus, as Lu and Miethe (2003) argue, choices that legal decision-makers make with regard to recommending or deciding a person's sentence should consider the extent to which his remorse may have already begun to foster healing and forgiveness, as well as if and how this process may be facilitated in a potential sentencing plan.

Ultimately, Daicoff (2013) suggests that if remorse is viewed through a Therapeutic Jurisprudence lens, then what is learned looking through that lens might be harnessed as a legal tool for decision-makers in order for them to adjudicate and remedy legal matters through more beneficial and positive means. Particularly, remorse can signal to sentencing decision-makers that they should consider or recommend particular types of sentencing plans that maximize therapeutic outcomes for and the healing of those being sentenced, victims, and the community, such as those that allow individuals to actively interact with and make amends to their victims, or to behaviorally showcase that they are truly rehabilitated (Murphy, 2006; Winnick, 1999). Thus, under this framework, remorse should act as an "important therapeutic balm" for sentencing, in so that decisions being made about punishment can accomplish a deeper sense of peace, justice, and allow both those being sentenced and their communities to be more wholly satisfied with sentencing and its outcomes (Schuman, 2000).

Even with this body of theoretical literature, to date, there has been no empirical work to draw from the Therapeutic Jurisprudence approach to investigate if and how expressions of remorse by individuals being criminally sentenced may be used by legal decision-makers as a therapeutic device to shape their sentencing considerations. As sentencing acts as a way to represent the interests of those that have been harmed, remorse may lead sentencers to rethink a person's punishment because of what it suggests about his redeemability, prospect of repairing his relationships, and whether he is worthy of forgiveness (Daicoff, 2013; Scheff, 1998; Wringe,

2012). Thus, within Therapeutic Jurisprudence's goals, remorse may allow legal decision-makers to consider and advocate for sentencing plans that seek to amplify the therapeutic well-being of those facing criminal charges, victims, and the community via tailored sanctions (Erez, 2004; Wexler, 2004; Wiener et al., 2010; Winick, 1999).

Probation Officers: Remorse Assessments in Sentencing Recommendations

Although data are varied and not yet focused on its potential therapeutic relevance, literature already suggests that remorse often bears on sentencing considerations as a significant, person-centered factor that may inform judges during sentencing as evidence of an individual's reform potential, moral compass, and the potential need for mitigation (Weisman, 2009; Zhong et al., 2014; Zhong, 2015). Yet, as judges only spend a minimal amount of time with those being sentenced (Weisman, 2014), other sentencing decision-makers are given the opportunity to spend more time learning about individuals and their cases during this process. Particularly, probation officers meet with individuals being sentenced, as their clients, multiple times and evaluate their history, legal background, demeanor, social support, and other circumstantial information ascertained during their meetings in order to write pre-sentencing reports for the court (Berryessa, 2022; Berryessa & Balavender, 2021; Walsh, 1985). In writing these reports, officers relay their recommendations, including any probation conditions or explanatory factors that they recommend a judge consider, for a client's sentencing (Hagan, 1975).

Existing work has indicated that officers may include information about their clients' remorse in their pre-sentencing recommendations, including whether any displays are present, what they believe these expressions convey, and their recommendations of how remorse displays could be considered in sentencing (Berryessa, 2022; Bennett, 2021; Drass & Spencer, 1987; Weisman, 2009). Spencer (1984) suggests that probation officers may utilize remorse to make

deductions about a person and his past and future behavior in sentencing recommendations, while other work shows that officers may use remorse displays to make attributions about a client's responsibility and rehabilitation and to support recommendations for more merciful sentencing (Everett & Nienstedt, 1999). Overall, studies have indicated that judges frequently rely on these reports in order to evaluate a person and his actions for sentencing purposes and that their dispositions are most commonly in accordance with and supported by officers' reports (Frieburger & Hilsinki, 2011; Rush & Robertson, 1987). Thus, this suggests that officers' remorse assessments are likely to bear on later sentencing considerations and outcomes.

Although literature may suggest that remorse expressions can positively affect sentencing considerations, it is still largely unclear how and through what process that remorse may actually shape probation officers' recommendations for more lenient sentencing outcomes and, at least in part, whether it may stem from their views on its therapeutic utility for the sentencing process. Indeed, many decision-makers involved in sentencing have been thought to hold more holistic views of sentencing in recent years, which may not only may signal a shift in punishment philosophy away from a focus on traditional social control, but also their interest in using their decisions to achieve more beneficial outcomes for those being sentenced and larger community (Pinard, 2003; Steinberg & Feige, 2004; Wexler, 2004; Winick, 1999). Thus, it is possible that some officers may already draw from principles of the Therapeutic Jurisprudence framework to make their recommendations for more lenient outcomes in their pre-sentencing reports.

Current Study

This study examines if and how probation officers utilize remorse to achieve therapeutic outcomes when considering and recommending how a person should be punished. Specifically, the goal of this research is to develop a qualitative model that elucidates a process that shows the

extent to and ways in which some officers recognize remorse as a therapeutic device for the sentencing process and, correspondingly, how they may draw from these principles of Therapeutic Jurisprudence when making their recommendations for an individual's criminal sentence. Therefore, the current inquiry has two related research questions:

1. To what extent and in what ways do probation officers view remorse as device that can be used to further therapeutic outcomes during the sentencing process?
2. Do and in what ways do probation officers draw from these views of remorse as a potential therapeutic device in order to inform their sentencing recommendations?

This study seeks to create an emergent model from interviews with probation officers in the U.S. that represents and explains relationships between these research questions. If a process emerges, then this model is indicative of ways in which some officers may view remorse through a therapeutic lens and how this may shape their pre-sentencing reports.

Method

This qualitative study uses semi-structured interviews with a large sample of probation officers and a grounded theory approach in order to build an emergent model (Strauss & Corbin, 2014). Although these research questions are shaped by the Therapeutic Jurisprudence literature, the phenomena in the emergent model and their interactions developed from the data themselves. Grounded theory is most often abstracted as an inductive method of qualitative research, but it also utilizes deductive framing from existing literature to inform research questions and analyses (Goulding, 2017). Thus, the current analyses relied on both inductive and deductive approaches. Comparable analyses plans, using grounded theory, have been utilized by Berryessa (2019) and Berryessa (2022) when building other qualitative models of sentencing decision-making.

Sampling Procedure and Interview Protocol

A purposeful sampling strategy was used in order to identify and select participants that could address this study's research questions (Palinkas et al., 2015). A sample of probation

officers from across the U.S. with criminal caseloads were directed for participation in this research from the American Probation and Parole Association (APPA). Besides being a probation officer who currently has or has had a criminal caseload, there were no eligibility criteria. Sampling was not limited to pre-sentence officers, but all officers said they had some experience with pre-sentence reports. In 2019, APPA sent out an email invitation for a telephone interview with probation officers, which included a consent form, study sheet, and the author's contact information, to its members (90,000 probation and parole professionals). The invitation indicated that participants could receive a \$20 token of appreciation if requested, although most refused. Apart from achieving theoretical saturation, there was no goal for the number of interviews. Overall, 151 officers provided consent and were interviewed, and the author's Institutional Review Board approved this research. As a note, the larger data set collected from this research sample has been recently analyzed in a separate, unrelated qualitative inquiry on bias in remorse assessments of individuals charged with violent offenses (see Berryessa, 2022).

Interviews, which were recorded and transcribed, were roughly one half-hour. The protocol, along with collecting demographics, included Patton (2014)'s question types for the development of grounded theory that permit meaning and theoretical processes to emerge from data; these include questions that elicited participants' experiences and behaviors; opinions and values; feelings; knowledge; and sensory observations, about the topics at hand. Probation officers were asked questions in five areas, which probed each of Patton (2014)'s areas: 1) officers' definitions of remorse, as well as how they recognize and assess clients' expressions of remorse (knowledge, sensory observations, experiences and behaviors); 2) socio-demographic, behavioral and other factors they feel are important to consider when making remorse assessments (feelings; opinions and values); 3) what information they include about remorse in

pre-sentencing reports (experiences and behaviors); 4) goals of including information about remorse in pre-sentencing reports (opinions and values); and 5) demographics (also see Berryessa, 2022). All question categories prompted officers' views of and experiences with both their clients generally, as well as those charged with violent offenses specifically. This inquiry stems from data on officers' views about their clients generally.

Analysis

Dedoose software was used to systematize and code the interviews in this study using a three-step grounded theory approach (see Strauss & Corbin, 2014). First, open coding, which is the process of iteratively defining and organizing both data- and theory- driven themes, was used for a random sample of 15 interviews and an emergent coding scheme from this process was applied to the entire set of data. This initial coding stage involved two coders going through transcripts and interview notes, line-by-line, to identify a list of emerging themes from phrases and segments of data. Following individual open coding, the two coders reviewed the other's open coding list, debriefed on the process to articulate inconsistencies, and collaborated to produce a final list of open codes.

Axial coding was then used to organize the themes established during open coding into different categories for the rest of the data. This process was constant comparative (see Glaser, 2003), allowing emergent themes from open coding to be eliminated or combined into saturated coding categories that spoke to the study's conceptual framework. Conceptual memoing was used by a primary coder during axial coding to help identify properties of these categories as data was continually collected and coded, which helped the author to connect data exploration and examination to theoretical category development as analysis progressed into selective coding. This process resulted in three emergent core categories that led into selective coding, in which

the relationships between validated categories observed in axial coding were examined in order to distinguish the theoretical model that best fits the data in relation to the research questions.

Selective coding included theoretical coding, which involved theoretical memoing in order to deeply engage with and examine relationships between coding categories identified in axial coding, as well as dialogic engagement between the two coders to discuss and collaborate on the developing theory. Ultimately, selective coding allowed for theoretical sorting of coding categories to formulate a conceptual outline for how to present the emergent model of the data that most wholly represented their integration. The second coder analyzed a random selection of data in Dedoose in order to validate the coding scheme's internal consistency, which confirmed a high (84%) level of inter-agreement (Patton, 2014). Theoretical saturation was achieved in each of the data's core categories, and no demographics appeared to bear on the presented results.

Results

Sample Demographics

The sample included 151 probation officers, who stated that they all have or have had caseloads that include clients charged with criminal offenses. The average caseload was 84.04 clients (a minimum of one client and a maximum of 576 clients), and the average tenure as a probation officer was 12.14 years (with a minimum time on the job as less than a year and a maximum of 34 years). In all, 81 officers identified as female and 70 officers identified as male. The minimum age was 21 years of age, and the maximum age was 75 years of age. Of the interviewed officers, 20 said they were between 21–30 years of age, 49 were between 31–40 years of age, 52 were between 41–50 years of age, 22 were between 51–60 years of age, seven were age 61 or above, and one officer preferred not to respond. Regarding their states of residence and work, 20 officers were from Nebraska, 19 from Texas, 18 from California, 13 from Virginia, 11 from Arizona, 10 from Ohio, nine from Illinois and Pennsylvania respectively,

six from Michigan, four from Indiana and Missouri respectively, three from Georgia, Oregon, and South Carolina respectively, two from Minnesota, Mississippi, New Jersey, Tennessee, and Washington DC respectively, and one officer from Arkansas, Colorado, Hawaii, Idaho, Kansas, Kentucky, Maryland, Montana, and Utah respectively. More comprehensive attributes of officers, such as education or racial identification, are available upon request, but no demographics appeared to influence the model developed below.

[Insert Figure 1]

Findings from the Developed Model

Three core coding categories (“Therapeutic Guilt,” “Rebalancing Power,” Reintegrative Sentencing Recommendations) developed from the data and were organized during coding, for which the outcomes support the emergent model described here and illustrated in Figure 1. As noted here, a large number of interviewed probation officers (more than half the sample) were found to view remorse as device that can be used to further therapeutic outcomes during sentencing in two main ways: 1) as evidence of an individual’s therapeutic guilt through which he acknowledges and condemns his wrongdoing, takes responsibility for his actions, and shows active changes to his behavior (“Therapeutic Guilt”); and 2) as a way to “rebalance power” by placing full responsibility for bad acts on the individual being sentenced (via his expressions of empathy and regret) and by opening opportunities for him to seek and receive forgiveness and reconciliation by providing apologies and “payback” to victims and community (“Rebalancing Power”). Then, officers who viewed remorse as a device to achieve therapeutic outcomes in sentencing then discussed how they draw from these principles to prioritize and recommend sentencing plans in pre-sentencing reports that best allows individuals to remain in and reintegrate into the community, including recommendations for sentencing options that allow

them to exhibit behavioral changes and for amends to be made between themselves, victims, and the community (“Reintegrative Sentencing Recommendations”). The sections of this model are detailed here and in Figure 1, with minor linguistic changes made to quotations to ensure clarity.

Remorse as Evidence of Therapeutic Guilt

When discussing what expressions of remorse may say about a person being criminally sentenced, 86 probation officers in total noted that it provides evidence of what was coded as “therapeutic guilt.” Generally, officers described therapeutic guilt by using language that conveyed how guilt can act as a person’s motivation to change his behavior (i.e., Officer 135: remorse tells you what “state of change they [are] in, [are] they ready to make a change]” or Officer 98: remorse is “the ability to acknowledge that you did something and the ability to then move forward and take the actions that you need to change”). Officers appeared to distinguish therapeutic guilt from what might be considered “traditional guilt,” in so that therapeutic guilt from remorse encapsulates active engagement and purposeful consideration of past actions, while traditional guilt was described as more related to feeling badly about past acts, but not necessarily claiming ownership of them or showing interest in avoiding such future behavior. As Officer 22 stated, remorse “has to be a feeling or an expression that is free of excuses, which is separate from guilt...I think a lot of people can feel guilty, but not necessarily remorseful.”

Officers described therapeutic guilt as encapsulating three components. First, 76 officers described that a person being sentenced shows therapeutic guilt by acknowledging and condemning his wrongdoings. They said look for verbal and emotional displays to gauge the extent to which a client acknowledges his crimes and their repercussions, as well as if he is emotionally mature enough to stop these behavior in the future. Indeed, remorse was not only perceived as recognition that a crime has taken place, but also that the behavior has violated a

person's own moral compass and larger social norms that affect the well-being of victims and the community. For example, Officer 133 described how remorse can represent a spectrum of cues that acknowledge how bad actions have impacted others: "They range from, 'I violated a rule,' and the consequence to, 'Wow, that bothered me because of my own error,' feelings of morality and then even beyond that, 'I feel sorry for what I did to others and the community.'"

Second, 78 officers described that a person being sentenced shows therapeutic guilt by taking full responsibility for his crimes, particularly through verbal and behavioral articulations of responsibility. Officers described that the genuine acceptance of responsibility does not involve excuses for the offense. For example, Officer 146 noted that for a client to develop "prosocial skills" that show acceptance, rather than justification, of one's poor choices, he has to "really own his part of it, has to accept culpability for whatever part he played... There has to be true acceptance there rather than blaming others or minimizing what he's done."

Officers stated that they believed that a person who has taken full responsibility will also exhibit this in their interactions. Specifically, a client who is truly taking responsibility is going to accept his punishment without a fight; as Officer 18 said, "[he's] not going to ask for a lesser sentence, ask for probation rather than a custodial sentence, ask for something less... [he's] going to accept what [he] gets if he's being genuine." Further, if a client genuinely accepts responsibility, officers said that he will consistently articulate this in their pre-sentencing meetings, which may suggest he is unlikely to commit or become involved in this type of behavior again. Indeed, as Officer 42 suggested about his clients,

Responsibility is exhibited over a period of time... In continuing [meetings], I look to see if [my clients] say the same thing over and over, have they written a letter, have they gone above and beyond to make a point that they really, truly feel bad about doing whatever it was they did. Now that shows responsibility.

Third, 72 officers described that a person being sentenced shows therapeutic guilt by

showing active changes to his behavior and habits. This was by far the most important component of therapeutic guilt for officers and the primary evidence that a client is likely to be successfully rehabilitated if provided the chance. Officers suggested that any acknowledgment and acceptance of responsibility for one's crimes are empty if they are not paired with behavioral changes and desistance from future offending. For example, when discussing how he assesses evidence of remorse, Officer 62 stated that,

It's really not verbal. I look at their future behavior. 'I'm sorry I did this, I shouldn't have stolen this, I shouldn't have been selling those drugs' – but real remorse would be remaining compliant. To me that's genuine remorse, if you feel sorry for doing something or want to make a change. It's not really words, it's actions. Real remorse is changing the behavior.

For these officers, active behavioral changes during the criminal–legal process, such as attending pre–sentencing meetings on time or following court instructions, also show potential for rehabilitation. A client's commitment to his criminal–legal system involvement suggests that he may show similar commitment to reforming his outside behavior. Officer 25 stated,

People who are really, really sorry...generally have visible changes that you can see in your interactions with them...They report when they're supposed to, any guidelines that they've been given by the court, they will carry out. I look for those things because for me it is an indicator of whether they're probably going to be successful later outside.

As these pre-sentencing meetings not only occur prior to a client's sentence but also in a restricted period of time that may only last a few weeks or months, most officers appeared aware of the ways in which the time constraints of their interactions and sentencing processes can generally limit their clients' abilities of to fully exhibit these three components of therapeutic guilt during this time period. Indeed, as officers painted therapeutic guilt as growing and unfolding over time, they suggested that clients can show their commitment to behavioral change by participating, articulating responsibility during, and being punctual to their series of pre-sentencing meetings, but that other behavioral changes, including desistance from future

offending, may be difficult to show or not fully possible until after sentencing. For officers, given these constraints, they said that they expect to see clients reflect on and articulate effortful intentions about how they will change their behavior during the pre-sentencing process, such as clients voluntarily choosing to attend outside support groups or helping them to write lists of potential future goals or future ways to avoid prior behavior. Particularly, officers described clients' intentions as more than verbal articulations of therapeutic guilt, and, instead, requiring effort to show how they intend to extend these processes post-sentencing.

As a contrast to these views above, the 65 officers that did not discuss remorse as evidence of therapeutic guilt did not relay consistent views, as a group, about what role remorse can play for clients and their transformations. Some officers either viewed remorse as having little bearing on a client's transformation, while some others believed that, although it could have positive effects for individuals and is more often than not sincere, the primary role of a client's remorse is to persuade sentencing decision-makers of his intent to change for purposes of sentencing discounts, rather than allowing for or furthering his transformation.

Although the minority view, a few officers appeared more cynical and viewed remorse as a common way for clients to pretend to accept responsibility for their actions and "fake" true behavioral change, while they are in fact unlikely to change and will keep offending. Several described that working with clients with previous criminal records has made them more wary of their remorse expressions and, as compared to those with little or no prior contact with the criminal-legal system, that they may be more likely to scrutinize or doubt that such expressions denote true condemnation, the taking of blame, and a desire to alter future behavior. However, although conveying some hesitation, only a few skeptical officers said that a prior criminal record would make them instinctively ignore these expressions, with most still willing

to give such clients a chance to prove that their remorse can be transformative:

[Prior criminal record] plays a fairly important role for me...Someone with no history who's kind of showing up and saying I feel bad, I can't believe this happened. And then someone who's had multiple incidents of similar behavior along entanglement in the criminal justice system, it would definitely play a part on my accepting the kind of depths of their remorse. I don't like to be someone that says, you're not going to change...so at first I may take someone less seriously with the long criminal history, but... that is not to say I prejudge him or his ability to change in the moment (Officer 138).

Remorse as an Avenue for “Rebalancing Power”

Eighty-eight probation officers viewed remorse as a way to rebalance the power in relationships between a person being sentenced, victims, and the community, coded as “rebalancing power,” in two main ways. First, 80 officers described how remorse signals that harm caused by bad acts is solely the wrongdoer’s responsibility, which allows victims and the community to release any self-blame, shame, or perceived accountability that they may feel. Officers noted that expressions of remorse relay that it was a person’s own, individual choice to commit bad actions and cause damage. In this sense, remorse was largely viewed as evidence that a client does not believe that he is the victim of “bad luck” or others’ decisions, and instead, that he recognizes himself as the victimizer. For example, Officer 1 said that remorse allows a client to understand that his situation is internally, rather than externally, caused:

I think [you can figure out remorse by] whether they talk about [the crime] as something they did and caused, or whether they’re talking about it externally...like, things happened to other people because of me as opposed to these are the things that happened to me.

Interestingly, officers believed that there were several positive emotions that remorse can help reestablish in the relationships between a person being sentenced and those harmed. Seventy-eight officers described how remorse allows a client to emotionally and verbally express, and feel, empathy for victims and the community, thereby allowing those that have been harmed to feel that their interests, and not the client’s, are the primary focus. As Officer 11 put it,

remorse is not only “feeling sorry for actions or behaviors, but also...emphasizing and understanding how that action and behavior has really impacted victims, the community at large.” This was described primarily as a client’s vocalization about how others must have emotionally felt because of his behavior, including fear, disgust, distrust, sadness, and anger. Officers said that crying also shows that he is seeking an emotional connection with his victims.

Further, for these officers, a client’s empathy does not necessarily always need to convey how he will make things right with victims or the community moving forward, but allows him to sit with his disappointment and frustration about his own behavior and how it has affected others. For example, Officer 16 stated that,

We hear a lot of, I wish I could go back in time and not make them feel that way, and that tells me that [the client is] empathizing with [those that he has harmed]. Doesn’t necessarily mean that he knows how he could have done it differently, but that he’s remorseful of what did happen and how it made others feel. Often times he may just indicate disappointment with the way that things are, which also signifies remorse, frustration with the position that [he’s] in, the position [he’s] put family members in.

Also, somewhat to a lesser extent, these officers described how remorse allows the person being sentenced to emotionally and verbally show regret for his actions. Many officers seemed to somewhat equate regret and remorse, suggesting that remorse is a form of “genuine regret” (Officer 94) that is built from the “internal feeling of regretting something that you have done in the past” (Officer 75). However, these officers described that “remorse is more like regret at the next level” (Officer 10) as a client attempts to make a situation right.

Second, remorse reestablishes the integrity of relationships between the person being sentenced and those that have been harmed by opening opportunities for them to seek and receive forgiveness via apologies and “payback.” Seventy-eight officers noted that a client can seek and receive forgiveness via verbal apologies as way to begin healing relationships. For officers, a sincere apology generally includes verbal articulations of acknowledgement,

condemnation, responsibility, and regret for one's wrongdoings, but officers said that a true apology should also communicate understanding that there have been impacted victims (i.e., Officer 126: "an apology factor[s] in victims right and awareness...acknowledging that [a person being sentenced] is responsible for making a victim whole") and that his relationships with victims and the community have become strained (i.e., Officer 73: "an apology recognizes that there is now distance between [the person being sentenced and those that have been harmed]").

Apologies also should "work on things that caused [the wrongdoer] to do this... express[ing] that he wants to try to make this up, either to the individual or the community or both" (Officer 55). However, this may not occur all at once, and officers stressed that apologies most often occur over time as a "process" as a client goes through the internal experience of "self-awareness" (Officer 132) in order to recognize and respond to his bad behavior; this process may be traumatic on its own for a client, but it is necessary for him to grow and for victims to be healed. As Officer 93 notes here, officers said that they help with the apology process as they regularly meet with their clients, allowing them to apologize over time by

explaining the details of the situation and then where they grew from it or if they think about it...because if they dwell on it, they're still in that change, learning from the experience... evolving from it. Remorse may not be a moment, but more of an evolution.

Along the same lines, 72 officers suggested that remorse allows the person being sentenced to seek and receive forgiveness by providing, or planning to provide, "payback" to his victims and community. This might occur during the course of a verbal apology, but officers were more focused on how forms of behavioral restitution may be required for them to be "made whole" (Officer 93). Thus, payback was viewed as predominantly a behavioral, rather than verbal, tool that begins to repair relationships between the individual being sentenced, victims, and the community. Particularly, the main form of behavioral restitution is when a client takes

active steps to change his day-to-day behavior that contributed to his offending. Indeed, officers described how lifestyle changes may be the most impactful form of “restitution” because they signal a client’s willingness to make a change in his life. Officer 103 stated that

a verbal apology may not be sufficient in remorse, but instead, more a lifestyle or a change of behavior. That’s what [victims] really want to see and I think it would be progress towards either starting a counseling program or something that puts them in a position to stop who they’ve been hanging around... in a position to really change.

Further, sometimes behavioral payback can include material restitution, such as reimbursing monetary payments or property, as a first step to healing. Officer 48 stated that a client should make “financial restitutions to someone who had their property damaged. And through that a [person who has offended] can go ahead and pay...there may be damages that caused hardships that money can never fix, but it’s a start.” However, financial restitution was far less discussed by officers as compared to the other forms of behavioral restitution described above, with some suggesting that behavioral restitution is what is really “going to make the victim whole” (Officer 139). Overall, only 25 officers in the sample described any form of financial restitution as an essential or necessary method of showing remorse, while most officers focused more on symbolic behavioral restitution. A handful of officers did mention how a client’s financial precariousness or inability to pay financial restitution could be perceived as evidence of him not caring or showing remorse. However, some of these same officers also said that it is the symbolic effort, not the actual financial resources provided to victims, that really shows remorse:

I think it's important to know when the client has been trying. Because not everybody succeeds at...paying restitution...they may not been able to pay restitution as ordered but they tried and they’ve made those efforts. That’s what’s really important (Officer 17).

As pre-sentencing’s time limitations may only allow their clients to just start the process in providing apologies or payback, most officers appeared to understand that it is unlikely that

complete forgiveness, repayment of monetary restitution, and, most importantly, the exhibition many forms of behavioral restitution would be possible to achieve or show prior to sentencing. However, for officers, one's intentions to make apologies or provide payback still needs to move past being solely verbal during pre-sentencing. For example, officers said that clients can foster the apology process as they regularly meet with their probation officers, but that they also would expect and hope to work with their clients to plan how they can formally apologize to victims during and after the sentencing process. Particularly, while clients could write letters to victims, officers hoped that clients would ask for their help during their meetings on how to make amends face-to-face after sentencing in a more natural, private location. In addition to them beginning to make more clearly-defined plans during pre-sentencing meetings on how to exhibit future behavioral restitution to their communities and victims, officers were enthusiastic that clients can successfully take active steps to change their day-to-day behavior, as perhaps their most important form of behavioral restitution, during pre-sentencing meetings as a gateway to more complex ways of making amends during and after sentencing.

The 63 officers that did not discuss how remorse can rebalance power in relationships between the individuals being sentenced, victims, and the community did not generally relay any views about if or whether remorse can impact their relationships, and instead, focused on more practical purposes and effects of remorse as a potential sentencing discount. Further, although the minority view, a few skeptical officers believed that some individuals, particularly those who have offended "over and over again" and have learned how to "play the system" (Officer 58), can feign expected remorse displays for their own benefit and described their concerns about these clients interacting with or having contact with victims since it is unlikely to achieve any purpose and may create more harm to victims. One officer, talking about individuals who

continue to offend, suggested that he would not want victims to have contact with clients if all “they will only get lip service” (Officer 12) in return, over fears that deceitful apologies or fake amends may make the offense’s effects, as well as the victim’s psychological and emotional well-being, far worse than prior to that contact.

Reintegrative Sentencing Recommendations

Overall, officers discussed how important it is for them to include information about a client’s expressions of remorse, and particularly as they have occurred over time, in their pre-sentencing reports. They viewed this as a way to give the court a full understanding of a person’s journey, from the commission of the offense to where he is today. For example, Officer 46 stated that she includes descriptions of her clients’ remorse in her reports because,

it shows the full picture of what has happened... I just feel it’s my job to paint the picture for the judge on someone’s telling me their story... So like, I’m asking [clients], do you feel responsibility for what happened? And then just how they present that to me? I want to take their actual verbiage, like how they said it to me... what [crime was committed], where did they start and where are they now.

In addition to a full understanding of a person’s remorse story or journey, this information also provides the court with access to his past, current, and future remorse “goals” (Officer 118), as well as if he has been self-motivated and how these goals have evolved during their meetings. Officers suggested that they include things that they have fostered or helped plan during pre-sentencing meetings, as mentioned above, such as a client’s clear payment plan for providing restitution, any apology letters to victims or clear future plans for them to meet them face-to-face to apologize, recent participation in treatment or support groups, or plans to give back to the community by volunteering at a local organization, in their reports to suggest that a client even if it might be “baby steps,” is “on right track” (Officer 118).

Yet, most prominently, these probation officers who viewed remorse as achieving

therapeutic outcomes in the ways noted above, discussed how they draw from these principles to prioritize and recommend sentencing plans to the court that allows a person to remain in and reintegrate into the community. Specifically, if possible, officers said that a client's remorse often informs them to consider two types of recommendations during pre-sentencing. First, 78 officers said they look to recommend sentencing options that allow the person being sentenced to exhibit behavioral changes and rehabilitation. Interestingly, the most common recommendation that officers believed allowed for this was a basic term of probation, as opposed to a term of incarceration. Officers said that "probation is like rehabilitation" (Officer 31), as

people who are remorseful are more likely to do what is in order, and are more likely to comply with the things that probation is required of them...I think that definitely sways our presentencing reports, our recommendations to the courts because we think in our perspective, if somebody is remorseful, they will be more likely to comply with community corrections and we should allow them the chance to show that (Officer 16).

Thus, officers believed that a term of probation can provide a client a set of rules to follow to show that they are ready to make real and lasting changes.

For officers, a term of probation also can allow a person to begin the process of reintegration by demonstrating his compliance to the larger community. Officers described that allowing a client to stay in the community and show how he has changed by following his probation requirements, as well as legal and social norms, helps provide him a second chance to become a productive member of society. Indeed, speaking about his clients, one officer stated:

Through a course of probation, the criminal justice system gets to see [my clients] in the community... are they going to take advantage of all the resources that they are going have? I think based on how they're following the rules of their probation and the rules of the community, then we can realize, okay, a guy came in, he spoke about being remorseful, but now his actions are proving it back in the community (Officer 45).

In addition to basic terms of probation, officers stated that they sometimes recommend treatment programming as an additional stipulation that can provide a client with the structure

and schedule to demonstrate compliance and completion, as well as emotional and behavioral skills to engage in future prosociality in the community. Officers described that programs, such as cognitive behavioral therapy or substance abuse counseling, are recommended on a client-by-client basis and based their unique needs and specific behavioral issues. Regardless of the specific program, completion sets the stage for and signals that a person is likely to be rehabilitated, move forward, and use these tools to successfully return back to the community:

When it comes to remorse, those clients finish their programs because they are trying to be a positive influence back into community. They are taking the second chance, doing something right by it. So they take what they learn and then it's either obtaining education, going to a trade school...stopping their addiction...counseling. That will help them move forward in their new journey and changing their behaviors (Officer 18).

Second, 66 officers said they look to recommend sentencing options in their pre-sentencing reports that allow for reconciliation and meaningful exchanges to occur between victims, the community, and individuals being sentenced. Once again, recommending a term of probation, rather than a term of incarceration, was considered a key way to keep a client in the community so that they these exchanges are more likely to occur. In some cases, this might involve court-ordered participation in the forms of cognitive-behavioral programming mentioned above that can teach individuals the interpersonal skills needed to effectively apologize to and payback victims and the community. Officers were clear that programs may not necessarily put a client in front of victims, but can teach him how to go out and engage with these parties, and the community, in order to make amends. Particularly, several officers described victim empathy classes in their jurisdictions that can foster empathy skills as a stipulation of his probation.

We have a crime victim empathy class that has been implemented over the past couple years...And it's one of the best courses just by clients saying, oh, man, I feel bad but I now realize there's a lot of more victims than just so-and-so. And I think that's...what we want to teach people. Not only is it to take responsibility for your actions and live a good life, but it's teaching empathy for your community (Officer 91).

In other cases, officers suggest that probation allows remorseful clients to “take the steps to better the community which they put at risk” (Officer 108). Particularly, officers believed that allowing a person to stay in the community, via probation, means that it will be more likely that he will voluntarily pay financial restitution (since he is able to keep his job and make money), and reach out, apologize, or provide behavioral restitution to victims (since he is able to meet or speak with them face-to-face on their terms or at their preferred location). Further, officers believed that allowing a client to stay in the community also means that he is better able to make amends with the larger group of law-abiders, particularly through behavioral restitution in the community, which can help him reintegrate as a productive and accepted member of society. For example, in speaking about recommending probation for one of her clients who had stolen items from local stores, Officer 28 described that because of probation,

he has been able to keep his job and decided to not only give restitution, but financial donations to charities in his community as a way to make amends...He’s likely to actually go out and volunteer in his community as a way to say he’s sorry, to give back.

Thus, a term of probation can help an individual engage with his community in ways that he would not be able to if he was incarcerated.

For the 60 officers that did not discuss how remorse often informs them to consider these types sentencing recommendations, they appeared to view remorse in one of four ways: first, as some did not view a client’s remorse as behaviorally transformative nor as a way to make true amends, about thirty officers also did not appear to believe or choose to use remorse to inform their pre-sentencing reports. Second, some officers that had viewed remorse through a therapeutic lens in either or both ways described above either did not extend these views to their later sentencing recommendations for unknown reasons or used them to consider or recommend more general sentencing discounts (i.e., less prison time), rather than recommendations for more

therapeutic sentencing outcomes. Finally, a selected few skeptical officers suggested that remorse displays, particularly of individuals with prior system contact and sentencing experience, may prompt their consideration of more punitive sentencing recommendations if there is any indication that these clients have exhibited remorse in previous sentencing processes and that they were provided with either discounts or alternative sentencing plans in those cases.

Discussion

In prior work, Therapeutic Jurisprudence has considered remorse as a potential therapeutic device that can be used during traditional sentencing processes to foster an individual's rehabilitation, reconciliation, and reintegration (Daicoff, 2013; Erez, 2004; Feigenson, 2010; King, 2008; Lurigio & Snowden, 2009). The model developed here indicates that a significant number of probation officers appear to share in this perspective and look to act as "therapeutic agents" during sentencing to improve the outcomes and well-being of those being sentenced, victims, and larger community (Birgden, 2004; Dewhurst, 2012; Evans & King, 2012; Wexler, 2006).

Many officers described utilizing remorse in order to make therapeutic sentencing considerations in ways similar to those discussed in existing literature. Officers appeared to consider remorse as a form of therapeutic guilt, through which individuals can verbally and affectively acknowledge, condemn, and take responsibility for their crimes (Daicoff, 2013; McMichael, 2018; Scheff, 1998). However, similar to Smith (2013a; 2013b), these remorse indicators were described as somewhat empty unless backed by actions, with adherence to the justice process during a client's involvement in the criminal-legal system potentially most suggestive of his deep commitment to behavioral rehabilitation. Officers also distinguished fundamental differences between traditional and therapeutic guilt, indicating that remorse

denotes the presence of therapeutic guilt through which a person takes ownership over his crimes and denotes moral and social disapproval of his own behavior. This was contrasted to traditional guilt, which officers noted may include negative emotions, such as regret or sadness, and shows less of a focus on existing or future behavior. In this way, officers appeared to liken their notions of traditional guilt to shaming, which focuses more on evaluating and censuring a wrongdoer's sense of self and character, rather than his behavior (Hayes, 2006; Tangney, 1995).

Also aligned with previous work, many officers described remorse as a device for rebalancing power in relationships between an individual being sentenced and those that have been harmed (Daicoff 2013; Scheff, 1998; Schuman, 2000), as well as fostering the emotional and psychological health of all affected by a criminal offense (Braithwaite, 2002). Yet remorse's role in allowing a person to seek and receive forgiveness was painted by officers as a continuous processes that builds during his meetings and interactions with his probation officer. Officers described their own active role in helping clients to verbally and behaviorally apologize over time in order to foster internal self-awareness and motivation to make reparations. This suggests that officers desire to use their authority to represent interests of victims, as well as those of the larger group of law-abiders that have been wronged, during sentencing (Wringe, 2012). Further, although remorse and forgiveness have been considered a two-step sequence to restore social bonds (Scheff, 1998), officers also suggested that a client's remorse must include both apologies and "payback," to victims and the community, in order for it to lead to forgiveness. Interestingly, payback was almost entirely conceptualized as a behavioral, rather than verbal, device to repair relationships, with officers also viewing forms of symbolic, rather than material, reparation as the most impactful way to make amends (McAlinden, 2021).

Building from these perspectives, the model suggests that probation officers who view

remorse as a way to further therapeutic outcomes in sentencing generally draw from these principles in their reports to inform sentencing plans that best allow for a client's community reintegration. In order for the court to fully understand the relevance of remorse to sentencing, officers' reports allow them to paint a picture of an individual's remorse journey and his past and future plans for behavioral restitution. Indeed, for sentencing to achieve reintegration, many officers relayed that a client must be given an opportunity to exhibit the rehabilitation that he has and will continue to foster during the remorse process and to have meaningful exchanges with victims and the community in order to instill reparation and restore social bonds. Prior literature has similarly described that only through true behavioral transformation, and potential sentencing opportunities offered to show such changes, can individuals being sentenced be meaningfully accepted and reintegrated back in their communities (Petrucci, 2002; Wexler, 2006). Most officers appeared to share in this perspective, as well as hold the belief that the remorse–forgiveness sequence should be facilitated in a potential sentencing plan (Scheff, 1998).

Types of therapeutic sentencing recommendations discussed by officers to help maximize community reintegration mainly relied on more traditional forms of social control. Particularly, officers suggested that basic terms of probation that keep clients in their communities can allow them to demonstrate behavioral transformation, by being compliant on probation, and provide them the opportunities to apologize and provide restitution that they would not be able to provide if they were incarcerated. Although officers also discussed how treatment programs can foster interpersonal skills needed to make amends, they were mainly described as potential stipulations of probation, rather than standalone sentencing alternatives. Existing work suggests that this focus on using more traditional forms of sentencing to achieve therapeutic outcomes may be unsurprising. Although Therapeutic Jurisprudence portrays the court as providing therapeutic

treatment, its provision still principally relies on more traditional modes of social control (Hunter et al., 2016). Thus, as previously argued, forms of “treatment” provided within the therapeutic process can still operate within the adversarial criminal-legal process, while also transforming an individual’s behavior (Berryessa, 2019; Moore, 2007).

To date, existing work has not conceptualized how more traditional punishments, such as terms of probation, can themselves be therapeutic for those being sentenced and the larger community (Dewhurst, 2012; Evans & King, 2012; Wexler, 2004; 2006). The data here, however, provide evidence that at least some sentencing decision-makers believe that therapeutic objectives can be achieved within more traditional sentencing recommendations for common community-based punishments that keep individuals in and engaged with their communities (Berryessa & Balavender, 2021; Erez, 2004; Wiener et al., 2010). In fact, such recommendations may even help to mitigate some of sentencing’s structural barriers that can hinder remorse’s therapeutic effectiveness. Officers here described how community-based punishments can more effectively lead to face-to-face interactions outside of criminal-legal contexts that may better provide closure and healing (O’Hara & Yarn, 2002), allow for more unprompted expressions of remorse outside of performative criminal-legal settings (Bibas & Bierschbach, 2004), and provide opportunities for those being sentenced to extend their remorse journeys, developed during pre-sentencing, into their communities (Daicoff, 2013; Etzioni, 2000; Smith, 2013b).

Of course, not all officers viewed remorse as fostering therapeutic outcomes in sentencing or relayed that it bears on their recommendations, with some putting no weight on it and other alternative perspectives aligning with other prior literature. Indeed, some officers believed that remorse’s chief purpose is to provide for potential sentencing discounts, which Bibas and Bierschbach (2004) have discussed as obscuring the more therapeutic effects of

sentencing that can be achieved by remorse. Further, some officers relayed concerns about clients, particularly those with prior criminal records, showing insincere remorse expressions and misusing them in an attempt to reduce their punishments (Daicoff, 2013; O’Hear, 1997; Smith, 2013b). However, as noted, these alternative takes were in the minority.

Interestingly, ways in which officers used remorse to facilitate therapeutic sentencing recommendations complement previous literature on “signaling desistance” and how others look for information about those charged with criminal offenses in order to determine whether they will be effectively rehabilitated. Particularly focusing on successful hiring after incarceration, Bushway and Apel (2012) argue that, beyond and apart from recidivism rates, certain “signals” can differentiate individuals with similar contacts with the criminal-legal system in order to identify those who are likely to be successful and desist from offending; this signaling framework does not use more traditional characteristics, but tracks a person’s behaviors and traits, that he willingly and actively acquires over time, that may speak to his more unobservable characteristics. In fact, true desistance signals, such as voluntary enrollment in rehabilitation classes or completion of employment programs, are a form of symbolic capital that require real effort and impose “opportunity costs” to achieve or show, while “cheap signals” that are easily acquired should be disregarded since they can be mimicked by those that have not desisted (Bushway & Apel, 2012; Maruna, 2012). Thus, true desistance signals may lead those in the criminal-legal system to view a person being sentenced as redeemable and, thereby, can “exploit” these signals to better attune their decision-making so that outcomes will maximize his potential success for real rehabilitation, both now and in the future (Maruna, 2012; Reich, 2017).

Maruna (2012) suggests that remorse can represent “costly signals” of desistance, such as providing restitution, apologies, and other gestures of forgiveness that would be materially and

otherwise pricey for a person to imitate. In these same ways, these officers appeared to view remorse as a true desistance signal, but they also extended this notion potentially even farther by primarily focusing on more costly, behavioral exhibitions of remorse that are expressed over time and their bearing on tailoring sentencing recommendations that allow for such behaviors. Interestingly, LeBel et al. (2008) suggest that showing up to court meetings on time and obeying legal rules or probation stipulations are “costly” to those who would rather be offending, doing drugs, or showing other antisocial behaviors, while similar legal requirements are viewed as necessary and much less costly to those who are dedicated to their own rehabilitation (Bucklen & Zajac, 2009). To this end, for clients who really care about achieving rehabilitation and making amends, this study not only suggests that officers also view timely attendance and adherence to probation requirements as “costly signals” of their desistance, but that they then later utilize this evidence when making sentencing recommendations (Reich, 2017).

Even though officers focused on the therapeutic utility of more traditional sentencing recommendations in this analysis, it is also important to note that themes developed here also align with restorative justice and related options for alternative sentencing. Restorative justice processes, including circles, mediation, and family conferences, use alternate, non-adversarial practices that attempt to restore relationships between all parties—those being criminally sentenced, victims, and the community—affected by an offense; these practices usually include the direct participation of each of these parties during the resolution process, as well as encourage those charged with criminal offenses to show remorse and make reparation so that all involved will make amends and move past negative emotions during sessions (van Stokkom, 2002; Zehr, 2005). Unsurprisingly, this study’s findings support that remorse may also be an effective tool for alternative sentencing processes, based in restorative justice, that can foster

therapeutic guilt and acceptance of responsibility, repair and rebalance relationships, and allow both material and symbolic amends to be made. Indeed, the model here suggests that remorse can be utilized to achieve many of the underlying values that restorative justice practices attempt to build in jurisdictions that use them (Zehr, 2005).

However, as restorative justice most often focuses on achieving forgiveness using direct participation or discussion in circles or mediations (van Stokkom, 2002), this may suggest that resolution in these alternative processes could bear more on verbal apologies or direct symbolic or material reparation relayed during such sessions, as compared to the behavioral transformation or life-style changes mentioned by officers here that occur over time outside of criminal-legal contexts and sometimes may not be directly relayed to victims or the community, as in restorative justice circles or problem solving courts. Indeed, rather than more direct methods commonly proposed by restorative justice practices, officers here described more indirect ways, such as doing community service to give back to the community, completing cognitive behavioral or empathy classes, or compliance with probation stipulations, of achieving reintegration in sentencing and showing behavioral transformation over time. As this study did not focus on alternative sentencing processes, it may be unsurprising that those processes were not routinely mentioned by officers when discussing their sentencing recommendations. Further, although these practices have become more common in certain jurisdictions across the U.S. and Europe, they are still not commonly used as sentencing options in many jurisdictions. Thus, future work should attempt to apply the current framework to examine if and how remorse may lead to officers' recommendations for alternative, restorative sentencing practices.

This study does have some limitations to note. Participants were recruited through APPA, which is a paid membership organization, and this may have limited types of officers available

for recruitment. Officers also self-selected into participating and may have had preexisting interests in this subject that led to their participation. Additionally, even though drawn from across the U.S., officers' geographic representation was not balanced across the sample. Future inquiries should examine these issues in other samples of probation officers or those with certain case loads, as well as use other approaches that achieve methodological triangulation and involve or study other sentencing decision-makers as well. Further, interviews did not illuminate whether officers' views or use of remorse could have been impacted by the context of their court environments or their place in their courtroom workgroups in their jurisdictions. Indeed, it is unknown whether the courts that these officers work in may train or follow some of the principles discussed here, which may have impacted or shaped their views expressed here. Thus, future work should examine how different court environments or philosophies may influence if and how remorse is viewed through a therapeutic lens during sentencing.

In conclusion, this study suggests that a significant number of probation officers likely already draw from the principles of Therapeutic Jurisprudence when using remorse to support their recommendations more lenient sentencing outcomes. As remorse was described as a "journey" that internally and behaviorally develops over time, officers may be in a special position, given their closer and longer-term relationships with clients, to use remorse as a therapeutic device during pre-sentencing processes that can then later be extended to sentencing recommendations and outcomes. Thus, regardless of whether officers currently draw from these principles in interactions with clients, this research suggests that they should receive training on how to assess for and track remorse over time in their routine case notes and client meetings (Berryessa & Balavender, 2021). Such evidence can then later be used to paint a picture of a person's remorse journey and how it can be therapeutically integrated into his sentencing.

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Figures

Figure 1. Developed qualitative model that illuminates the extent to and ways in which probation officers recognize remorse as being therapeutic for a client’s sentencing (Remorse as “Therapeutic Guilt” and “Rebalancing Power”) and how they draw from these principles of Therapeutic Jurisprudence when making pre-sentencing recommendations in their reports (“Reintegrative Sentencing Recommendations”).

