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# The Maryland Opportunity Compact: A Philanthropy-Enabled Partnership

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## Executive Summary

The Maryland Opportunity Compact is an innovative private-public tool to finance evidence-based change in areas of social need that have been resistant to reform.

Introduced in 2005 in Baltimore, Maryland, the Compacts combine an initial catalyst of philanthropic investment with a written agreement by private and public stakeholders to introduce to the government a new program to improve outcomes for vulnerable populations. The agreement sets out a negotiated formula for calculating savings from the program and provides that a portion of those savings is returned to the government, while the rest is directed to expanding the program and introducing new interventions for disadvantaged populations.

This report explores the experience of the first generation of Maryland Opportunity Compacts, finding that they present a promising tool that merits close examination by governments seeking to introduce new approaches to social programs in underperforming areas. The report considers the strengths and vulnerabilities of the Compacts and offers six recommendations for how to refine them, in light of the lessons from their first decade of use.

A great deal of attention has been paid in recent years to social impact bonds as a mechanism for financing new social programs. Despite bearing some similarities to the social impact bond model—along with important differences— the Maryland Opportunity Compacts have mostly sat in the shadows of the social impact bonds. This report seeks to shine a light on the Compact model as an alternative financing tool, while also suggesting that the two models might have something to learn from each other.

## Introduction

In so many areas of policy, the boundary between the public and the private is fading. And this is especially true in the delivery of social services, where enthusiasm is growing for the promise of harnessing private funds to public ends.

One approach that has drawn particular attention is the social impact bond—a financial instrument in which private investors loan money to finance new social programs and then receive a return on their investment if an evaluator finds that the program was successful in meeting certain performance outcomes. In the face of entrenched social problems and stretched public resources, governments and service providers have been attracted to the vast possibilities of tapping even a small portion of the $80 trillion of assets under private management for important new evidence-based programs.

The first social impact bond was launched in the United Kingdom in 2010. As of 2016, 60 social impact bonds had been launched in 15 countries, drawing an investment of over $200 million.[1] In the United States alone, $90 million had been invested across nine active bonds, with dozens more under development.[2] Observers have lauded the “extraordinary potential” and “promise” of social impact bonds.[3] In fact, the Obama Administration, in its second term, began to direct tens of millions of dollars to social impact bonds and similar programs, proposing a $300 million incentive fund to build investor confidence in the new instruments and to encourage state and local governments to adopt them.[4]

But lost in all of the enthusiasm for social impact bonds is a different public-private arrangement born in Maryland that quietly has produced strong, early results. This instrument, known as the Maryland Opportunity Compact, also finances alternative, evidence-based approaches to costly social programs.

But rather than rely on private investment capital, the Compact uses a one-time philanthropic investment to kick-start the intervention. And rather than provide investors with their initial capital and a financial return on their investment if the program is successful, the Compact allocates savings to continue the program and then splits any additional savings between the government and new investments to further improve outcomes for vulnerable populations.

Over the last decade, these Compacts have introduced new programs in foster care, juvenile justice, and addiction treatment and recovery across the Baltimore metropolitan area. These programs already have touched thousands of lives while saving millions of public dollars. And in the process, one can see the early signs of a provocative new approach to social policy, where philanthropy catalyzes a virtuous cycle that eases people—and then money—out of overwhelmed and often ineffective institutions and into alternative, cost-effective services for those that need them most.

Each Compact has followed its own, distinct path. There have been successes and disappointments. But the experience to date has revealed the Compacts to be a promising new option, one that merits consideration alongside social impact bonds and other emergent financing tools that aim to blend private and public action to deliver much-needed change to vulnerable populations.

This report discusses the approach of and the lessons learned from this first generation of Compacts. Part One provides an overview of the Compacts, and how they work. Part Two chronicles the three Compacts introduced so far. Part Three outlines the lessons learned from this first round of Compacts. Part Four compares the Compacts to social impact bonds, the leading public-private financing instrument. Finally, Part Five offers recommendations and concluding thoughts.

## Part One: A New Kind of Partnership

At the turn of the century, civic leaders in Baltimore had come up against a disquieting reality.

Time and again, they had seen most of the public funding for social programs slip inexorably into the deep end of remedial and punitive interventions such as foster care, juvenile detention, and lifelong incarceration. The outcomes of these deep-end efforts were unevenly measured and tracked—and when they were tracked, the results all too often were disappointing. Although well-intentioned, state and local agencies were repeatedly inhibited by a range of budgetary and regulatory constraints from adopting new approaches to these social problems. And as a result, far too few investments were being made in front-end services and opportunities that increasingly were understood to nurture the healthy development and growth of children and youth.

In 2003, the Safe and Sound Campaign—a Baltimore nonprofit organization that seeks to improve conditions for children—began convening private and public stakeholders to discuss a new model for financing social change. The objective was ambitious and reflected nothing less than an effort to change the very way in which government works. As advocates explained at the time:

> "Each time funds are invested to enhance citizens' well being, the state does not have to pay enormous sums to fix problems that don't have to occur. [We need an approach that] redirects the documented savings to invest more funds in opportunity and supports—thereby reducing even more, the need to fix problems and freeing even more funds for positive investments—all the while creating a cycle of opportunity and good outcomes. Focusing on strategies that build opportunity not only produce positive results, but . . . they also seed and stabilize institutions that reflect the citizenry's priorities. The public budget becomes a positive vehicle to increase opportunities and support."[5]

Out of these conversations emerged the Maryland Opportunity Compact, a multi-stakeholder agreement that harnesses a one-time philanthropic investment to launch evidence-based programs, uses a negotiated formula to improve outcomes and save money, and then directs a portion of the savings to sustain the program and further investments in the community.

**Multi-stakeholder agreement**. The backbone of the Maryland Opportunity Compact is a written agreement signed by at least four groups of stakeholders: the state agencies responsible for providing social or public safety services; a public budget authority; a statutorily established entity known as a Local Management Board that coordinates care for children and families in Maryland counties; and the Safe and Sound Campaign itself. The written agreement is about five or six pages long and in broad terms sets out the responsibilities of each of these parties, identifies one or more teams to oversee the operation of the program, and describes how the savings from the program are to be calculated and then reinvested.[6] The agreements lasted four or five years in duration and were terminable with notice at any time by the parties.

**One-time philanthropic investment.** An initial, philanthropic investment seeds the new program for roughly the first year of its operation. Ten different entities provided a total of nearly $5 million in seed capital to the first three Compacts, and several other entities provided hundreds of thousands of dollars in in-kind services.[7]

**Evidence-based programs.** The Compact is built around interventions with prior evidence of positive outcomes in moving an identifiable population out of costly government programs. This focus on demonstrated success helps to provide stakeholders with a level of confidence before committing to what is a very new kind of partnership. It also ensures that the economics underlying the Compact are durable—that savings could be measured for a discrete population and that those savings would be sufficient to support the program over time.

**Improve outcomes and save money.** The Compact identifies, in general terms, one or more performance goals for the program—for instance, reducing the long-term rates of out-of-home placement and recidivism for delinquent youth, or accelerating the reunification of children entering foster care with their parents or adoption for those children who cannot be reunified. It then sets out a pre-determined formula for calculating savings from the program. For example, the formula might be based on the baseline amount spent each day on incarceration and any reduction in the number of days served by those who participated in the Compact program.

**Direct a portion of the savings.** Finally, the Compact establishes a new stream of funding to initially sustain the program and then to invest in other community-based alternatives and opportunities. Generally, the Compact contemplates that the savings should be allocated in two steps. First, the Government uses the savings from the success of the program to fund it for another year. Second, any and all additional savings beyond those funds necessary to sustain the program are divided between the State (for its own uses) and a Local Management Board or another entity (to either expand the scope of the program or make other investments consistent with the broad goals of the Compact).

There have been three Compacts to date. The first Compact was introduced in 2005 and provided substance abuse treatment for parents with children in foster care. The second commenced in 2007 to offer home- and community-based treatment to youth who would otherwise go to juvenile placement facilities in Baltimore County, Maryland. The third began a year later, and provided wraparound services to eligible men and women in state prisons. Other Compacts were considered over the years but fell away, including one to provide wraparound services to children aging out of foster care and another to provide home visits during pregnancy by nurses to reduce premature births. The former succumbed to operational issues, while the other ran into the difficulty of identifying a sub-population who lacked pre-natal care and would have required neo-natal care in the absence of the intervention.

None of the reinvestment agreements for the three Compacts is still in place, although many of the programs they supported live on. We chronicle the story of each Compact in Part Two.

## Part Two: The Compacts

### *The Family Recovery Compact*

Each year, more than 250,000 children in the United States are removed from their parents for abuse or neglect. These children usually move through one or more foster care settings while they wait to be reunified with their parents, adopted, or placed in some other permanent setting. But foster care can be highly traumatic for children. Studies show that those who stay in foster care experience vastly elevated rates of depression, addiction, teen pregnancy, incarceration, and homelessness.[8]

One of the principal goals of the State in this context is to move the child out of foster care and into a safe, stable, and permanent home—ideally, reunifying the child with his or her parent—as quickly as possible. However, the system for accomplishing this is extremely troubled. And this is particularly true in the far too many instances where abuse of drugs or alcohol is a contributing factor to a parent's abuse or neglect of a child.[9]

Often in these cases, the child will be removed from the parent while the court orders the parent to receive treatment for his or her addiction as a condition to reunification.

## One 2008 report found that children in families served by the Family Recovery Program spent 252 days in foster care, compared to 346 days for children in families not in the program.

Social workers will then direct the parent to a drug treatment program. At that point, the parent will typically face a months-long wait for a drug treatment spot, then move unsupervised in and out of treatment and return to court no better. And this cycle will continue, while children wait in foster care for years as cases drag through the system.[10]

To break this cycle, in 1998, James Milliken, a child welfare court judge in San Diego, introduced a new program called the Substance Abuse Recovery Management System (SARMS). His goal was to shorten the amount of time that children of parents with addiction spent in foster care, by offering both a carrot and a stick. The carrot was prompt, comprehensive treatment services, along with a "recovery specialist" who monitored attendance at court dates, offered counseling, and administered drug tests. The stick was a series of escalating consequences that included, at one time, a short jail sentence if the parent did not follow treatment,[11] and eventually, a termination of parental rights. The program was voluntary, but once a parent chose to participate, he or she was held to its rules.

The program quickly showed results. After only a few years under SARMS, the average length of stay for children in foster care in San Diego decreased from three years to 13 months. Further, San Diego had previously spent an average of $2.7 million for treatment and foster care services for 50 parents and their children; however, under SARMS, that amount dropped to $1.5 million as children cycled out of foster care faster.[12]

Safe and Sound Campaign Executive Director Hathaway Ferebee first learned about Milliken and his work through the Robert Wood Johnson Foundation, and their conversations would be the inspiration for the first Maryland Opportunity Compact. In Baltimore at that time, the average length of stay for all children in the foster care system was 34 months. For children with a mother who had a substance abuse issue, estimated at more than 76 percent of kids who entered foster care under age 5, the average stay was considerably higher at more than 46 months. Meanwhile, the State was spending about $12,800 per year on out-of-home placement for those children.[13]

Ferebee worked with public and private stakeholders to develop a public-private agreement that would bring the SARMS program to Baltimore. Among the key players in these early discussions were Doug Nelson (then-president of the Annie E. Casey Foundation), Arlene Lee (then-director of the Governor's Office for Children and Families), Judge Marty Welch (then-judge in charge of the Juvenile Court), Gerry Grimm (Family League of Baltimore City), Martha Holleman (then-policy director at Safe and Sound Campaign), and Robert Embry (president of the Abell Foundation). Ferebee brought Milliken to Baltimore in 2004 to discuss his program and raised over $1.6 million in seed money to catalyze the program, thanks to contributions from the Abell Foundation, T. Rowe Price Associates Foundation, Venable Law, and the Reason to Believe Fund.[14]

The Family Recovery Compact was launched in August 2005.[15] All parents in the Compact would receive drug treatment referrals within 24 hours of participation in the program; case managers would maintain daily contact with participants; and participants would receive a range of additional wraparound services including mental health services, transportation assistance, skills building, and housing support. Unlike the San Diego SARMS initiative, the Family Recovery Program would apply only to parents of children under age 5, and it eliminated jail time as an option for noncompliance, substituting residential treatment instead.

However, the carrots in the program would prove to be far more important than the sticks. For example, two of the earliest participants in the program were parents, both addicted to crack, who lost their 6-month-old daughter Keyona to foster care. Each went clean and relapsed briefly, but when they did, they were guided back to treatment by case workers, program staff, and the court. They received drug treatment and therapy, placement in a transitional living center, and other support services. Ultimately, less than a year and a half later, the mother faltered, but the father emerged a success—sober for months, with a new job and a new home—and received his daughter back from foster care. “I have my gift,” he said, “my child.”[16]

The program quickly demonstrated this same promise for many children and their parents. One 2008 report found that children in families served by the Family Recovery Program spent 252 days in nonkinship foster care, compared to 346 days for children in families not in the program during the same period.[17] Parents in the program were twice as likely to complete substance abuse treatment as those not in the program. And children in families in the program were 1.5 times more likely to be reunited with their parents.

The Compact provided that 60 percent of any net savings from the reduction in time that children spent in foster care—above and beyond what was needed to sustain the program on an ongoing basis—would be transferred to the Family League for further investment in the City’s vulnerable children and families. During the first five years of the program alone, it saved more than $24 million, using the calculations set out in the Compact. Consistent with the terms of the Compact, a portion of this money was allocated to maintain the program.

However, no part of the remaining savings was directed to the Family League for further investment under the Compact. There are several reasons for this. First, there was a delay in enrolling parents into the program, which delayed the point when the program’s total savings exceeded its operating costs. Second, the parties were slow to implement language in the Compact requiring the calculation and verification of savings every six months.

Finally, as the Compact neared the end of its five-year term, the State expressed interest in continuing to fund the program but explained it was unwilling to continue the mechanism for the allocation of savings in the agreement. Accordingly, the State declined to sign a new Compact agreement and instead started funding the Family Recovery Program through a budgetary line item. As part of this arrangement, the stakeholders allowed any amounts owed for savings above the operating cost to accrue entirely to the State.

The line item, which covers the operation of the program, has been provided each year since. And the Family Recovery Program continues to thrive. The program now serves over 100 parents in Baltimore each year. It expanded its coverage to children up to age 10 and now provides services to families in Washington, D.C. And most recently, it raised money to open a debt-free 23-unit comprehensive living and program space for client families where both the mother and father are allowed to live and raise their children together—the only development of its kind in the city to do so.

## After the first year, 74 percent of the youth served by the Multisystemic Therapy Compact program remained engaged in school or work, and 81 percent had avoided re-arrest.

### *The Multisystemic Therapy Compact*

On any given day in the Unites States, tens of thousands of youthful offenders are held in out-of-home detention. And yet, there is a widespread consensus that the detention of youth has a severely harmful effect on their education, well-being, and likelihood of recidivism. In Baltimore, more than 50 percent of youth who are committed to out-of-home facilities are arrested again within a single year of their release.[18]

One of the most successful evidence-based interventions for youth who are at imminent risk for out-of-home placement is Multisystemic Therapy (MST), a family-focused and home-based program that uses teams of therapists with small caseloads who are available 24 hours a day, seven days a week. They provide intensive care to modify how youth function in multiple settings, including at home, in school, and among peer networks.

The outcomes of MST have been remarkable. Repeated studies have shown that MST leads to significant reductions in criminal activity, drug use, and total days in out-of-home placement for youth who come in contact with the juvenile justice system. Across these studies, MST has shown a median 42 percent decrease in long-term re-arrest rates for senior juvenile offenders. One 22-year follow-up study found that children who received MST had 36 percent fewer felony arrests, 75 percent fewer violent felony arrests, and 33 percent fewer days incarcerated. The impact on their families was positive as well. There were 37 percent fewer divorce, paternity, and child support suits, and 56 percent fewer felony arrests for their siblings. The program also showed considerable cost savings.[19]

Around the turn of the century, MST was just beginning to be used in the United States outside of clinical trials. In 2002, the State of Maryland provided a Youth Strategies Consolidated Grant to Baltimore County to begin providing MST to at-risk youth in the area. Five years later, the grant was expiring, so the Local Management Board responsible for coordinating care for area children, youth, and families—pleased with the early success of the program—began looking for an alternate funding source.

It was against this backdrop that, in September 2007, the Safe and Sound Campaign and the Baltimore County Local Management Board negotiated and then launched the second Opportunity Compact, to provide MST services to 40 post-adjudicated youth in Baltimore County.

The Compact was seeded with $400,000 from the Charles Crane Foundation. Savings under the Compact would be calculated as follows. For each day over 90 days that a participant in the Compact remained in the community rather than the custody of the State, the government would be deemed to have saved $143. As with other Compacts, these savings would first be used to fund the program once the initial philanthropic seed funding was exhausted. Then 50 percent of any additional savings above the cost of operating the program would be provided to the Local Management Board for additional evidence-based practices for youth who come in contact with the criminal justice system.

Once again, the Compact showed immediate results. After the first year, nearly 90 percent of the youth served by the program remained

## A 2015 analysis of Public Safety Compact program graduates found an 8.2 percent recidivism rate three years after graduation, a dramatic reduction from the statewide recidivism rate of 40.5 percent.

at home with their families, 74 percent remained engaged in school or work, and 81 percent had avoided re-arrest. At the conclusion of the first year, the avoided cost of out-of-home placement under the Compact exceeded $800,000. After deducting the cost of administering the program (roughly $400,000), about $200,000 was shifted to the Local Management Board for additional investments in area youth and $200,000 was retained by the State.

Although these savings continued to accumulate over the next year, the State began to voice unhappiness with the ongoing split of net savings, citing budget constraints related to the national recession. In August 2009, the State terminated the Compact agreement, but pledged to sustain—and even grow—the program through an increased budgetary commitment of $500,000 per year. To this day, the program continues under an annual line item in the budget, and Baltimore County is now looking to expand the program to an early adult population.

### *The Public Safety Compact*

About a decade ago, Maryland wrestled with implications of a massive growth in its prison system.

Between 1980 and 2000, the State's prison population tripled, even as crime rates held constant.[20] Per capita spending on corrections had grown by 100 percent during this period, at a rate four times higher than education spending. About 50 percent of prisoners released from Maryland prisons returned within three years,[21] and although figures were not made public for Baltimore City, estimates there often ran much higher. And of the more than 9,000 prisoners screened by the Maryland Department of Public Safety and Correctional Services in 2007, more than 70 percent were assessed as needing treatment for drug abuse and addiction, a condition that only exacerbates this cycle of crime and incarceration if left untreated.

In 2006, the Maryland Department of Public Safety and Correctional Services made a substantial commitment to expanding drug treatment to prisoners with a history of substance abuse and addiction. But, research has shown that those treatment programs were most effective in reducing the rate of recidivism when combined with community-based aftercare and re-entry services. In fact, one combined sample of inmates from California, Texas, and Delaware found that only about a quarter of those who took part in intensive drug treatment programs and aftercare returned to prison, compared with about three-quarters of those who received no treatment in prison, or received treatment in prison but no treatment after being released.[22]

It was against this backdrop that Hathaway Ferebee and Diana Morris of Open Society Institute—Baltimore convened a working group to develop a new program to reduce incarceration rates by providing effective in-prison substance abuse treatment followed by early release from prison, and community-based re-entry support. Meetings included officials from the Department of Public Safety and Correctional Services, the Family League of Baltimore, and Baltimore foundations, as well as national experts on the criminal justice system.

Out of these conversations emerged the third Maryland Opportunity Compact, the Public Safety Compact. The Public Safety Compact was signed in 2008 with more than $2.3 million in seed funding raised by Safe and Sound Campaign and the Open Society Institute.[23] Funding partners included the Harry and Jeanette Weinberg Foundation, as a part of its pledge to the Open Society Institute;[24] the Abell Foundation; the Compact Fund at the Family League; the Baltimore Community Foundation; and the France-Merrick Foundation.

The Compact sought to provide services to 250 eligible prisoners who were set to return to Baltimore City and had a diagnosis of substance abuse or dependence. Once screened by the Parole Commission and deemed to meet eligibility criteria, these prisoners would participate in six months of behind-the-walls substance abuse treatment and other programming,[25] as well as re-entry planning with a Public Safety Compact case worker. And then if approved for early release, they would immediately receive drug treatment and a range of other out-of-prison re-entry programming guided by the case worker and a dedicated parole officer. This would include educational, employment, mental health, and financial counseling, and when necessary, cash assistance for needs such as transportation to new jobs. Successful participants took part in a graduation ceremony at the end of the year.

The Compact agreement provided that savings would be based on a calculation of the number of days a participant avoided spending in prison as a result of the program and the per diem cost of holding a person in prison, which would be adjusted annually. The agreement also contemplated that the parties would track additional variables such as the recidivism rate for participants, as well as the capacity to defer future prison construction, and quantify any savings over time. The savings would be subject to a regular audit, conducted by the Maryland Office of the Inspector General.

As with the other Compacts, the State agreed to continue to fund the program in future years after the philanthropic investment was tapped and divide any savings above and beyond the cost of sustaining the program, with 60 percent of that amount directed to the Family League (later, the Safe and Sound Campaign) for investments that would expand treatment and re-entry services, and 40 percent returned to the State.

When the Compact began, there were challenges in identifying eligible prisoners to participate. But by 2015, nearly 600 prisoners had been released from prison into the program. More than 280 of them had graduated from the program. A 2015 analysis by the Safe and Sound Campaign of program graduates found an 8.2 percent recidivism rate[26] three years after graduation, a dramatic reduction from the statewide recidivism rate of 40.5 percent.[27] A separate, independent analysis found that even just participation in the program produced a marked reduction in recidivism: 29 percent of participants were arrested and 8 percent were incarcerated one year after release, compared to 41 percent and 17 percent, respectively, in a control group.[28]

One of those graduates is named Antoine Quarles-El. Antoine describes spending most of his life in and out of prison on drug and firearm charges. When he was out of prison, he would roam the streets homeless, toting guns and knives and looking for opportunities to commit a crime. Antoine was released in 2014 as a participant in the Public Safety Compact, and credits the program with finally keeping him out of prison and helping him to deal with issues he had suppressed for years. Now he has his own home, mentors other men emerging from prison, and spoke at the 2015 graduation of the Public Safety Compact.[29]

The Maryland Opportunity Compacts succeeded in introducing new social programs—or in one case, preserving an existing program—that have improved outcomes for thousands of people, while saving millions of public dollars.

Over time, deep fissures emerged between the State and the Safe and Sound Campaign over the interpretation of language in the Compact agreement. One major area of disagreement centered on how to calculate the amount of net savings under the Compact, and another entirely separate dispute involved how to allocate the net savings among the parties to the agreement once calculated.[30] As a practical matter, these disputes meant that relatively little in the way of net savings—that is, savings above what it took to sustain the program—found its way each year to the Family League or the Safe and Sound Campaign.[31] The net savings that were distributed allowed the parties to—among other things—create a new program called Elevation, which placed pre-trial detainees and individuals with short sentences in the Baltimore City Detention Center in a dedicated dorm, where they received access to life skills training and educational opportunities.

The rising disagreements between the Safe and Sound Campaign and the State eventually led to litigation.[32] The Compact agreement formally expired in 2013, but the parties continued operating in the absence of a contract. However, in October 2015, the State officially terminated the Compact. Although the State pledged to continue the program on its own outside of the Compact structure, the program appears to be inoperative at the time of writing this report, and the wraparound services provided to participants outside of the prison have ended.

## Part Three: Lessons Learned from the First Generation of Compacts

The Compacts sought to bind together a set of familiar stakeholders in a new and unique arrangement. Philanthropy would award one-time money as a grant but expect no return; third parties would collaborate with the public sector to introduce a new evidence-based program and hold themselves accountable to independent assessments of outcomes and evaluation; the government would receive much-needed funding for a new evidence-based program at low or no risk, and commit itself to sustaining the program in the out years and cede a portion of the savings to a Compact intermediary (e.g., the Local Management Board); and the intermediary would invest the savings in additional evidence-based practices continuing the cycle anew.

That, at least, was the concept behind the Compact instrument. As outlined in Part Two, in practice, the Compacts played out in any number of ways. This section discusses the lessons learned from this first round of Compacts.

### Strengths

The Maryland Opportunity Compact can offer a number of compelling features to jurisdictions interested in new approaches to bringing needed change to vulnerable populations and under-resourced communities.

### *Change Delivery*

The Compacts succeeded in introducing into Maryland new social programs or in one case, preserving an existing program—that have improved outcomes for thousands of people, while saving millions of public dollars. For two of the three Compacts, the programs in question not only endure to this day, but are thriving and expanding—an accomplishment that all too often eludes conventional pilot programs. This alone is a critical success.

Indeed, one of the key virtues of the Compact is the way in which it helps to shift the risk of launching a new social program from taxpayers to funders. The Compact does not require the government to use funds to launch the program. The Compact does not even require the government to return those funds at any point. And, if the program is successful and generates savings, it will free money that the government would not otherwise have seen. Further, a portion of that money is used to sustain the new social program, leaving a net savings for the State. This shifting of risk away from taxpayers for the reform of social programs is an important feature of the Compact model.

### *A Virtuous Cycle*

One of the core features of the Compact is how it seeks to use philanthropic seed funding to catalyze a cycle of reinvestment that can lead to lasting structural change in the delivery of social services. This plays out in a couple of ways. First, the Compact eases people out of costly and overwhelmed institutions such as foster care and prisons, and into evidence-based alternatives in the community. This shift offers the existing institutions an opportunity to focus on how best to meet the needs of a smaller group that truly needs to be held in state institutions, and to implement the necessary reforms for that population.

Next, the Compact directs at least some of the savings that result from the above changes to expanding the evidence-based alternatives and investing in new programs in the affected neighborhoods. This sets the cycle into motion again, with an opportunity to move more people into effective programs and save additional tax dollars for reinvestment once again. The first round of Compacts ended before we could see this cycle truly set in motion. However, we caught a glimpse of what a scheme like this could produce, in particular with the use of cost savings to deliver new programs under the Multisystemic Therapy and Public Safety Compacts.

### *Accountability*

State agencies have come under criticism in recent years for their failure to document that taxpayer funds are being deployed to achieve measurable results. As one expert put it, governments still tend to "fund the same services year after year, paying based on metrics like the number of people served, regardless of whether the programs make a difference in the lives of people they aim to help."[33] Often, governments and their contractors do not track the outcomes of their programs. Even when they do, they frequently don't make the information available to the public, or hold themselves to transparent benchmarks.

The Compact embeds this sort of accountability into its very DNA. The stakeholders agree in advance on a clear formula for the calculation of savings. The State is obliged to make data available to all stakeholders in order to calculate savings. And the parties contemplate that third-party evaluators will be used to assess results. Through these methods, the Compact seeks to shift the allocation of public funds toward documented and transparent metrics rather than politics or process-based goals—a world where the government and service providers know their feet will be held to the fire, and they will be held accountable for the results.

### *Continuity*

The failure of governments to make long-term funding commitments is a notorious challenge for the successful delivery of social services. The instability of government funding and the constant turnover in government personnel lead to a focus on quick results; inhibit the capacity to invest and follow through on programs with longer time horizons; undermine long-term planning and collaboration; contribute to turnover of staff among third-party service providers and the erosion of expertise; and force service providers to constantly market themselves for funding rather than lean into the task at hand.

The Compacts, in some measure, help solve these problems. They are several years in duration, which injects an element of stability and strategic planning into the delivery of public service. And in fact, although the State backed out of each of the Compacts, it waited the full five years or longer to do so for two of them. This gave the new programs an opportunity to breathe, work through initial wrinkles, and eventually produce results and generate savings. A number of participants noted that the commitment reflected in the Compact helped them to develop partnerships with third parties because the Compact was seen as a commitment that was more durable than a grant or a line item in a budget. And most of all, tying sustained public funding to actual success and out-of-pocket savings allows the State to sustain the program without robbing funds from another needed program.

## Vulnerabilities

At the same time, the experience of the last several years reveals at least two areas of vulnerability in the Compacts.

### *Instability*

The first generation of Compacts proved all too fragile. Although the majority of the programs introduced by the Compacts continue today, none of the Compact agreements is still in effect. The State either cancelled them outright or waited for them to expire of their own force. And when the Compacts were in place, they were riven by a number of disagreements and misunderstandings that contributed to their unraveling (e.g., how to allocate and validate savings).

The instability of the Compact agreements is understandable, as the Compacts are designed to draw stakeholders together into an unfamiliar arrangement. And, they tug against what might otherwise be the natural impulses of the public sector to control the direction of future budget lines. To hold these arrangements together despite these forces, the Compact requires strong binding agents that take the form of legal arrangements, trust and social capital, or other features. But these agents were insufficient in this early version of the Compact. There were disputes over the language and meaning of the Compact that led to litigation; a turnover in personnel eroded the relationships that had forged the Compact, and advocates acknowledge that there were breakdowns in communication among the signatories in the Compact.

### *Allocation of Savings*

In concept, the allocation of savings was an attractive feature of the Compact; however, in practice, it ran into serious challenges. At first, the State was willing to commit to the allocation of net savings from the success of the program over and above the costs to sustain the program. In exchange for the philanthropic catalyst at the outset at little or no risk to the State, the State would allocate the savings toward additional social services. But in each instance, it eventually chose to back out of the commitment after several years. This reallocation of net savings was not just some afterthought to the Compact, it was a commitment at the heart of the agreement.

There are any number of explanations for the State's change of mind, including a turnover

The Compact directs a return not to the philanthropic donors themselves, but to the actual program and then an intermediary to implement additional reforms with the aim of improving outcomes for vulnerable citizens.

in administrations; the emergence of a deep recession and related budgetary pressures; or the simple fact that what might have seemed an acceptable bargain when the carrot was a philanthropic commitment to a new social program, appeared far different several years down the road when that investment was in the rear-view mirror. Most likely, each of these contributed to the breakdown. Nonetheless, it seems clear that at least as structured and implemented in the first generation of Compacts, the allocation of savings provision did not carry through on its promise.

## Part Four: A Contrast with Social Impact Bonds

The rise of the Maryland Opportunity Compacts roughly coincided with the emergence of the Pay for Success movement, which seeks to improve greater accountability in the delivery of social services by ensuring that service providers are paid only upon achieving performance targets. The most prominent example of Pay for Success is the social impact bond, which uses private investment capital to jump-start new solutions to social programs and offers a return to investors if they meet certain designed benchmarks.

The first social impact bond in the United States—the Adolescent Behavioral Learning Experience (ABLE) program—is illustrative. The ABLE program offered a behavioral therapy program known as Moral Reconation Therapy to a cohort of 16- to 18-year-olds on Rikers Island in New York City. Goldman Sachs committed $9.6 million in financing,[34] and the five-year agreement among the parties provided that if recidivism rates declined for participants by at least 10 percent relative to a comparison group, Goldman Sachs would receive its money back. If the recidivism rate declined by at least 11 percent, Goldman Sachs would receive a return on its money as well, on a sliding scale.[35] Three years into the contract, the ABLE program was not meeting its recidivism reduction goals, and the participants were able to exercise a clause to shutter the program.

Plainly, there is a lot that social impact bonds and the Opportunity Compacts have in common, perhaps more than the proponents of either would admit. They both access private capital to introduce new, evidence-based programs into overstretched public institutions. They both distribute returns based on the performance of the program under a pre-set formula or schedule. And they both are suited to similar kinds of programs—those that can produce measurable results for well-defined populations and already enjoy some record of success.[36]

But, it is also instructive to consider the differences. The most conspicuous is the return on investment. A social impact bond provides investors with their capital and a return on the investment if benchmarks are met. The Compact directs a return not to the philanthropic donors themselves, but to the actual program and then an intermediary (e.g., a Local Management Board) to implement additional reforms with the aim of improving outcomes for vulnerable citizens.

There are trade-offs inherent in this choice. For example, the social impact bond may be able to tap larger amounts of capital and market discipline in service of the social goals, and it obtains a binding commitment to the full term of the financing up front. But in cases where the program is successful, the State is required to move money out of the system and into private hands that it could otherwise use to fund the system moving forward. To be certain, the rate of return in a social impact bond is calculated in a manner such that the State also makes money, due to the cost savings that the State is expected to see if the program is successful. Even so, the money that is diverted as a return on capital is money that is moved away from sustaining and expanding the program in question in the social impact bond construct, in a way that is not in the Compact model.

Another difference concerns the flexibility of the respective agreements. To date, social impact bonds have tended to involve highly structured contracts, with precise terms negotiated by sophisticated financial entities. With investor expectations and interlocking interests at stake, these contracts are usually only terminable with cause. Although these agreements offer clarity, experts have noted that one downside is their inflexibility, as they are embodied in multiple and complex financial agreements and cannot adapt easily over time.

Unlike social impact bonds, the Compacts are more open-ended and malleable, and can be terminated by any party with notice. For example, one recent social impact bond agreement contained seven pages of instructions on how to calculate and

### Table 1: Social Impact Bonds vs. Opportunity Compacts

| | Social Impact Bonds | Opportunity Compacts |
|---|---|---|
| **Initial Investment** | Private (principally aimed at capital markets) | Private (principally aimed at philanthropy) |
| **Target Programs** | Evidence-based programs, well-defined populations | Evidence-based programs, well-defined populations |
| **Return on Investment** | Portion goes to investor, based on formula | Portion goes to intermediary for sustaining program and expanding opportunities for participants, based on formula |
| **Flexibility** | Rigid | Malleable |
| **Sustainability** | Contract not specifically structured to promote continuation of program | Contract structured to promote continuation and expansion of program |

allocate savings, and three pages of mandatory rules on oversight and governance meetings for stakeholders to monitor progress and resolve disputes.[37] The typical Compact, on the other hand, included one page of rules on savings and two sentences on oversight. This less prescriptive approach allows the Compacts the flexibility to adapt to unforeseen circumstances,[38] but can contribute as well to their undoing. It is, therefore, not entirely surprising that the Compacts appeared to unravel precisely in areas like the calculation of savings, and stakeholder involvement and support.

Finally, there is the sustainability of the agreements. The differences here manifest themselves in various ways.

First, under the Compact the State is obliged to assume financial support for the program once the philanthropic investment runs out, so the State develops a pattern of finding space in its budget and appropriating money for the program. On the other hand, once the terms of the social impact bond are complete, and the State or the City pays the investors what they are due, the bond contract has served its purpose and is designed to come to a close.

Next, the Compact uses savings to create a new stream of funds to serve vulnerable populations. The total amount of net savings achieved for this purpose in the first generation of Compacts was quite small in absolute purposes, although still significant compared to the overall funding for the services in question.[39] And even then, the amount could very well have grown quickly if the Compacts had been allowed to continue and the savings from the early participants had been measured and accrued to the effort. Thus, the Compact is structured precisely to free up a line of money for supporting these communities. The social impact bond does no such thing.

Although the differences between the two mechanisms are real, there might be an opportunity for a convergence between the two models. Earlier we identified a few lessons the Compacts might be able to draw from social impact bonds. But we can also observe ways in which, in light of the experience of the first several years with the model, the social impact bonds may be starting to ease toward the Compact structure.

For one, although philanthropy was always a part of social impact bonds, many are calling for it to increase its role. A philanthropic investment famously provided a financial backstop for many of the early social impact bonds. In the example of the Rikers Island social impact bond cited above, Bloomberg Philanthropy provided grant support to the coordinating intermediary and guaranteed $7.2 million of Goldman Sachs' investment.[40] And yet some leaders in the Pay for Success movement—concerned that social impact bonds are still not quite established enough to attract mainstream capital markets—are now looking to philanthropy to enter the fray even more, either through a willingness to invest at lower rates of return or as "outright grant makers."[41]

Meanwhile, others are calling on the next generation of social impact bonds to focus on how to sustain the social program at issue after the bond itself comes to a close. To take just one example, one early participant in social impact bonds asked last year, in a discussion of their successes and failures to date: "Isn't the ultimate measure of a SIB's success the identification of an effective (and cost-saving) program that can be sustained by government funding? Yet the issue of sustainability is rarely addressed explicitly in SIB agreements. It should be." He went on to suggest that if the savings from a social impact bond are substantial, "philanthropies and government entities could multiply those savings by plowing a portion of them back into further improvement efforts."[42] What he is describing, of course, is one of the central features of the Maryland Opportunity Compact model.

## Part Five: Recommendations and Conclusion

A number of recommendations for further action emerge from the above analysis. They are:

1. **Jurisdictions should give close consideration to Opportunity Compacts.**

Maryland Opportunity Compacts have shown strong promise as a mechanism for introducing new evidence-based practices into the delivery of social programs. Therefore, they should be given close consideration by jurisdictions and policy advocates—alongside social impact bonds and other Pay for Success instruments—as an alternative, multi-stakeholder approach to financing much-needed social change.

2. **Parties should ensure greater clarity in legal documents.**

As discussed in Part Four, the first round of Compact agreements consisted of relatively short and open-ended documents and included provisions that led to disputes and even litigation (i.e., the Public Safety Compact). At one point, there was even a disagreement as to whether the Compacts were binding at all. To strengthen the durability of the Compacts in the future, the parties would do well to focus on ensuring clarity regarding their intent in negotiations and then reflecting that clarity in detailed legal agreements.

3. **Compacts should be made terminable for cause.**

Parties developing the next round of Compacts should consider taking steps to strengthen the binding nature of the agreements. Previous Compacts were terminable at any moment with 90 or 180 days' notice, allowing any party to escape at any moment. This is a particularly fragile approach in an arrangement such as this, where one of the parties receives much of the benefit up front (in the form of a philanthropic commitment). A more structured model—one that allows parties to terminate only for reasons set out in its text—could help to ensure that all of the stakeholders are committed at the outset and then remain so through its duration.

4. **Approaches to collaboration should be structured and well-articulated.**

Previous Compacts included an understanding that the parties would participate in one or more oversight teams, but even advocates admitted that, in practice, there were challenges in keeping everyone engaged and informed. By contrast, social impact bonds often include exceptional detail about the structure, membership, and responsibilities of governance committees, and even state explicitly that the failure of a party to participate is a material breach of the contract.[43] To promote the collegiality and involvement of stakeholders necessary for the success of these new instruments, a new Compact should consider borrowing from the social impact bond model in this regard.

5. **Signatories should consider savings allocations that are more attractive to the State.**

In each of the three previous Compacts, the State eventually managed to extricate itself from the obligation to allocate cost savings to the intermediary. However, steps could be taken in the design of this feature to make savings allocations more attractive to the State not only at the outset, but later in the agreement. Options to consider here include:

- Reduce the percentage of allocated net savings, perhaps to a figure that more closely resembles a traditional return on financial investment. Then permit that number to increase over time only as the success of the program—and experience and familiarity with the Compact—grows.
- Require the Compact intermediary to use the funds for a more defined set of purposes.

## As enthusiasm continues to build for evidence-based social change and new ways to finance that change, the Compacts deserve a closer look.

- Allow the State to keep a greater portion of the savings, but require it to allocate its portion back to the specific agency participating in the Compact—a solution that would press a greater portion of the savings toward the social problems at issue.[44]

6. **Signatories should consider including stricter performance benchmarks in the agreement.**

The parties to a new Compact should consider including binding benchmarks for performance outcomes. Previous Compacts set out clear expectations for cost savings; however, while an outcome (e.g., recidivism) might be factored into the savings calculation, there was no specific requirement that the program achieve a certain goal for that outcome (i.e., reduce recidivism by a certain negotiated amount). Performance-based benchmarks would not only give the State additional comfort with a robust allocation of savings provision at the outset of the agreement, they would also allow greater public scrutiny of the reasons any of the parties might cite for wanting to back out of the Compact once it has been in effect for a number of years.

### Conclusion

There is now greater interest than ever in the promise of public-private agreements to promote social change.

In June 2016, the U.S. House of Representative approved a bipartisan piece of legislation titled the Social Impact Partnerships to Pay for Results Act, which would have created a $100 million fund for state and local governments to launch "social impact partnership projects" that tap private and philanthropic money to finance evidence-based social programs involving a partnership among the federal government, a state or local government, service providers, and investors and intermediaries. The legislation generated excitement in the social impact bond community, and indeed, there is not much doubt that the sponsors of the legislation had social impact bonds in mind. One of its sponsors lauded it as "the first detailed proposal to adapt the social impact bond model for broad use at the federal level."[45]

The bill did not pass the U.S. Senate, but it came close several times, most recently in November 2016, when it was tucked into a sweeping bill on national science policy, and then stripped out in the final hours before enactment. Even so, there is every indication that we may be on the cusp of the largest national commitment to date for social impact bonds.

And this legislation could quite reasonably be read to encompass agreements like the Maryland Opportunity Compact. The text of the legislation sweeps broadly and is written in a manner that leaves space for variants on the Pay for Success theme that do not strictly provide a return on investment, but instead allocate savings achieved under clear and accountable standards among a range of stakeholders.

And so, we are at a moment—in the wake of the first generation of Compacts, as enthusiasm continues to build for evidence-based social change and new ways to finance that change, and as the federal government leans into the promotion of these practices as never before—the Compacts deserve a closer look.

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5 Hathaway Ferebee, Martha Holleman, Compact for Sound Government, 2010.

6 Occasionally, the Compacts also would include an attachment that explained the calculations behind the savings formula in the Agreement.

7 These philanthropic investments came from a range of organizations, including the business community.

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9 The National Survey of Child and Adolescent Well-Being has estimated that 61 percent of infants and 41 percent of older children in out of-home care are from families with alcohol or drug abuse. According to the National Data Archive on Child Abuse and Neglect, parental alcohol or drug use was the documented reason for removal for over 30 percent of all children placed in foster care in 2012.

10 Child Welfare Information Gateway, Parental Substance Abuse and the Child Welfare System, available at https://www.childwelfare.gov/pubPDFs/parentalsubabuse.pdf.

11 At one time, the potential punishment even included a short jail sentence if the parent did not follow treatment. In 2009, the California Supreme Court ruled that jail was not a permissible sanction in the context of juvenile dependency proceedings, and thus that a state dependency court may not use incarceration or fines to enforce a reunification order. Judicial Council of California, Fact Sheet: Changing Behavior: Incentives and Sanctions in Juvenile Dependency Drug Court, March 2010.

12 Leslie Albrecht, A Court That Heals Families, SparkAction, January 26, 2004, available at http://sparkaction.org/node/539; The Substance Abuse Recovery Management System (SARS), available at http://www.sandiegocounty.gov/grandjury/reports/2009-2010/SARMSReport.pdf.

13 Compact for Sound Government Agreement for the Family Recovery Program, exhibit 1 (citing Maryland Citizens Review Board for Children).

14 The Family League, the Safe and Sound Campaign, Baltimore Substance Abuse Systems, and the Baltimore Circuit Court would also provide $550,000 in in-kind services.

15 The Compact was signed by officials at the Maryland Department of Budget and Management, the Maryland Department of Human Resources, the Governor's Office for Children and Families, the Family League, and the Safe and Sound Campaign.

16 Mary Otto, Reunion is Part Sorrow, Part Success: A Child Comes Home but Not to the Family Once Envisioned, Washington Post, Dec. 4, 2006, available at https://www.washingtonpost.com/archive/local/2006/12/24/reunion-is-part-sorrow-%09part-success-span-classbankheada-child-comes-home-but-not-to-the-family-once-%09envisionedspan/

17 These numbers are lower than the baseline assumption of 3.85 years of out-of-care time agreed to in the Compact, which is likely a consequence of the fact that several years passed between the calculation in the Compact (which examined years 1995 to 1999) and the report (which examined years 2005 and 2006), and that the report appears to have calculated the time in care using a different set of assumptions than the original calculation.

18 In Baltimore, more than 50 percent of youth who are committed to the care of out-of-home facilities are arrested again within one year of their release.

19 Multisystemic Therapy Research at a Glance, January 2016, available at http://mstservices.com/files/outcomestudies_condensed.pdf (collecting studies and results).

20 Judith Greene and Timothy Roche, Cutting Correctly in Maryland, February 20, 2003, available at https://www.prisonpolicy.org/scans/jpi/cc_md.pdf.

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22 American Psychological Association, Inmate Drug Abuse Treatment Slows Prison's Revolving Door, March 23, 2004.

23 The Compact was signed by the State of Maryland, the Maryland Parole Commission, the Baltimore Substance Abuse Systems (which served as the substance abuse authority for Baltimore), the Family League of Baltimore City, and the Safe and Sound Campaign.

24 The JEHT Foundation, no longer in existence, also contributed to the effort through its support of the Open Society Institute.

25 This piece eventually fell away, when new research indicated that treatment behind the fence was unnecessary.

26 Defined as a conviction or violation of parole that results in an inmate's return to the custody of the Department of Public Safety.

27 Public Safety Compact (PSC) Summary Report (as of October 21, 2015).

28 Shawn M. Flower, Choice Research Associates, Maryland Public Safety Compact: Recidivism Analysis Final Brief, December 2014.

29 See, e.g., Briahnna Brown, Effort to Halt Prison Revolving Door Loses Funding, The Washington Informer, Nov. 3, 2015.

30 Safe and Sound took the view that as with the other Compacts, and by the terms of the agreement, the funds should be used to expand participation or services. Prior to 2015, the State allocated the net savings after first dedicating funds to sustain the PSC services. After 2015, the State took the position that any net savings in a single year were to be applied to the cost of running the program in subsequent years, an approach that effectively led to a distribution of no net savings during the term of the contract.

31 Even so, using the State's numbers, the audited savings due to a decrease of days spent in prison totaled more than $3 million through 2015—and this figure did not include a calculation of longer-term savings, such as those due to the reduction in the rate of recidivism.

32 The parties ultimately settled the litigation.

33 Testimony of Jeffrey B. Liebman, Before the Government Performance Task Force of the U.S. Senate Budget Committee, May 1, 2014.

34 $7.2 million was guaranteed by Bloomberg Philanthropy if the SIB failed.

35 Goldman Sachs would also receive part of its money back if recidivism only declined by 8.5 percent or more, and there were additional clauses that could result in bonuses to Goldman Sachs (e.g., if the project reduced recidivism by more than 9 percent at the three-year mark).

36 George Overholser and Caroline Whistler, The Real Revolution of Pay for Success, Community Development Investment Review, Federal Reserve Bank of San Francisco at 9; Testimony of Jeffrey B. Liebman, Before the Government Performance Task Force of the U.S. Senate Budget Committee, May 1, 2014; Gerard Robinson, Badger Bonds: A WPRI Special Report, available at http://www.wpri.org/WPRI-Files/Special-Reports/Reports-Documents/SIB_UnlockingPotential2016.pdf; John K. Roman, Urban Institute, Solving the Wrong Pockets Problem: How Pay for Success Promotes Investment in Evidence-Based Best Practices, September 2015; Gordon L. Berlin, Learning From Experience: A Guide to Social Impact Investing, March 2016.

37 http://govlab.hks.harvard.edu/files/siblab/files/denversibcontract.pdf

38 For example, the Public Safety Compact removed in-prison treatment as a prerequisite for participation in the program, as researched showed over time it was unnecessary, but it added housing vouchers to the roster of wraparound services when the City made them available through the Housing Choice Voucher Program.

39 For example, in the case of MST Baltimore County, the net savings were $200,000, and while this is tiny compared to the tens of millions of dollars the State spent on juvenile incarceration during this period, it is substantial compared to the $400,000 budget for MST in Baltimore County.

40 V. Kasturi Rangan and Lisa A. Chase, The Payoff of Pay-for-Success, Stanford Social Innovation Review, Fall 2015.

41 Overholser and Whistler, supra note 34 at 9; see also Gordon L. Berlin, supra note 34; Rangan and Chase, supra note 40. It should be noted that this is not a universally held view. Some suggest that the markets for social impact bonds are more likely to mature if they are held separate, at least to some degree, from philanthropic and other extra-market efforts at social change.

42 Gordon Berlin, Learning from Experience: A Guide to Social Impact Bond Investing, MDRC, March 2016, p. 21-22.

43 For examples, see the Denver Social Impact Bond, available at http://govlab.hks.harvard.edu/files/siblab/files/denversibcontract.pdf; and the Massachusetts Pay for Success Contract, Roca Project, available at http://siblab.hks.harvard.edu/files/siblab/files/ma-pfs-contract-amended-and-restated-final-12_16_14.pdf.

44 This would also help to address the "wrong pockets" problem, in which one government agency may not be fully supportive of needed social reforms because the principal benefits accrue to another agency.

45 Reps. Young and Delaney Introduce Social Impact Bond Act, June 18, 2014; Gene Falk, et al., The Temporary Assistance for Needy Families (TANF) Block Grant Legislation in the 114th Congress, Cong. Res. Serv. June 7, 2016, at 2.

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by Phil Spector
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## About the Abell Foundation

The Abell Foundation is dedicated to the enhancement of the quality of life in Maryland, with a particular focus on Baltimore. The Foundation places a strong emphasis on opening the doors of opportunity to the disenfranchised, believing that no community can thrive if those who live on the margins of it are not included.

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