



COLORADO

Alternative Sentencing Approaches

Presentation to the
Sentencing Alternative/Decisions & Probation Working Group
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COLORADO
Division of Criminal Justice
Department of Public Safety

Colorado Commission on Criminal and Juvenile Justice: Sentencing Reform Task Force

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Overview

- ❖ Purposes of Sentencing
- ❖ Risk Assessment
- ❖ Probation & Adjuncts
- ❖ Restorative Justice
- ❖ Problem Solving Courts
- ❖ Fines & Restitution
- ❖ Community Service
- ❖ Diversion



Purpose of Sentencing

Primary purposes of sentencing & corrections

1. Punishment
2. Incapacitation
3. Deterrence
4. Rehabilitation
5. Restoration

- ❖ “Alternative sentencing” options usually tend toward rehabilitation or restoration
- ❖ Incarceration often seen as the default expectation



Actuarial Risk Assessment & Sentence Recommendations

- ❖ Sentencing recommendations are becoming more likely to be influenced by actuarial risk/need assessment instruments (i.e. LSI-R, COMPAS, ORAS)
- ❖ “Risk/need informed sanctioning could potentially allow courts officials to better match the sanction to the criminogenic needs of an individual while still considering the seriousness of the offense...”¹
- ❖ There is concern that the assessment instruments compound criminal justice biases due to the variables they take into account (i.e. criminal history, age at first arrest, prior incarceration, employment)
 - Many assessments use proprietary algorithms that are shielded from public scrutiny²
 - “Risk scores impart a sense of moral certainty and legitimacy into the classifications they produce...”³
 - Alternative sentencing choices impacted by assessment scores may lead to disproportionate representation present in other sentencing decisions
- ❖ Status quo decision-making is what led to the currently observed biases so the options are....

¹ D’amato, C. et al. (2020).

² Carlson, A. (2018).

³ Hannah-Moffat, K. (2013).



Intermediate Sanction Sentences

- ❖ Recent Ohio study found that intermediate alternatives (community corrections, ISP, others) were rarely used regardless of whether risk level or offense serious would recommend it¹
- ❖ Large study of three years of Pennsylvania sentencing data found that:²
 - ❖ Intermediate sanctions (not probation or jail/prison) used only 9.3% of the time
 - ❖ Male and minority offenders less likely to receive intermediate sanctions
 - ❖ County-level funding related to availability of programs
 - ❖ Cases resolved at trial significantly less likely to get intermediate sanctions

¹ D'amato, C. et al. (2020).

² Johnson, B. & DiPietro, S. (2012).



Probation & Adjuncts

- ❖ Probation is the most common sentencing option ordered
- ❖ Highly customizable by judge, department policy, or officer for level of supervision, dosage, conditions, adjuncts (i.e. drug testing, electronic monitoring, etc.)
- ❖ Novel ideas being tested and reported on regularly
- ❖ Further research and information on probation in Colorado will be provided by Glenn Tapia



Restorative Justice Conference (RJC)

Restorative Justice Conference

- ❖ Includes family/friends/key supporters of victim and offender
- ❖ Trained facilitator
- ❖ Offender describes each incident; participant describes impact
- ❖ Victim has opportunity to ask questions about the offense
- ❖ All participants contribute to plan for how offender can repair harm
- ❖ 45 states have codified restorative justice practices

Source: Maryfield, B. (2020).

Jerry Lee Restorative Justice Program (Australia)

- Police acted as facilitators
- 12 randomized control trials over 10 years
- Victims
 - Less fearful of attack by same person
 - More pleased with case handling
 - Less desirous of violent revenge
 - Less PTSD
 - Less negative emotional impact
- Offenders
 - Violent crime recidivism reduced
 - No change in property crime recidivism
 - Biggest effects for high-frequency offenders

Source: Sherman, L. et al. (2015).

RJC Meta-Analysis

- In 10 studies RJC's reduce future crimes in offenders willing to consent in cases with victim also willing to consent
- Pooled results found significant reduction in reoffending but some individual studies did not
- Most studies not conducted with control on fidelity of model delivery

Source: Strang et al. (2013).



Problem Solving Courts

- ❖ As of 2018, 76 problem solving courts (PSC) in 20 judicial districts
 - Drug/Sobriety Courts
 - Mental Health/Wellness Courts
 - DUI Courts
 - Veterans Courts
 - Juvenile Drug Courts
 - Family Treatment Courts
- ❖ When evidence-based models are utilized and fidelity to the model is maintained PSCs can be an effective alternative to normal criminal justice processing^{1,2}
- ❖ Voluntary participation limits it as a unilateral sentencing alternative
- ❖ Wide variation in effectiveness due to model fidelity, and personality or style of legal and treatment teams can effect success

¹ Lowder, E. et al. (2018).

² Miller, M. et al (2020).



Fines, Restitution & Community Service

- ❖ Fines are simple and relatively easy to modify by legislature or judge
- ❖ Fines or restitution may put person in debt for extended periods of time
- ❖ Payments are extended over years, collection rates are low, and no evidence for effectiveness
- ❖ Community service is an effective low cost alternative available throughout Colorado
 - Study using large sample and controlling for relevant legal variables found those sentenced to community service had lower recidivism rates compared to those sentenced to prison¹
 - A study that compared community service to monetary fines found lower post-program recidivism²
- ❖ Community service requirements are statutorily required for some crimes (i.e. DUI).
- ❖ Day reporting centers can be cost effective and positively impact recidivism³

¹ Wermink, H. et al (2010).

² Bouffard, J. & Muftic, L. (2007).

³ Wanner, P. (2018).



Adult Diversion

- ❖ Pre-trial Adult Diversion (CRS 18-1.3-101 passed in 2013)
- ❖ District Attorney's offices determines eligibility criteria
- ❖ Path out of traditional criminal court process
- ❖ Charges will be dismissed if participant complies with diversion agreement
- ❖ Agreement may require participation in "drug or alcohol treatment, recovery support, mental health, anger management or domestic violence offender treatment or restorative justice practices, for example"¹
- ❖ State Court Administrator's Office has funded 12 adult diversion programs
- ❖ Goals of the program may differ based on place. Rehabilitation and lowered recidivism vs. efficiency and reduction of collateral consequences.²

¹ Colorado Judicial Branch (2020), *Adult Diversion*.

² Johnson, K. et al (2020).



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