Alternative Sentencing Approaches

Presentation to the Sentencing Alternative/Decisions & Probation Working Group
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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…”

- 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 scrutiny
  - “Risk scores impart a sense of moral certainty and legitimacy into the classifications they produce…”
  - 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).
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 it\(^1\)

- 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).
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)

- 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

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

RJC Meta-Analysis

- In 10 studies RJCs 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).
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 prison
  - A study that compared community service to monetary fines found lower post-program recidivism
- Community service requirements are statutorily required for some crimes (i.e. DUI).
- Day reporting centers can be cost effective and positively impact recidivism

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”
- 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.

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


Questions & Contact Information

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