

## EBDM SENTENCING PROGRAM

### INTRODUCTION

#### BASIC PRINCIPLES

- Assessment tools should be utilized to identify risk to re-offend, criminogenic needs and appropriate programming.
- Intense programming is reserved for medium and high-risk offenders.
- Programming for medium and high-risk offenders is focused on individual criminogenic needs.
- Responses to misconduct should be swift, certain and proportionate.
- Positive reinforcements are more effective than sanctions and should outnumber them.
- Programming delivered in natural settings is more effective than programming in institutional settings, and.
- Sanctions without programming do not reduce recidivism.

### PROBATION SENTENCING PROCESS

#### LOW RISK INDIVIDUALS

- Low-risk individuals generally not placed on probation.
  - Low-risk individuals tend to self-correct.
  - Probation may be counterproductive in that it may interfere with positive influences in low-risk individual's life or negatively impact that individual through exposure to medium or high-risk individuals.

- Determination of low-risk status initially made by Proxy and then by COMPAS if necessary.
- Public interest exceptions may warrant probation supervision of low-risk individuals.
  - e.g., some sexual assault cases.
  - e.g., some theft cases with very large amounts of restitution.

### PLEA NEGOTIATIONS

- COMPAS must be sought before probation recommended or imposed
- COMPAS obtained as early in plea negotiation process as possible.
- COMPAS obtained through referral to Jail Assessment Coordinator.
- COMPAS automatically distributed to all parties and court.
- COMPAS sealed in court file.
- Defendants declining to participate in COMPAS process sentenced as in pre EBDM system.

### INTERPRETATION OF COMPAS

- Probation recommended or imposed only if COMPAS confirms presence of one or more of the eight criminogenic needs at level warranting probation supervision.
- Eight recognized criminogenic needs.
  - Anti-social cognition or thinking;
  - Anti-social companions;
  - Anti-social personality or temperament (e.g. lack of empathy, anger/hostility, poor problem-solving and decision-making, risk taking, impulsivity, lack of focus and narcissism);
  - Poor family and/or marital relationships;
  - Substance abuse;
  - Un or under-employment;

- Poor performance or failure in school;
- Poor use of leisure and/or recreational time;
- Review COMPAS resource manual for guidance as to what “probation COMPAS” looks like.

### TREATMENT PROGRAMS

- Once criminogenic needs identified, there must be consideration of whether programming available to address needs.
- Review DOC Preferred Response Guidelines for information on available programs.
- Recommendation for imposition of probation should be accompanied by statement of available program to address identified criminogenic needs.
- Public interest/safety may warrant probation supervision even absent identified criminogenic need or available treatment program.

### CONDITIONS OF PROBATION

- Establishment of treatment/program conditions left to DOC.
  - DOC in best position to assess availability of programming.
  - DOC in best position to prioritize treatment of multiple criminogenic needs.
- Parties may recommend and court impose non-treatment/program conditions such as no contact conditions.
- Judges should apprise defendants of likely probation conditions through motivational interviewing technique.

### GENERAL POINTS

- Given limited probation supervision and programming resources, some limit on probation cases necessary.
  - Cases involving relatively minor criminal conduct.

- Cases involving defendants not likely to benefit from probation supervision.
- Probation generally not imposed solely or primarily to collect restitution.

### LENGTH OF PROBATION

- Length of probation determined by same factors considered as to imposing probation.
- As an incentive for positive performance, probationers should be apprised of possibility of early release upon successful completion of programming and other conditions.

### JAIL AS A CONDITION OF PROBATION

#### MINIMAL JAIL AMOUNTS

- Jail imposed as condition of probation should be as minimal as can be, consistent with public interest considerations.
  - Purpose of probation is community protection through treatment, not punishment;
  - Need for jail as consequence minimized by fact probation itself is consequence;
  - Need for jail minimized by fact that if defendant does not succeed on probation, he will face sentence after revocation.
- Factors to consider.
  - Seriousness of criminal conduct at issue and defendant's history;
  - Will jail deter future criminal conduct by defendant?
  - Will jail provide any meaningful general deterrence?
  - Will victim or community be as satisfied with temporary punishment as from knowing maximum effort undertaken to change wrong-doer behavior?

## RATIONALE FOR JAIL

- Any recommendation for or imposition of jail term should be accompanied by specific explanation as to why jail required or is as minimal as reasonable.

## STAGGERED JAIL TERMS

- Any jail imposed as condition of probation should be imposed in staggered fashion (i.e. defendant allowed early release based upon compliance with rules/programming).
- Early release rewards past positive behavior and provides incentive for future positive behavior.

## STRAIGHT JAIL SENTENCES

### SANCTIONS WITHOUT PROGRAMMING DO NOT REDUCE RECIDIVISM

- Straight jail sentences largely are a sanction without programming.
- Since sanction of straight jail sentence without programming is not likely to reduce recidivism, parties and court must specifically explain desired purpose of sentence and why sentence advances that purpose.

### SENTENCES AFTER REVOCATION

- Beginning point is recognition that probationary term was itself a consequence.
- Sentence after revocation should be based upon need/benefit of further consequence.

### STAGGERED SENTENCES

- Whenever possible, straight jail sentences should be imposed in a staggered fashion to allow for a reduction based upon successful completion of jail or community programming.
- DOC Revocation Summaries will contain recommendations for staggered sentences when warranted.

- Reduction for programming should only occur if programming addresses COMPAS-identified criminogenic need.

### PRISON SENTENCES

#### RESEARCH-BASED SENTENCING INFORMATION

- Any argument for prison sentence must be accompanied by attempt to have COMPAS completed.
- Prior to imposing any prison sentence, court should order PSI or seek COMPAS.

#### RATIONALE FOR PRISON SENTENCES

- Any prison recommendation or sentence must be accompanied by a specific statement of the purpose or rationale for a prison sentence and the length of the recommended sentence.