

DEFENSE-BASED ALTERNATIVE SENTENCING PROGRAMS: ISSUES AND PROBLEMS

Some of the problems and issues which public defenders and program administrators have encountered and overcome when establishing successful alternative sentencing programs follow:

I. Designing a Program and Setting Program Policies:

1. What is your definition of "the program"? What will be its sentencing components?
2. Will the program's objectives include client rehabilitation, lighter court dockets, reduction of jail or prison sentences, or a combination thereof?
3. What will be the program's role in the system? How will it work in relation to existing programs, such as diversion or intensive probation? Will it duplicate services provided by a public defender staff, such as social workers may provide, or will it complement them? Will the program be viewed as a "duplication" of probation? How will it differ from court-based sentencing programs?
4. Will the program handle serious felony or minor offenses? Will the clients be first-time or repeat offenders? (There will be pressure to start with the easy cases and to ignore the more difficult ones.)
5. Some defendants will be excluded from the program as a result of 4, above, because of caseload limits, or because they can not be referred. What will happen to these clients?
6. Who will do the work? What will be their job descriptions? Will you use social workers, paraprofessionals, investigators, interns? Will they be defense-oriented and highly motivated?
7. What will be the relationship between the staff of an alternative sentencing program and the lawyers or other professional staff in a public defender office? Who will be in charge administratively and who will make the decisions about sentencing strategy and how cases are handled?
8. What will be the caseload limit for each component of the program?
9. How will the success of the program be measured? What kind of information needs to be collected and who will collect it? Can you be certain that cases excluded from the program will not be counted against you?
10. What is the funding objective? Who will pay for alternative sentencing services and how will you obtain financial support outside your present budget? Will your evaluation of program success be acceptable to the potential funding source?

II. Laying the Groundwork: Getting the System to "Buy In":

1. Should you make initial approaches about the alternative sentencing program to judges, probation officers, prosecutors or other programs, such as drug treatment or diversion programs? Do the people whose support you will need understand your objectives and the differences between a defense-based sentencing program and programs in which they may already have a vested interest?
2. What sentencing alternatives will most likely be acceptable to judges and probation officers in your courts? (The answers are not always evident: some judges oppose community service, others favor it; some object to employment as an alternative, others do not; some like third party "volunteer" supervision, others think it conflicts with the job of probation. Although they may disagree with what you propose, it helps to know their objections in advance.)
3. Has anyone in the system had experience with sentencing programs that might prejudice them against your efforts?
4. Should you state your program's policies and objectives "clearly" to others, especially when you propose alternative sentences for more serious offenders not previously tested by the system? What is the best way to respond to objections?
5. Should you form a community advisory board? If so, who would you want on it?

III. Program Operation:

1. What are the criteria by which cases are referred to the program and who applies these criteria?
2. Do lawyers know what information they must provide to program staff and what information they should expect in return?
3. At what stage in the court process do you refer cases? Do you refer them early on to reduce incarceration in some instances?
4. Some cases will be referred and rejected; how do you handle these so that the rejection of an alternative plan has the least adverse effect upon your client?
5. If you assemble information about the defendant, do you deliver it to the court and other parties concerned prior to or on the day of sentencing?
6. How can lawyers use alternative sentencing services in litigating sentencing guidelines as they are applied to clients?
7. How can you use the information obtained from alternative sentencing programs during plea negotiations?
8. Will there be periodic review and discussion of new strategies with program staff and attorneys? Who will initiate this?
9. Will someone be responsible for collecting case data necessary to document accomplishments?
10. Are attorneys and program staff looking for openings and new opportunities for alternative sentences? Are they flexible and innovative in their use of programs and paraprofessional assistance?