



ELEMENTS OF A DEFENSE SENTENCING PLAN

The possible elements of a cohesive sentencing plan are limited only by the imagination of the case developer and defense lawyer. The Sentencing Project urges case developers to consider as full a range of community placements, punishments, and alternative sanctions as is possible for each case. A partial list of these includes the following:

1. Living Arrangements and Residential Options. Where and with whom the client lives, and any necessary special consideration throughout the duration of the sentence. Options include the family home, group homes, half-way houses, secure residential treatment centers, and residences of collateral family members or friends.

2. Geographic Relocation. Moving an offender from an area or out of the family setting which causes him or her problems. Moving an offender to remove him or her from the presence of the victim, or for employment reasons.

3. Psychological Assessment or Treatment. To assist the client with problems which give rise to criminal behavior or to further rehabilitation, appropriate assessment or treatment must be arranged for alcohol and drug dependency, and for emotional and psychological disorders, including unacceptable sexual conduct. Plans must document an offender's acceptance into a program, the location of treatment, the treatment facility personnel, and the extent of the period of treatment.

4. Counseling. Many offenders can benefit from counseling in areas such as financial management, employment, parenting skills, family relationships, and the like. We too often neglect the difficulties offenders have coping with the basics of their lives.

5. Community Service. Unpaid work contributed to a community through its agencies which fulfills the payment of a defendant's debt to society; should be more than "busy work," and if possible, should be intimately related to the characteristic of the offense and the skills of the client, and should in fact and in appearance "fit the crime" as much as possible. (Some of the following items might be considered variations of community service).

6. Public Acknowledgement of an Offense or a Characteristic. Known as "public humiliation" sentences. Courts have adopted this sentencing option on occasion in an effort to ensure that an offender publicly acknowledge his offense or responsibility, through devices such as paid newspaper advertisements, marked clothing, signs, or bumper stickers. Community Service serves a similar purpose, and is much more constructive.

7. Contributions to Law Enforcement. Sheriff and police offices are intrinsically related to almost every crime and the role of law enforcement. Some offenders can contribute their special knowledge about the techniques of illegal conduct (fraud, technologically assisted crimes) and others can provide manual services, such as yard work or cleaning up garages, to these agencies.

8. Public Information Services. Some offenders are well positioned to inform the public about the seriousness or the means of preventing certain types of offenses, such as drunk driving, check fraud and the like. The means of providing information extend beyond public speaking to writing newspaper articles, or assisting reporters and other media professionals in preparing articles on crime and justice issues.

9. Victim Restitution. Payment of the victim's monetary loss to compensate for damages or financial loss as a result of the offender's criminal activity.

10. Symbolic Restitution. The amount of restitution must be related to a person's ability to pay, which is often far below the fair value of damage or loss. Courts need to be impressed with the value of partial, symbolic restitution, which punishes the offender even as it partially offsets a victim's loss. In addition, restitution to the victim isn't always possible or appropriate. Symbolic restitution may be paid to a public agency, including the police, medical services, or the like, who may have suffered an indirect financial expense due to the offender's behavior, or to a charitable organization. (Note: some state and federal statutes preclude restitution other than directly to victims of crimes).

11. Special Consideration for the Victim. There is no reason why a sentencing order should not take into account the reasonable needs or desires of the victim. An offender's offer to "stay away from" an individual or a neighborhood, or to in some way assist a victim, his or her friends, family, or a person in whom the victim has an interest, may be appropriate in some cases.

12. Education. In public or private schools, GED preparation, remedial or special education programs, or specialized training; usually considered a rehabilitating function.

13. Employment. Important to most courts, the offender should be employed whenever possible. The case developer should specify who should supervise the offender, the hours of employment, the salary, the duties of the position.

14. Vocational Training. When employment is impossible or inappropriate, vocational training should be considered as leading toward gainful employment in the future. In addition to state vocational rehabilitation, manpower, Job Corps, and corporate on-the-job training, case developers might consider variations on the apprenticeship model.

15. Community Advocate/Third Party Monitor. A highly recommended, if not essential, component, for most clients, this element provides individuals in the community to monitor an offender's compliance and behavior. Properly arranged, a third party monitor can extend supervision beyond that normally provided by probation or parole officials. There may be more than one advocate or third party monitor. This function may be linked to employment, counseling, vocational training, and the like. Community organizations such as churches and civic organizations may contribute to this function.

16. Relinquishing a Right/Sacrificing Freedom. The most common form involves "house arrest," which need not be linked to electronic monitoring. Other provisions may involve limits upon use of a car or travel, rigid structuring of an offender's time, restrictions on privacy, and voluntary submission to searches, breathalyzer tests, and the like at the behest of law enforcement, including probation. Punishment for some offenders may be giving up treasured activities, including fishing or hunting, sports, television, social drinking, and the like.

17. Part Time Incarceration. Work release or periodic (e.g., weekends) imprisonment, usually in a local (jail) facility.

18. Short Term Incarceration. A week, a month, or six months in jail.

19 Day Reporting/Treatment Programs. Day reporting offers daily accountability and observation, including optional drug testing. Linked to outpatient treatment, it combines control, supervision and rehabilitation elements.

20. Special Considerations. Tailored to the offender, includes steps to solve medical needs, transportation problems, transferring probation elsewhere (interstate compact), financial assistance, immigration problems, or developmental disabilities.

21. Letters of Support and Recommendation. A sentencing plan needs to provide indications of the support available to the offender in the community and from family, friends, employers, public officials, clergy and the like. Care must be taken that letters are consistent with the sentencing strategy, including acceptance of responsibility, presented to the court.