

Sentencing in the 21st Century: Instincts, Evidence and Practice¹

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20 Effective EB Sentencing Practices

1. Avoid significant intervention with low risk offenders.
2. Target moderate to high risk offenders.
3. Target criminogenic needs in setting conditions of probation, and programs.
4. Assess offender risk factors through the use of an actuarial risk/needs assessment tool and professional judgment.
5. Imposing additional conditions of probation beyond those directly related to an offender's risks/needs only distracts and impedes the offender and probation.
6. Use cognitive behavioral programs rooted in social learning theory. They are the most effective at reducing recidivism.
7. Offenders will tend to behave in ways that result in the most rewards and fewest punishments.
8. Rewards are more effective than sanctions. Use both positive and negative reinforcement. Respond to violations promptly and surely.
9. Changing an offender's chronic anti-social thinking and behavior often does not happen over night. Frequently, the offender must learn new skills and acquire new abilities. Periodic relapse is also common.
10. To the extent possible, involve the family and community in the offender's treatment.

¹ Excerpt from presentation delivered at the Idaho Judicial Conference in Sun Valley, Idaho, on October 6, 2008.

11. Treatment must be individually determined because treatment must be matched to the offender's personal characteristics.
12. Judges should educate themselves about the effectiveness of the community-based corrections programs in their jurisdictions in reducing recidivism, and, when appropriate, utilize those programs shown to be effective.
13. The offender's satisfactory compliance with the conditions of probation should be the shared goal of all parties.
14. Respond to all violations of probation promptly, consistently, and surely.
15. Use a graduated continuum of both sanctions and services.
16. The most appropriate response to a particular violation of probation depends on the severity of the violation, extent of prior compliance, and the offender's adjusted level of risk.
17. The judge can be an agent of positive change by encouraging the offender's voluntary compliance with all conditions of probation. Intrinsic motivation is a critical precondition for offender behavioral change.
18. The judge should be aware of the "stages of change" model which is a useful tool for understanding the offender's readiness to change and the corresponding strategies that have proven most effective in facilitating behavior change.
19. The judge should also consider use of "motivational interviewing" techniques (e.g., reflective listening, pointing out inconsistencies, use of open-ended questions, and reinforcing positive behaviors.) The judge should avoid threatening, lecturing, arguing, shaming, or sympathizing with the offender.
20. To achieve multiple sentencing objectives (e.g., Risk reduction (rehabilitation), punishment, and behavioral control), treatment provisions must be successfully integrated with intermediate sanctions and behavioral controls.