Sentencing Support Tools and Probation in Multnomah County

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Background: Focus on Public Safety Outcomes in Sentencing

Probation and corrections agencies across the nation are attempting to pursue evidence-based best practices. Corrections workers and supervision officers are urged to understand the importance of assessment, to address criminogenic factors in offenders' lives, to master motivational interviewing, and to stay up on the rapidly developing literature of criminology and corrections.

But all of this is alien to most courtrooms where, unfortunately, the predominant culture is one of ultimatum, enforcement of last chances, and imposition of consequences for failure. Also unfortunately, this culture has encouraged many probation officers to look to the revocation hearing as an occasion on which to be vindicated or undercut by the judge. This tension between what works and other competing agendas has crippled the crime reduction efficiency of criminal justice for eons. Laws stating the purposes of sentencing are full of un-prioritized, mixed messages.[1] There is even a debate whether judges should consider public safety at all.[2]

In an effort to improve our public safety performance, Multnomah County, Oregon has built sentencing support tools – based on a computerized criminal justice database called DSS-Justice – intended to help transform the culture of criminal justice, including the role of probation officers. Essentially, these tools show judges and supervision officers how similar offenders, sentenced for similar crimes, have or have not avoided criminal behavior after being subjected to any of the available sanctions.

DSS-Justice: Using Data to Inform Sentencing Decisions

DSS-Justice starts with a computer data warehouse – essentially a database automatically filled with information from a variety of computerized operational information systems. The courts, the police, the sheriff (who runs our jail), the district attorney, and the department of corrections provide access to their data. Data warehouse technology extracts a copy of the needed information from each source, transforms it so it is mutually intelligible, and transfers it to the "warehouse" where criminal justice users can query it for answers that cannot be obtained from any one source alone.

A user of the DSS-Justice sentencing support application (one of many running based on the warehouse) enters a case number and selects the charge for which a sentence is being selected. The program constructs a bar chart based on data for the offender and the charge selected. The chart includes a bar for sentencing elements imposed on such offenders for such a charge, arrayed left to right in order of their declining frequency.[3] Each bar reflects the proportion of those receiving that sanction who were free of any new conviction for a similar crime within three years. Note that this approach displays incarcerative and non-incarcerative sanctions side by side, measured by precisely the same test.

The right side of the screen displays the variables upon which the bar chart is based. The user's choice of crime for sentencing yields a variable that chooses one of six categories of

crime as a "similar crime." For example, choosing Theft in the First Degree yields a default of "property crime," so that the program is analyzing sentences imposed on similar offenders for any property crime. A "similar offender" is one who has a similar criminal record and similar demographics (age, gender, and ethnicity). A "similar" criminal record is one that reflects the same rating, from "none" to "severe," in each of six crime categories: violent crime, sex crime, property crime, drug crime, major traffic crime (including impaired driving), and domestic violence.[4]

Users can modify all of the variables and generate a new bar chart in seconds. For example, if we are dealing with a common criminal category, we may be able to focus on only those offenders sentenced for the same crime as the offender before the court, so the program allows a user to change "property crime" to "Theft I." If the offender's crime category is less common, we may have to expand it to compare offenders like the one before the court who have been sentenced for any crime. We may also want to modify what we mean by "similar" offender.

Finally, users can modify the outcome measure. The default measure of recidivism is a new conviction for a similar crime within three years. Users can specify instead conviction for "any crime," or for a crime in any of the six crime categories. Users can also modify the period during which recidivism is tallied or focus on arrests (particularly useful in domestic violence
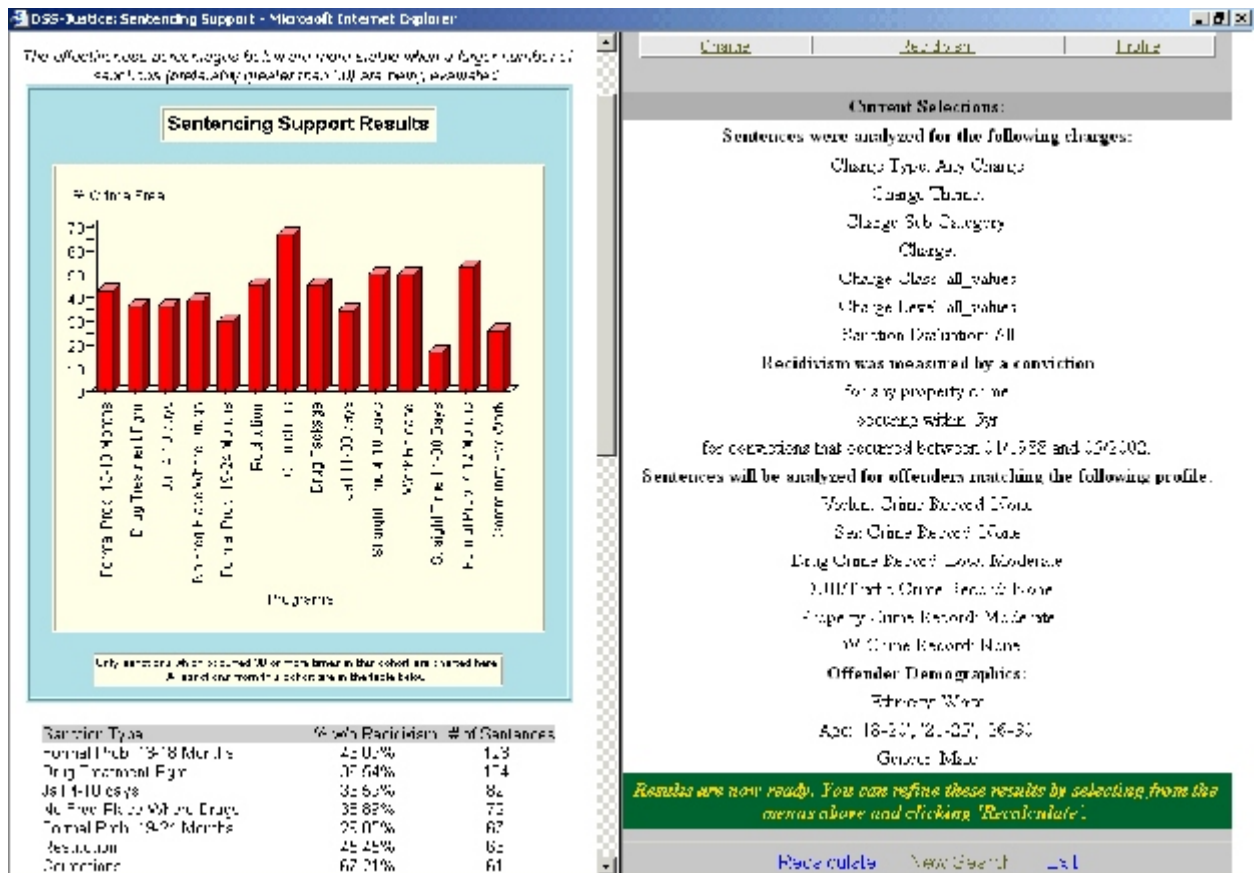
Screen Shot of a Sentencing Support Display

cases).[5]

The point of all of this is not to ask technology to select a sentence, but to focus the attention of the sentencing process on public safety. With that focus, advocates and probation officers can supplement the data available from sentencing support tools with information about the offender's particular circumstances or treatment history, the availability or not of local community-based or custodial programs, or with research germane to a particular sentencing analysis.

Transforming the Role of the Probation Officer

As part of this effort, we have begun building a new partnership between the courts and probation officers. We have added a box to the standard order for a pre-sentence investigation (PSI), requesting that the report include "Analysis of what is most likely to reduce this offender's future criminal behavior and why, including the availability of any relevant programs in or out of custody." Probation officers who are completing PSIs now regularly include an analysis of what is most likely to work, citing literature and sentencing support results to the court.

Our next step is to transform the role of the probation officer in connection with probation violation hearings. Judges who handle criminal cases have asked our probation department to approach the probation violation process as our experts on what works – to write violation reports and to advocate in court for the outcome most commensurate with public safety. We recommended that probation violation report recommendations spell out how the recommendation serves public safety, short and long term.

For example, a short run outcome might be to give a domestic violence victim time to get away from an abusive partner, or to hold someone until a treatment bed is available. Long run looks at the total crime reduction impact over the expected lifetime of an offender – this perspective forces judges to address competing factors such as present risk to the community, length of any incarceration, recidivism after release, and the impact of any actually available program in or out of custody *on the totality of criminal behavior likely to be exhibited by the offender over time*.

When a probation officer recommends jail or prison, we ask: Why are you recommending incarceration?

> If it is to accomplish treatment, is the treatment available to this offender in custody and is there sufficient remaining time in custody for him to get into and benefit from treatment?

> If it is to incapacitate the offender, how long will the offender be incapacitated (how much time is left, and what is the likelihood that he will be released early)?

> If it is to stabilize the offender on medications or for addiction recovery, will the offender get or accept the medications, and is a plan in place for recovery?

> If it is to address the needs of a victim, such as a domestic violence victim who needs safety to get away, are there plans in place for the victim and is the available remaining custody time adequate in light of that plan?

If it is to impose a consequence for the offender's misbehavior, how does the amount of time you are recommending stack up against what we know about what works?

For all of these and for any other purpose, how does it comport with the offender's risk level and the community's safety interests in the most efficient deployment of the custody slots the offender would be occupying?

Although this project is in its infancy, we are enthusiastic about its potential. Courts can do a far better job with the expertise and information probation officers can bring to these hearings. Sentencing support tools can help us all access data that informs us of what has and has not worked in order to craft better sentences and probation violation dispositions. We expect to adapt the tools specifically to probation use – so that probation officers have good data on which responses (including forms of supervision, sanctions, and rehabilitation efforts) have correlated most significantly with success for which offenders under what circumstances. This gets to the heart of probation officers' need to address offender responsivity in the "what works" environment.

Similarly, we expect the tools to adapt well to pretrial release decisions, so as to display correlations between various forms of supervision and terms of release for various types of offenders, and with success measured by avoiding both failures to appear for trial and new criminal activity.

All of this is designed to improve our ability to protect our constituents from avoidable victimizations by using our best efforts to understand the risks our subjects present and to respond to those risks in a manner most likely to achieve public safety. Our successes will be measured in crime reduction and improved lives and communities.

1. It took a constitutional amendment to put public safety at the head of Oregon's sentencing purposes. Various strains of deterrence, just deserts, proportionality, and rehabilitation run through most state and federal statutes declaring the purpose of sentencing. *See, e.g.,* 18 USC §3553. Oregon's statutory provisions concerning punishment are conveniently captured in 1997 Judicial Conference Resolution #1:

WHEREAS Oregon law vests judges with discretion to select an appropriate sentence or disposition following adjudication of criminal conduct or violation of terms of probation in adult and juvenile cases;

WHEREAS Article I, Section 15, of the Constitution of the State of Oregon provides that "Laws for the punishment of crime shall be founded on these principles: protection of society, personal responsibility, accountability for one's actions and reformation;"

WHEREAS Oregon law declares that the purposes of the Criminal Code include, among others, "To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the correction and rehabilitation of those convicted, and their confinement when required in the interests of public protection" (ORS 161.025(1)(a)); "To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders" (ORS 161.025(1)(f)); and "To safeguard offenders against excessive, disproportionate or arbitrary punishment" (ORS 161.025(1)(g));

WHEREAS Oregon law empowers judges to "impose any special conditions of probation that are reasonably related to the crime of conviction or the needs of the defendant for the protection of the public or reformation of the offender, or both" (ORS 137.540(2)), and requires that judges make decisions to incarcerate probation violators in prison based "upon a reasonably systematic basis that will insure that available prison space is used to house those offenders who constitute a serious threat to the public, taking into consideration the availability of both prison space and local resources" (ORS 137.592(2));

WHEREAS Oregon law provides that the juvenile justice system in delinquency cases is "founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community" (ORS 419C.001);

WHEREAS Oregon law vests judges with discretion to select an appropriate sentence or disposition following an adjudication of criminal conduct or violation of terms of probation in adult and juvenile cases;

WHEREAS public safety would be furthered by increased attention to the probable impact of judges' choices in the exercise of such discretion on the future criminal conduct of offenders;

THEREFORE, BE IT RESOLVED BY THE OREGON JUDICIAL CONFERENCE that in the course of considering the public safety component of criminal sentencing, juvenile delinquency dispositions, and adult and juvenile probation decisions, judges should consider and invite advocates to address the likely impact of the choices available to the judge in reducing future criminal conduct.

BE IT FURTHER RESOLVED that judges are encouraged to seek and obtain training, education and information to assist them in evaluating the effectiveness of available sanctions, programs, and sentencing options in reducing future criminal conduct.

2. *Compare* Paul H. Robinson, *Punishing Dangerousness: Cloaking Preventative Detention as Criminal Justice*, 114 HARV. L. REV. 1429 (2001), *with* Michael H. Marcus, *Comments on the Model Penal Code: Sentencing Prelminary Draft No. 1*, 30 AM. J. OF CRIM. LAW 135 (2003), *and* Michael H. Marcus, *Archaic Sentencing Liturgy Sacrifices Public Safety: What's Wrong and How We Can Fix It*, 16 FEDERAL SENTENCING REPORTER 76 (2003).

3. Bars display only for those sentencing elements that have been imposed at least thirty times for the cohort in question, but a table below the bar chart displays all data for all elements ever imposed for the cohort.   The thirty-occasion minimum discourages predictions based on insufficient data.

4. Data rules determine whether a given criminal history receives a rating of "none," "low," "moderate," "major," or "severe." In all but domestic violence, only convictions count; arrests not followed by dismissal for want of merit (as opposed to victim recanting, for example) do elevate a domestic violence rating. The rules are accessible at http://www.ojd.state.or.us/mul/marcus_crimethemegrid.pdf.

A step-by-step description, with screen shots, and a link to a user manual, are available at
5.
http://www.smartsentencing.com.