

# SENTENCING

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NEW LAWYER TRAINING

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Rachel Boaz

# BE HUMAN

Get to know your client as a person.

Create a theme, ie drug issues & need for treatment

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Body Language matters, yours and the clients

Remind client about appropriate attire

# VIETNAM

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# Case Law

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- McCleary v. State, 46 Wis. 2d 263 (1971)
  - Gravity of the Offense
  - Character of the defendant
  - Need to protect the public

# Harris v. State 75 Wis 2d 513 (1977)

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- a) Prior criminal offenses
- b) Undesirable behavioral pattern
- c) Personality, character, social traits
- d) PSI
- e) Viciousness/aggravated offense
- f) Degree of culpability
- g) Demeanor at trial
- h) Age
- i) Remorse, repentance, cooperativeness
- j) Need for close rehabilitative control
- k) Rights of the public
- l) Length of pretrial detention

# State v. Gallion 270 Wis. 2d 535

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- Re-emphasized the importance of *McCleary* criteria
- The Judge must base sentence consistent with the criteria.
- There is a presumption for probation.
  - Unless
    - Confinement necessary to protect the public
    - Treatment needs can only be met in confined setting
    - It would unduly depreciate the seriousness of the offense

# Chapter 973

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- Sentencing Statute
  - Credit 973.155
  - Probation 973.09
  - Costs, surcharges, fees 973.06
  - Restitution 973.20
  - Etc. Read the entire statute.

# Statutes cont.

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939.51, classification of misdemeanors

939.61, penalties when none defined

939.62, habitual criminal/ repeater, 3 convictions in past 5 years for mis. (can get prison)

302.45, good time. 1 for every 4 days in jail.

973.015, Expunction

must be under 25, facing 6 yrs imprisonment or less, if class H or I felony  
cannot have been convicted of a prior felony. Forfeitures are a no go on this

# PROBATION

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- It is a deprivation of liberty!!!
- Wis. Stat. 973.09- READ
- Probations must run concurrent
- Conditions must be reasonable and appropriate. \*clients w/ prior sex offenses will have sex offender rules\*
- Make sure to double check transfers and/or interstate compact rules if applicable.

# JAIL

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- Credit. Get jail records, check CCAP, ask client (ie arrested in different city)
- Condition time, no good time, except for mand. min sentences
- Huber, fees and individual jail rules, medicines etc. Check w/ Huber officer
- Remember electronic monitoring, be aware of fees and rules.
- Transfers, ie Ozaukee clients can't transfer to Milwaukee city.

# ALTERNATIVES

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- Reduce to an ordinance
- Fine only, but with the conviction
- VIP- volunteers in probation
- DPA, deferred prosecution agreement

# Remember your CLIENT

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- Can the complete probation
  - Drug issues
  - Restitution, fines court costs payments
  - Maybe ask for imposed and stayed
- Huber, fees, transfers
- Collateral consequences
  - <http://www.abacollateralconsequences.org/>

# Collect Useful Info

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- Sentence Memo (see example attached)
- Character letters (example of do's and don'ts attached)
- Check Prior record, ask client about it
- Any relevant medical records/treatment records. \*get release of info\*
- Employment verification, especially for requesting huber
- Hand to court prior to sentencing

# Random things

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- OWI
  - Have to go to jail forthwith after 3rd
  - Needs AODA assessment and Ignition interlock for huber
- 4<sup>th</sup> degree, no registration under WI but will have to under *Adam Walsh Act*
- Domestic enhancer, no gun under federal law
- Ask for civil judgments on fines and court costs, or if appropriate a waive!
- Immigration consequences.

# DNA COLLECTION

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- 973.046 DNA surcharge \$200 for misdemeanors \$250 for felonies
- 973.047, any sentence or probation imposed, DNA shall be collected
- Expungement of DNA 165.77(4) (summary, needs to have a not guilty, no charge after a year, or judgment vacated. \* form to expunge DNA in materials\*
- 946.52, failure to submit a sample is a class A misdemeanor

# Lastly

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- Remember to check the JOC
- File the notice of intent to appeal
- Explain the sentence to the client

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WHEN IN DOUBT, ASK A  
PUBLIC DEFENDER