

SENTENCING

MISDEMEANOR A-Z TRAINING

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BE HUMAN

Get to know your client as a person.

Create a theme, ie drug issues & need for treatment

Body Language matters, yours and the clients

Remind client about appropriate attire

Case Law

- 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)

- 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

- 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

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

Statutes cont.

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

EXAMPLE

- Juris Doc
 - 22 years old, high school education, was unemployed at time of new offense, now working construction
 - 1 child, not married, has one prior misd. conviction for THC, unsuccessful on probation was 18 at time of offense.
 - Crime: retail theft under \$500 dollars. Stole an Ipad and tried to pawn it. When police called him, he turned self in and confessed
 - GO! And try to remember *Harris* and *Gallion* when coming up with arguments.

PROBATION

- 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

- Credit. Get jail records, check CCAP, ask client (ie arrested in different cty)
- 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 cty.

ALTERNATIVES

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

Remember your CLIENT

- 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

- 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

- OWI
 - Have to go to jail forthwith after 3rd
 - Needs AODA assessment and Ignition interlock for huber
- 4th 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. Can lead to imprisoning the poor.
- Immigration consequences.

Lastly

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

WHEN IN DOUBT, ASK A
PUBLIC DEFENDER
