

Alternatives Sentencing and a Means of Reducing Recidivism

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Introduction

This article is intended to offer suggestions in alternative sentencing which have proven successful during my time on the Bench. The catalyst to writing this article came as a result of receiving information from an investigative reporter on November 16, 2010, delineating the plea, sentence, adjudication, revocation and prison sentence, if any, in every burglary case filed in my Court from January 2009 through July 2010. After an extensive search of the Harris County Justice Information Management System (JIMS), the reporter found that, in the 177th Criminal District Court, 10.8 percent of all burglary cases resulted in deferred adjudication community supervision from July 2007 through December 2008. After I took the Bench, that percentage grew to 39.6 percent. Defendants were granted a deferred probation in 79 out of 199 burglary cases filed during the time of the study. Of those 79 defendants granted a deferred probation, 69 were in compliance and successfully completing or had successfully completed their community supervision.

The question is whether sending defendants to some form of treatment rather than locking them up in the Texas Department of Criminal Justice (TDCJ) is an effective improvement in terms of sentencing alternatives. Alternatives to prison may be appropriate in a myriad of situations, including, but not limited to, defendants with serious mental health issues (hence the birth of the Mental Health Courts), those suffering from Post Traumatic Stress Disorder, occasioned by their military service during war time (hence the birth of the Military Court), and those suffering from drug addiction and alcoholism (pervasive in all courts). This

article centers on those defendants with substance abuse problems including both drug addiction and alcoholism.

Determining When Alternatives to Prison are Appropriate For Defendants with Substance Abuse Problems

The first requirement is that it must be shown the defendant has an actual substance abuse problem. This includes everything from alcohol and marijuana to cocaine and heroin.

Additionally, there must be some indication the individual desires to quit drinking and using although this is not an absolute bar to sending someone to treatment, of some form, rather than prison. All 79 defendants granted a deferred underwent an evaluation called a “Level of Service Inventory – Revised” (LSIR).

The LSIR was developed by Texas Christian University’s School for the Study of Addiction and Alcoholism. It is the best tool available to judges to evaluate a particular defendant’s needs and risks, especially in the area of substance abuse. Specifically, the LSIR allows a sentencing judge to consider a defendant’s criminal history, education and employment background, financial situation, family and marital history, accommodation, leisure and recreation time, the companions he keeps, alcohol and drug problems, emotional and personal problems, and, finally their attitudes and orientation toward society and crime in general. These areas of risk and need are scored from very low to very high, with low, medium, and high in between. Based on the results of the LSIR, the evaluator can make a recommendation as to the best course of action, short of imprisonment, available for a particular defendant. A judge then can make a more informed decision as to what course of action is best for the defendant and society as a whole, including incarceration in the Texas Department of Criminal Justice (TDCJ). It should be noted the LSIR is primarily utilized to determine whether a defendant has a substance abuse problem and the level of treatment needed in order to provide the best

opportunity for success while on community supervision. The other areas of concern are secondary to the substance abuse issue because they are components which help explain a particular defendant's substance abuse level and assist in determining what type of program, if any, to place a particular defendant in, as well as where to place a defendant upon completion of treatment, assuming treatment was deemed appropriate.¹

In the 177th, almost without exception, the LSIR was performed only after the defendant entered a plea of guilty to the offense. Additionally, again, almost without exception, no defendant was granted a deferred probation unless the defendant demonstrated a history of drug or alcohol problems. If the LSIR resulted in the conclusion the defendant had a substance abuse problem, that defendant was usually granted a deferred and was required to complete some type of treatment program, including in-patient treatment followed by rigorous Alcoholics Anonymous (AA) meeting attendance and completion of all 12 Steps, out-patient treatment followed by the above-mentioned AA attendance and step work, or simply sending them to AA with the required attendance and step work.

There are a number of reasons for granting a deferred probation to an addict or alcoholic. First, a court can require the defendant to attend and successfully complete a treatment program for his or her substance abuse problem. This addresses the defendant's criminal behavior at its source: his or her substance abuse problem. If the underlying cause of the behavior is addressed, the chance the defendant will reoffend is reduced. Second, if the defendant violates his or her community supervision while on deferred adjudication, the full range of punishment is available in assessing a prison sentence.

¹ It should be noted SATF-Atascosita has been closed due to cuts in funding. Thus, 48 beds were lost due to the budget cut. This, however, should not prevent the use of alternative sentencing as other avenues, discussed below, are available.

Is Such Alternative Sentencing Effective?

Is alternative sentencing for substance abusers effective? The short answer is yes. The most impressive aspect of the data provided showed that out of 79 defendants placed on deferred probation for burglary, who were required to complete some course of treatment, including solely AA meetings and step work, only ten were adjudicated guilty and sent to prison. The vast majority of cases where there was an adjudication of guilt and prison sentence were the result of a new law violation.

The other defendants who have had motions to adjudicate filed have been for technical violations, such as not attending AA meetings, failing to complete their step work as ordered, failing to perform community service as directed, and failing to pay their fines and fees as ordered. Generally speaking, these defendants were ordered to serve a period of time in jail and to continue their community supervision. The remaining 69 defendants, with the exception of those just mentioned, have successfully fulfilled their obligations while on community supervision or are currently successfully fulfilling their obligations. Most importantly, they are accomplishing the entire point of granting them a deferred probation in the first place. They are staying clean and sober on their own effort toward recovery from drug addiction and alcoholism.

What Makes Alternative Sentencing Successful?

What makes alternative sentencing successful? The secret to success for a defendant with a substance abuse problem is long-term, regular attendance at AA meetings and completing the 12 Steps of the AA Program. Although a detailed discussion of the AA Program and the specifics of the 12 Steps are beyond the scope of this article, reference is made to the *Big Book of Alcoholics Anonymous* when doing so is helpful for the reader. The basis of their success is that each defendant, as previously discussed, is required, whether the LSIR recommends in-patient

treatment, outpatient treatment or simply attending AA meetings, to attend meetings for a sustained period of time and that they complete all 12 Steps of the AA Program.

It should be noted, in order to dispel any misconceptions, AA is not a religious organization. ANONYMOUS, THE BIG BOOK OF ALCOHOLICS ANONYMOUS , at 565 (3d ed. 1976)(hereinafter the *Big Book*). The only requirement for membership in AA is a desire to stop drinking [and using]. *Id.* at 565. It is not required that a “member” believe in any particular deity or be affiliated with any certain religious faith or organization. The word “God” is used in the most general sense possible. The “member” is free to believe in any power greater than himself or herself. *Id.* at 12, 46-47, 50, 53, 55. In other words, they are free to believe in a “God” of their own understanding, regardless of what that understanding may be. Perhaps it is simply the group as a whole, the power of the universe or Mother Nature. *Id.* at 59. It may, however, include a specific faith in a particular religious organization. *Id.* at 87. It should also be pointed out the requirements placed on a defendant were born out of a combination of the contents of the *Big Book*.

Each defendant is required to attend a meeting a day, every day, for 180 days. The reason for rigorous attendance is three fold. First, it allows the defendant to develop a routine of attending meetings with people suffering from the same malady – alcoholism and addiction. In this way, they can begin to see clearly not only that they have a problem, assuming they had any doubt or denial in the beginning. They begin to see they are not alone or unique and that there is a solution to their problem. Often, addicts and alcoholics fail to recognize the nature of their substance abuse problem. They view the problem as outside themselves and if their family, friends and society would just leave them alone or do as they wish, they would have no problem. *See id.* at 61-62. When a defendant with this mindset is forced to attend meetings regularly for

six months, they have an opportunity to begin to recognize the problem is within them and is manifested in the abuse of drugs and alcohol. *Id.*

Second, it allows the defendant to make new friends and acquaintances who are drug and alcohol free and have a desire to stay that way. It removes them, at least for a couple of hours a day, from their old friends and stomping grounds where drugs and alcohol might be readily available, accepted and even encouraged. Although a defendant may go back to such an environment after every meeting, the establishment of new friends and acquaintances opens the door to allow them to make the change in companions necessary for long-term sobriety.

Finally, daily meeting attendance allows the defendant to experience life activities without the use of drugs and alcohol. They begin to discover that having a good time does not need to include alcohol and drugs. *Id.* at 164. Equally, if not more importantly, they see others go through devastating life experiences, such as loss of family and friends, divorce, loss of jobs and other low points in life, without having to resort to alcohol and drugs to escape such problems. *Id.* at 98. This, in turn, allows them to understand they can do the same. In other words, in order to recover, each defendant must change their playmates, playthings and playgrounds. Without actually experiencing the happiness and freedom of a drug and alcohol free life, rarely can an addict or alcoholic envision life without drugs and alcohol. Most importantly, it has been proven time and again that “one alcoholic [can] affect another as no nonalcoholic [can].” *Id.* at xvi-xvii. It is thus imperative that a defendant with a substance abuse problem be exposed to recovering addicts and alcoholics because they can relate to the defendant in a way no one else can. *Id.* Requiring a defendant to attend one or two AA meetings a week for three months is wholly insufficient. Such limited exposure to AA and its participants,

especially those with long-term sobriety, cannot accomplish the goal of changing the defendant's playmates, playgrounds and playthings.

Each defendant must also complete all 12 Steps of the AA Program. Recovery from drug and alcohol abuse comes as a direct result of working the Steps. In AA, as with all other 12 Step organizations, the "suggested [] plan of recovery" is as follows²:

1. We admitted we were powerless over alcohol [and drugs] – that our lives had become unmanageable.
2. Came to believe that a Power greater than ourselves could restore us to sanity.
3. Made a decision to turn our will and our lives over to the care of God *as we understood Him*.
4. Made a searching and fearless moral inventory of ourselves.
5. Admitted to God, to ourselves, and to another human being the exact nature of our wrongs.
6. Were entirely ready to have God remove all these defects of character.
7. Humbly asked Him to remove our shortcomings.
8. Made a list of all persons we had harmed and became willing to make amends to them all.
9. Made direct amends wherever possible, except when to do so would injure them or others.
10. Continued to take personal inventory and when we were wrong promptly admitted it.
11. Sought through prayer and meditation to improve our conscious contact with God *as we understood Him*, praying only for the knowledge of His will for us and the power to carry that out.

² The 12 Steps as set forth on page 58 of the Big Book are general in nature. Actually working the Steps requires a line-by-line study of the Preface, called the Doctor's Opinion and the first 164 pages of the Book.

12. Having had a spiritual awakening as the result of these steps, we tried to carry this message to alcoholics [and addicts], and to practice these principles in all our affairs.

Defendant's are given 90 days to complete the Fourth Step and 180 days to complete all 12 Steps. Each Defendant must show proof of their completion of the Fourth Step to their Community Supervision Officer (CSO). They must provide proof to their CSO, prior to the expiration of the 180 days, of their completion of all 12 Steps. This must be done via a letter from their sponsor (a person who has worked all 12 Steps and is taking the defendant through the 12 Steps) verifying they have completed all their Step work within the time required. Once the defendant has completed the requirement that he or she attend a meeting a day, every day, for 180 days, they must attend no less than five meetings per week for the duration of their community supervision or until further or of the Court. Lastly, as a sanction for a defendant not attending AA meetings, a defendant is required to serve one to three days in jail for each meeting missed and make up the missed meetings on the backend of the 180 meetings originally ordered.

In-Patient Treatment Alone, Without AA as a Continued Course of Recovery is Not Sufficient³

The latest report from Harris County Community Supervision and Corrections Department (HCCSCD), CJAD & HCCSCD RESIDENTIAL OUTCOME STUDY, 2011, shows an average successful completion rate of approximately 85 percent. However, over 45 percent of those who successfully complete one of the in-patient programs results in an adjudication of their guilt, followed by incarceration, or a revocation of their community supervision, followed by incarceration. Upon completion of in-patient treatment, the vast majority of these defendants were either not ordered to attend AA and complete all 12 Steps or were ordered to simply attend a minimal number of meetings for a short period of time. It does not, therefore, surprising these defendant's ended up incarcerated. They had no continuing course of treatment ordered, not a

³ See CJAD & HCCSCD RESIDENTIAL OUTCOME STUDY, 2011.

plan of recovery after treatment, which, in most cases, is a life-time commitment. More needs to be done to by the judiciary in order to raise the number of successful completions of community supervision overall. A discussion of the CJAD & HCCSCD RESIDENTIAL OUTCOME STUDY, 2011, is beyond the scope of this paper. However, a thorough review of the study is highly recommended.

Conclusion

The data I was provided showed 69 people are receiving help who otherwise would be sitting in prison receiving no help for their addiction to drugs and alcohol. These same defendants would be highly likely to commit new offenses following their release from prison. Ultimately, the data clearly demonstrates that alternative sentencing for substance abusers is much more effective than simply locking them away only to have them reoffend after their release from prison. Finally, and most importantly, given the recent budget cuts, it should be emphasized the cost of sending a defendant to AA, as described above, is zero dollars and zero cents. Ironically, the most important aspect of successful completion of probation is also the least costly on the State and the County.