

MODULE SIX

SENTENCING

FACILITATOR'S GUIDE

OBJECTIVES

At the end of this module participants will:

- Increase their knowledge on the principles and processes underpinning a determination of a sentence.
- Be able to apply the above knowledge in practical cases.
- Be able to determine appropriate sentences.

TIME [2 Hours 20 minutes]

CONTENT

6.1 Sentencing Guidelines
6.2 Sentencing Options

MODULE OUTLINE

Sessions	Method	Resources	Time
6.1 Sentencing Guidelines	Presentation	Handout 1, Sentencing Guidelines; Exercise 1, the cases of Bobby and Juan. Slides 1-8.	1 hr 20
	Case study		
6.2 Sentencing Options	Presentation	Handout 2, Sentencing Options; Handout 3, Examples of Residential Sentencing Options. Slides 9 - 12.	1 hr
	Sharing experiences (Pin board)		

SESSION 6.1 SENTENCING GUIDELINES

- Purpose** Participants should understand the sentencing guidelines used to determine a sentence and practice applying them to a fictional situation.
- Preparation** Write objectives on flip chart, review slides, photocopy handouts.
- Materials** Handout 1, Sentencing Guidelines; Exercise 1, case of Bobby and Juan¹; Slides 1 – 8.
- Equipment** Laptop with PowerPoint, projector, flip chart and marker pens.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the module objectives and outline on flip chart. 	5
<ul style="list-style-type: none"> • Introduce the session purpose 	
<ul style="list-style-type: none"> • Present slides 1- 8 on sentencing, distribute copies of the slides for participants to refer to in completing Exercise 1, determining an appropriate sentence. 	20
<ul style="list-style-type: none"> • Group work discussing the case studies of Bobby and Juan, determining an appropriate sentence. 	
<u>Steps:</u>	
<ol style="list-style-type: none"> 1. Divide the participants into four groups, distribute Exercise 1 and ask two groups to review case A and the other groups to review case B. 	25
<ol style="list-style-type: none"> 2. Ask the groups to discuss the case and recommend an appropriate sentence and explain the principles underpinning the decision. 	20
<ol style="list-style-type: none"> 3. Give each group a flip chart and ask them to nominate a presenter. Participants should be encouraged to look at one or a combination of sanctions. Remind them to use the principles and guidelines provided in the slides in responding to the question². 	10
<p>Ask each group to present their conclusions to the plenary. In the debrief ensure that the following principles are mentioned: proportionality, promoting the rehabilitation of the child</p>	

¹ **Note to facilitator:** You should ideally substitute profiles of real teenagers who have gone through the juvenile court in their jurisdiction for use in these exercises

² For a less experienced group you may also want to encourage participants to use Handout 1, sentencing guidelines, as a resource in completing exercise 1.

and the principles from the presentation.

4. Example answers should include the following points:

Case A considers the: seriousness of the offence, harm done to the victim, degree of responsibility (he was not alone), personal circumstance (family environment – lives with his parents, good student), the fact that he might have a problem with drinking. Recommend that he should stay at home because he has a stable family environment and can benefit from an alternative such as community service or reparation to the victim. If he has a drink problem he should go for therapy.

Case B: Consider the extent to which he was involved in committing the offence (there were two involved so he has more responsibility), the degree of responsibility because he firstly denies and then he admits the offence, previous findings of guilt (he has already two adjudications of guilt, one for the same fact, destruction of property), his personal circumstance he has no father, poor school attendance, he is engaged in academic studies rather a more practical education that would suit his skills better, he has a problem controlling his temper and he takes medication for his depression. However, he has some capacity to change and participants should stress that he shouldn't receive a longer or more intrusive sentence because of his personal circumstances. Stress that any intervention even welfare is a punishment. Participants are encouraged to look at whether an alternative sanction or a residential sentencing with follow-up is more appropriate for him.

- Refer participants to Handout 1, Sentencing Guidelines, in the participant's manual.

SESSION 6.2 SENTENCING OPTIONS

Purpose	Participants will explore the different sentencing options and identify lessons learned around implementing each option.
Preparation	Write objectives on flip chart, review slides, photocopy handouts. Pre-session assignment is to read through the example of Community service in Canada in Handout 3.
Materials	Handout 2, Sentencing Options; Handout 3, Examples of Residential Sentencing Options. Slides 9 - 12.
Equipment	Laptop with PowerPoint, projector, 4 pins boards, cards and marker pens.

Activities	Time Estimate (minutes)
<ul style="list-style-type: none"> • Introduce the session purpose. 	
<ul style="list-style-type: none"> • Show slides 9 – 12. Check whether participants have read through the example of community service in Canada and whether they have any questions. 	15
<ul style="list-style-type: none"> • Group discussion of sentencing options. 	
<p><u>Steps:</u></p>	
<ol style="list-style-type: none"> 1. Plenary brainstorm, ask participants to think of the sentencing options they are familiar with e.g. wilderness camp, community service. As they call out their suggestions in turn ask a participant to write each named option on a coloured card. 	10
<ol style="list-style-type: none"> 2. When the ideas are exhausted, take the cards and pin the cards along the top of a pin board. Space them out evenly as each card will be a column heading. 	
<ol style="list-style-type: none"> 3. Ask participants to get into pairs. Each pair should think of any issues relating to the implementation of the sentencing options named on the board. For example, for community service, whether the placement should be supervised, the importance of screening each client to ensure the placement maximizes their potential. 	10
<ul style="list-style-type: none"> • The pairs should write the issues on different coloured cards and pin them up on the board under the sentencing option that they relate to. Again, one issue per card. If the issue related to more than one sentencing option, encourage them to place it under the option they have most experience of. Note, participants don't have to write lessons learned for each named sentencing option just 	

those that they have experience of³.

4. Debriefing using vernissage (see Training Tips in this module). 10
The pairs should circulate and read each other's cards. They are encouraged to add comments on the other pairs' work on post-it notes and stick them on the board. The post-it notes should agree with the point, disagree or ask for clarification of anything they don't understand. Ensure that all participants have an opportunity to read the comments before returning to plenary.
 5. Plenary debrief: Ask the plenary for their observations, and if there is anything that surprises them. Invite participants to gather around the pin boards and look at the post-it notes. Highlight a few of the comments. Arrange for the output of the exercise to be typed up and distributed. 15
- **Alternative Activity** – if community services isn't mentioned you should go back to the example of community service in Canada and ask the plenary if they think it is possible to implement this kind of project in their country and if so what would be the issues and challenges?
 - Refer participants to Handout 2, Sentencing Options; Handout 3, Examples of Residential Sentencing Options in the participant's manual.

³ For a less experienced group you might want to just ask them to brainstorm the issues to consider when implementing different sentencing options and discuss later which of the options the issues might relate to.

Power Point Slides 1-12

The slides are available on the CD-ROM

Slide No

Speaking Points

Purpose of Sentencing

- To hold a child accountable for the offence committed.
- Imposing fair sanctions that have meaningful consequences for the child and promote his/her rehabilitation and reintegration into society.

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1

BEFORE SHOWING SLIDE:
Ask participants 'what is the purpose of sentencing?'
Take a few responses and show slide.

Assessing Risk during the Sentencing Process

Sanctions must consider a risk posed by offender.

Principles of assessing risk:

- Minority of offenders are "serious offenders"
- Only highest risk offenders need high security
- Offense is not reliable indicator of offender risk
- Priority of sanctions should be rehabilitation not punishment
- Community contact builds community responsibility

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2

Nature of Risk

- Peer risk (danger to those around offender)
- Re-offence (Risk of repeating offence)
- Community risk (risk to community, fear)

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3

Assessment factors

Static

- Age at first conviction
- Number of prior convictions
- Severity of prior criminal convictions
- History of childhood abuse/neglect
- History of drug or alcohol abuse
- History of education, employment, family and social factors

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4

BEFORE SHOWING SLIDE:
Ask participants to spend a few minutes at their tables listing some of the risk factors that the assessment should consider.

Take a couple of suggestions from each table before showing the slide.

Assessment factors

Dynamic

- Antisocial attitudes, values and beliefs
- Antisocial peers and associations
- Substance abuse
- Educational deficiencies
- Vocational deficiencies
- Mental health issues
- Life skills and social skills deficiencies
- Character defects (anger, aggression, impulsivity...)

JUVENILE JUSTICE MANUAL SECTION 8

5

Sentencing Principles

- A sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the child for that offence
- The sentence must not exceed the sentence that an adult would receive
- The sentence also promotes the rehabilitation of the child

JUVENILE JUSTICE MANUAL SECTION 8

6

Factors to guide a Court in determining an appropriate sentence

- The extent to which the child participated in committing the offence;
- The harm done to victims and whether the child intended to cause it or could reasonably have foreseen that it might occur;
- Any previous findings of guilt relating to the child.

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In determining the seriousness of the offence and the degree of responsibility of the child, the court must consider some of these factors:

The harm done to victims and whether it was intentional or reasonably foreseeable.

Previous findings of guilt;

Any other aggravating or mitigating circumstances related to the child or the offence.

The sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult convicted of the same offence committed in similar circumstances

The sentence imposed on the child must:

Be the least restrictive sentence that can achieve the purpose of rehabilitation, be the sentence that is most likely to promote the rehabilitation and reintegration of the child; and promote a sense of responsibility in the child and an acknowledgement of the harm done to the victim and the community.

A previous finding of guilt does not necessarily mean that a child should receive a more severe sentence than would be appropriate if he or she were a first offender. However, previous findings of guilt may indicate a greater degree of responsibility for the current offence.

Other factors referring to circumstances that may have occurred before the imposition of the sentence that may decrease the severity of the sentence to be served by the child

- Any reparation made by the child to the victim or the community
- The amount of time that the child may have spent in pre-trial detention as a result of the offence
- Any other aggravating and mitigating circumstances related to the child or the offence, such as the nature and circumstances of the offence, the personal history, social circumstances and personal characteristics of the child

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Non-custodial sentencing

Purposes of alternative sentencing:

- More appropriate for certain types of offences (minor offences) and offenders (age and personal circumstances)
- Promote integration back into the community as well as rehabilitation
- Are more humane
- Less costly than sanctions involving punishment

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Alternative sentencing in the Beijing Rules and the UN Standard Minimum Rules for Non-Custodial Measures:

- Verbal sanctions e.g. admonition, reprimand & warning
- Conditional discharge
- Status penalties
- Care, guidance and supervision orders
- Financial penalties, compensations and restitution
- Probation
- Community service orders
- Intermediate treatment and other treatment orders as referral to an attendance center, house arrest
- Orders to participate in group counseling and other similar activities communities or other educational settings

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Residential sentencing options

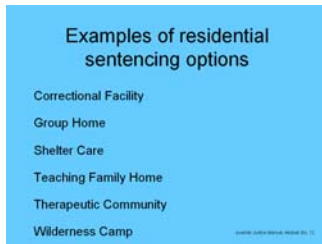
Principles

- International standards clearly reflect a strong preference for non-custodial sentences wherever possible
- The juvenile justice system should reserve its most serious intervention for the most serious crimes and reduce the over-reliance on incarceration for non-violent children
- Residential placement facilities for children should offer comprehensive treatment programs for these children with a focus on education, skills development and vocational or employment training and experience

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Non custodial sentences include:
 Fine (with or as part of sentence); Financial Penalty
 Probation (judicial-prior to or in place of custody),
 Unsupervised (passive), Supervised (active)
 Early Release (administrative- after sentencing),
 Remission, Parole, Deferred or Conditional Sentence, with
 successful reparations, treatment and programs.

Restitution, Community service, Work performed by an offender to the benefit of the community with a focus on rehabilitation and reparation. Intermediate treatment and other treatment orders as referral to an attendance centre, house arrest.
 Drug, alcohol and substance abuse treatment programmes.
 Structure rehabilitation programmes. Educational and vocational Training Programme. Skill development



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Correctional Facility: Any public or private residential facility designed to physically restrict the movements and activities of child offenders.

Group Home: A residential placement that operates in a homelike setting in which a number of unrelated children live for varying time periods.

Shelter Care: Provides temporary residential care to children who are in need of short-term (1 to 30 days) placement outside the home.

Teaching Family Home: Long-term, residential facility for troubled children, featuring a family teaching team in a family style living environment.

Therapeutic Community: Drug-free residential program that provides a highly structured prosocial environment for the treatment of drug abuse and addiction.

Wilderness Camp: Residential placements that provide participants with a series of physically challenging activities, such as backpacking or rock climbing in an outdoor setting.

ADDITIONAL READING

Justice for children: Detention as the last resort, Innovative Initiatives in the East Asia and Pacific Region UNICEF [www.unicef.org/protection/files/Justice for Children Detention.pdf](http://www.unicef.org/protection/files/Justice%20for%20Children%20Detention.pdf)

www.unodc.org/pdf/criminal_justice/protecting_children_en.pdf to access icpjj publication

CHECKLIST FOR FACILITATORS

Key Message/ Reflective Questions for UNICEF staff
Remember that deprivation of liberty should be the measure of last resort
Always promote alternative measures to imprisonment.

FEEDBACK ON THE WORKSHOP

To ensure that the workshop is effectively meeting the needs of participants, it is important to continually monitor the proceedings through a system of participant feedback. If the feedback indicates that adjustments should be made to the workshop structure (e.g., slowing the pace of the sessions, or using fewer presentations), they should be made as soon as possible by the workshop facilitators. Any or all of the four tools listed below may be used during the workshop.

Daily Feedback Questionnaire: a one-page questionnaire with simple questions such as “What did you or didn’t you like about today’s sessions?” to be filled out at the end of each day.

Mood Meter: a pin board with symbols representing happy, unhappy and neutral feelings about the day’s proceedings. At the end of the day, each participant is asked to indicate their personal feelings by sticking a red dot or a pin under the relevant symbol.

Eyes and Ears: a method of representation by participants in the daily review of proceedings. Two different participants are asked to fulfill this role daily and report back to the group at the end of the day or the beginning of the following day.

Hopes and Fears: a pin board and cards are used at the beginning of the workshop (in conjunction with a review of the workshop objectives) to allow participants to share their expectations and concerns (or hopes and fears) about the workshop. Individual concerns can be removed at any time during the workshop by participants, and the remaining cards are reviewed in the final module.

At the end of the workshop, all participants should evaluate the overall workshop, to improve future workshops and workshop materials. Sample evaluations are included in the annex.

FEEDBACK TO PLENARY

The following are useful alternatives for sharing information and the results of group discussions with the plenary. A good variety of feedback methods helps to keep the participant's concentration up.

Option 1. Vernissage

Instead of making a verbal presentation of the results of their group work, teams visit the pin board of other teams (like at vernissage on the first day of an exhibition at a gallery). Each participant is invited to read the visual presentation and comment in three ways:

Sticking a tick on post-it note to show agreement with any point, and adding a comment which builds on that point.

Sticking a cross to indicate disagreement with any point and adding the reason for disagreement,

Sticking a question mark to say 'I don't understand this point'.

As a facilitator, you invite participants to view each board and clarify the question marks and comment on the ticks and crosses.

Option 2: Jigsaw

This is useful when you have a number of topics to cover with a large group. It provides a lively alternative to giving several straight presentations followed by a short discussion on the various topics, and takes less time.

1. Divide participants into as many groups as there are topics (four to five groups/topics is an optimum number).
2. Assign each of the groups a topic for discussion.
3. Give each group specific questions relating to the topic to help guide their discussion.
4. Before the participants settle into their groups, allow 10 minutes to go around the room and post up issues or questions on the flip charts posted at the various 'tables' that they would like discussed or considered by the group who will be discussing that topic in more depth. This will avoid frustration by some participants who have been allocated a different theme, or not being able to give their input into another group's discussion.
5. Ask each group to discuss their topic for between 30 – 60 minutes.
6. Ask everyone in the group to act as rapporteur for their topic.
7. When the groups have discussed the topic sufficiently, recompose the groups so that

each group has a participant from one of the other themes. Each rapporteur presents the key issues arising out of their thematic discussions to the other members of the group (10-15 minutes each). This allows some people to have discussed some topics more in-depth than others, but all benefit from the overall discussion.

8. Hold a plenary discussion for 10-20 minutes, summarizing the points from the group discussion and bringing out any issues that may not have been mentioned.

Option 3: Information Market

The purpose of this approach is to share information on several topics with a large group in a participatory manner.

Ensure that participants have received any reading relating to the topics to be discussed ahead of time. A short brief to direct their reading is also recommended. This could be in the form of questions to allow participants to identify key points and issues arising out of the reading.

This exercise requires one facilitator per topic. The facilitators can be selected from among the participants themselves if you know some to be good facilitators or content experts.

1. Introduce the topics in the plenary to everyone.
2. Split the participants into as many groups as there are topics to discuss.
3. Ask participants to form working groups with a facilitator who will facilitate the process of discussion (30 minutes to 1 hour).
4. After allocated time, ask participants to rotate and discuss another topic with a different facilitator.
5. Repeat this process up to 4 times.
6. The facilitators do not shift. They gather the different inputs or findings, which they later summarize and share with the plenary.

Option 4: open Information Market

In this alternative to Option 3, content is made by the participants themselves on the basis of pre-assigned readings. Participants are invited to prepare a presentation in whichever format they wish (drawing, symbols, cards or PowerPoint) and to set up their presentation in an assigned area of the room or building. The rest of the participants then visit that space together with the facilitator to receive the presentation. The facilitator can assist in answering questions, clarifying issues or supplement information given.

MODULE SIX

SENTENCING

PARTICIPANT'S MATERIALS

OBJECTIVES

At the end of this module participants will:

- Increase their knowledge on the principles and process underpinning a determination of a sentence.
- Be able to apply the above knowledge in practical cases.
- Be able to determine appropriate sentences.

TIME [2 Hours 20 minutes]

CONTENT

6.1 Sentencing Guidelines
6.2 Sentencing Options

The Cases of Bobby and Juan

Case Study a): Bobby J. (age 17)

Bobby is charged with felony destruction of property. Information known at the time of pre-trial detention hearing: Bobby lives in a suburb of a major city. He was arrested last night for vandalizing a nearly finished, but still unoccupied home during an unauthorized party of more than 100 teenagers. According to press reports, three other local children – ranging in age from 17 to 21 – had distributed flyers in the area, announcing a keg party at \$5 a head last Saturday night. An unoccupied home -- owned by a couple unrelated to any of the organizers -- was listed on the flyer as the party's location. Scores of teens and children showed up and during the course of the night caused approximately \$250,000 in damage. They smashed dozens of windows, kicked and punched holes in the walls and ceilings, damaged marble counter tops and urinated on appliances.

The police have arrested approximately a dozen children, one of whom identified Bobby as being one of the partygoers who smashed in windows with a football helmet. Bobby has never been arrested before. He lives with his parents.

Information known at the time of transfer hearing/disposition:

Bobby is an average student at the local high school, where he is a junior. He plays football and is very committed to his sport. Bobby's home life is unremarkable; he grew up with his parents, both of whom work, and has two younger siblings. Bobby says that he had not seen the flyer advertising the party, but heard about it from one of his friends on the football team. Bobby has attended a number of parties, usually at the home of a friend or acquaintance whose parents were out of town. He arrived at the party at around midnight with some of his team-mates. When he got there the party was in full swing. He admitted that a number of people appeared drunk and some guys were urinating in the living room.

Bobby says he and his football friends drink regularly on the weekends, but that night he probably drank more than he usually did. He explained that he did not go into the party intending to do any harm. He remembers his team-mate Steve was joking around, wearing his football helmet while he danced. Bobby remembers taking the helmet off

Steve's head, and then swinging it into a glass window; before he knew it, he was smashing a number of windows. Bobby says that he never would have done anything like that if he had not been so drunk. Bobby says he knew that they were in the house without the owners' permission.

Bobby's parents are shocked. They did not know where Bobby was that night; they do not keep tabs on Bobby or give him a curfew because he has always been a good kid.

Recommend an appropriate sentence and the principles underpinning it.

MODULE SIX

EXERCISE 1

Case Study b): Juan M. (age 14)

Juan M. is charged with arson. Information known at the time of intake/pre-trial detention hearing: According to the police report, witnesses saw Juan and a 13-year-old boy throwing lit matches into a shopping mall dumpster earlier that evening. The dumpster fire spread to the adjacent toy store, causing extensive damage to the exterior walls. When he was arrested in front of his apartment house later that evening, Juan made a statement to the police that he had been looking for toys in the dumpster with his friends, and that another boy who was with him had thrown the matches into the dumpster. He made a second statement at the police station that they had just lit the matches to see better into the dumpster because it was dark out, and one of the matches just fell in. Juan has two prior adjudications: one for unauthorized use of a vehicle (passenger) when he was 12 and a second for destruction of property (for vandalism in a local playground) last year. Juan lives at home with his mother, who says that Juan is always acting out, but that she wants him home with her.

Information known at the time of transfer hearing/disposition:

Juan grew up in a fatherless household headed by his mother; his father had no involvement with him until last summer. Juan has been in special education from kindergarten until sixth grade because of emotional problems and a learning disability. He was mainstreamed last year, but is doing very poorly and is very frustrated with his schoolwork, according to his mother. Juan has problems with school attendance, cutting classes to go to the arcade and out in the neighbourhood. His mother reports that Juan is good at fixing things around the house, like the radio, and Juan says he would like to study electronics. School records show that Juan has tested well for activities that require speed and visual-motor coordination, but he does poorly in math and has poor verbal skills.

Juan has been involved in therapy since elementary school because of his behavioral problems. He admits that he has a temper control problem, which leads to his provocation of altercations with his peers. Juan also has problems in school, where his record shows that he has thrown tantrums at teachers and punched walls. Juan said that he is afraid of crowds and feels that other kids try to hurt him for no reason. He reports that his mother often screams at him and threatens to place him in foster care. Juan currently takes medication for depression and hyperactivity

Recommend an appropriate sentence and the principles underpinning it.

Sentencing Guidelines

Purpose of Sentencing

Sentencing is inextricably linked to the overall principles and values underlying a juvenile justice system. These include restorative justice, respect for human rights and dignity, proportionality, individualization and limited use of deprivation of liberty.

The purpose of sentencing is to hold a child accountable for the offence committed. This is accomplished by imposing fair sanctions that have meaningful consequences for the child and promote his/her rehabilitation and reintegration into society.

The court must consider what consequences would be meaningful for the individual child. Consequences that are meaningful may vary depending on the particular child, but they must be consistent with the principles of sentencing, such as the principle of proportionality. In addition, if a custodial measure is being contemplated, it is important to recognize that non-custodial consequences, such as repairing the harm done to the victim, are more likely to be meaningful for many children than custody.

A valid sentence must also promote the rehabilitation of the child and his or her reintegration into society. Ideally, sentences will result in successful rehabilitation and reintegration of the child. However, research in this area indicates that there are numerous factors beyond the control of the court that can influence the chances of success with a particular child. Thus, the court is required to choose a sentence that will promote, but not necessarily ensure, rehabilitation and reintegration. It should be recognized that imposing a sentence with terms and conditions likely to be breached would not be consistent with promoting the rehabilitation of the child and, therefore, would not be a valid sentence.

Assessing Risk during the Sentencing Process

Assessing the risk can be important in a variety of contexts as sanction must consider the risk posed by the offender. In the juvenile justice system, the issue is frequently a consideration in the disposition of cases following adjudication. Risk assessment is also important for the purposes of programme placement and rehabilitation planning.

The guiding principles are the following:

- Minority of child offenders are 'serious offenders'
- Only highest risk offenders need high security
- Offence is not reliable indicator of offender risk
- Priority of sanctions should be rehabilitation not punishment
- Community contact builds community responsibility.

Assessment Factors

The purpose of risk assessment is aided by the identification of **risk factors (static and dynamic)**.

Static risk factors are those that are not subject to change. For child offenders, the relevant static risk factors include gender, low socio-economic status, instability of family environment, a history of school problems, a history of childhood abuse/neglect, a history of substance abuse, a history of crime and violence (exposure to and victimization by as well as perpetration of), younger age of onset of antisocial behaviors, and certain kinds of disorders or deficits.

Dynamic risk factors are those that have the potential to change through planned intervention, rehabilitation, or other influences. These changes can occur within the individual (e.g., treatment, rehabilitation) or within the situation (e.g., living setting, access to weapons). Thus, in terms of the broad purposes of risk assessment, knowing the relevant dynamic risk factors associated with child offending would allow targeting areas for risk-reducing intervention planning. Among the dynamic risk factors for child offenders are current familial instability and problematic interactions, association with delinquent peers, access to weapons, victim availability, and poor use of leisure time, the presence of conduct problems and other non-severe pathologies, substance abuse.

SENTENCING PRINCIPLES

Principles that are particularly relevant to the determination of a child sentence include the principle that proportionate accountability of children must be consistent with their greater dependency and their reduced level of maturity. In addition, the measures taken against children who commit offences should:

- Reinforce respect for social values;
- Encourage the repair of harm done to victims and the community;
- Be meaningful for the individual child, given his or her needs and level of development;
- Where appropriate, involve the parents, the extended family, the community and social or other agencies in the child's rehabilitation and reintegration;
- Respect gender, ethnic, cultural and linguistic differences;
- Respond to the needs of children with special requirements.

Proportionality

A fundamental principle is that a sentence must be **proportionate to the seriousness of the offence and the degree of responsibility of the child** for that offence. In brief, this basic principle of fairness means that less serious cases should result in less severe sentences and more serious cases should result in more severe sentences.

In determining the seriousness of the offence and the degree of responsibility of the child, the court must consider some of these factors:

- The harm done to victims and whether it was intentional or reasonably foreseeable;
- Previous findings of guilt;
- Any other aggravating or mitigating circumstances related to the child or the offence that are relevant.

Having determined the seriousness of the offence and the degree of responsibility of the child, the court must determine which of the possible sanctions or combination of sanctions would be a proportionate sentence. It is quite possible that more than one sentence would meet the requirement of proportionality in a particular case. Other considerations, such as the potential rehabilitative effect of the sentencing options will guide the determination of the appropriate sentence.

For example, a short period of probation with minimal conditions would be proportionate to some less serious offences. A longer period of probation with restrictive conditions would be proportionate to more serious offences.

Sentence must not exceed the sentence that an adult would receive.

The sentence must not result in a punishment that is greater than the punishment that would be appropriate for an adult convicted of the same offence committed in similar circumstances.

Relationship between proportionality, rehabilitation and needs of children

The purpose of sentencing and the rehabilitation principle requires that the sentence also promotes the rehabilitation of the child. The measures or sanctions that are directed at rehabilitation, however, must not violate the proportionality principle. This means that the rehabilitative measures must not result in a sentence that exceeds a response that is proportionate to the seriousness of the offence and the degree of responsibility of the child.

Thus, a child who has committed the same offence as another child should not receive a longer or more intrusive sentence because his or her needs appear to require more intensive rehabilitative measures. Such a sentence would amount to punishing the child because of his or her needs, despite the fact that the judge is well intentioned, concerned about helping the child, and does not perceive the greater degree of intervention as punishment.

If the child has needs that go beyond the appropriate scope of a criminal justice, intervention should be sought outside the child justice system.

The court must assess the remaining possible proportionate sentences, which provides that the sentence imposed on the child must:

- Be the least restrictive sentence that can achieve the purpose of rehabilitation,
- Be the sentence that is most likely to promote the rehabilitation and reintegration of the child;
- Promote a sense of responsibility in the child and an acknowledgement of the harm done to the victim and the community.

The first requirement reflects the fundamental policy that the criminal law should be used with restraint. A child should not be subject to an intervention that is more restrictive or intrusive than the minimum necessary to achieve the purpose of sentencing. This provision generally encourages the use of non-custodial sentences rather than custodial sentences because custody significantly restricts the liberty of the child. However, it is possible that in some circumstances the requirements of a non-custodial sentence would be more restrictive than a short custodial sentence.

The second requirement — that the sentence be the one, among the possible proportionate sentences, most likely to promote rehabilitation and reintegration — encourages the use of non-custodial sentences rather than custodial sentences. The general conclusion from a large body of research is that community-based, non-custodial interventions are more effective than custody in reducing recidivism among child offenders. In light of this research, it is likely to be difficult to demonstrate to the court that a custodial sentence meets this requirement in a case in which there is a credible non-custodial alternative that is proportionate to the seriousness of the case.

Factors to Guide the Court in Determining an Appropriate Sentence

Some of the factors are relevant to the determination of the seriousness of the offence and the degree of responsibility of the child for the offence. These are:

- **The extent to which the child participated in committing the offence**

A child who is the leader of a group of children who commit an offence, for example, has a greater degree of responsibility for the offence than another member of the group who is essentially a follower and plays a minor role in the commission of the crime. The court must take into account this difference in degree of responsibility as it determines a proportionate sentence for each of the offenders.

- **The harm done to victims and whether the child intended to cause it or could reasonably have foreseen that it might occur**

The harm to a victim is relevant to the seriousness of the offence but the full extent of the harm may not have been intended or could not reasonably have been foreseen. The child is not to be penalized for causing harm that he or she did not intend or could not have reasonably foreseen. In determining the seriousness of the offence and a proportionate sentence, the court is to take into account only the harm that was intended or could have been reasonably foreseen by the child.

- **Any previous findings of guilt relating to the child**

The court is sentencing the child for the current offence, not previous offences. The child has already been held accountable for the previous offences and it would be unfair to hold him or her accountable again for those offences.

A previous finding of guilt does not necessarily mean that a child should receive a more severe sentence than would be appropriate if he or she were a first offender. However, previous findings of guilt may indicate a greater degree of responsibility for the current offence. An offender with previous findings of guilt obviously has had experience with the justice system. This experience is likely to suggest that the child was more aware of the seriousness of committing an offence and the impact of offences on victims or the community than a less experienced offender would be. However, this may have less weight if the offender has special circumstances.

Other factors refer to circumstances that may have occurred before the imposition of the sentence that may decrease the severity of the sentence to be served by the child:

- **Any reparation made by the child to the victim or the community**

If the child has done something, prior to sentencing, to repair the harm caused by the offence, the court must take that into account in determining the sentence.

- **The amount of time that the child may have spent in pre-trial detention as a result of the offence**

If the child has been held in detention prior to sentencing, the court must take into account the amount of time in detention. This factor requires the court to give serious consideration to giving credit to the child for the time spent in detention.

- **Any other aggravating and mitigating circumstances related to the child or the offence such as the nature and circumstances of the offence; the personal history, social circumstances and personal characteristics of the child.**

Sentencing Options

According to international standards, sentencing option needs to present a real alternative to custodial sentencing, in particular, imprisonment. Secondly, the sentencing option must be feasible within a country context and not resource-intensive. Thirdly, the sentencing option should be sustainable through inter-sectoral and civil society support and should be simple, accessible and have community support.

There is a broad range of possible sanctions that a court may consider in determining an appropriate sentence. A sentence must be in accordance with the purpose and principles of sentencing and may consist of one or more sanctions that are not inconsistent with each other. The options include both non-custodial and custodial sentences.

NON-CUSTODIAL (OR ALTERNATIVE) SENTENCING

Purposes of alternative sentencing

Alternative or non-custodial sentencing probably has its origin in the realization that imprisonment is not suitable for all offenders, and that it can have a range of detrimental affects, often not anticipated when punishments are imposed. Further reasons for alternative sentencing are that they are considered more appropriate for certain types of offences and offenders; they promote integration back into the community as well as rehabilitation, and are therefore more humane. The appropriateness of sentencing relates both to the nature of the offence and to the personal characteristics of the offender. There is a range of petty offences for which a prison sentence would not be appropriate, as when the age and personal circumstances of the offender make a prison sentence unsuitable.

In addition, alternative sentences are generally less costly than sanctions involving imprisonment, by decreasing the prison population, they ease prison overcrowding and thus facilitate administration of prisons and the proper correctional treatment of those who remain in prison.

Non-custodial options overview

- **Reprimand**

This sentencing option is a formal rebuke by the judge in court. It is essentially a lecture from the judge and may be most appropriate in minor cases in which the experience of being apprehended, taken through the court process and reprimanded appears to be sufficient to hold the child accountable for the offence. It can reinforce to the child that his or her *behaviour* was wrong. It may be appropriate in cases in which the court has determined that reparation made by the offender to the victim, or time spent by the offender in detention, essentially satisfies the requirement of a proportionate sentence.

- **Fine (with or as part of sentence)**

Monetary payments may involve minimal State intervention. Fines are the best-known and most common form of monetary sanction. Fines are considered humane, causing a minimum of social disruption for children who can afford them. Fines, however, may create inequalities by discriminating against poor children, for whom the inability to pay may mean imprisonment.

- **Probation**

The child is found guilty of the offence but is given the opportunity of not serving the sentence under clear and specific conditions. The most common condition is that he/she should not commit an additional offence during the probationary period. The supervision of the child during this period may be minimal, moderate or intensive.

Minimal supervision entails only a few contacts between the child and the supervisor to ensure that the child is abiding by the conditions of the probation or suspended sentence. Breach of probation condition does not automatically lead to an end of probation. There may be judicial warnings, an amendment of the conditions or an extension of the period of supervision.

School-based probation is a programme partnership between juvenile probation departments and local schools that places probation officers directly within the confines of the school. The programme targets students who have been charged with offences and/or are under the supervision of the court. The benefit of school-based probation is that it increases the contact between the officers and the children. Being located in the school also permits officers to check attendance, discipline records, and other information about probationers on a daily basis, as well as to check with teachers about academic progress. Consequently, officers develop more substantial personal relationships with children, resulting in improved communication and understanding.

Intensive/Correctional Supervision

(1) Intensive supervision implies that the child is closely supervised in order to reduce opportunities for re-offending and to assist the child in reintegrating into society. Intensive supervision programmes (ISPs) are community-based, post-adjudication, non-residential programmes designed to provide restraints on offenders in the community. ISPs differ from traditional probation in that they are characterized by higher levels of contact with probation officers or caseworkers and strict conditions of compliance. ISPs generally encompass a wide variety of risk control strategies, including multiple weekly face-to-face contacts, evening visits, urine testing, and electronic monitoring. Most ISPs also incorporate the delivery of a wide range of services to address offenders' needs.

(2) Correctional supervision has a dual function: it can be used as an alternative to imprisonment or it can be used as a method of facilitating the earlier release of people who have been imprisoned. In essence, correctional supervision is a more structured and strictly controlled community-based sentence than the community service orders. The sentence may include the following: house arrest; the performance of community service for a certain number of hours in a community project; participation in treatment programmes, for example, treatment for drugs or alcohol abuse or in a training programme, which will help him/her find work; the payment of victim compensation.

- **Restitution/Community Service**

Monetary restitution is a process by which offenders are held partially or fully accountable for the financial losses suffered by the victims of their crimes.

Restitution is typically ordered to compensate victims in cases of property crime, fraud, forgery, or theft. It may also be applied to reimburse victims of violent crime for expenses related to their physical and mental health recovery.

Direct service to victims is the rarest form of restitution. It is a type of reconciliation in which the offender and the victim meet in a carefully supervised setting to determine how the offender can make restitution directly to the victim by performing a service. These services usually include repairing property damaged by the offender or other services such as lawn mowing or snow removal. This type of personalized restitution incorporates the benefit of the victim being able to meet the offender, which often alleviates the fear associated with the criminal encounter (much like mediation programmes).

The main goals of restitution and community service programmes are to hold offenders personally accountable for their crimes and to make reparations to victims either directly or indirectly. There are three major types of restitution programmes: community service, monetary restitution, and direct service to victims.

Community service is work performed by an offender for the benefit of the community. It offers a way for the offender to be held accountable and to repair some of the harm caused by his or her criminal conduct. This sanction involves a specific number of hours of unpaid work for the benefit of the community. It ought not to interfere with the education of the child, and is usually undertaken outside school hours. Community service also has the benefit of involving the local community in the reintegration of the child. The free consent of the child must be given before community service can be authorized.

- **Child Contracts**

The social (or probation) services department considers a case after having been contacted by the police. After negotiations with the child and his or her family, it drafts a contract taking into consideration the wishes and circumstances of the child and creating as far as possible a coordinated approach. The draft includes a description of the conditions, duration, supervision arrangements and the consequences of any non-compliance during the contractual period. The draft is forwarded to the police for acceptance. The police may propose amendments. Once accepted by the police, it is signed by the child, the parents, the social services and then the police.

The signed contract is forwarded to the court, which fixes a date for the hearing when, according to the rules of conditional discharge, the child makes a full confession and the court agrees to the conditions of the contract. The child contract may cover the following: employment or apprenticeship, participation in educational or training programmes, stipulation of residence, stipulation of leisure activities, treatment for alcohol or drug addiction, and payment of damages.

- **Intermediate Treatment**

Intermediate interventions are programmes that hold children accountable for their actions through more restrictive and intensive interventions (non-residential or residential). Intermediate sanctions are appropriate for children who continue to offend following immediate interventions, children who have committed more serious offences, and some violent offenders who need supervision, structure, and monitoring but not necessarily institutionalization.

Because of the negative consequences of the overuse of secure facilities, many jurisdictions are pursuing alternative options to residential facilities for serious offenders. The use of effective alternatives assures that children who do not require secure care can be supervised in less costly programmes thus reserving secure care space for the most serious offenders. This approach requires juvenile justice systems to examine closely the allocation of resources towards managing public safety and meeting the needs of the greatest number of children. It considers and implements a variety of intermediate interventions. These types of programmes are detailed below:

- **Alternative School:** Alternative schools are essentially specialized educational environments that place a great deal of emphasis on small classrooms, high teacher-to-student ratios, individualized instruction, non-competitive performance assessments, and less structured classrooms. The purpose of these schools is to provide academic instruction to students expelled or suspended for disruptive behaviour or weapons possession, or who are unable to succeed in the mainstream school environment.

- **Day Treatment:** Day treatment facilities (or day reporting centres) are highly structured, community-based, post-adjudication, non-residential programmes for serious juvenile offenders. The goal of day treatment is to provide both intensive supervision to ensure community safety and a wide range of services to the offender to prevent future

offending behaviour. The intensive supervision is fulfilled by requiring the offender to report to the facility on a daily basis at specified times for a specified length of time. Generally, programmes are provided at the facility during the day and/or evening at least 5 days a week. Special weekend activities may also be conducted.

- **Home Confinement with or without Electronic Monitoring:** Home confinement or house arrest—with and without electronic monitoring is a community corrections program designed to restrict the activities of offenders in the community. This sanction allows offenders to remain in their homes, go to work, run errands, attend school, and maintain other responsibilities. However, their activities are closely monitored (either electronically and/or by frequent staff contacts) to ensure that they comply with the conditions set by the court. Offenders placed under home confinement are restricted to their residence for varying lengths of time and are required to maintain a strict schedule of daily activities.

- **Therapeutic Treatment Approaches:** Therapeutic treatment approaches are interventions that may come in many forms, but generally adhere to 'behaviourism', social learning, or cognitive behavioural models that are designed to reinforce pro-social behaviour. Some specific types of treatment approaches include: individual therapy, anger management, problem solving, behaviour modification, group therapy, multimodal treatments, multi-systemic therapy and individualized case planning.

Examples of Residential Sentencing Options

International standards clearly reflect a strong preference for non-custodial sentences wherever possible. The juvenile justice system should reserve its most serious intervention for the most serious crimes and reduce the over-reliance on incarceration for non-violent children. If the court decides however to impose custody, it must justify its decision by including in its reasoning an explanation of why a non-custodial sentence was not adequate to hold the child accountable.

Children whose offences are serious or who fail to respond to other sanctions are handled at a different level of the juvenile justice continuum. These children may be committed to out-of-home placement in an institutional or camp-like setting, or they may be eligible for an alternative placement, such as community confinement. Residential placement facilities for children should offer comprehensive treatment programmes children with a focus on education, skills development, and vocational or employment training and experience.

The programmes considered below include programmes from all residential settings, including secure and non-secure residential facilities, institutions, training schools, hospitals, group homes, shelters, foster care, treatment facilities and camps/wilderness programmes, among others:

Correctional Facility: Any public or private residential facility with construction fixtures or staffing models designed to physically restrict the movements and activities of children or other individuals that is used for the placement, after adjudication and disposition, of any child who has been adjudicated as having committed an offence, or of any other individual convicted of a criminal offence.

Group Home: A group home is a residential placement for children that operates in a homelike setting in which a number of unrelated children live for varying times. Group homes may have one set of house parents or may have a rotating staff. Some therapeutic or treatment group homes have specially-trained staff to assist children with emotional and behavioural difficulties.

Shelter Care: Shelter care provides temporary residential care to children who are in need of short-term (1 to 30 days) placement outside the home. Shelter care facilities are generally non-secure or staff-secure.

Teaching Family Home: A teaching family home is a long-term, residential facility for troubled children, featuring a family teaching team in a family-style living environment. The family teaching team generally consists of a married couple who provide intervention strategies to create daily opportunities for teaching, learning, and a wide variety of other skills.

Therapeutic Community: A therapeutic Community (TC) is a drug-free residential programme that provides a highly structured pro-social environment for the treatment of

drug abuse and addiction. It differs from other treatment approaches principally by its use of the community as the key agent of change, in which treatment staff and recovering clientele interact in both structured and unstructured ways to influence attitudes, perceptions, and behaviours associated with drug use. In addition, TC uses a staged, hierarchical model in which treatment stages are related to increased levels of individual and social responsibility.

Wilderness Camp: Wilderness camps or challenge programmes are generally residential placements that provide participants with a series of physically challenging activities, such as backpacking or rock climbing in an outdoor setting. These programmes vary widely in terms of settings and types of activities and therapeutic goals, but their treatment components are grounded in experiential learning which advocates 'learning by doing' and facilitates opportunities for personal growth.

Example: Community Service in Canada

Community service in Canada

Background: Funded jointly by the Ontario Ministry of Correctional Services and the Ministry of Community and Social, the Community Service Orders (CSO) programme at St. Leonard's administers the sentences of male and female offenders who are ordered by the court to perform community service work.

CSO participants are usually first or second time offenders. The services performed are as varied as the individuals themselves. As a result, the staff attempts to match, as best as possible, the needs and abilities of each offender with participating agencies. Currently, over 130 community agencies accept CSO clients.

Since 1984, almost 90% of child offenders have successfully completed their CSO placements. In the 1997/98 Fiscal Year, the courts ordered 29,607 hours of Community Service to children and adults in this community. During the same period, children and adults successfully completed 22,863 hours of community service.

BENEFITS OF THE CSO PROGRAM:

- Offers a community-based alternative to incarceration.
- Allows the offender to participate in the determination of an appropriate sentence.

- Facilitates the participation of the community in the Criminal Justice System.
- Encourages the responsible behaviour of the offender.
- Provides a worthwhile experience to the offender by offering an opportunity to learn new skills, enhance existing skills, gain a sense of self-worth, self-esteem and a sense of accomplishment from the completion of their work.
- A programme of tangible benefit to the community.
- Promotes a greater understanding of offenders within the community.
- Encourages offenders to spend their time in a meaningful way.
- Brings the offender into contact with the recipients of the help he/she is giving.
- Gives the offender an opportunity to work alongside non-offenders.

MODULE SIX

HANDOUT 3

CSO Child: Keeping children in contact with their community, making them take responsibility for their actions and providing them with necessary employment and social skills are just a few of the goals behind the CSO programme. Mandated for children between the ages of 12 and 15, St. Leonard's has been involved with the CSO programme for children since 1982 and ensuring that there are viable alternatives to incarceration. By carefully screening each client, the staff attempts to place the individual in an environment that will bring out their best in an attempt to make the placement beneficial for all those involved. Each client is supervised while at their placement, and reports are sent directly to the staff regarding their activity, and ensuring that the hours assigned by the court are completed.

With over 130 local non-profit service organizations participating in the programme, clients have a chance to work directly with the community and develop the connections that will help ensure a more healthy, pro-social lifestyle. Individuals willfully failing to complete their court mandated order can be charged under Section 26 of the Young Offenders Act where they face a maximum penalty of 6 months in custody and/or a \$1000 fine.