

Alternative Dispute Resolution In Criminal Cases

or

'Dogs & Cats Working Together'

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Example: Milwaukee County Early Intervention Project

- **Who: A Collaborative Policy Effort**

The Milwaukee County District Attorney's Office
The Wisconsin State Public Defender Milwaukee Trial Office
Private Milwaukee Defense Bar
Pretrial Monitoring Services.

- **What: Alternative Dispute Resolution in Criminal Cases**

Criminal cases resolved with agreements negotiated prior to the adversarial process.
Goals, desired outcomes and strategies mutually negotiated on case-by-case basis.
Problem solving approach to criminal justice cases.

- **Where: Milwaukee County**

- **When: Initiated in January 2007, through present.**

- **Why: Sending every (drug) offender to jail/prison has NOT worked.**

Initial Milwaukee Early Intervention Project Protocol Goals:

- 1) To ensure that all members of our community who violate the law are held accountable while receiving a fair and just result;
- 2) To help offenders overcome the obstacles that may lead them to the criminal justice system and assist them in becoming productive members of our community;
- 3) To help protect the citizens of our community by placing the majority of limited resources into prosecuting violent criminal offenses.

Current Early Intervention Programs Purpose:

Goal of these programs is to reduce the long-term recidivism risk of individuals involved in the justice system while at the same time ensuring public safety and the efficient allocation of limited criminal justice resources.

To maximize the opportunity to support and encourage pro-social attitudes and behaviors among those involved in the criminal justice system, while minimizing the potential negative consequences that may accrue to an individual involved in the system, such as social stigma, exposure to higher risk offenders, and loss of pro-social supports (family, employment, educational activities, etc.).

Ensure greatest opportunity for public safety through swift delivery of services and interventions, commensurate with the possibility that an individual will continue criminal behavior (level of re-offense risk) and the presence of risk factors that are indicators of criminal behavior (criminogenic needs).

Provide for the best use of criminal justice dollars and resources by reducing the costs of processing cases for those at lower risk to reoffend and instead investing those resources in those who pose the greatest risk to the community.

- **How: Agreements Between Offenders and Prosecutors**

Diversion Agreements – no charge filed – out-of-court process – case remains ‘no processed’ if agreement fulfilled. For those determined to be low risk to reoffend. Agreement conditions typically focus on restorative justice (victim offender conferencing, letter of apology), or accountability (restitution, community service).

Deferred Prosecution Agreements - charge filed – court reviews – charge reduced or dismissed if Agreement fulfilled. For those determined to be moderate to high risk to reoffend. Agreement conditions typically focus on reducing risk by overcoming criminogenic needs: AODA Tx, sobriety, mental health treatment & medication management, cognitive intervention.

MKE Drug Treatment Court – long-term, court-monitored phased programming aimed at achieving sobriety for drug-dependent offenders

MKE Veterans treatment Initiative – court-monitored programming for offenders who are armed services veterans

- **Additional Characteristics of the Milwaukee Early Intervention Programs:**

A protocol governs policy related to the Project – the protocol was first created by the DA’s Office in collaboration with the Public Defender, private bar, and pre-trial services. The protocol is currently revised, to incorporate new program options, and to reflect current research.

Policy decisions and project adjustments made collaboratively – prosecution, defense, & pre-trial services.

All Diversion/Deferred Prosecution Agreements are case-specific.
The agreements are customized to the case, as opposed to vice versa.

Agreement conditions are intended to address the offense and the offender (eg. Restitution, AODA/M.H. treatment, community service, victim/offender conferencing).

Agreements are for cases where issues of guilt/innocence are not in dispute.

Adversarial process suspended in favor of problem-solving approach.

- Offender assessed for risk.

- Pre-charging conference: prosecutor, offender and counsel.

- Discovery shared up front.

- Goals of specific agreement negotiated and defined.

- Positive and negative outcomes of agreement negotiated and defined.

- Conditions of agreement negotiated and defined.

- Direct interaction with offender by both sides – prosecutor and defense.

Risk/eligibility assessment in every case.

Not a first offender program.

Few constraints on eligible cases; not just for misdemeanors/property offenses.

Ongoing collaborative training for prosecutors, public defenders, private bar.

Uniform standard agreement templates.

Agreements monitored by third party.

- Pre-trial services provides monitoring in eligible (per risk assessment) cases.

- Community monitors in other cases (treatment providers, case workers, clergy, sponsors, etc.).

- If part of conditions, treatment information & drug screens shared with both sides.

Data compilation and analysis.

Advocacy Issues for Criminal Lawyers Using ADR Methods

Problem solving approach – not lawyerly?

*Lack of adversarial approach or litigation does not mean lack of advocacy.
Factual inquiries and investigations are still required.*

Problems with innocence.

These ADR programs & methods are for when guilt is not (fully) in dispute.

Litigation: constitutional motions and challenges; preliminary hearings.

Not considered a barrier to participation. (Milwaukee)

Client management. Selling 'no' lawyering.

*Define the goal of representation – reduce criminal liability exposure, reduce jail/prison, avoid criminal record, etc. Does an ADR method further this goal?
Sell the program or ADR method as a mean to the goal.*

Shedding limitations on creativity.

*ADR, particularly in criminal justice, is unconventional: so should your thought process be.
Self-education and research.*

Possible approaches are limitless.

Additional Wisconsin Resources:

<http://www.wicourts.gov> > about the courts > programs > Effective justice strategies/Alternatives to incarceration

[2012 National Center for State Courts Report: Effective Justice Strategies in Wisconsin](#)



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