

FIVE PRACTICAL STEPS COURTS CAN TAKE TO REDUCE IMPRISONMENT OF INDIGENOUS PERSONS

Stewart O'Connell —6 February 2016

1. ENSURE UNDERSTANDING OF OBLIGATIONS AND POSSIBLE CONSEQUENCES

- a) Use hearing enhancement devices;
- b) Use interpreters;
- c) Use plain English and Indigenous conceptual frameworks (see the Plain English Legal Dictionary (ards.com.au));
- d) Ask the person to explain back their understanding of their obligations and possible consequences;
- e) Be satisfied that the person has the cognitive ability to retain information.

2. GIVE EVERY OPPORTUNITY FOR AN INDIGENOUS PERSON TO BE GRANTED BAIL

- a) Be the circuit breaker that allows lawyers time to prepare a proper application;
- b) Identify the Court's concerns and give time for them to be addressed.

3. HAVE A GREATER ROLE IN THE PRE-SENTENCE PROCESS

- a) Ask for preliminary assessments for Foetal Alcohol Syndrome, Post Traumatic Stress Disorder and acquired brain injury;
- b) Ask for a senior elder/s from the person's community to attend sentencing;
- c) Ask for any representatives of any clubs/organisations the person is involved with to attend;
- d) Ask for any relevant service providers to attend;
- e) Make sentencing a less formal and more communal process;
- f) Become familiar with the wider Aboriginal community and their challenges;
- g) Be open to opportunities to get sentencing remarks to an Aboriginal audience.

4. HAVE A GREATER ROLE IN THE POST-SENTENCE PROCESS

- a) Ensure obligations and possible consequences of sentence are understood;
- b) Outline specific sanctions for specific breaches;
- c) Ensure that Probation and Parole are accountable for achieving specific outcomes;
- d) Monitor progress at regular intervals;
- e) Provide incentives.

5. WHEREVER POSSIBLE, ADVOCATE FOR FUNDING TO BE DIVERTED TO THE SERVICES THAT WILL REDUCE AND PREVENT FURTHER CRIME

- a) In sentencing remarks note the absence of a service that is achieving success in dealing with the particular issue/s the person before you is facing;
- b) Praise those services that are achieving positive results;
- c) Note the Court's opinion that a certain service would likely be of significant help if it was properly funded;
- d) Note the deficiencies in normal sentencing principles as they apply to Aboriginal people.