

**Swift, Certain, & Fair Implementation Evaluation Report:
Defense Attorneys' View of the Program**

Working Paper #2017-16

October 2017



July 2017

Na Liu, M.S.
Research Associate
585-475-4834
lcngcj@rit.edu

John Klofas, Ph.D.
Director
585-475-2423
jmkgcj@rit.edu

www.rit.edu/cla/criminaljustice/cpsi/

Introduction

Defense attorneys are considered as the first advocates of the Monroe County Swift, Certain, and Fair (SC&F) program, because clients are likely to rely on their interpretations of the program. Moreover, their professional advice helps clients make the decision to enroll in the program or reject the plea offer. Based on the relationship between defense attorneys/public defenders and their clients, they are tasked to make sure clients understand the risks and benefits of the program as well as to ensure clients' initial buy-in to the program which is critical. Unlike other stakeholders—such as the Probation Supervisors, the (Assistant) District Attorney and the Judge—defense attorneys do not take active roles in the implementation of the Monroe County Swift, Certain & Fair Probation Program. Instead, they focus on representing their clients in court— they are the “first line of communication between court and the offender” (See www.swiftcertainfair.com) when their clients abscond. Collecting information from defense attorneys and public defenders enables us to identify some important factors that may help improve the quality of SC&F future implementation and expansion.

Data Collection

For this report, researchers interviewed two SC&F participants' lawyers on their knowledge and thoughts of the program, as well as their understanding of the program's impact on their clients (See Appendix A for the list of questions used for the interview). We obtained the contact information of the interviewees outside the courtroom after their clients' SC&F court appearance and then contacted them for an interview request. Once the individual agreed to the interview, researchers scheduled a face-to-face or phone interview at the convenience of the interviewee. For each interview, the interviewee was provided with an introduction to the program evaluation as well as a statement of confidentiality. The researchers took notes of the

interview and then generated key information for the evaluation report based upon the content of the interviews.

The two lawyers that were interviewed both specialized in criminal defense, and each was assigned to represent one SC&F participant. One of the interviewees was a public defender and the other a defense attorney working in a private law firm. The public defender that we interviewed estimated his caseload as between 60 to 70 cases, and the defense attorney gave an estimation of 30 cases.

Key Findings

Client Background VS. SC&F Criteria: “Most of my gun cases don’t fit into that area.”

First of all, both of the interviewees spoke highly of the gun court: since the launch of the gun court in Monroe County, interim supervision probation alone has offered many of their clients an alternative to a prison sentence – “originally those cases would be considered for prison, but now they have an opportunity to re-operate in the community...that alone, is a step in the right direction.” Both interviewees had a general understanding of the criteria for the SC&F target population such as the age limit, gang status, and a certain amount of criminal history, but had little knowledge on how exactly the screening procedure is done.

Even though the gun court model overall has offered many people charged with gun-related crimes alternatives to prison sentences, both lawyers thought that there was a need to extend the criteria of programs like SC&F to allow more clients to benefit from it. Since SC&F started screening candidates in January 2017, a large number of the two interviewees' caseloads were screened for SC&F, but eventually sentenced to interim probation supervision. Usually, during the pre-indictment conference, the lawyers would advise some of their clients who they thought fit the criteria to get into SC&F. However, the very specific criteria/standard that clients

have to reach in order to be considered for SC&F became the major obstacle for their enrollment. One interviewee mentioned that he had recommended two other clients for the SC&F program thinking that they were both qualified, but both were eventually rejected by the DA.

The newly launched pilot program indeed offered some young individuals with some criminal background an alternative, but some people without enough criminal background – especially first-time offenders who are no longer eligible for Youth Offender treatment – were filtered out and received prison sentences. In the lawyers' eyes, the SC&F program offered a very specific group of people "privilege" which can be unfair to other clients who have limited criminal backgrounds. One interviewee used his client as an example to talk about the criteria for SC&F: "I have one client who got his very first criminal possession of firearm charge and went to prison for two years, why wasn't he considered (for SC&F)?"

Researchers also asked whether the two lawyers were aware of the change in the SC&F screening criteria. One interviewee stated that he was aware of the change and talked about his understanding of it: "...maybe because they (major stakeholders) weren't getting enough people... they either wanted to increase the number or make it look like it was working by enrolling more people with lower risk." The other interviewee did not know about the criteria change, but after researchers gave a description of it, he considered it to be a positive change of the program. He thought that everyone who received a pending gun charge should be considered for the program even if it is the individual's first gun offense. In this lawyer's opinion, getting caught with an illegal firearm for the first time is only "the tip of the iceberg" – the individual was probably on his/her way to committing future crimes. Programs like SC&F provide both supervision and opportunity for the individual while keeping him/her out of prison, therefore it should be made available to more people with a variety of backgrounds.

Pros and Cons of SC&F Program Design

The two interviewees talked about the design of SC&F, from the program contract, sanction grid, and major needs of the clients, to the negotiation of potential prison sentences. Both lawyers said that they reviewed the contract with their clients in a clear-cut manner, which was to present clients with the two choices they faced: "I explained...that there were two options: (the first choice is that) you enter this program, but it's going to be strict and you have a significant amount of time to serve if you fail, or you can take the shorter prison sentence that you are also offered right now." At that time, he advised the client to take the prison sentence because he thought the young individual was not going to successfully complete the program.

One interviewee mentioned that he did see an effort from program designers such as the District Attorney and the Mayor to ensure program buy-in among public defenders and defense attorneys. He understood that the program could provide an opportunity for his clients to stay out of prison, but he thought that the message behind the program was to simply "put young people in a condition where they are so supervised that they can't fail out of the program." He thought that the logic of the program operation (especially the technical supervision and violation aspects) may not be the best fit for young people: "...young people are knuckleheads and don't necessarily follow the same logic that we as adults used to design the program, and the focus (of the program) should be to work with them as much as possible rather than violating them and shipping them off (to prison)". He then talked about how the program should be designed with more consideration of young offenders' needs and risks: many of his clients with pending gun charges were young individuals who were already lacking discipline in the environment they grew up, yet programs like interim supervision and SC&F expected them to "be disciplined all of a sudden." He thought that "we" – as in the Judge, Probation Officers, Prosecutors, Attorneys,

and community service providers – should be more patient and understanding with the young participants. Interestingly, the other interviewee gave a very positive comment on the program design. He explained that he appreciated the clearly defined sanctions for violations of the SC&F contract, and even suggested for the interim probation program to start using a contract that includes the sanction grid component.

When asked about the court processing/scheduling speed for SC&F participants, the two interviewees thought court appearances were scheduled fast for both SC&F participants and interim supervision participants. There was no apparent difference between the two programs. The two interviewees supported the "one judge for all cases" design of the SC&F program and commented that it offered more consistency, especially with the disposition of cases. In addition, both lawyers thought Judge Moran was the perfect judge for SC&F: "...they got the right judge," one interviewee commented. In regards to Judge Moran's way of explaining the program and addressing the issues to the participants during their court appearance, one interviewee considered that as a good message to be sent to the young people: "it teaches them consequences." He went on and explained that unlike some judges who would teach their clients the concept of responsibility by denying their Youth Offender treatment, Judge Moran sends a powerful deterrence message while giving reasonable and consistent sentences.

Looking Forward to Seeing Changes in Conviction

In order to be enrolled in the SC&F program, participants have to plead guilty to a felony charge which will likely affect their future life, especially employment. Both lawyers strongly advocated for new programs like SC&F to allow participants to earn an opportunity to reduce the felony charges to a misdemeanor. Even though lawyers knew that without the push from legislation, reducing the charge for a client charged a violent felony is unlikely to happen, they

still would like to see offers such as Youthful Offender treatment to be given to SC&F participants.

Conclusion

Compared to other major stakeholders such as the probation supervisor, the assistant District Attorney, and local law enforcement, public defenders and defense attorneys have very limited involvement in the SC&F program implementation but their roles should still be considered as critical. Their buy-in of the program is especially important, as clients usually first learn about the program from their lawyers and the way the lawyers explain the program to them and/or advise them is likely going to affect clients' decision for enrollment. In fact, several eligible candidates did reject the SC&F program and researchers are plan on contacting their lawyers for interviews to see how they viewed the program as well as how they advised their clients.

Both of the lawyers thought the criteria for the SC&F program was very strict, and they were not satisfied by the fact that very few defendants would be eligible for the program. In their view, it seems unfair that having no or limited previous criminal record could become the primary obstacle for some clients to be eligible for SC&F. In fact, during the SC&F review meeting in February 2017, a representative from the Monroe County Public Defender's Office expressed similar concerns and suggested that the SC&F program open up the criteria to be available for more of their clients. The interviewees perceived the change of the criteria as a positive change of the program implementation, and would like to see more of their clients offered the opportunity to be enrolled in the SC&F program. Even though believe that changes need to be made, the two lawyers both agreed that the SC&F program is a good start.

One interviewee strongly advocated for adding components that show understanding of the developmental nature of the young offenders. While the SC&F program does offer programs like *Ready, Set, Work!* and Cognitive Behavioral Training (CBI) to its participants, researchers will conduct observation of these programs and interview case managers to evaluate their contents. In fact, the need for programs targeting SC&F participants has also been discussed during the monthly screening meeting; furthermore, follow-up meetings between probation and service providers have been scheduled.

Of all the other features included in the pilot program, the lawyers were in favor of the “one Judge for all cases” model and the clearly defined sanction grid because they provide more consistency, especially in terms of disposition. However, even though the lawyers advocated for more programs like SC&F, they did understand the risk associated with participating in the program and would dispute the prison sentences for their clients before they signed the contract.

Last but not least, both of the lawyers extended the topic by talking about the need for legislature to make a change to offer young offenders alternatives to prison: campaigns like “Raise the Age” and reducing felony charges for young offenders were both mentioned multiple times by the two interviewees. One of the interviewees suggested adding Youthful Offender (YO) treatment to future SC&F participants who qualified for it. In fact, during one of the case review meetings in August, 2017, the option to offer YO treatment was also brought up by the committee members and decision was made to offer it to one new candidate. This indicates that stakeholders of SC&F program stay on the same page during the program implementation.

Appendix A:

Interview Questions for SC&F Participants' Public Defenders/ Defense Attorneys

1. Experience: How long have you been a public defender?
2. Tell me about your job: What kind of cases do you handle?
3. What's your current caseload? What's the percentage of your caseload that is gun-related?
4. How did you learn about SC&F? How many of your clients are SC&F participants or were at least considered for SC&F? Have you advised any client to reject the plea offer? What are the major concerns for your client when they are considering the program?
5. What's your understanding of Swift, Certain & Fair Program (the contract, sanction grid, and other components of the program)? Do you know any other programs for gun-related violence offenders? And how did you explain it to your clients (advantages and disadvantages)?
6. What are the major difference between your SC&F client and other clients? (For example, Nightwatch cases. Talk about court scheduling speed, response to violation, sentencing, community program enrollment etc.)
7. As you may already know, all SC&F cases go to Judge Moran. What do you think are the advantages and disadvantages of having one judge?
8. What do you think of the adjustment of SC&F enrollment criteria? How does that impact your current or future clients who might be eligible for SC&F?
9. In your eyes, with your experience of being a public defender, what are the top needs for your clients who fit in the SC&F target population? Young (16-25 years old), have pending gun-related charges, previous criminal history etc. And do you think SC&F program provides a good resource for their needs?
10. Do you have any suggestions for the program?