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# Pretrial Defendants: Are They Getting Too Much of a Good Thing?

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**R**esearch shows that the eight principles of evidence-based practices (EBP), when applied correctly, produce reductions in recidivism with offender populations. Community corrections and probation agencies across the country are instituting EBP into their supervision of offenders with promising results. Oakland County Community Corrections in Michigan is no exception, and in some cases we are extending these EBPs to pretrial defendants. We are on the path toward mapping ways to maximize EBP in a pretrial context.

The Oakland County Community Corrections Division (OCCCD) is not affiliated with the Michigan Department of Corrections, as is the case in many states, but rather it is a locally operated program. As our mission statement indicates, it is our goal to:

*...minimize jail and/or prison lengths of stay by providing a continuum of supervision, sanctions, and services that promote behavioral change through the individualized assessment of defendants/offenders in order to reduce criminal conduct while mitigating risks to public safety.*

As such, the OCCCD offers a variety of programs for clients within all stages of the criminal justice system. Step Forward is one of these programs. Initially it was designed for sentenced offenders, but with the advent of the drug court movement, Step Forward has been accepting pretrial defendants as well. In order to receive state funding in Michigan, a drug court must function in a post-adjudication manner. Some courts have referred pretrial defendants to the program in an attempt to intervene with services at the earliest possible time.

## **Programmatic Approach**

The Step Forward program has a one-stop-shop concept, and it offers an array of services under one roof. Before the program was developed, the lack of public transportation within Oakland County's 911 square miles made it difficult for clients to access services. Forging partnerships with the many outstanding agencies and providers in the community was the key to bringing them all together at one location for the sake of the client. However, simply having more services available doesn't mean that those services will be effective for the client. Therefore all components of the Step Forward program have been engineered or re-engineered to meet the principles of EBP.

**Intake assessments.** Every client referred to the Step Forward program, both pretrial and sentenced, goes through an initial intake. At the intake an actuarial risk/needs assessment is performed using the COMPAS instrument, an automated

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tool developed by Northpointe, Inc. A personal interview is also part of the intake process so that areas of concern can be fully explored with the client.

One factor in adopting the COMPAS is its use statewide in Michigan’s reentry work—using the same tool will allow us to share information if that becomes a priority at some point in the future. The COMPAS instrument scores the client on four major risk scales: risk of violence, risk of non-compliance with community supervision (technical violation), risk of recidivism, and risk of failure to appear. These scores appear as decile rankings from 1 to 10, with a score of 1 representing the lowest amount of risk (the lowest 10%), and 10 being the highest risk (the top 10%—meaning their risk is higher than 90% of the offender population for violence, recidivism, noncompliance, or failure to appear). These scales are derived using both static and dynamic risk factors. In keeping with the EBP that services should be reserved for higher-risk offenders, eligibility for Step Forward is limited to clients who score 4 or higher on both the risk of violence and the risk of recidivism scales. The other two risk scales, of community non-compliance and failure to appear, determine the level of supervision for each client.

The COMPAS contains other scales that relate to client criminogenic needs. These scores also are shown as decile rankings from 1 to 10. For purposes of case planning, some of these scales are compressed together and displayed in categories that correspond with eight known criminogenic factors: substance abuse, social isolation, cognitive/behavioral issues, criminal associates/peers, employment/vocational status, financial status, residence instability, and unstructured idle time (boredom). The assessment results show each of these criminogenic factors with scores of highly probable, probable, or unlikely to result in crime or failure on supervision. Areas in which the client scores a “highly probable” become the focus of targeted interventions and/or the overall supervision and treatment plan.

**Case planning.** Clients are assigned to a case manager after their risks and needs have been assessed. The case manager develops a case plan with the client that centers on the client’s assessed needs. All Step Forward staff have been trained in the techniques of motivational interviewing. Using these techniques during the development of the case plan, the case manager can increase the client’s motivation and commitment to the plan through involvement and accountability. For each of the criminogenic factors on which a client has scored “high,” a set of goals and tasks becomes part of the case plan.

**Services and interventions.** The majority of the services clients need to complete their assigned tasks and achieve their goals are offered at Step Forward. All of the group programs offered through Step Forward have been structured using cognitive behavioral treatment (CBT) methods. Groups are no longer didactic or strictly lecture-oriented. Instead, role playing, homework, and interaction are used to deliver treatment. Successful completion of groups is not dependent on a client just sitting through a set number of weeks of attendance. Successful completion is performance-based and is dependent on the client’s grasp and integration of skills taught in the groups.

Though different providers are used to deliver treatment, each group has a standardized curriculum that all facilitators follow to ensure the treatment is delivered completely and in the manner it was intended. It is important to note that pretrial defendants involved in the Step Forward program are not required to admit guilt or assume responsibility in any of the groups.

Groups currently offered in the Step Forward program include:

- ◆ Stages of Change I & II, based on Prochaska's stages of change: pre-contemplation, contemplation, preparation, and action/maintenance;
- ◆ Cognitive Restructuring Fundamentals and Cognitive Applications, a series beginning with concepts and expanding into real-life application of the cognitive skills learned;
- ◆ Anger Management;
- ◆ Domestic Violence (HEAL) for Men;
- ◆ Domestic Violence (WEAVE) for Women;
- ◆ Experiential Learning Group;
- ◆ Women's Issues;
- ◆ 12-Step Program; and
- ◆ Dual Diagnosis.

A random drug and alcohol testing program is also available on the premises.

In order to meet a wide range of client schedules, the Step Forward program operates from 7:00 a.m. through 7:30 p.m., Monday through Thursday, and until 5:00 p.m. on Fridays. Group utilization fluctuates over time, but on average, Step Forward has 35 groups running at various time slots throughout the week. Based on the client's needs, he or she may be placed in one or several of the groups. Clients may also be referred to outside sources for job counseling or placement if necessary.

**Case management.** Case managers play an important role in keeping the clients focused on achieving tasks and goals without being seen as the "enforcer." They meet with each of their clients monthly for a one-on-one session that usually lasts about an hour. These special sessions are in addition to other required contacts throughout the month based on the client's supervision level. During the one-on-one sessions, the client is given time to discuss progress or issues and has the opportunity to adjust or update his or her treatment plan.

The client's participation in the case plan is essential in increasing their motivation to change and their chances of success within the Step Forward program. Case managers often see their clients informally on a weekly or even daily basis,

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because the case managers also facilitate groups. The case management offices are located in the same area as the classrooms, which further promotes interaction between case managers and clients.

**Sanctions and incentives.** Clients are held accountable for their actions—both positive and negative—through a series of sanctions and incentives. Clients can earn reward points for accomplishments such as 90 days of sobriety or attendance at 12 consecutive on-site groups. Reward points can be used to maintain the client’s status in the event of a missed treatment obligation or relapse. Other rewards can also be earned, such as certificates for group completion and reductions in drug testing frequency.

Sanctions are given for missed groups, appointments, or drug tests. Specific forms of sanctions include a verbal warning, an increase in frequency of testing, an increased level of treatment, or additional writing assignments. Sanctions are graduated and can culminate in an unsuccessful discharge from the program.

### **Burning Questions**

Oakland County has struggled to justify exposing pretrial defendants to this level of programming. Largely the reason behind this struggle is that defendants placed under the supervision of pretrial services should have conditions of bail only that are tied to risk of pretrial failure—defined as non-appearance at court and/or danger to the community pending trial. According to the standards of the National Association of Pretrial Services Agencies (NAPSA), conditions which address clinical and social needs of clients that are not linked to pretrial failure go beyond the purpose of bail and may be considered excessive.

Perhaps the most difficult task we face is in determining what condition or combination of conditions addresses pretrial failure without crossing that fine line into addressing clinical and social needs. What makes this even more difficult is that recent research suggests there are common risk factors for pretrial failure.<sup>1</sup> Factors that seem to be predictors of pretrial failure center around criminal history, length of time at one residence, employment, and substance abuse. These pretrial risk factors and the criminogenic needs we can identify share some commonalities. Given these similarities, the real question becomes: how do we address an issue such as substance abuse, for example, in a way that mitigates pretrial failure without addressing it as a clinical and social need?

### **Success Rates Compared**

The Step Forward program enrolled 386 clients between June 1 and December 31, 2007, of whom 42 were pretrial defendants. Outcomes for the pretrial defendants showed a 93% success rate in returning defendants to court and mitigating pretrial misconduct. Of the pretrial defendants, 32 returned for all court dates as sched-

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1. Marie VanNostrand, *Assessing Risk Among Pretrial Defendants in Virginia: The Virginia Pretrial Risk Assessment Instrument* (Richmond: Virginia Department of Criminal Justice Services, 2003), <http://www.nicic.org/library/019500>.

uled, three (3) had their cases dismissed (but appeared as directed), two (2) were arrested for new felony charges, one (1) failed to appear for a court appearance (but appeared 40 days later and the case was adjudicated), and four (4) are still awaiting sentencing but have appeared as directed.

Successful defendants were involved in 2.2 treatment groups on average and had an average length of stay in the Step Forward program of 50 days. The three defendants who experienced pretrial failure were involved on average in only one (1.0) treatment group, and they had an average length of stay of 43 days. (Length of stay is measured from enrollment until the date of a new arrest.)

Successful defendants averaged a rating of “highly probable” or “probable” on 3.5 of the eight needs scales. Unsuccessful defendants averaged a rating of “highly probable” or “probable” on 4.3 of the needs scales. This could suggest that, had the unsuccessful defendants been in more groups to address identified needs, their pretrial misconduct could have been mitigated. It is difficult to determine why these defendants received fewer services. They simply may have refused to attend additional groups, for example, or their failure may have occurred before additional services could be offered.

During the same time frame, pretrial defendants placed on standard supervision achieved a 94% success rate. Standard supervision requires the defendant to check in weekly and may have other conditions such as drug testing. Defendants on standard supervision are not subject to the COMPAS assessment, and therefore data on their risks and needs are not available. However, the similarity in success rates does raise questions.

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- ◆ Is it possible that the pretrial defendants involved in Step Forward could have been just as successful under the less restrictive conditions of standard supervision?
- ◆ For the three defendants whose cases were dismissed, was their exposure to this level of programming premature and excessive given the outcome of their case?

These are the types of questions our agency struggles with daily in incorporating EBP into treatment/supervision plans for pretrial defendants, as we seek to effectively balance the rights of the accused and still mitigate pretrial risk.

### **Next Steps**

Currently our agency is looking at how to best answer these questions. We are collecting data on performance and outcomes in the hopes that a more in-depth analysis can be done in the near future. We hope that further analysis will begin to help us answer some of the questions posed throughout this article so that we may continue to move forward with delivering EBP in the pretrial field while preserving the legal rights of the pretrial defendant. ◆