
Advancing Evidence-Based Practices in the Pretrial Field

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The Commonwealth of Virginia in 1995 passed the Comprehensive Community Corrections Act and the Pretrial Service Act, resulting in the establishment of 37 local Community Corrections programs and 30 Pretrial Service agencies. Today, these agencies are experiencing increasing levels of offender/defendant non-compliance with supervision conditions, resulting in violations that often lead to unsuccessful termination from supervision. Local probation and pretrial professionals are committed to implementing supervision strategies that are based on scientifically proven principles associated with behavior change, in part to reduce the number of unsuccessful terminations.

Given the research on probation populations and the effectiveness of targeting behaviors in order to reduce recidivism, can this approach be transferred to the pretrial population? If on the post-trial side we are shifting away from focusing on the current offense and instead targeting our strategies on risks and needs, can we do the same for defendants without jeopardizing their legal status? Why do we think it is important to question the effectiveness of our supervision strategies on the post-trial side but not the pretrial side?

Background

The statewide average length of pretrial supervision in Fiscal Year 2007 was 118 days for defendants charged with a felony and 69 days for defendants charged with a misdemeanor. This gives defendants ample time to begin to address factors that may contribute to pretrial failure. Most local community corrections agencies in Virginia offer both pretrial and post-trial services. Our current practices do not address potential defendant risk factors that contribute to pretrial failure. We are not offering interventions; we supervise defendants' compliance with bond conditions, and only when the defendant is noncompliant do we suggest interventions.

In Virginia, our pilot pretrial agencies need to decide how evidence-based practices can be applied to pretrial supervision. We have reached a fork in the road and need to decide between supervising for bond conditions with no focus on addressing risk/need for defendants, or stressing the need to change behavior and to develop tools and strategies that target risk. We believe we have an opportunity to advance the field by the latter approach.

We have recently revalidated our pretrial risk assessment tool, the Virginia Pretrial Risk Assessment Instrument (VPRAI), after 4 years of use. The tool focuses on danger to the community (risk to reoffend) and risk of flight. We are now exploring whether we can apply the same tools with pretrial defendants as

we are currently using with post-trial clients to identify risk/need areas and levels of risk of failure.

Our focus is not on low-risk defendants who have strong ties to the community, are employed, are substance-free, and have a stable home environment, but on the medium- and high-risk defendants who typically have had previous involvement in the criminal justice system. If we have knowledge of previously assessed criminogenic needs, are we ethically obliged to determine whether the dynamic traits have changed for the better or the worse regarding the defendant's risk level? To mitigate risk of danger to the community, we need to assess what is contributing to the behavior. This means looking at the criminogenic risks and beginning to facilitate change regardless of the case outcome.

Our current assessment tool measures static factors and helps pretrial staff identify risks for failure to appear and danger to the community. Unfortunately, we do not have supervision recommendation guidelines in place to address the high-risk areas. This allows the courts to focus solely on the high-risk VPRAI results from our risk assessment report and address the circumstances with secure bond and supervision, without also addressing the risk areas themselves.

From 2004 to 2007, the number of pretrial placements on secure bond for misdemeanor charges has increased from 23.9% to 34.8%. Pretrial placements for felony charges have increased from 36.2% to 49.9% in the same period. We do not support this, but we cannot combat it without greater emphasis on interventions during supervision to address judicial concerns.

Making a Difference

In Virginia we are on the threshold of implementing differential supervision and case classification guidelines. Since we are identifying risk, we also need to mitigate it by addressing needs that lead to high-risk behavior. We are asking what the goals of supervision should be—simply ensuring compliance with bond conditions, or encouraging positive change by addressing the areas of high risk?

The correctional field in general is moving away from telling an offender what to do and is recognizing the value of offender involvement in changing behavior, drawing on the client's motivation. Supervising staff are recognizing that they should not be imparting their values, opinions, and insight to offenders. Rather, they should elicit thoughts and values from their clients and help them focus on positive aspects. Taking this approach is more likely to increase their motivation to make positive changes in their lives.

When the defendant enters into the system, pretrial services is typically the first point of contact where there is significant interaction between the defendant and a criminal justice professional, usually the pretrial officer. We believe this may be the optimum time to begin to influence subsequent behavior.

Among the eight defined principles of effective interventions, those most directly applicable in the pretrial field are:

- ◆ **Risk**—directing programs and service toward high-risk defendants;
- ◆ **Need**—Targeting factors that predict future criminal behavior and that can be affected; and
- ◆ **Responsivity**—Being responsive to each client’s learning style and level of motivation.

If we truly focus on the risks and needs of clients and not only on the instant offense, using cognitive behavior treatment approaches will not encroach upon the defendant’s rights regarding presumption of innocence and self-incrimination. The cognitive approach helps defendants develop skills to function constructively in the community and to engage in behaviors that contribute to positive outcomes. By developing defendants’ problem-solving and coping skills while identifying cognitive deficits and distortions, we can help defendants engage in behavior change. Positive reinforcements can easily be incorporated to promote sustained change, and coupling them with appropriate sanctions/consequences to address non-compliance will encourage clients’ progress in a positive direction.

Engaging clients in positive social environments can increase clients’ pro-social values, which can in turn increase empathy and concern for others. Clients who engage in high-risk behavior typically disassociate from the larger community and take on the characteristics of individuals they consider important. Expanding the client’s world by exposing them to other segments of the community can provide positive reinforcement and pro-social interaction and can help defendants develop a long-term support network. Providing measurable feedback to defendants about their progress helps them understand the process of change and provides them with the motivation and purpose to keep moving forward.

As criminal justice professionals, our goal is to reduce risk and recidivism. Guided by the research, we need to work collectively to promote systemic change that focuses on fostering positive behavioral change among defendants, and ultimately making a safer and more just society. ◆

References

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