

Identifying and Servicing the Needs of Pretrial Defendants

Research Summary

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INTRODUCTION

A needs assessment is conducted to gather information about a pretrial defendant that can be used to provide services to help ensure success in pretrial events. By assessing the needs of offenders early in the process, pretrial services programs can gather basic information about a defendant that can be used to develop treatment and supervision programs as alternatives to traditional case processing methods (e.g., institutionalization).

Unlike assessments performed after adjudication, pretrial assessments collect information on needs that can be linked to a defendant's probability of success or failure in pretrial events such as failure to appear in court. A review of the related decision literature reveals evidence that assessing the needs of offenders early in the case process improves outcomes. Although the misapplication of risk and needs assessments can create its own problems, survey results show that several jurisdictions across the country have successfully implemented needs assessments with pretrial populations and had promising results. This review summarizes the relevant decision literature produced in this vein.

OVERVIEW

The first section of this review describes the information typically gathered during a needs assessment, and the relationship between risk assessments and needs assessments. The next section outlines key issues raised when assessing the needs of offenders and whether and how pretrial service programs are meeting those needs at the pretrial stage. The final section addresses how pretrial service programs have changed since the 1960s and discusses recent trends in pretrial services programs.

DEFINING NEEDS

Gathering Information

Basic information about offenders, which may involve needs, is typically collected during the pretrial investigation. The objective of the pretrial investigation is to gather information about the defendant that will help the judicial officer reach an informed bail decision. This includes options for safely releasing the defendant or, when necessary, detaining him or her without bail (Pretrial Justice Institute [PJI], 2009). Ideally, pretrial investigations collect information on the defendant's residence and employment status, length of time in the area, ties to the community, criminal record, record of appearance in court, current probation parole or pretrial release status, mental health status, and indications of substance abuse (PJI, 2009).

Comparing Risk Assessment to Needs Assessment

Risk assessment and needs assessment differ in overall objective of the analysis, interpretation of the results, and development of measurement tools. The primary objective of a risk assessment is to identify individuals who are likely to commit crimes, whereas the objective of a needs assessment is to identify the treatment needs of individuals so they are less likely to commit crimes (Gottfredson and Moriarity, 2006).

Comprehensive case management plans usually assess risk and needs simultaneously, but the results must be applied appropriately to make informed release decisions or develop appropriate case plans. Gottfredson and Moriarity (2006) caution that in most cases, using a risk assessment measure to predict treatment outcomes is inappropriate. A needs assessment tool will produce more valid results and can be used to better assess offender treatment decisions.

Unlike validated risk assessment instruments, generic needs assessment devices do not use predictive scales. They are usually developed instead through staff efforts to implement case management procedures using a structured process of analyzing problems frequently encountered with clients.

Assessing the Needs of Pretrial Defendants

The needs of offenders at the pre-adjudication and post-adjudication phases of case processing are typically assessed using clinical techniques or actuarial methods. During a clinical assessment, an expert interviewer gathers information from an offender face to face. The interviewer then makes a professional judgment based on the defendant's responses to nonstandardized questions (Bonta, 1996). Professionals who use clinical assessments can also make recommendations by considering information obtained during pretrial investigations. Research shows that decisions made using clinical techniques often lead to inconsistent outcomes (Lowenkamp, Holsinger, and Latessa, 2001; Van Voorhis and Brown, 1997). Conversely, information obtained using actuarial-based assessments tends to be more structured. This is often preferred by professionals who make decisions about release, placement, and supervision of offenders before and after case processing. More important, decisions made using actuarial-based assessment produce more consistent results and outperform decision-based clinical judgments in a range of professional fields (Ennis and Litwack, 1974; Glaser, 1955, 1962; Gough, 1962; Meehl, 1965).

Adopting National Standards for Needs Assessments

According to a recent report from the National Association of Pretrial Services Agency (NAPSA), the American Bar Association (ABA) Standard 10-4.2 requires pretrial services programs to investigate and report to the court every time a defendant is in custody for a criminal offense. This includes cases where it is unlikely that the defendant will be released on

nonfinancial bail conditions or when the defendant cannot be released immediately because of a hold relating to another charge (ABA, 1993; NAPSA, 2009). It is worth noting that an earlier section of the ABA Standard (10-3.2.a) requires that the pretrial investigation be conducted after the defendant's arrest but before his or her first appearance in court (NAPSA, 2009).

EFFECTIVENESS OF NEEDS ASSESSMENTS

Pretrial needs assessments are effective when the analysis is applied appropriately. However, there is some question about whether the assessment should be conducted in the early stage of case processing. Some argue that including criminogenic needs in pretrial assessments allows for early identification of characteristics that are not only empirically linked to a defendant's failure to appear in court and rearrests, but could also be used to improve treatment referrals. Others think that the assessment of criminogenic needs at the pretrial phase should be limited to institutional/community corrections facilities, because the outcomes are different for post-conviction offenders than for pretrial offenders. This is supported by the observation that offenders enter the criminal justice system with a full range of needs, but not all of these needs are associated with their criminal behavior (Andrews and Bonta, 2006; Andrews et al., 2006).

ORGANIZATIONAL CONSIDERATIONS

The characteristics of the needs assessments conducted by a pretrial program depend largely on the quality of the pretrial program that is supporting them. Three primary considerations are the program's scope, its administrative location, and the innovations it has made.

Scope of Pretrial Service Areas

Pretrial services programs have evolved tremendously since the 1960s and 1970s. For example, programs that began during this time

served mostly large urban jurisdictions. Today, these programs still tend to be the largest in terms of both budget and staff size, but a second generation of programs were started in the 1980s and 1990s in mid-sized jurisdictions. The third generation, those started since 2000, are usually found in smaller jurisdictions with populations up to 100,000 (PJI, 2009). In light of these generational developments, it is not surprising to see a trend toward placing pretrial programs in probation departments. Currently, 38 percent of pretrial programs are housed administratively within these departments, up from 24 percent in 1989 and 31 percent in 2001 (PJI, 2009).

Administrative Locations of Pretrial Services Programs

Pretrial services housed in probation departments often have smaller budgets and staff and serve smaller populations than programs in other administrative units. This has raised concerns that these programs are not as effective as those in other administrative areas. However, findings from the PJI survey in 2009 show that on most of the ABA and NAPSA core services, such programs are as successful as pretrial programs housed in other departments:

Innovations in Pretrial Services Programs

The PJI 2009 national survey administered to 171 pretrial services programs from 30 states examined changes in the way these services operate compared with findings from the 2001 survey (PJI, 2009):

- ▶ Fewer programs currently use exclusions when determining which defendants they interview.
- ▶ Fewer programs rely exclusively on subjective criteria in risk assessment.
- ▶ More programs base their risk assessments on local research and have validated their risk assessment instruments in recent years.
- ▶ Fewer programs recommend money bail other than 10 percent deposit.
- ▶ More programs provide written reports to the court at a defendant’s initial appearance, with more providing copies to the prosecution and defense.
- ▶ More programs provide supervision services.
- ▶ More programs are finding ways to remind defendants of upcoming court dates, respond when defendants fail to appear in court, and review the status of detained defendants.

Core Service	Probation-based Programs (percent)	All Programs (percent)
Conduct their initial interview of defendants before initial court appearance	67	68
Rely on exclusively objective criteria in risk assessment	30	24
Recommend money bail other than 10 percent deposit	23	23
Recommend money bail with nonfinancial conditions of release	25	28
Provide supervision services	98	97
Remind defendants of court dates	83	89
Have a procedure for follow-up for failure to attend	79	84
Validated risk assessment procedures in the past year	23	15

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