

Pretrial Services in the District of Nebraska After the Office of Federal Detention Trustee Study

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THE DISTRICT OF Nebraska began the pursuit of evidence-based practices in August of 2007, when Dr. Marie VanNostrand of Luminosity, Inc. visited our district and completed an organization assessment. At the conclusion of the assessment Dr. VanNostrand recommended that our district work to determine the outcomes for defendants released to pretrial supervision and develop a system to collect outcome and performance measures. She also recommended that we examine policies and procedures for bail recommendation and responses to technical violations of conditions of release.

As a result of these recommendations, our district formulated an evidence-based practices committee. The committee determined that it was critical to learn the district's current baseline pretrial supervision-related performance and outcome-related measures to provide the critical information needed to identify and pursue EBP-related policies and practices. The committee decided to identify the outcome of all supervision cases closed in fiscal year 2007 by documenting and analyzing 11 variables with each case. A supervision case was considered a failure if bond was revoked for the following: failing to appear/absconding, an arrest for new criminal activity, or a technical violation. In the event of a bond revocation for a technical violation, the reason for the violation was included. A supervision case was considered a success when the pretrial release ended for any reason other than the three types of failure listed above.

The evidence-based practices committee also needed to identify a system for both inputting and analyzing data collected. With Dr. VanNostrand's assistance, we decided to purchase software called SPSS (Statistical Program for the Social Sciences) and began inputting the variables for all pretrial defendants whose period of supervision ended in 2005, 2006, and 2007.

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Outcomes

Once all the case information was entered for fiscal years 2005 through 2007, the data was analyzed. Understanding that we were somewhat new to research techniques, we did not want to misinterpret any results we found. As a result, our district received technical assistance from Dr. VanNostrand during this stage of the process. The results indicated that each of the years was consistent in the failure to appear/abscond, new arrest, and technical violation rates, and we had finally established a baseline for success and failure for pretrial supervision in our district.

The average failure to appear/abscond and new arrest rates were fairly low, at 3 percent and 6 percent respectively, during the three-year period. However, the technical violation rate vacillated from 17 to 20 percent during this same time frame. Due to the variables we had selected early in the process, we were able to separate out the types of technical violations that resulted in revocation. We discovered that almost 60 percent of the revocations were precipitated by a failure in drug treatment, a positive drug test, or drug use while on release.

We now knew how effective we were with our defendants, but this information led to a number of other questions: Was our technical violation rate high compared to other districts? Or is this technical rate of failure appropriate given the type of cases under supervision? Can this rate be improved upon and if so, what practices will positively impact the rate of failure? Answers to these questions would take additional data analysis that would need to include many more variables than the 11 we had decided to use with our 2005 through 2007 data set.

As a result, we expanded our analysis to include factors contributing to the release or detention decision. When the draft of the Office of Federal Detention Trustee study (OFDT study) led by Dr. Marie VanNostrand became available to us in early 2009, we added many of the variables included in the study to our pretrial cases closed in 2008. This meant that we incorporated data for all the cases, even those detained. These variables included:

- offense charged
- defendant criminal history
- pending offenses
- prior absconding and escapes
- residential status
- employment status
- whether the defendant was on a conditional release at the time of the initial appearance
- interview status
- bail report type
- pretrial services officer recommendation
- AUSA recommendation
- pretrial status

We were able to input all of the data for the 2008 cases into SPSS and provide a report to our officers and judges in May of 2009. The outcomes provided a backdrop to our district's release and detention rates. We believe that our judges also benefited by seeing the results. For example, 54 percent of the defendants charged with a drug offense and 47 percent of the defendants charged with a firearm offense in our district in 2008 were released to pretrial supervision. This is important, as 68 percent of the defendants who appeared in our district during this time frame were charged with a drug or firearm offense. In addition, 70 percent of our supervision caseloads in 2008 consisted of defendants charged with a drug or firearm offense. According to the OFDT study, these two populations of defendants have the highest risk of pretrial failure.

The OFDT study also illustrated that 51 percent of the pretrial defendants released in the federal system from 2001 to 2007 were determined to have a substance abuse problem. The data for the District of Nebraska’s pretrial defendants from 2005 through 2008 showed our rate to be significantly higher—approximately 67 percent. In addition, the OFDT study revealed that defendants who abused narcotics/stimulants were 40 percent more likely to experience pretrial failure. The percentage of defendants from 2001 through 2007 in the national system with reported abuse of narcotics/stimulants was 32 percent, while the percentage of defendants in the district of Nebraska with the same type of substance abuse was once again much higher—47 percent from 2005 through 2008.

At this point we are also able to examine further and determine if there are additional factors contributing to detention rates and pretrial supervision failure. We can separate out officers to see the types of recommendations made and we can look at success rates for defendants released on different caseloads. However, these capabilities have been handled cautiously, while we wait for the risk assessment tool to become available. Once this tool is implemented, each defendant will be given a risk level at the start of the pretrial process, allowing us to track the release or detention decision as well as the pretrial supervision outcome as it correlates to the level of risk. We can then put officer recommendations as well as supervision success rates into context and identify possible training issues for officers as well as stakeholders.

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The Risk Principle

There is an evidence-based practice known as the risk principle. As it relates to the post-conviction field, research has demonstrated that evidence-based interventions directed towards offenders with a moderate to high risk of committing new crimes will result in better outcomes for both offenders and the community. Conversely, treatment resources targeted to low-risk offenders produce little, if any, positive effect. In fact, despite the appealing logic of involving low-risk individuals in intensive programming to prevent them from graduating to more serious behavior, numerous studies show that certain programs may actually worsen their outcomes. By limiting supervision and services for low-risk offenders and focusing on those who present greater risk, probation and parole agencies can devote limited treatment and supervision resources where they will provide the most benefit to public safety.¹

The OFDT study included research specifically on pretrial defendants and confirmed the applicability of this principle to the pretrial services field. The study examined the use of alternatives to pretrial detention including, but not limited, to the following:

- third-party custodian
- substance abuse testing
- substance abuse treatment
- location monitoring
- halfway house
- community housing or shelter
- mental health treatment
- sex offender treatment
- computer monitoring

The research examined the effectiveness of the alternatives to pretrial detention while considering risk and found similar results. Release conditions that included alternatives to pretrial detention—with the exception of mental health treatment, when appropriate—generally decreased the likelihood of success pending trial for lower-risk defendants. Similarly, defendants

identified as moderate and higher risk were found to be the most suited—both programmatically and economically—to pretrial release with conditions of alternatives to pretrial detention. With this information we set out to identify areas where the risk principle could be applied in our district.

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Utilizing The Testing Condition in a Least Restrictive Manner

Due to our technical violation rate and the number of defendants with a substance abuse problem in our district, we now have an area to target. As a result, our district began reviewing recommendations for release to ensure we were not recommending drug testing if the defendant did not present a risk of substance abuse. In addition, we looked at Initial Case Plans to ensure that defendants with a drug-testing condition were being tested at a rate reflecting their reported substance abuse problem. For instance, defendants reporting casual use of marijuana were initially placed in a lower phase compared to frequent users of methamphetamine or defendants who were participating in substance abuse treatment. The results so far in this area indicate that the officers are doing a good job of assessing risk in the area of substance abuse and placing defendants in phase-testing levels that reflect the reported risk.

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Lowering Phase Levels as an Incentive for Compliance

The next area we began monitoring was moving defendants down in their phase-testing level if they had been on release for 90 to 120 days without experiencing a positive test. We monitored this at the six-month case review. Once again, officers did a very good job of providing an incentive to the defendant and lowering the frequency of tests required if the defendant had not provided a positive drug test or experienced substance abuse noncompliance.

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Using Substance Abuse Treatment in a Least Restrictive Manner

We then began looking at substance abuse treatment and whether defendants were required to participate in a substance abuse treatment program that was least restrictive when compared to the reported addiction. Again, officers were doing a good job of implementing levels of substance abuse treatment that were least restrictive. For instance, only defendants who had a severe methamphetamine or cocaine addiction were placed in residential treatment. In addition, officers were taking risks on defendants with reported methamphetamine, cocaine, or marijuana use and releasing them without implementing the treatment condition. In these types of cases, the treatment condition was not implemented unless a positive test occurred or the defendant reported use while on release. The officers were appropriately using substance abuse treatment as a graduated sanction.

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Differential Supervision Strategies and Targeting Resources

Throughout the process of reviewing initial case supervision plans and performing the six-month case reviews, it became apparent that officers were dedicating too much time to low-risk defendants and we were running the risk of over-supervising them. As a result, we developed a differential supervision strategy based on the level of risk presented by the defendant. We began to use RPI scores as a method to determine reporting requirements. We started with low-level defendants, those with an RPI score of 0 or 1, and required them to report via the web (or using e-reporting, as we call it). The e-reporting method was initially developed by the U.S. Probation Office in Nebraska. Through collaboration, our pretrial services officers devised a reporting form for pretrial defendants using the same web-based technique. Once the defendant completes

the form on line, this generates a chronological entry and notifies the officer. If certain areas in the report require officer contact, like a change in address, the officer supervising the case will follow up with the defendant. We began piloting this program with three officers in March of 2009 and it worked so well that we recently made it available to the entire staff.

We will begin developing additional differential supervision strategies based on risk once the risk assessment tool developed by Dr. Christopher Lowenkamp becomes available to the field. We recognize the need to be resourceful in dedicating our time and skills to those defendants needing them the most. One possibility in this area is using a kiosk system, so that those defendants whose level of risk still requires them to report in person to the office can complete their check-in process in this manner. We want our officers to get away from doing so many supervision notes or chronological entries and allow them to use their skill sets to facilitate defendant compliance. We are hopeful that this will have a positive impact on our technical violation rate and also serve as a time saver for the officers, allowing them more opportunities for field contacts, treatment visits, and case planning.

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Conclusion

The upcoming pretrial risk assessment tool for federal pretrial services will be welcomed in our district. We feel that we have taken the necessary steps to develop a system to collect outcomes and performance measures. The assessment tool will serve as the final piece to this equation. We understand that implementation of such a tool will require education of the pretrial employees as well as the primary stakeholders in our court system. However, we believe we began the education process for this risk assessment when Dr. VanNostrand visited our district in August 2007.

We also believe it is important to continue inputting data from our Probation/Pretrial Services Automated Case Tracking System (PACTS) into SPSS, but due to the time it takes for manual entry of this information, the future of this data entry is uncertain. Our pretrial services office is not a participant in the OPPS-funded Research to Results Program, so the progress we have made in this area was done using our district's existing financial resources and staff. To continue to make this a successful venture, we recommend having a report written in PACTS that would allow the transfer of the data to the SPSS software. By this means other districts can begin taking the necessary steps to collect outcomes and performance measures and at the same time ready themselves for the upcoming risk assessment tool.

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¹ Cadigan, Timothy “Evidence-based Practices in Federal Pretrial Services” *Federal Probation* (September 2008) at p. 87.

² VanNostrand, Marie “Pretrial Risk Assessment in the Federal Court” (April 2009) at 41.

³ VanNostrand at 10.

⁴ VanNostrand at 31.

⁵ Dowden and Andrews *International Journal of Offender Therapy and Comparative Criminology* “The Importance of Staff Practice in Delivering Effective Criminal Correctional Treatment: A Meta-Analytic Review of Core Correctional Practice” (2004) at 1.

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¹ *Putting Public Safety First: 13 Strategies for Successful Supervision and Reentry* (The Pew Center on the States, 2008).

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An Assessment of District Reviews: Implications for Pretrial Services Policy Development and Practice

¹ 18 U.S.C. § 3672: The Director of the Administrative Office of the United States Courts, or his authorized agent, shall investigate the work of probation officers and make recommendations concerning the same to the respective judges and shall have access to the records of probation officers

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