

7 Treatment Issues in Pretrial and Diversion Settings

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Overview

The pretrial period of criminal justice processing is unique in that for most people it is brief and the outcome is uncertain. Yet, it represents an opportunity to identify those who could benefit from substance abuse treatment and begin to engage them in the process. Providing effective services at this early stage of involvement with the criminal justice system can result in heightened motivation to seek treatment and decreased recidivism.

After characterizing the population of arrestees, this chapter describes the processes of arrest, arraignment, plea bargaining, trial, presentencing, and sentencing. Diversion to treatment can occur at several points during the pretrial phase. Several types of diversion, including drug treatment courts, are discussed. The chapter continues with a discussion of some of the strategies that are effective during the pretrial stage, as well as some of the issues that are specific to it. Some of the qualities of effective pretrial and diversion programs are the next topic: the staff resources, training, coordination, program components and procedures. Finally, the chapter describes several existing diversion programs and lists resources, research findings, and conclusions.

Introduction

There are several challenges in developing treatment interventions during pretrial criminal justice processing and the presentencing phase. A large number of offenders move relatively quickly through the system, and many different agencies are involved with each case and supervision. At the pretrial stage, offenders have been charged with a crime, not convicted, and involvement with treatment may or may not be in the offender's legal interests. The trauma and uncertainty of the arrest can either help or undermine motivation for treatment. Diversion to treatment can occur at several points before incarceration. The offender may opt for treatment in lieu of incarceration or to reduce the length of incarceration by participating in treatment.

Variations in local prosecution and diversion practices may affect a jurisdiction's ability to develop the criminal justice treatment linkages presented in this chapter. Not all jurisdictions have established procedures or programs for clients who abuse substances; those jurisdictions that do have programs to treat offenders often maintain such programs with limited resources. Recognizing the disparities between available treatment programs for offenders, the consensus panel posited the following observations as a starting point for discussions of treatment in pretrial and diversion settings.

- Expanding and institutionalizing pretrial treatment services are important goals. The pressure of overcrowded jails and prisons is expanding and institutionalizing programs for drug treatment in pretrial and diversion settings nationwide. In the past, the criminal justice system and the treatment community have often operated independently, but the advent of drug courts and other diversion programs has created a better climate for collaboration.
- Treatment remains a low priority in the criminal justice system at the pretrial stage, although it has been credited with helping to reduce criminal behavior. Each jurisdiction decides what priority to give substance abuse treatment and whether it merits significant financial resources. Outside of formal drug court and diversion programs, treatment access is limited.

- Pretrial defendants are often uncertain as to the status of their case and experience significant disruption related to their arrest. The uncertainty of their case disposition influences a counselor's ability to engage an individual in treatment. For example, defendants may be unsure whether treatment will be required by the court as part of their sentencing arrangements, or whether voluntary pretrial involvement in treatment would be more rigorously monitored than standard probation that they would receive as an alternative to involvement in diversion programs. For some, the arrest provides strong motivational leverage to engage individuals, while for others, the stress related to arrest and lack of clarity regarding their case disposition makes offenders less receptive to treatment.

This chapter highlights some of the innovative programs to treat offenders and the issues that substance abuse treatment and criminal justice personnel are likely to encounter when treating clients in a pretrial or diversion setting.

Characteristics of the Population

In 2000, the Arrestee Drug Abuse Monitoring Program (ADAM) collected data on male arrestees from 35 urban sites (National Institute of Justice 2003). Of the male arrestees tested and interviewed, more than 50 percent from every site tested positive for at least one

National Arrest Highlights in 2003

- Estimated total U.S. arrests: 13,639,479.
- Number of arrests for drug law violations: 1,678,192.
- Number of arrests for driving under the influence: 1,144,148.
- 83.7 percent of arrestees were aged 18 or older.
- 46.3 percent of arrestees were under age 25.
- 76.8 percent of arrestees were male.
- Drug arrests rose 22.4 percent between 1994 and 2003 while total arrests declined 2.8 percent.
- Between 1994 and 2003 the number of females arrested increased by 12 percent while the number of males decreased by 7 percent (FBI 2004).

drug. Marijuana was the drug detected most frequently, followed by cocaine.

In the 29 sites where data were collected on women, more than half tested positive for at least one drug. Unlike the male arrestee population, cocaine was most frequently detected among female arrestees, followed by marijuana and methamphetamine (National Institute of Justice 2003).

Nationally, 65 percent of all arrestees test positive for an illicit drug. Seventy-nine percent of arrestees are “drug-involved,” meaning they tested positive for a drug, reported that they had recently used drugs, had a history of drug dependence or treatment, or were in need of drug treatment at the time of their arrest (Belenko 2000).

Approximately 13.6 million arrests were made in 2003, including 1.7 million for drug violations, the largest category of arrests. Seventy-seven percent of all the individuals arrested in the United States during 2003 were male. This represents a 0.4 percent drop in the arrests of males and a 1.9 percent increase in the number of arrests of females compared to 2002 figures. Drug- and alcohol-related arrests occurred at a rate of 1,470 per 100,000—the most numerous of crime types (Federal Bureau of Investigation [FBI] 2003).

In 2003, of arrests nationwide, 71 percent were Caucasian, 27 percent were African American, and the remainder were of other races. Race distribution figures also showed that Caucasians accounted for 68 percent of the property crime arrests, and 61 percent of the violent crime arrests (FBI 2003).

Despite the common assumption that most offenders are incarcerated shortly after arrest, studies show that the majority of drug-involved offenders are supervised in the community fol-

lowing arrest. For example, in 1996 in large urban areas, 62 percent of drug traffickers and 71 percent of other drug offenders were released before trial (Dorsey and Zawitz 1999).

The Need for Treatment Services

Very few arrestees were in treatment at the time they entered the criminal justice system, yet 24 percent of those interviewed for the ADAM study in 1997 indicated that they needed treatment. Thirty-six percent of arrestees reported use of cocaine, but only 6 percent had ever received drug treatment (National Institute of Justice 2000).

Treatment Services in the Pretrial Justice System

The process through which an accused individual moves from arrest to full discharge of a sentence has many decision points, each with many variations from jurisdiction to jurisdiction, and each with many decisionmakers and possible decision outcomes.

Advice to the Counselor: General Considerations for Working With Clients in the Criminal Justice System

- Treatment should not compromise the due process rights of defendants.
- Treatment professionals should bear in mind the presumption of innocence that exists during the pretrial period.
- Defendants’ due process rights are of vital interest and affect what they are willing to agree to and the type of information that they are willing to disclose.
- Defendants should not be coerced into waiving due process rights.

Arrest

Arrest is the taking of a suspect into legal custody by police, probation or parole officers, or other authorized officials. Arrest may be authorized pursuant to a judicial warrant, which is issued when there is probable cause to believe that a crime has been committed and that the suspect committed the crime. Arrest without a warrant may be made by a police officer when there is probable cause to believe a felony was committed by the suspect. Arrests for misdemeanor violations generally require a warrant, except when the arresting officer sees the suspect committing the misdemeanor (e.g., in some cases of drug possession). Police have some discretion in whether to make arrests, although some jurisdictions have mandated arrest in certain situations, such as domestic violence or drunk driving.

For many individuals, further involvement in the criminal justice system might be prevented if police were informed about substance abuse and empowered to make referrals to a responsive treatment system. The consensus panel suggests that, when possible, police officers should use their community contacts to explore substance abuse treatment services options for individuals involved with substances who come to their notice but who are not arrested.

From a treatment perspective, arrest and the related crisis may have a positive outcome. Arrest can be a significant event in a person's life, and for offenders whose arrest was related to their substance abuse, the event might make it difficult for the person to deny substance abuse problems. Arrest offers the opportunity for the individual to voluntarily choose to enter substance abuse treatment. Thus it is important for connections to be made between the treatment and criminal justice systems at this point. Representatives from both the criminal justice and substance abuse treatment systems can view arrest as an important point from which to establish linkages, engage the defendant in interventions, and promote collaboration between the systems.

It must be noted, however, that involvement of substance abuse treatment providers at the point of arrest may raise constitutional issues. If the arresting officer transfers the individual to substance abuse treatment rather than to the criminal justice system (which has laws protecting defendants' rights), questions may be raised about due process, civil liberties, and extension of the criminal justice system beyond permissible bounds. Once an individual has been arrested, the defendant is subject to the authority of the criminal justice system even if he or she has been transferred to treatment. The level of responsibility granted to the treatment program should be defined clearly, understood by both systems, and incorporated into the information flow between systems.

Advice to the Counselor: **Diversion to Treatment Decision Points**

- Diversion to treatment can take place at several points in the criminal justice process:
 - > After arrest and prior to initial arraignment or bail hearing
 - > After initial arraignment appearance or bail hearing
 - > After preliminary hearing/probable cause hearing
 - > After guilty plea but before sentencing
 - > After conviction and sentencing, with sentencing suspended pending treatment completion

Arraignment

Arraignment is a technical term signifying presentation of the charges to the defendant. In many jurisdictions the term is reserved in felony cases for the presentation of charges in superior court. A first appearance is held in the lower court after arrest for bail setting and proba-

ble cause review. This hearing is not referred to as an arraignment.

The period of time between arrest and arraignment is a window of opportunity to intervene and articulate the value of substance abuse treatment. Drug testing, screening, and assessment for substance abuse and dependence, needs assessment in other areas, and relapse prevention are important components of intervention at this time as well as at other points along the continuum. The consensus panel recommends a multidisciplinary approach, with treatment providers available to work with police and court personnel to guide offenders who abuse drugs into treatment.

During arraignment, charges are brought against the defendant, and the defendant is informed of his rights. The defendant then enters a plea in response. Additional personnel, including staff from pretrial service agencies, judges, prosecutors or defense attorneys, court referral officers, and representatives of referral systems, handle this process and become involved as the defendant moves through the arraignment process. Each of these individuals can refer the defendant to substance abuse treatment services.

As a result of the arraignment, a defendant can be released on his or her own recognizance (i.e., a sworn promise to return); detained pending the posting of a certain amount of bail; detained with no bail (very unusual); or released under certain conditions, such as keeping a curfew, reporting periodically to a supervising officer, or wearing an electronic tracking device.

Pretrial Diversion: Supervision in Lieu of Detention

An increasingly common condition of release is participation in some form of treatment in which a pretrial supervision agency or probation department monitors compliance. Should the individual fail to comply with the conditions of release, he or she can be returned to

jail for detention prior to trial. Successful completion of the treatment or other conditions can mitigate the sentence imposed by the court if the offender is convicted. The consensus panel recommends that, ideally, judges should mandate as a condition of release that offenders receive treatment within 24 hours.

Pretrial Diversion: Treatment in Lieu of Prosecution

In some instances, arrest charges against the defendant are dropped if the person completes treatment. The decision to order treatment as part of pretrial diversion typically, though not always, rests with the prosecutor's office. The prosecutor offers to cease all prosecution of the case if the defendant completes the prescribed treatment regimen. However, if the defendant fails to complete the treatment and to satisfy the other conditions of diversion, he may risk being sentenced more harshly (if prosecution proceeds and a conviction results) than if the individual had never entered the diversion program.

Because pretrial diversion occurs before an individual enters a guilty plea or is convicted by a judge or jury, the defendant is still technically innocent. Anxiety about the outcome of pending charges may motivate those charged to agree to treatment, and many treatment providers view this as an ideal time to intervene and offer the individual an opportunity to participate in treatment.

Plea Bargaining

With court docket overcrowding, plea bargaining is used in a large number of cases. In a plea bargain, defendants are allowed to plead guilty to lesser charges than the charges that they would have had to face at trial. In most cases, especially misdemeanors or low-level or nonviolent felonies, the sentence is agreed to by prosecutor and defense attorney as part of the plea bargaining agreement. So although judges have the power to change the

sentence, they generally do not do so except in unusual circumstances.

Incorporation of substance abuse concerns into the plea bargaining process is a key element in strategies to link the justice and treatment systems. A requirement that the defendant enter treatment can be part of the plea bargain. Many systems are finding that getting defendants into treatment at this point is successful because they are ready for services. However, just as overcrowded court dockets force the hand of criminal justice system officials on certain decisions, overcrowded caseloads can make it difficult for treatment programs to accept new clients. In some cases, defendants who are placed on waiting lists for treatment can be involved in substance abuse education or treatment orientation groups, so that they do not lose track of

the need for recovery and treatment involvement.

Pretrial Diversion: Probation Before Judgment

Another form of pretrial diversion is Probation Before Judgment. Under this scheme, the defendant is placed on probation (usually unsupervised) and the charges are pending. If the probation is completed successfully (which may include court-ordered treatment) then the charges may be dropped. This happens commonly in regular traffic court but can be used as a mechanism within diversion programs as well.

Trial and Postverdict Periods

Advice to the Counselor: **Information Management During the Pretrial Stage**

- Information management is the key to identifying treatment needs and can provide treatment and related services during the pretrial stage more effectively.
- Because of the complexity of the pretrial phase (with many different agencies involved in a short or uncertain time period), it can be difficult to access necessary information on a timely basis. Also, treatment providers may not be permitted to provide certain information regarding clients to criminal justice staff. As a result, the information needed for clinical or case decisions may not be available at the appropriate time.
- Pretrial information about a defendant can be grouped into the following categories:
 - > Criminal record
 - > Prior compliance with supervision
 - > Pretrial evaluation
 - > Substance abuse assessment information
 - > Substance abuse treatment information
 - > Mental health treatment
 - > Relevant medical information

Trial

A trial is a court hearing in which a prosecutor presents a case against the defendant to show that he or she is guilty of a crime. The defendant presents information to support the plea that he or she is not guilty. A judge or jury decides the verdict.

Presentencing

Presentencing is the period after a guilty plea is entered (in cases that are plea bargained) or after a conviction is handed down (in cases that go to trial).

Prior to sentencing, a presentence investigation is usually conducted. The investigation is conducted after the plea is entered or after the conviction is handed down. In some plea-bargained cases, a plea may be withdrawn after the presentence investigation is completed and

sentencing recommendations are made. However, in some jurisdictions, the prosecution conducts an investigation prior to making the plea offer, thereby preventing the problem of changes in plea at the sentencing stage.

Many jurisdictions have presentence investigation agencies that specialize in writing the presentence report. Elsewhere, probation officers compile the report. The sentence or penalty handed down by the judge is based on the information compiled in the report. Therefore, with more relevant information available, the judge is better equipped to make an appropriate sentencing decision.

This is another point where linkages between the substance abuse treatment and criminal justice systems are crucial. It is suggested that some sort of preliminary assessment be conducted at this stage, if one has not yet occurred in the earlier stages.

In many States, serious legal constraints preclude sharing information contained in the presentence investigation. In some States, only the judge can see the report—not even the defendant can see it. However, the presentence investigation report may contain information highly relevant to developing a substance abuse treatment plan for the individual. To avoid duplication of efforts in gathering needed information at various stages of the justice-treatment continuum, planners should investigate ways to ensure that critical information follows the individual through the process without breaching confidentiality. (For more information on confidentiality, see CSAT 2004.)

Sentencing

If the verdict is “guilty,” either the judge or the jury, depending on the State, determines the sentence or the penalty imposed in the case. In many States, the sentence or penalty is based partially on the information that has been compiled in the presentence investigation report. Increasingly, States are passing laws to ensure

that the penalty is based on the offense without regard to information contained in the report. Laws requiring the sentence to be based on fixed criteria are known as sentencing guidelines, and their purpose is to eliminate wide judicial discretion that can result in disparate sentences by jurisdiction within a system or even by courtroom. However, these guidelines allow for very little flexibility based on defendant-specific factors such as substance use or mental disorders.

Diversion to Treatment

Much of the substance abuse treatment that occurs in the pretrial setting is in the form of diversion from prosecution into treatment. In other cases, diversion is conducted after conviction but before sentencing. This model is used extensively by drug treatment courts (DTCs) (see description below) and provides safeguards so that prosecutors can effectively reinstate charges for those individuals who are unsuccessfully terminated from diversion programs. Diversion is a “multi-systems collaboration between criminal justice and community-based agencies [that] allows programs to begin to address potential contributing factors to recidivism” (Broner et al. 2002, p. 87). It is a “mechanism to identify those in need of treatment, to broker treatment, housing, medical care, vocational and educational training, and often to remain involved with the individual . . . in the community” (Broner et al. 2002, p. 97). DTCs are a primary mechanism through which offenders are diverted into treatment. Diversion to treatment depends to a large extent on the statutory framework that guides processing defendants and on the prosecutor’s approach to resolving cases through placement in treatment.

Drug Treatment Courts

In communities throughout the United States, DTCs are dramatically changing the way the criminal justice system deals with offenders who use drugs. Drug courts and other diversion programs hold considerable promise for

engaging and retaining offenders who are involved with drugs in treatment and related services. DTCs share the underlying premise that drug abuse is not simply a criminal justice system problem, but a public health problem. American University's Drug Court Clearinghouse and Technical Assistance Project documents over 1,000 operational drug courts as of December 2003, with many more in the planning process. (See TIP 23, *Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing* [Center for Substance Abuse Treatment {CSAT} 1996].) Preliminary outcome research indicates that DTCs are effective in engaging and retaining offenders in treatment and can significantly reduce criminal recidivism during program participation and following release from the DTC (Belenko 2001). Successful implementation of DTCs has stimulated the development of several other "specialty court" approaches for substance-involved populations, including DUI/DWI courts, juvenile drug courts, and family drug courts. Each of these specialty courts uses a collaborative rehabilitation team model that involves the judiciary, treatment providers, community supervision, and ancillary community services.

DTCs were established in response to the realization that incarceration for longer periods and under mandatory sentencing laws was not having a significant effect on drug-using behavior. Instead, the courts, jails, and prisons were becoming more and more congested. DTCs provide diversion from jail or prison through expedited involvement in treatment for nonviolent offenders with substance abuse problems. Some drug courts have now expanded their admission criteria to include offenders who have a history of multiple prior offenses related to their substance abuse. Several different diversion models are used by DTCs (some operating within the same jurisdiction), including presentence diversion, processing through post-plea or presentence arrangements, and post-conviction arrangements. The essential "core" of DTCs is a collaborative partnership

between the courts, substance abuse treatment providers, community supervision, and other ancillary services to achieve sustained participation in treatment, coupled with regular oversight and monitoring by the court. In contrast to the adversarial nature of traditional criminal court processing with its focus on prosecution of cases, DTCs feature more of a rehabilitation team approach that couples mandatory treatment involvement with accountability through surveillance, monitoring, and regular feedback to the court and drug court team. Drug courts provide more rigorous supervision and accountability than is provided for offenders on traditional probation.

Typically drug court planning and oversight teams determine the DTC structure, treatment delivery model, and selection of treatment providers. A DTC team consists of judge, prosecutor, defense counsel, treatment provider, corrections personnel, local social service and mental health representatives, and housing authorities to help in the design of the most responsive treatment model possible. Though DTCs vary, the goal is essentially the same: treatment for offenders dependent on drugs instead of incarceration or probation (CSAT 1996; Hora et al. 1999).

Figure 7-1 (p. 134) depicts the role of DTCs in substance abuse treatment and highlights the importance of creating and maintaining cooperative working relationships between the substance abuse treatment and criminal justice systems. It is vital that information flow smoothly among the courts, case management staff, and substance abuse treatment professionals. Judges must have access to evaluation and screening reports, drug screens, and information about the client's participation in treatment. At the same time, substance abuse treatment counselors, social workers, and mental health professionals involved with the client's case must be aware of any requirements or restraints imposed by the courts. Figure 7-1 also demonstrates the need for evaluation and reevaluation. During the treatment and recovery process, the

10 Key Components of Drug Courts

The following components were developed by a national committee of experts for the Office of Justice Programs, Drug Courts Program Office (National Association of Drug Court Professionals 1997).

- Drug courts integrate alcohol and drug treatment services with justice system case processing.
- Using a nonadversarial approach, prosecution and defense counsel promote public safety while protecting participants' due process rights.
- Eligible participants are identified early and promptly placed in the drug court program.
- Drug courts provide access to a continuum of alcohol, drug, and related treatment and rehabilitation services.
- Abstinence is monitored by frequent alcohol and illicit drug testing.
- A coordinated strategy governs drug court responses to participants' compliance.
- Ongoing judicial interaction with each drug court participant is essential.
- Monitoring and evaluating achievement of program goals is necessary to gauge effectiveness.
- Continuing interdisciplinary education promotes effective drug court planning, implementation, and operations.
- Forging partnerships among drug courts, public agencies, and community-based organizations generates local support and enhances drug court program effectiveness.

client's level of functioning, mental health status, and physical condition may change along with his treatment needs. Continual monitoring will allow both systems to tailor treatment to the client's stage of recovery by identifying and addressing emerging health or mental health issues.

In DTC proceedings, the judge takes an active and leading role in monitoring the offender's progress in the treatment process through mandatory court appearances and data from urinalysis. The judge encourages the offender to stay in treatment through graduated rewards and sanctions. Generally, treatment lasts about a year, although incentives and sanctions can shorten or lengthen this time (Hora et al. 1999).

Treatment through drug courts usually consists of three or four phases:

- Orientation, drug education
- Treatment
- Relapse prevention, educational/vocational services
- Aftercare and transition

A range of treatment interventions is employed in DTCs. Most use a tapered approach that employs intensive outpatient treatment during initial stages of treatment, followed by progressively less intensive involvement in outpatient treatment (e.g., 1–3 times per week) in later stages of the program. In addition to regular involvement in treatment, DTC clients attend regular status hearings in court, receive individual and group counseling, are involved in case management services, are drug tested, and participate in peer support groups and a range of other ancillary services.

Other Diversion Models

Treatment Accountability for Safer Communities (formerly Treatment Alternatives to Street Crime) (TASC)

TASC programs focus on providing a bridge between treatment providers and the criminal justice system and offer a range of services, including screening and assessment, referral

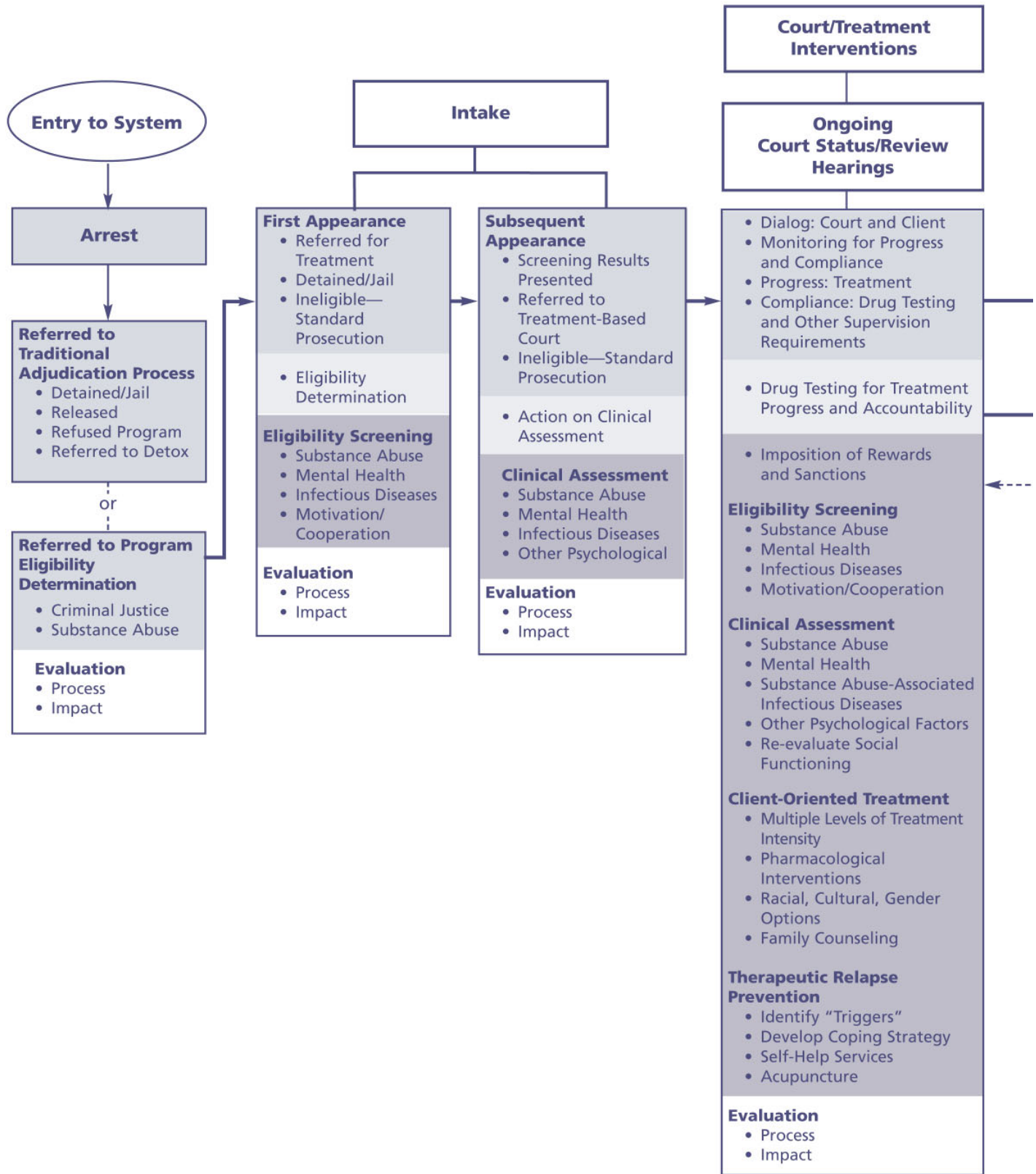
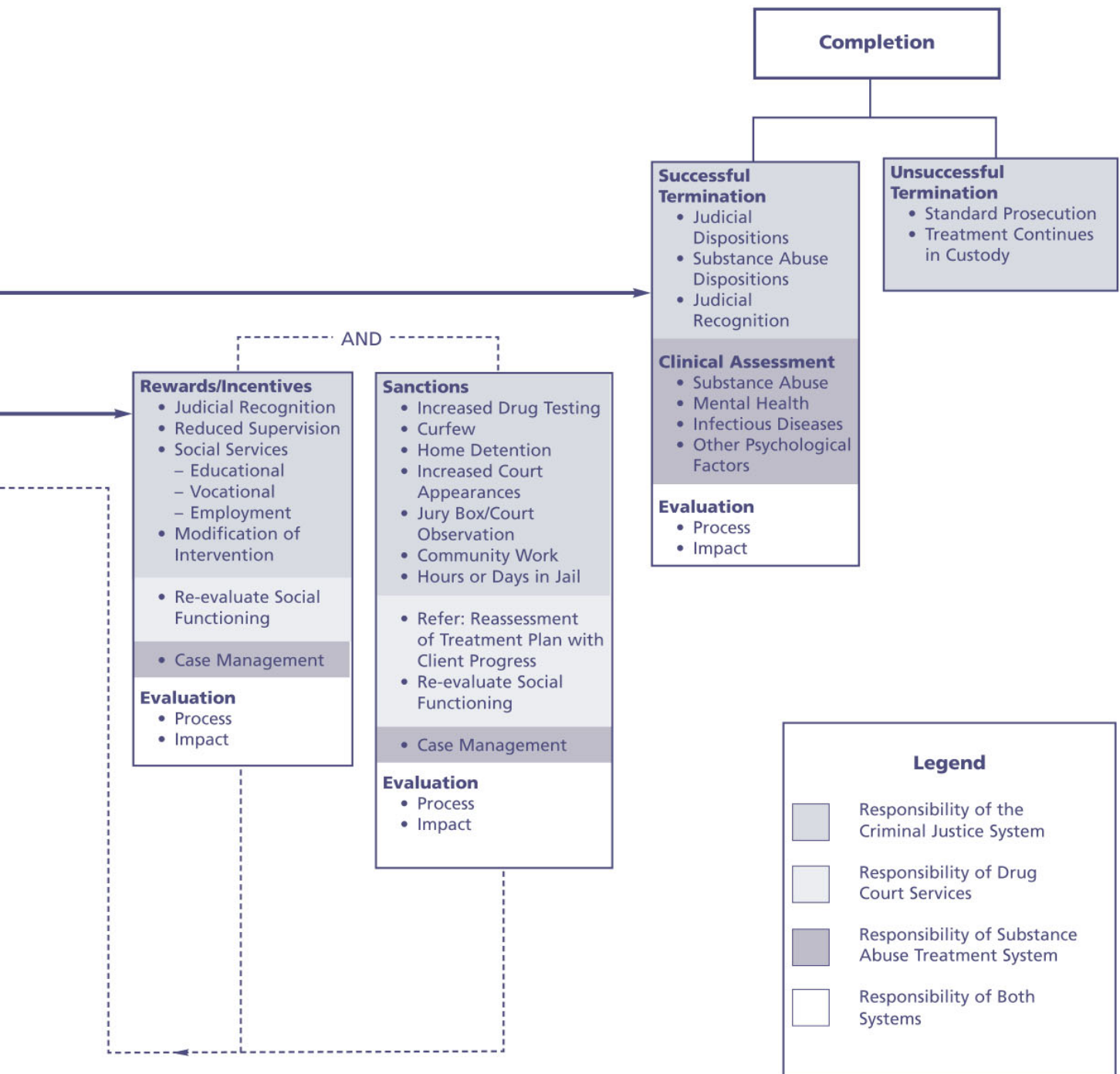


Figure 7-1

Substance Abuse Treatment Planning Chart for Treatment-Based Drug Courts



to community-based services, monitoring of treatment progress and compliance, case management and brokering community services, and court liaison. TASC programs sometimes are embedded with treatment agencies or court services departments, and, in some cases, are freestanding organizations. TASC programs have a long history of collaborative work in the criminal justice system. Early evaluations of TASC programs were generally positive, although limited in scope. An evaluation of five TASC programs (one for juvenile offenders) found mixed results. While TASC programs were consistently successful in identifying offenders who abused drugs and referring those offenders to treatment, three of the sites outperformed the others in at least one measure of subsequent drug use, while results on criminal recidivism were inconclusive. Study authors report that the findings on TASC programs were “consistently favorable,” although modest and, in some cases, confined to offenders with more problematic behavior (Anglin et al. 1999).

Diversion programs established through constitutional ballot initiatives

A number of ballot initiatives have been approved by the electorate in Alaska, Arizona, California, Oregon, and other States that have significantly affected the way in which drug offenses are processed in the criminal justice system. Several of these initiatives have focused on use of marijuana for medical purposes and decriminalization of drug possession offenses. Others, such as Proposition 200 in Arizona and Proposition 36 in California, have been more far reaching and require diversion to treatment for nonviolent drug offenders who meet certain eligibility criteria. Similar initiatives are scheduled to appear on the ballot in other States. These ballot initiatives also restrict the use of sanctions (e.g., jail incarceration) that can be applied and provide procedural safeguards to prevent incarceration. These initiatives have been perceived in some jurisdictions as a

direct threat to other existing diversion programs such as drug courts. A preliminary study of the Arizona initiative indicates that significant savings were provided to taxpayers in the form of reduced demand for jail and prison space.

Proposition 36: The Substance Abuse and Crime Prevention Act

In November 2000, California voters approved a ballot initiative, Proposition 36 (Substance Abuse and Crime Prevention Act [SACPA] of 2000). The intent of SACPA was to reserve space in prisons and jails for serious and violent offenders, to increase public safety through reduction of drug-related crime, and to expand treatment and rehabilitation for offenders involved with drugs. The SACPA initiative changes State law to provide substance abuse treatment and community supervision for certain groups of nonviolent drug-involved adult offenders who would otherwise be sentenced to institutional settings or supervision in the community. All offenders charged with nonviolent drug-related offenses are potentially eligible to receive treatment services through the initiative. Offenders who use a firearm during the commission of their offense, who have additional nondrug offenses, or who refuse drug treatment as a condition of probation are ineligible for SACPA participation. The initiative establishes the Substance Abuse Treatment Trust Fund and provided \$60 million for fiscal year 2000–2001, and \$120 million for each subsequent fiscal year, ending in 2005–2006.

Although the long-term effects of SACPA await examination in the future, early studies provide information about the people being served. Compared to non-Proposition 36 clients in treatment, Proposition 36 clients were more likely to be men in their first treatment episode receiving outpatient services for methamphetamine and marijuana use. They were less likely to use heroin or injection drugs (Hser et al. 2003). Another study

indicated that criminal justice clients (whether or not they came from Proposition 36) with high-severity drug abuse were less likely to be admitted to residential programs. Of high-severity outpatient clients, the SACPA clients were more likely to be re-arrested for a drug-related offense (Farabee et al. 2004).

Diverting individuals with co-occurring disorders

People with some types of mental disorder are more frequently jailed than sent to hospitals. About three quarters of these individuals also have a substance use disorder (Broner et al. 2001a). Their multiple problems present a challenge to criminal justice personnel.

Some of these individuals are good candidates for diversion in the approximately 50 jail-based diversion programs that currently exist. Arrestees with co-occurring disorders can enter a diversion program in either the pre- or postbooking phase. In prebooking diversion, the police officer is the decision-maker, although few police departments provide training in specialized responses to those with mental disorders. In postbooking diversion, there is usually screening, mental health evaluation, and negotiation between diversion and legal staff for a diversion rather than prosecution. In some postbooking programs, drug court procedures for case management have been adapted for a population with co-occurring disorders. In others, a “mental health court,” based on the drug treatment court model, has been established. These courts focus on the mental disorders rather than on prosecution.

Many of those with co-occurring disorders do not respond well to traditional community interventions; their problems are too complex. It is clear that integrated treatment is more effective than either parallel treatment of mental disorders and a substance use disorder or sequential treatment of the two (Weiss and Najavits 1998). Drake et al. (1998b) concluded that treatment outcomes

were especially improved when treatment lasts 18 months or longer.

Work by Steadman and colleagues (1995) notes six central features of effective diversion programs for offenders with co-occurring disorders: integrated services, key agency meetings, boundary spanners, strong leadership, early identification, and distinctive case management. Boundary spanners in this context are individuals with knowledge of both criminal justice and treatment systems who can bring the systems together to collaborate on the shared goal of obtaining substance abuse and mental health treatment for an individual who must answer to restrictions set by the criminal justice system.

Recent evaluations of drug court programs throughout the United States indicate that they are achieving their goals.

Driving Under the Influence courts

Recent evaluations of drug court programs throughout the United States (Belenko 2001), which work to rehabilitate drug offenders, reduce recidivism, and save money, indicate that they are achieving their goals. This success has prompted practitioners and various institutions such as the National Association of Drug Court Professionals and the U.S. Department of Justice to discuss the potential benefits of widespread use of Driving Under the Influence (DUI) courts. Although arrests for DUI have been on the decline since 1987, serious, habitual abusers of alcohol remain largely unaffected by stiff criminal penalties and public awareness campaigns to stop

drunk driving (National Drug Court Institute 1999).

Similarities between repeat DUI and drug offenders have led many practitioners to believe that DUI or combined DUI/Drug Courts can be effective. Both types of offenders have a serious substance abuse problem and both require treatment, a strong support system, and the ability to overcome denial.

For some offenders, especially during the pretrial stage, a brief intervention can determine if treatment is necessary.

However, unlike drug offenders, DUI offenders tend to be employed, and because of their generally more stable family situations, they tend to be able to draw on greater emotional and financial resources. But perhaps the most significant difference between the two is that DUI offenders usually believe that because the substance they ingest is legal, they do not have a substance abuse problem (National Drug

Court Institute 1999).

In November 1998, practitioners from seven legal jurisdictions formed the DUI/Drug Court Advisory Panel at the invitation of the National Drug Court Institute to discuss establishing DUI courts that are modeled after drug courts and/or expanding existing drug courts to include DUI cases. The panel also addressed the many barriers to achieving this goal, including a lack of funding, a negative “soft on crime” perception held by the public, delayed adjudication, and minimal incentives for offenders to enter treatment (e.g., reduced or suspended jail time) (National Drug Court Institute 1999).

What Treatment Services Can Reasonably Be Provided in the Pretrial Setting?

The large number of offenders who are supervised in the community, time constraints, supervision issues, and multiple agencies limit the services that can reasonably be provided in the pretrial setting. Below is a general description of intervention strategies and treatment components recommended by the consensus panel that can be used in a pretrial setting.

Intervention Strategies

A number of intervention strategies can be adapted to the pretrial setting, as described in the following section. The time required to implement these strategies is necessarily brief.

Brief interventions

For some offenders, especially during the pretrial stage, a brief intervention can determine if treatment is necessary. Addressing a substance use disorder even briefly is preferable to ignoring it. A counselor can use the FRAMES approach or other motivational enhancement strategies, for example.

- **Feedback** is given to the individual about personal risk or impairment.
- **Responsibility** for change is placed on the participant.
- **Advice** to change is given by the clinician.
- **Menu** of alternative self-help or treatment options is offered to the participant.
- **Empathic** style is used by the counselor.
- **Self-efficacy** or optimistic empowerment is engendered in the participant.

TIP 34, *Brief Interventions and Brief Therapies for Substance Abuse*, describes

other brief interventions in more detail (CSAT 1999a).

Behavior contracts

Some treatment programs use contracts with clients that describe precisely what is required of them. For example, offenders may be placed under less restrictive conditions of supervision if they successfully complete a pretrial treatment program. These behavior contracts offer rewards or incentives for specific behaviors. In drug court, individuals move to the next phase only when they complete the requirements in their contracts. Contingency contracts can reduce relapse and improve retention in treatment (Prendergast et al. 1995).

Sliding scale (client fees)

Many drug courts and pretrial diversion programs require participants to pay treatment or diversion fees in order to participate. Often these are based on ability to pay, or clients are allowed to defer some payments until after they become employed, one of the principles being that charging fees gives the offender some “buy-in” to the treatment process.

Treatment Modalities

In addition to previously discussed drug treatment courts and related specialty court/diversion programs, several other types of treatment modalities can be used effectively in pretrial settings.

Sobering stations

Willamette Family Treatment Services in Eugene, Oregon, offers a Sobering Station, a 24-hour facility designed as a safe and clean facility where an individual can be monitored while coming off drugs or alcohol. The service is not detoxification. The individual is housed and monitored until he can leave safely. Those admitted to the Sobering Station are offered detoxification services when appropriate.

Detoxification

Detoxification is the term used to describe the process of withdrawal from alcohol or drugs that cause physical addiction. Detoxification, as the word implies, entails a clearing of “toxins” from the body. The most immediate purpose is to safely alleviate the short-term symptoms of withdrawal from chemical dependence, including physical discomfort.

Detoxification may occur in either an inpatient or an outpatient setting. It involves several procedures for therapeutically supervised withdrawal and abstinence over a short term (usually 5 to 7 days but sometimes up to 21 days), often using pharmacologic treatments to reduce client discomfort and reduce medical complications such as seizures. It is a first step for many clients who will enter treatment, but it is not synonymous with comprehensive, ongoing treatment. The detoxification process entails more than the removal of alcohol and illicit drugs from the body; it includes a period of psychological readjustment that prepares the individual to enter ongoing treatment.

Withdrawal from certain drugs such as sedative-hypnotics, alcohol, benzodiazepines, and barbiturates can be life threatening. Thus, it is recommended that medical detoxification be provided for these classes of drugs. Though not life threatening, opioid withdrawal should also be treated in order to provide humane conditions to inmates and to avoid the potential for morbidity from dehydration as well as suicide attempts. TIP 19, *Detoxification From Alcohol and Other Drugs* (CSAT 1995a), describes clinical detoxification protocols for a variety of substances (see also the forthcoming revision of TIP 19, *Detoxification and Substance Abuse Treatment* [CSAT in development a]).

Day reporting centers

Day reporting centers are used to monitor the behavior of arrestees in the pretrial setting and of probationers and parolees under com-

Chicago, Illinois, Day Reporting Center

A day reporting center established in Chicago supervises detainees awaiting trial, ensures appearance in court, and begins to address substance abuse and other service needs. The program consists of a mandatory 15-day orientation phase, from which detainees progress into one of several tracks based on assessed needs. Several challenges in developing the day reporting center include (1) time limitations that restrict the type of interventions that can be provided, (2) facility limitations related to space and treatment activities, and (3) the need to integrate assessment and treatment information within the judicial process and to communicate in a timely manner about security and clinical issues. One interesting outcome related to the day reporting center is that approximately half of participants left the program when they were no longer required by the court to remain, with those leaving no longer involved in community treatment services. Those who completed the orientation phase of the program were more willing to engage in substance abuse treatment. Length of involvement in the day treatment center was associated with reductions in substance abuse (McBride and VanderWaal 1997).

munity supervision. They provide closer supervision than twice-a-week drug testing, but are less restrictive than residential treatment.

Additional treatment components

The vast majority of offenders processed through the criminal justice system during the pretrial phase have chronic substance problems, as well as high rates of vocational, social service, educational, mental, and physical health needs. The following components can be an important and useful adjunct to standard counseling services offered in the pretrial setting and treatment providers may need to contract these services out on an as-needed basis.

- Vocational training
- Job readiness assessment and preparation
- Liaison with employer
- Literacy assessment and referral
- Anger management training
- Criminal thinking assessment and treatment
- HIV education (sexual health)
- Assistance in accessing State or Federal entitlements such as Medicaid; Temporary Assistance for Needy Families; Women, Infants, and Children Program; Food

Stamps; and housing programs available for clients willing to enter treatment

These additional services are integral to fostering long-term recovery but they do add cost, more service and supervision layers, and the need for case management. In the long run, however, treatment can save greater costs to the criminal justice, medical, and foster care systems. In a Philadelphia study of Medicaid clients receiving outpatient treatment with “enhanced services” (supplemental health and social services), McLellan and colleagues (1998) found that on almost all outcome measures, the clients receiving the supplemental services showed the best outcomes, including drug and alcohol use.

Use of Sanctions

Judges and prosecutors have seen that sanctions encourage participation in treatment and are necessary to gain public acceptance of treatment in lieu of punishment. Sanctions include a range of measures that focus on holding offenders accountable for their actions. When a system of sanctions is implemented in concert with a sound treatment plan, offenders swiftly experience real consequences of their actions. This accountability is achieved through graduated sanctions. For example, an offender in an outpatient program requires drug testing three times per week. After a first positive drug test, the

offender may be required to participate in treatment exercises to address reasons for relapse and may be required to submit to more frequent testing. If the offender continues to test positive, he or she may be required to enroll in more intensive services (e.g., residential treatment). Further, if an offender, who pleaded guilty and received a deferred jail or prison sentence so that he could enter treatment, continues to fail to comply with his treatment program, despite the imposition of intermediate sanctions, the ultimate sanction of a sentence of incarceration will be imposed. It is important, from a motivational standpoint, that other program participants see what will happen to them (i.e., incarceration) if they fail to comply with their treatment programs.

Other sanctions such as victim impact meetings encourage the offender to recognize how drug-related activities affect the community. If the offender fails to complete the required treatment activities, victim restitution may be imposed as the next level of sanctions. By holding offenders accountable, graduated sanctions can be effective in redirecting individuals away from substance abuse and toward recovery. In general, the availability and use of sanctions tends to strengthen the impact of treatment, just as involvement in treatment tends to strengthen adherence to community supervision arrangements.

Examples of sanctions used in diversion

- *Means-based fines* (also called “day” fines). The total amount of these fines is calibrated to both the severity of the crime and the discretionary income of the offender, with the calibration and calculation established by the court as a whole for all cases in which this type of fine is to be imposed. (This type of fine contrasts with traditional fines that are imposed at the discretion of the judge according to ranges set by the legislature for particular offenses.) Defendants with more income (and/or fewer family obli-

gations) pay a higher overall fine than those with lower incomes (and/or more obligations) for the same crime. This approach to setting the fine amount is typically coupled with expanded payment options and collection procedures that are tighter than usual.

- *Community service*. This is the performance by offenders of services or manual labor for government, private, or nonprofit organizations for a set number of hours with no payment. Community service can be arranged for individuals, case-by-case, or organized by corrections agencies as programs. For example, a group of offenders can serve as a work crew to clean highways or paint buildings.
- *Restitution*. Restitution is the payment by the offender of the costs of the victim’s losses or injuries and/or damages to the victim. In some cases, payment is made to a general victim compensation fund; in others, especially where there is no identifiable victim, payment is made to the community as a whole (with the payment going to the municipal or State treasury).
- *Outpatient or residential substance abuse treatment centers*. Both public and private treatment centers may be contracted to provide treatment to offenders, as described in this TIP.
- *Day reporting centers or residential centers for other types of treatment or training*. These centers are established to provide services other than substance abuse treatment. For example, a center may provide skills training to enhance offenders’ employability. Offenders must report to the center for a certain number of hours each day, and/or report by phone throughout the day from a job or treatment site, as a means of monitoring.
- *Intensive supervision probation*. The level and types of supervision that are labeled intensive vary widely but usually involve closer supervision and greater reporting requirements than regular probation for offenders. This level can range from more than five contacts per week to fewer than

four per month. Supervision usually entails other obligations (to attend school, have a job, participate in treatment, or the like).

- *Intensive supervision parole* has similar requirements and variations but is usually provided by parole agents to offenders who have completed a prison term and who are serving the balance of their sentences in the community.
- *Curfews or house arrest* (with or without electronic monitoring). Offenders are restricted to their homes for various durations of time, ranging from all the time to all times except for work or treatment hours, with a few hours for recreation. Frequently, the curfew or house arrest is enforced by means of an electronic device worn by the offender, which can alert corrections officials to his or her unauthorized absence from the house.
- *Halfway houses or work release centers*. Offenders are restricted to the facility but can leave for work, school, or treatment. The facility is in the community or attached to a jail or similar institution.
- *Brief jail incarceration* (e.g., for 1–3 days). Brief incarceration is often used with offenders who have committed major program infractions in DTCs or in other diversion programs. This provides respite from temptations to use drugs and is useful in reinforcing the importance of sobriety and treatment. In some cases, incarceration can be used counterproductively for DTC or diversion participants if it is lengthy and if it prevents the offender from reengaging in treatment activities.
- *Boot camps*. Typically, a sentence to a boot camp (also called shock incarceration) is for a relatively short time (3 to 6 months). As the name implies, boot camps are characterized by intense regimentation, physical conditioning, manual labor, drill and ceremony, and military-style obedience. Because boot camps are a form of incarceration, some in the criminal justice field reject their inclusion in the category of intermediate sanctions. Others include boot

camps because placement in them is intended to take the place of a longer, traditional prison term. Several research studies have shown that boot camps do not significantly reduce criminal recidivism or substance abuse. One potential explanation for these findings is that most boot camps do not provide intensive substance abuse treatment services.

How to use sanctions

Evidence on the usefulness of sanctions from other institutional settings demonstrates several principles.

- The efficacy of a punishment is determined, in large part, by the individual's history and circumstances.
- Sanctions must be of sufficient intensity so the client does not become habituated to threats and punishments, yet not so severe that the judge exhausts all options for sanctions.
- A sanction should be delivered for each infraction.
- To the extent possible, sanctions should be delivered immediately after the undesirable behavior.
- Undesirable behavior must be reliably detected (e.g., through mandatory urinalysis two or three times per week).
- Sanctions must be predictable (by explicit statements of behavioral expectations) and controllable through the individual's actions.
- Behavior does not change by punishment alone; desired behaviors should be rewarded. Desired behaviors include those that are incompatible with drug use, those that are naturally rewarding, and those that are likely to be rewarded by the client's social environment (Marlowe and Kirby 1999). Rewards for positive behavior and behavior change in DTCs include public praise and recognition of achievement by the judge and other staff, reduction of fees or time in the program, small prizes such as key chains or

movie tickets, and certificates of phase and program completion.

Treatment Issues

The counselor–client relationship in a pretrial setting raises unique challenges. For one, the role of the counselor can become blurred between therapist and gatekeeper, answerable to both the treatment and the criminal justice communities. In the midst of this role confusion, the client’s legal rights need to be carefully guarded.

The discussion below highlights some of the issues counselors operating in a pretrial setting are likely to face.

Importance of Screening

Unpredictability characterizes the hours and days immediately following arrest. The rapidly developing nature of arrest and arraignment creates a challenge for counselors in gaining access to the arrestee. Arrests can occur at odd hours, while assessment staff are unavailable. Interviewing conditions, such as in a police lockup, are less than ideal. Still, the consensus panel believes that detainees should receive screening for substance abuse during the initial intake procedure to determine whether further assessment should be recommended or whether referrals should be made. (See chapter 2, Screening and Assessment, for examples of appropriate screening instruments.) Prompt screening is also important to identify offenders in need of detoxification services.

It is important for counselors to understand that offenders sometimes sign up for treatment because “it’s the thing to do.” Accessing drug treatment can help an individual appear more sympathetic in the eyes of the court. Understanding this, some

offenders who do not genuinely have a drug or alcohol problem will participate in treatment nonetheless. One example is a drug dealer who does not have a substance use disorder, but earns income from drug trafficking. During assessment the offender may deny using substances. However, once a clinician threatens to send the offender back to the judge, the offender may prudently decide he is boxed into “admitting addiction.” In this instance, the offender is simply using common sense to avoid harsher sentencing and improve his chances for leniency in the criminal justice system.

To address this dilemma, the panel suggests that treatment counselors assess collateral evidence of a substance use disorder. Orientation and other “pretreatment” program components are also used to determine individual readiness and commitment to treatment, prior to involvement in more intensive program services. Not every offender is appropriate for treatment. For example, if a counselor assesses an individual who does not have a substance use disorder, the person should be referred back to the judge in order to avoid denying the offender’s due process rights, such as the right to a speedy trial. Early drug screening and the use of profes-

Advice to the Counselor: Operating in a Pretrial Setting

- Counselors must maintain a client’s confidentiality. One strategy is to avoid discussing the client’s criminal case.
- Counselors should bear firmly in mind that the client is presumed innocent before trial.
- Counselors should be realistic about the responsibilities that a client is capable of handling in pretrial settings. For example, it is unrealistic to believe that a defendant will suddenly become a model citizen, meeting all of his or her responsibilities, simply because of an arrest.
- Counselors should avoid allowing individuals to be inadvertently penalized for enrolling in treatment.
- Counselors should be aware that clients may be more focused on “beating the case” than on recovery.

sional alcohol breathalizers can also be helpful in determining the need for further screening and treatment.

To better identify individuals with substance abuse problems and to provide informed diversion to treatment services, several jails have implemented a comprehensive screening, and use systematic “case finding” approaches (National GAINS Center 2000; Steadman et al. 1999). In some areas, TASC program staff perform these activities; in others, different types of “boundary spanners” perform these tasks. Generally, these are people who are knowledgeable about criminal justice processing and different community treatment systems and resources.

Meeting Immediate Needs

The pretrial setting can create difficult scheduling problems for clients. Individuals may have lost their jobs because of an arrest, and clients who are employed may wonder how they will hold onto their job if they are required to attend treatment. Counselors tend to believe that putting an individual into treatment is of primary importance during

this time period; however, they should be sensitive to the fact that although treatment is critically important, it is not always the client’s most pressing priority. This is especially true when weighed against considerations such as displacement from housing and lack of appropriate childcare. Many clients who are navigating more immediate and pressing needs are not ready to engage in the therapeutic process. Effective triage helps to build client trust and lays a foundation for successful engagement in therapy.

The consensus panel recommends that counselors prioritize case management services to include the most pressing client needs, such as food, clothing, shelter, and medical treatment. Does the client need detoxification? Are there childcare issues to be resolved? Is the client in need of medication?

Maintaining Existing Services

In many U.S. communities, individuals receiving Federal disability supports, such as Medicaid, Social Security Insurance, or Social Security Disability Insurance, often lose their benefits if they are detained in jail.

Although Federal regulations do not require these supports to be terminated for jail detainees, misunderstandings regarding policies often result in loss of services. Upon release, these individuals must re-apply for Federal supports, a somewhat lengthy process that often creates a delay in access to community treatment services. A lapse between incarceration and treatment without benefits means that these individuals are often unable to meet their basic subsistence, health, and mental health needs and usually lose any stabilization gained while in jail, bringing them back in contact with the criminal justice system after a short period of time (National GAINS Center 1999b).

Advice to the Counselor: Addressing the Client’s Immediate Needs

- *Detoxification needs:* Screen for the need for detoxification services and refer clients when appropriate. Train staff in signs and symptoms of withdrawal so that staff can detoxify clients from alcohol and drugs.
- *Childcare issues:* Provide on-site childcare at treatment facilities.
- *Potential forfeiture of public housing:* Notify an individual’s landlord that the individual is receiving treatment.
- *Transportation needs:* Provide bus tokens, car-service vouchers, and transportation support.
- *Medical needs:* Ensure that medical needs are addressed, including receipt of prescription medicines and screening for infectious diseases.

Although Federal policies do not require an individual's benefits to be terminated immediately upon incarceration, they do stipulate a timeframe after which benefits cannot be received. Whether communities suspend or drop an individual's Medicaid benefits depends on the State (National GAINS Center 1999b).

In Lane County, Oregon, diverted individuals with co-occurring mental and substance use disorders experienced difficulties in maintaining uninterrupted treatment due to issues with Medicaid and Social Security Insurance benefits. In response, the County raised its concerns with the Oregon Medical Assistance Program director. The State recognized this situation as a continuum-of-care issue for those with short-term stays in the jail. The State adopted the Interim Incarceration Disenrollment Policy, which states that individuals cannot be disenrolled from the Oregon Health Plan during their first 14 days of incarceration (National GAINS Center 1999b).

In addition to this policy change, Lane County has coordinated with the local application processing agency for Medicaid and Social Security Insurance. This relationship allows detainees who did not have benefits upon booking or who have been incarcerated longer than 14 days to begin the application process while still in custody. Diversion program participants are now given priority and are able to regain or obtain benefits within a few days (National GAINS Center 1999b). The staff of the Lane County diversion program reports that the disenrollment policy has been crucial for offenders and has greatly benefited program participants. Other jail staff members, providers, and advocates are also encouraged to develop a thorough understanding of the rules regarding Federal benefits, and to maintain an open line of communication with the State Medicaid agency and local Social Security office (National GAINS Center 1999b).

Protecting Clients' Rights

The client's due-process rights can affect the counselor's role in the pretrial setting. Clients and counselors should not discuss the client's ongoing criminal case. The boundaries of the counselor's responsibilities can begin to blur when clients discuss their criminal cases. Counselors should avoid the situation of being forced to report to a prosecutor something they have been told concerning the client's case.

A memorandum of understanding (MOU) can also protect a client's rights. An MOU signed by the prosecutor will ensure that the prosecuting attorney in the case will not use information gathered during the treatment process against the client. A judicial order attached to such an MOU may carry more weight: If the judge rules that information given to a treatment provider is out of bounds for a prosecutor, the client has that much more assurance that he or she may speak freely to the counselor.

Presumption of Innocence

The issue of presumption of innocence points to an essential difference between the legal and therapeutic cultures. It also poses a challenge for treatment counselors during the pretrial phase. The dilemma is this: For individuals to participate in drug treatment, they must first admit to having a drug problem. As a result, when the crime is possession of drugs, counselors often have a more difficult time presuming a client's innocence.

"Presuming their innocence never occurs to me. I'm usually trying to convince the clients they have a problem."

—Counselor

Coercive Power of Treatment Staff

The impact of arrest itself carries trauma, uncertainty, and disruption that are different from being in jail. This uncertainty can either help or hinder counselors who are trying to

engage clients in treatment. The aftermath of the arrest often provides additional motivational leverage and counselors can better engage their clients in treatment by assessing this motivation. Are they seeking to avoid prosecution? Do they want to remain in the community? Counselors who perceive clients' motivation and assist them in meeting short-term goals provide strong incentive to engage them in the treatment process. For counselors, the keys to meeting these short-term goals are awareness of resources and the ability to offer them.

Counselors working in the pretrial setting have additional leverage with clients in that they are responsible for making recommendations to the court concerning adherence to and progress in treatment. However, the counselor's role is potentially more adversarial. Self-disclosure to a counselor is not necessarily in the client's best interest. As a result, it may be more difficult to engage the client in an open relationship. The counselor should inform the client at the outset that at some point it may be necessary to report to the court or pretrial supervision staff. The counselor should be absolutely clear about this process, its requirements, and his or her role in relation to the community supervision agency. In some settings, such as drug courts, counselors are part of a multidisciplinary team and play a vital role in case reviews and determining clients' disposition. For example, counselors provide regular and periodic reports regarding client treatment adherence and progress. The judge may defer to the counselor's opinion regarding recommendations for the client's promotion to different phases, or graduation from the program, giving the counselor additional leverage in motivating clients to engage in treatment.

Checks and Balances on a Counselor's Influence

The power of the counselor in pretrial and diversion settings raises several important ethical questions. Should counselors be able

to circumvent a client's release conditions? What assurance is provided that counselors will act with fairness and consistency? What measures can be taken to prevent counselors from abusing this power? Should some type of oversight mechanism be established to avoid the potential abuse of power? These types of checks and balances are incorporated within drug treatment courts. For example, team staff meetings provide a forum for discussion to review each case prior to court hearings and to achieve consensus regarding what the judicial and drug court program response will be to infractions or other critical incidents.

Developing Pretrial Treatment Services

Efforts to expand and institutionalize treatment programs in order to make them a standard part of the pretrial criminal justice system often face a number of challenges. In planning such programs, the consensus panel believes the following strategies may be helpful:

- Increase the number of experienced counselors and trained clinical staff.
- Create special licensing and certification for counselors who provide treatment in the pretrial setting.
- Increase awareness of the importance of the pretrial setting in promoting clients' successful recovery.
- Educate the media concerning the effectiveness, usefulness, and importance of providing treatment in pretrial and diversionary settings.
- Demonstrate that the services provided are effective in reducing substance abuse and recidivism.
- Expand treatment options to include brief interventions and treatment readiness programs.
- Consider the effects of treatment on case processing.

Baltimore's Response to Drugs and Crime

Since the early 1990s, Baltimore, Maryland's substance abuse prevention and treatment agency, the Board of Directors of Baltimore Substance Abuse Systems, Inc. (BSAS), has faced a crime rate that is double the national average, an increase in the spread of infectious diseases, and economic costs of drug use exceeding \$2.5 billion a year. Baltimore's drug problem is among the worst in the Nation. At least 60,000 Baltimore city residents need alcohol and drug treatment (*Smart Steps* 2000).

In its efforts to tie high-quality, readily available treatment to comprehensive wraparound services, BSAS recognizes that outside help is crucial, given the strict limitations on Baltimore's own budget. To aid in this effort, neighborhoods across the city have come together to form a Crime and Drugs Solution Work Group, whose major goal is to improve the quality and quantity of drug treatment. Another organization, the Greater Baltimore Interfaith Clergy Alliance, which represents over 200 congregations in the region, is working to strengthen community-based treatment services in neighborhoods throughout the city. Over the past several years, *The Baltimore Sun*, the city's major newspaper, has editorialized frequently to raise awareness of the need to boost the city's investment in drug treatment. Other local organizations and foundations have advocated more public funding for treatment, and have even contributed their own dollars (*Smart Steps* 2000).

For more information on Baltimore's commitment and approach to improving drug treatment, go to <http://www.drugstrategies.org/Baltimore>.

- Include stakeholders from a variety of domains in the planning process.

Effective Pretrial and Diversion Programs

The consensus panel recommends that to be effective in providing substance abuse treatment, diversion programs need adequate staff resources, training, and coordination, along with program components adapted to criminal justice settings. These recommended elements are discussed in detail below.

Staff resources

Staff for effective programs can include both counseling personnel and individuals in liaison and administrative roles. Counselors can provide information regarding how to access treatment services and available treatment programs. A liaison resource coordinator can disseminate this information, or an administrator can maintain a database of treatment programs, supervise referrals, and provide coordination between treatment and the

court. As "boundary spanning" staff members, they can perform the delicate balance between social work, social justice, and social control.

To ensure that trained personnel are available to deliver services on a timely basis, programs could hire additional staff or link to other treatment programs and agencies. For example, treatment providers may not have the ability to offer anger management or literacy training classes in a particular program site. Given the cost of maintaining these specialists, agencies could provide these services through contract vendors. Clinical agencies may also need to contract for backup staff in order to reduce the size of caseloads and to provide 24-hour services for offenders who are arrested and/or processed during "off hours."

Training

Cross-disciplinary training for effective programs emphasizes the importance of substance abuse interventions and criminal justice supervision while making available the

information that all staff members need. CSAT has provided technical assistance to States seeking to establish cross-training programs. While early efforts focused on training probation officers and treatment staff, more recent training activities have focused on creating multidisciplinary teams of staff from different systems that collaborate to engage and retain offenders in treatment. The Addiction Technology Transfer Centers (ATTCs), funded by CSAT, also offer an extensive array of training and resource materials for use by criminal justice and treatment professionals. For more information, contact the ATTC National Office at (816) 482-1200, or their Web site at <http://www.attcnetwork.org>.

Effective substance abuse treatment is culturally competent. That is, the programs and staff demonstrate behaviors, attitudes, and policies that enable them to work effectively in cross-cultural situations (Cross 1989). Cultural competence is based on understanding and respect for differences among people and groups. It is important to recognize that culture plays a complex role in people's lives and in the development of substance abuse problems and their treatment. Cross-training is an appropriate time to review practical examples of cultural competence in program development and operation. Staff require training in cultural diversity and issues spe-

cific to the cultural populations that they serve. (See the forthcoming TIP *Improving Cultural Competence in Substance Abuse Treatment* [CSAT in development b].)

The consensus panel suggests that judges, too, must stay informed about issues in many areas. Organizations such as the American Bar Association, the National Judicial College, the National Association of State Court Judges, the American Judicature Society, and the National Association of State Judicial Educators ensure that judges receive many kinds of information and training.

Coordination

Effective programs include mechanisms for coordination and information exchange between substance abuse and criminal justice agencies (including MOUs, discussed below). For example, individuals need to be screened for diversion, and their treatment histories given; diversion programs often require that specific conditions be met. Both situations entail communication between agencies if the defendant is to receive appropriate treatment.

In addition, the pretrial environment requires coordination in making key clinical decisions, including determination of the treatment intensity, duration, modality, set-

Suggestions for Improving the Timing of Treatment

Effective programs work to optimize the timing and sequencing of treatment services. The following approaches can be helpful:

- Provide screening and assessment at the earliest possible point in the justice system.
- Move offenders into treatment as soon as possible.
- Provide several levels of care, including detoxification.
- Develop flexible sanctions so clients who have been unable to access treatment are not punished for this.
- Provide services to increase the offender's motivation to engage in treatment.
- Address the offenders' denial.
- Use brief interventions, where appropriate.
- Identify treatment and ancillary resources in the community.

ting, and specific services required. Counselors can work with the court to develop consensus-building approaches to deal with these critical issues that arise during the course of treatment, with the goal of developing mechanisms to advise judges regarding the best course of action for an individual's treatment. Decisions regarding diversion to treatment that provide a balanced consideration of public safety needs are complex when offenders have multiple cases in different courts, including noncriminal systems (e.g., family court, housing court, child welfare cases). Some offenders are already on probation, parole, or other types of supervision when they are arrested. The challenge is then to determine and arrange a hierarchy of services within multiple systems (e.g., criminal justice, treatment, child welfare).

Successful interagency cooperation requires information sharing that is coordinated as quickly as possible. Establishing commonly accepted protocols, such as those required for sharing information, is also useful in promoting this coordination. (For information on confidentiality, see CSAT 2004.) Case managers who provide wraparound services and work within both the treatment and justice systems are also instrumental in improving interagency coordination and can address critical issues such as insurance coverage and navigating through managed care networks.

Memorandums of Understanding

MOUs are useful for clarifying who has responsibility for various decisions related to sanctions, treatment, and case disposition, and under what conditions these decisions can be modified. Effective programs set up MOUs to establish guidelines and procedures for treating the client, sharing information, and maintaining the confidentiality of information. First, MOUs foster cooperative interagency relationships by ensuring that each component of the treatment system is aware

of how the other components will access, share, and use information (Tauber et al. 1999). Second, when participants sign the consent to disclosure (permitting the counselor to share information from the client's treatment), the MOU can be used to explain how information will be distributed to the criminal justice system. (See also CSAT 2004.) The following are the consensus panel's recommendations for elements that should be contained in MOUs.

- MOUs typically note that discussions at team meetings are confidential, in part because of legal concerns but also to promote trust and fairness.
- If outsiders are permitted to attend treatment team meetings, the MOU should require them to sign an agreement that they adhere to the confidentiality provisions of the law (redisclosure) and the MOU.
- MOUs should state that the prosecutor's office will not use information obtained in the drug treatment to prosecute the participant, with two exceptions: child neglect or abuse and crimes committed at the treatment center or against treatment personnel. A prosecutor frequently learns of offenses by participants, particularly drug possession offenses. In some cases, an offender who commits a crime may lose eligibility for the drug court program (among other possible consequences) but should not be prosecuted for crimes based on information that was acquired during the drug court proceedings.
- The MOU should describe the conditions under which the information can be shared or held confidential.
- The MOU should encourage the free flow of information within the drug court team to promote the drug court's mission.
- The MOU should include rules governing the storage of, and the access to, written and electronic records. Federal law requires such written policies (Tauber et al. 1999).

Procedures To Serve the Best Interests of the Offender

Even at the pretrial stage, the best interests of the offender may be seen differently by the substance abuse treatment and criminal justice systems. While the former strives to assist offenders in recovery, the emphasis in the criminal justice system is to prevent further illegal actions and ensure compliance with court orders and conditions. A common goal of both programs is to prevent recidivism.

A central challenge for treatment in the criminal justice setting is determining who has jurisdiction over program violations. Offenders may not know the “rules” or the exact consequences of their actions. Clients may fail to complete obligations in the criminal justice system without violating treatment requirements. The question becomes: Should clinicians report this violation if it could adversely affect the individual’s treatment? Does the discretion of the clinician undermine the sanctity of the judicial system? Other concerns include the format of a clinician’s report: If a violation occurs, should the report be in a regular general format or an immediate communication?

Sanctions, as well as incentives to engage in treatment, should be described in clear written guidelines. This information should be provided to clients in the presence of their attorneys in order to make certain they understand the sanctions. These guidelines should be grounded in reality. For example, jailing an employed individual can be potentially excessive punishment. The sanctions should be fair, consistent, and involve each of the agencies. Education and cross-training are needed for both criminal justice and treatment professionals in order to ensure

that sanctions are provided in a fair, consistent, and timely manner.

How can a public defender convince a client that treatment might be best if it goes against the client’s legal interests? The role of the counselor is to engage the client in treatment—but the role of the attorney is to advocate the wisest legal course. The attorney’s role becomes more complicated when the need for treatment is identified. Legal counsel traditionally plays the role of gatekeeper, although negotiating treatment issues in the pretrial setting can call for a different role. Defense counselors need specific training in what can and cannot be achieved in treatment, and the advantages and potential risks related to the clients’ enrollment in treatment.

The use of drug testing in the pretrial setting is somewhat controversial. It is argued that because drug use is associated with criminal behavior, those currently using drugs are more likely to commit additional crimes if they are released into the community while awaiting trial, and that these individuals are less likely to appear for trial if they continue to use drugs. Belenko and colleagues (1992) report that drug testing does not appear to be a cost-effective method for predicting which defendants are at risk for pretrial misconduct. Their examination of pretrial drug testing at six sites showed that the testing did not consistently predict pretrial misconduct better than other information available at the time (e.g., prior arrest record, indications of ties to the community).

Belenko and colleagues (1992) make several additional arguments against pretrial drug testing for detainees in the absence of treatment. First, one could argue that judges

The Paradox of Diversion, Treatment, and Public Safety

Diversionary treatment is perceived as a threat to public safety because offenders are quickly placed back into the community. However, over the long run, diversionary treatment increases public safety because individuals involved in substance abuse treatment are less likely to commit crimes (Belenko 2001).

would be more likely to release detainees if they required periodic drug testing because this condition of release would act as a system for monitoring their behavior. In fact, this has not happened. Second, staff costs and costs for purchasing drug-testing equipment are substantial. Third, the accuracy of drug testing technology is not perfect. False-positive results can have serious consequences for a defendant, and given the number of drug tests an offender is required to take over the course of 6 months, the chances of receiving at least one false-positive result can be significant. Finally, mandatory drug testing raises constitutional issues of due process, self-incrimination, and unnecessary search and seizure.

Pretrial drug testing is considered a search under the Fourth Amendment to the U.S. Constitution. Court rulings have determined that it complies with due process when collection and testing procedures meet the legal test of reasonableness (Bureau of Justice Assistance 1999). From the treatment perspective, however, part of the difficulty with drug testing is that it can only flag the presence or absence of certain drugs. It cannot discriminate between chronic and casual users—between those with a substance use disorder who would benefit from treatment and those who are experimenters.

Drug testing alone does not provide enough information to make decisions about pretrial release or detention or referral for treatment. Rather, these results should be combined with other information available in the pretrial setting or from a thorough clinical assessment. Drug testing is, however, a necessary and useful adjunct for monitoring offenders' compliance with conditions. As an intermediate sanction, drug testing often decreases drug use among offenders. Although drug testing and sanctions alone are limited in what they can provide, there are some individuals who will stop using drugs if they are tested.

Many clinicians believe that offenders who have not been able to access drug treatment should not be punished for testing positive. Nonetheless, use of drug testing alone without sanctions is sometimes used as an alternative to treatment and may lead to an individual's exclusion from treatment. The Washington, D.C., Drug Court provides drug testing and sanctions without drug treatment. This combination of sanctions without treatment is referred to as the "Coerced Abstinence Model." The D.C. Drug Court does demonstrate reduced recidivism, though the impact on drug use is unclear (Belenko 1990).

Resources

Examples of Diversion Programs

These programs, in the view of the consensus panel, exemplify effective diversion programs. While some are still in operation in 2005, others are not.

Brooklyn Drug Treatment Alternative to Prison (DTAP) Program

The Brooklyn Drug Treatment Alternative to Prison program was established by Kings County District Attorney Charles J. Hynes in 1990 to divert nonviolent felony offenders with one or more prior felony convictions and a documented history of drug abuse into treatment. Although DTAP started as a deferred prosecution model, in 1998 the DTAP shifted to a deferred sentencing model (Kings County District Attorney's Office 2001).

DTAP's target population includes nonviolent felons who, under New York State's Second-Felony Offender Law, face a mandatory prison sentence. Defendants accepted into DTAP have their sentences deferred while undergoing 15–24 months of rigorous, intensive drug treatment. Those who successfully

complete treatment are returned to court to have their charges dismissed. The program is a therapeutic community with a rigid structure, rules, timetables, and goals. As of March 2005, 2,094 individuals have begun the program, 831 have completed it, and 374 are currently enrolled (Kings County District Attorney's Office 2001).

A 5-year study of the program indicates that 53 percent of these participants have completed it (National Center on Addiction and Substance Abuse [CASA] 2003). Their rearrest rates and reconviction rates are significantly lower than a matched sample of offenders who received regular processing in the criminal justice system. After 2 years, DTAP graduates were 87 percent less likely to return to prison. In addition, preliminary results show that graduates had decreased their drug use compared with offenders who dropped out of the program or did not participate. Those participating in DTAP stayed in treatment longer than those in the general treatment population (17.8 months, compared to 3 months). Retention rates were highly associated with high levels of perceived legal pressure to remain in treatment. The average cost for a person in DTAP compared favorably with costs of incarceration: \$32,975 versus \$64,338 (CASA 2003).

Memphis Prebooking Jail Diversion Program

Memphis police officers have been specially trained to handle mental health and substance abuse crises while on patrol. They receive training in psychiatric diagnosis, substance abuse issues, de-escalation techniques, community mental health and substance abuse resources, and legal issues. The officers have a working relationship with the University of Tennessee's Medical Center and help community agencies implement treatment plans for those diverted to treatment.

Montgomery County (Pennsylvania) Pre- and Post-Booking and Coterminous Jail Diversion

The county's Emergency Services works closely with County Administration and a local Task Force to maximize multidisciplinary involvement in the diversion program. Its success is credited to police training, a 24-hour crisis response team, inpatient treatment, case managers, and an outreach team. Prebooking uses psychiatric treatment in lieu of arrest while postbooking involves regular screenings for incarcerated individuals with mental health and substance abuse problems. By taking an offender directly to psychiatric treatment while concurrently filing charges, police engage coterminous jail diversion, which diverts the individual from criminal incarceration. The program was funded through a CSAT grant to the University of Pennsylvania.

Addiction Prevention and Recovery Administration and the Salvation Army

These two organizations have formed a partnership to expand the current community-based residential treatment program, Salvation Army Beacon for Adult Males in the Justice System, through a grant awarded by the U.S. Department of Health and Human Services. The program, which was funded through a CSAT grant to the District of Columbia's Department of Health Addiction Prevention and Recovery, addresses the needs of men in pretrial or presentence status who abuse substances and who have been charged with a nonviolent drug-related crime. The program currently serves 95 men annually, but the grant will increase the number by 30 and incorporate Treatment Readiness and an aftercare component.

Assistance for drug treatment courts

The National Association of Drug Court Professionals (NADCP) is the main member organization that provides advocacy and support for the development of drug treatment courts throughout the country. The group has an extensive training and technical assistance program with experience in planning and implementing drug courts and establishing community linkages with law enforcement. A network of 27 mentor drug courts uses practitioners to act as resources at meetings and conferences and onsite visits. (For more information, see the NADCP Web site at <http://www.nadcp.org/>.)

Other pretrial diversion models

- Phoenix, Arizona's and Eugene, Oregon's Substance Abuse and Mental Health Services Administration (SAMHSA) Diversion Projects (for co-occurring disorders)
- Jacksonville, Florida, Drug Court (pays for aftercare)
- Pensacola, Florida, Drug Court (serves as "mentor" court for other drug treatment courts)
- San Bernardino, California, Drug Court (higher level of supervision and services provided for the most serious offenders)
- Reno, Nevada, Family Drug Court (one of the earliest family/dependency drug courts)
- South Carolina's statewide diversion program
- Various sites participating in the SAMHSA Jail Diversion project

Program Resources

The following resources include instructional as well as financial assistance.

Substance Abuse and Mental Health Services Administration

To help States break the pattern of incarceration without treatment and reduce the high rate of recidivism, SAMHSA provides grants for diversion and reentry programs for adolescents, teens, and adults with substance use and mental disorders. These grant programs focus on treatment as well as housing, vocational and employment services, and long-term supports. For more information go to <http://www.samhsa.gov>.

Bureau of Justice Assistance (BJA)

The BJA in the U.S. Department of Justice is authorized by Congress under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program to make grants to States in order to improve the functioning of the local criminal justice system. The program places emphasis on violent crimes and serious offenders, and the enforcement of State and local laws that establish offenses similar to those in the Federal Controlled Substances Act. The Drug Court Grant Program in the BJA administers financial and technical assistance and training to State, local, and tribal governments and jurisdictions to develop and implement drug treatment courts. (Additional information is available at <http://www.bja.gov>.)

SAMHSA provides grants for diversion and reentry programs for adolescents, teens, and adults with substance use and mental disorders.

Training outlets

- National Association of Pretrial Services Agencies (<http://www.napsa.org/>)
- National TASC Conference (for case managers, assessment staff, clinicians) (<http://www.nationaltasc.org/>)
- National Drug Court Institute (provides targeted training for all of disciplines involved in drug courts; judges, prosecutors, defense attorneys, probation officers, treatment professionals) (<http://www.ndci.org/aboutndci.htm>)
- National Association of Drug Court Professionals Annual Training Conference (<http://www.nadcp.org/>)
- The National GAINS Center (<http://gainscenter.samhsa.gov/>)

Conclusions and Recommendations

The consensus panel highlights the conclusions and recommendations as follows:

- The vast majority of offenders processed through the criminal justice system during the pretrial phase have chronic substance abuse problems, as well as high rates of vocational, social service, educational, mental, and physical health needs.
- The rapid movement of offenders through different points of processing in the criminal justice system complicates delivery of substance abuse treatment services and presents challenges in sharing information and encouraging continuity of involvement in treatment.
- Pretrial services programs face many challenges in identifying and referring offenders in need of treatment. These include providing timely clinical assessment, timely referrals to services, effective monitoring of treatment progress, referral, and case management.
- Pretrial drug testing is unlikely to be more effective than indicators such as the prior

arrest record and family or other community ties in predicting pretrial misconduct (Belenko et al. 1992).

- Treatment providers face several challenges in serving pretrial clients. These include developing processes to transfer information between jails, courts, community supervision, and treatment agencies, and strategies to identify and resolve potential conflicts between courts, supervision, and treatment staff related to clinical decision-making, sanctions, and level of supervision.
- Access to effective treatment and other services is sometimes limited for offenders at the pretrial stage.
- Diversion from prosecution and treatment can occur at several points in the criminal justice process and can result in a variety of case dispositions (Anglin et al. 1999; Broner et al. 2002).
- There is a significant need for cross-training of criminal justice and treatment staff, use of culturally sensitive treatment approaches, and for stakeholder involvement in program planning in pretrial and diversion settings.
- Community task forces provide an important mechanism to coordinate activities of various community agencies that are involved in diversion programs.
- To capitalize on the initial and sometimes fleeting interest in personal and lifestyle change that can accompany arrest, individuals in pretrial settings should be screened as soon as possible for substance use disorders, detoxification needs, and other immediate needs.
- Mental health screening and assessment should be conducted as soon as possible after consideration for diversion programs, and when appropriate, clients with mental disorders should be referred to specialized programs that are tailored to address their needs.
- Treatment in pretrial and diversion settings should focus on immediate needs, such as

housing, transportation, economic support, and vocational placement and training. Counselors should consider use of brief interventions that are based on early identification of substance abuse treatment and other urgent needs.

- Drug courts and other diversion programs hold considerable promise for engaging and retaining offenders who have substance use disorders and for reducing substance abuse and criminal recidivism during periods of program participation and following program completion.
- Providing access to continuing involvement in community recovery services is essential to maximize the long-term impact of pretrial and diversion programs.
- Diversion programs for those with co-occurring disorders are most effective when they provide integrated treatment for mental disorders and substance use disorders (Broner et al. 2002).
- Few studies have examined treatment services in pretrial and diversionary settings. Further research could help identify and reduce gaps in services, identify beneficial services, inform clinicians regarding useful and effective changes, evaluate program effectiveness, and assist in providing program funding.
- More research is needed to determine the economic costs and benefits of treatment interventions at the pretrial stage. Intensive and long-term programs that target first-time or low-risk offenders are not likely to be cost-effective. At the same time, limited nonintensive interventions for chronic serious offenders are also unlikely to be cost-effective.