



Incorporating Services and Support into Pretrial Supervision: Is There a Best Model?

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Abstract

Behavioral health and social service needs are common in most arrest populations. For most individuals, these needs will not interfere with making court appearances and remaining arrest-free before trial. However, need can escalate into a heightened risk of pretrial misconduct for some people. This publication discusses the complexity of managing substance use disorder—a prevalent need in most arrest populations—and suggests a “pretrial intervention services” model that outlines when pretrial agencies should consider services, when services should be integrated into supervision support, and what treatment service strategies are best at the pretrial stage.

Introduction

A pretrial supervision support model based on the legal requirements of bail adheres to the following principles:

- A goal to promote successful pretrial outcomes (future court appearance and arrest-free behavior).
- Conditions individualized to each person’s assessed risk level and identified risk factors.
- The least restrictive conditions needed to promote court appearance and public safety.
- No requirements that are punitive, based on an individual’s financial resources, or aimed at rehabilitation.

The goal of pretrial support is to promote pretrial success.

This approach corresponds to the purposes of bail (reasonably assuring court appearance and public safety) and the low-to-moderate risk for misconduct most individuals pose.

However, many people also pose significant behavioral health and social service needs, such as substance use disorder, mental health issues, and lack of housing and transportation resources. For example, it has been estimated that 87 percent of incarcerated individuals in jails and prisons meet the criteria for substance use disorder.¹ A 2019 report by the National Association of Counties found that 50 percent of people incarcerated in county jails had chronic health conditions and 53 percent had substance use disorders.² Addiction is a scientifically researched medical disorder that changes an individual’s behavior and negatively affects the brain. Further, individuals with substance use disorder suffer from other health issues such as heart disease, stroke, nervous system disorders, dental problems, skin disorders, HIV, and Hepatitis C.³

Substance use disorder is often the primary and most problematic need in pretrial arrest populations. Over the past two decades, pretrial risk assessment research has shown a correlation between substance use disorder and pretrial misconduct. Tools such as the Virginia Pretrial Risk Assessment Instrument (VPRAI), Ohio Risk Assessment System Pretrial Assessment Tool (ORAS-PAT), the Nevada Pretrial Risk Assessment (NPRA), and the Indiana Risk Assessment System (IRAS) include substance use disorder as a risk factor.⁴

Unfortunately, the criminal justice system’s response to substance abuse disorder at the pretrial stage is often inadequate or poor. For example, a recent summary of research findings related to pretrial supervision published by Advancing Pretrial Policy and Research (APPR) found that pretrial drug testing did not improve court appearance or new arrest rates and could lead to worse outcomes for individuals assessed as “more likely to succeed,” i.e., low risk.⁵ Furthermore, drug testing increased technical violations and was costly to the

individuals and the supervision/monitoring agency.⁶ For people with a substance use disorder, conditions of release such as drug testing and mandatory treatment often result in non-compliant behaviors, leading to punitive responses, even though the behavioral issues are beyond an individual's control. This, in turn, causes even more harm and, in some jurisdictions, additional criminal charges.

Pretrial services agencies play a vital role in the criminal justice system, especially by monitoring conditions of release. The methods of monitoring vary by pretrial services agency, with some agencies providing intensive supervision akin to that of probation or parole requirements, others adopting a light touch with a court reminder system with minimal contact, and others offering a combination of both. However, regardless of the supervision support model, technical violations for infractions of conditions of release are far too common. Further, supportive services such as peer support and recovery navigation are often non-existent in most pretrial supervision support models. More can be done at the pretrial stage to identify needs and help supervised individuals down a path that supports their success.

Providing or referring defendants to interventions such as substance use disorder or mental health treatment, vocational services, or housing assistance is often part of a supervision strategy. Pretrial services agencies should offer these services when they help achieve pretrial outcomes and supervision compliance. ... Helping defendants with substance disorder issues enroll in treatment pretrial can help prevent re-arrests related to drug or alcohol use. Such services, however, should be tied to risk factors specific to the individual defendant and be offered voluntarily rather than required as a condition of release.

In determining the appropriate type and level of services to be offered, agencies should employ evidence-informed and validated needs assessment tools, usually after the defendant's release to supervision. Agencies also consider how long a defendant likely will be supervised pretrial and what needs outcomes can be expected during that period.

National Institute of Corrections (2017). *A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency*, p. 49

Incorporating Treatment into Pretrial Supervision Support

To further encourage and promote success, pretrial services agencies are rethinking how to interact with individuals under supervision by incorporating supportive and behavioral health services into their supervision practices. When taking this approach, the question becomes: Should these services be *integrated into* pretrial supervision support or *supplemental to* pretrial supervision support strategies? While substance use disorder treatment is a significant need for many people, there are critical issues about its use at the pretrial stage.

- **Not all drug-involved individuals need treatment to assure court appearance or to safeguard the public.** For example, people who score as high risk on pretrial assessment tools and high need on clinical assessments may need treatment as a component of supervision support (integration). In contrast, others may only need referrals to services outside of court intervention (supplemental).
- **The time and intensity needed in treatment often exceeds the length of case processing for pretrial matters (arrest to case adjudication).** Given the limited scope and role of pretrial agencies, they often cannot assure continued treatment placement or an individual's continued participation in treatment once a case reaches disposition.
- **Many treatment episodes end with the individual not completing treatment requirements.** For example, discharge data from over 1 million patients who received substance use disorder or alcohol treatment in 2019 showed that less than 42% of these individuals completed the recommended treatment plan.⁷ Research also shows that treatment success depends on numerous factors unique to the individual. Given the relatively low rate of treatment completion, ordering it as a condition of pretrial release essentially sets individuals up to fail. This means that treatment non-completion should not be considered a violation of bail, something counter to how many pretrial systems treat condition noncompliance.
- **Given the limited goals of bail (court appearance and public safety), the purpose of integrated pretrial treatment is to minimize substance use disorder as a potential risk factor for pretrial misconduct.** This purpose may require different recovery strategies than traditional treatment models.
- **The lack of resources within pretrial agencies and jurisdictions is challenging, especially for substance use disorder populations.** Not every jurisdiction has the resources to address identified substance use disorder needs.

The Best Model for Pretrial Intervention Services

Given the realities of substance use disorder in pretrial populations, the limited purpose of pretrial supervision support, and the condensed timeframes for most case adjudications, should pretrial agencies consider adding treatment referrals or recommendations to their assessment and supervision support protocols? If yes, is there a “best” model to adopt? Treatment and support services can be a part of pretrial supervision and oversight, but only if pretrial services agencies adopt the following principles:

1. Any referral for a clinical assessment for treatment placement must conform to the overarching purpose of pretrial supervision support—reasonably assuring pretrial success with the least restrictive means. Clinical assessments and treatment placements, then, must not interfere with an individual’s ability to make scheduled court dates or exacerbate the likelihood of committing new offenses.
2. Pretrial agencies must confirm that appropriate treatment options exist. If there are no appropriate options, there should be no discussion of treatment.
3. When treatment options exist, pretrial agencies should distinguish groups that can be offered “**supplemental**” services (voluntary and independent from court order) and those who may require “**treatment integration**” (placements designed to address a need that reaches the level of risk and require adjustments to court-ordered supervision)—for example, the high-risk/high-need person with an expected extended pretrial period.
4. For integrated placements, the pretrial agency and the court must adhere to different definitions of “infractions” and “noncompliance” and understand that adverse behavioral health events are not willful. Training and education on substance use disorder and how the disease affects the brain is critical for pretrial practitioners and all justice partners.
5. For integrated placements, the pretrial agency must have regular contact with the treatment provider and have procedures (with court approval) to reduce or remove pretrial conditions that may interfere with the treatment plan.

Clinical assessment and treatment referrals, ideally, should be supplemental to pretrial supervision support, voluntary, and not court ordered.

What Is Not Appropriate for Pretrial Supervision Support

Courts often require individuals with pending drug charges to obtain treatment services without a clinical assessment or medical diagnosis indicating a treatment need. This approach has a higher likelihood of overusing already limited treatment services. Additionally, treatment can have adverse effects if administered to someone without a diagnosed substance

use disorder or when it is court-ordered rather than voluntary. Research and empirical evidence on the effect of mandated treatment at the pretrial stage is extremely limited and inconclusive. However, some studies show that court-mandated treatment such as drug court programs and probation terms work as well as voluntary treatment, while others show that court-mandated treatment has poorer outcomes.⁸

Recovery Strategies and Models

There are numerous recovery models and treatment strategies used in behavioral health that have proven to be effective. While not all strategies are appropriate at the pretrial stage, the principles and methods of these models can prove to be beneficial, especially when supplemental to pretrial supervision.

Recovery-Oriented System of Care

The Recovery-Oriented System of Care (ROSC) model is a person-centered, holistic approach in which there is no “wrong door” to recovery. The journey is individualized, with many different pathways to recovery.⁹ A person-centered recovery model focuses on the individual and not the disease. Recovery is different for everyone, and there are multiple roads that do not always involve treatment in the clinical sense. The Substance Abuse and Mental Health Services Administration (SAMHSA) outlines four areas that promote recovery:

- Health: Physical and emotional well-being.
- Home: Stable, safe environment to live in.
- Purpose: Meaningful productivity.
- Community: Non-judgmental support system of friends, family, and others in recovery.¹⁰

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-V) no longer uses the term substance abuse and substance dependence. Rather, it refers to substance use disorders, which are classified as mild, moderate, or severe. The level of severity is determined by the number of diagnostic criteria met by an individual.

SAMHSA, Section 223 Key Terms and Definitions, 2015

The ROSC model is a voluntary pathway to recovery that takes a trauma-informed and focused approach. Trauma-informed care involves understanding the nature of trauma and how practices and services can often re-traumatize the individual one is trying to help. Trauma-informed care assumes trauma has occurred and recognizes the signs and symptoms.

Harm Reduction Strategies

Harm reduction strategies reduce the negative effects of substance use and are a vital part of the continuum of care.¹¹ Put simply, harm reduction practices save lives. There are numerous harm reduction strategies within the public health realm, such as naloxone distribution, overdose prevention education, syringe exchange programs, safety/first aid kiosks, HIV and Hepatitis C screenings, Good Samaritan laws, medications for opioid use disorder (MOUD), peer support services, and fentanyl test strip distribution.

Harm reduction practices have recently emerged in the criminal justice system, mainly due to increased overdoses and overdose deaths from justice-involved individuals. One of the most common strategies employed by the justice system is overdose-reversal medication distribution (e.g., naloxone).

Provisional data from the Centers for Disease Control and Prevention show that overdose death rates in the United States increased 30 percent in 2021, with synthetic opioids accounting for two-thirds of the fatalities. Between September 2020 and September 2021, over 104,000 Americans died of a drug overdose. Overdose deaths exceeded homicides by 307 percent from the previous year. The epidemic is widespread and touches all areas of the country. West Virginia has the highest overdose death rate of 52.8 per 100,000 population, while Maryland has the highest overdose death rate among all deaths (4.68%).¹²

Local criminal justice systems are on the frontlines of the epidemic and feeling the devastating effects of substance use disorder and overdose deaths. Overdose is the third leading cause of death for individuals in jail and the leading cause of death for those recently released from prison.¹³ One study found that individuals are 40 times more likely to die from an opioid overdose within the first two weeks of being released from prison than the general population.¹⁴

“Between 2000 and 2018, the number of people who died of intoxication while in jail increased by almost 400%; typically, these individuals died within just one day of admission. Jails are not safe detox facilities, nor are they capable of providing the therapeutic environment people require for long-term recovery and healing.”

Prison Policy Initiative, *Mass Incarceration: The Whole Pie 2022*

In 2021, Overdose Lifeline, a non-profit harm reduction organization in Indiana, purchased 19 vending machines specifically designed to dispense free naloxone kits for jails across the state. These machines are placed in the jail lobbies so that individuals being released from jail and the community can easily access this life-saving medication.

Appropriate Supportive Strategies for Pretrial Supervision

There are various recovery and harm reduction strategies that pretrial agencies and the court system can employ that are appropriate at the pretrial stage. These strategies can assist with achieving positive pretrial outcomes and addressing the “needs” of the individual in a humanitarian way.

In 2021, the Kentucky Administrative Office of the Courts, Department of Pretrial Services partnered with the University of Kentucky Healing Communities Study⁴ to increase the use of evidence-based practices to reduce opioid deaths by providing access to naloxone kits to individuals released from jail in eight pilot counties. The goal of the partnership is to identify the overdose of vulnerable individuals at the time of arrest and facilitate naloxone distribution to prevent overdose deaths.

Overdose Reversal Medication Distribution

Pretrial services agencies should include overdose prevention education into their training curriculum. Pretrial services agencies should (based on state distribution laws) provide access to overdose reversal medication such as naloxone to individuals on pretrial supervision support without judgment.



Peer Support and Recovery Navigation Services

Peer support and recovery navigation services are essential components of a recovery-oriented system of care in the treatment realm.

Certification requirements for peer support specialists vary depending on the state; however, having lived experience and being in recovery is universal. Peer support specialists and recovery navigators use their life experiences and/or education to support individuals in recovery. Some pretrial services agencies, such as the New York City Criminal Justice Agency (NYCJA), have peer support specialists on staff that work with individuals on pretrial supervision. The services are supplemental and voluntary. Other pretrial services agencies partner with community services agencies and non-profit organizations that provide peer support and recovery navigation services.

Individuals who provide peer support work in partnership with case managers and social workers to support clients in navigating various systems and facilitating connections to community-based services, such as shelter facilities and housing programs, employment, educational and vocational programs, benefit and identification procurement, and links to

supportive community resources (group meetings, respite/crisis care, clubhouses, food/clothing pantries, etc.). Peers instill hope and promote meaningful pathways towards wellness and recovery, with compassion and empathy as their guide. Peer specialists aim to support and empower clients as they navigate the pretrial process through effective interpersonal connection and engagement.

New York City Criminal Justice Agency

The NYCJA has operated a supervised release program in Queens since 2009. The program provides individuals on pretrial release with the opportunity to receive voluntary referrals for a wide variety of social services while their cases are pending. After a thorough assessment, individuals are assigned a social worker or counselor who works closely with them to provide support and assistance in meeting court-ordered conditions of release. Voluntary referrals are made for services ranging from housing and vocational training to community-based mental health or substance use treatment. Supervision frequency is tailored to the risks and needs of each individual. The supervised release program also offers peer support services on a voluntary basis. Individuals are connected to a team of certified peer specialists who use lived experience and evidence-based practices to provide person-centered, strength-based support through a trauma-informed lens.



[Supervised release] has become such a critical and much needed alternative for judges and the courts and, most importantly, individuals who are arrested and cannot afford bail (when applicable). Therefore, I don't feel that we can ever go back to a time where this option would not be available.

Joann De Jesus, Director of Special Projects, NYCJA

Project NORTH-Massachusetts Pretrial Services

Project NORTH (Navigation, Outreach, Recovery, Treatment, and Hope), managed by the Massachusetts Trial Court and Probation Service, is a recovery navigation service offered to all court users and their families. Recovery navigators work in 13 courthouses across the state, providing free, confidential, and voluntary services and treatment referrals. In addition to short-term and long-term care coordination, Project NORTH offers transportation to court and treatment as well as financial assistance for sober housing.

The statewide pretrial services agency in Massachusetts is a partner of Project NORTH. The pretrial agency conducts substance use and mental health screenings, assists individuals with enrolling in Mass Health for medical coverage, and makes referrals to Project NORTH for supplemental navigation services to pretrial supervision.

Maine Pretrial Services

Maine Pretrial Services is a partner in a federally-funded reentry program that aims to connect community service providers for the sentenced and pretrial population in Cumberland County. As this program has evolved over the years, the team has expanded to include community-based peer support and recovery coaches. These peers begin forming connections with clients while incarcerated and are part of the team in reentry planning and support during the transition back to the community.

The peer support program has been a critical addition to our agency and has allowed for tighter communication, access to additional community resources, and most importantly a warm handoff as individuals are released from jail.”

Shawn LaGrega, Deputy Director, Maine Pretrial Services

New Jersey Pilot Pretrial Mental Health Screening and Support Program

In September 2022, the New Jersey Department of Human Services launched a pilot program in Camden, Essex and Middlesex counties to identify and connect individuals on pretrial release with serious mental health needs to treatment and other vital social services.¹⁵ Under the voluntary program, individuals who choose to participate will receive a social determinants of health (SDOH) mental health screen. Based on the identified needs, they will be connected to community-based services, behavioral health treatment and a mental health assessment or evaluation. Individuals who are eligible to continue services with the behavioral health team and also meet legal and clinical criteria can also apply for admission into a current or newly created voluntary mental health diversion program track, integrated with the County Prosecutor’s office and courts. Successful completion of this diversion program may result in deferred disposition of the criminal charges against the individual.

Clinical Assessment and Treatment Recommendations



Treatment recommendations should not be made without a clinical assessment performed by a qualified professional. Clinical assessments determine levels of care, guide appropriate individualized recovery plans, and identify medically necessary treatment. Pretrial services agencies serve a supportive role by screening individuals who are ordered to supervision for substance use or mental

health disorders and by making referrals for further clinical assessments. These referrals should be supplemental to pretrial supervision and voluntary.

Community Supports

Pretrial services agencies should partner with community-based service providers to identify resources that promote positive outcomes and assist individuals with basic needs such as housing, transportation, medical care, food, and clothing. Transportation and childcare challenges, specifically, can directly affect an individual's ability to meet conditions of supervision. Pretrial agencies should develop procedures to identify these challenges and provide alternative methods or supports to assist individuals in being successful on supervision.

Thurston County, WA, Pretrial Services

In June 2022, Thurston County Pretrial Services expanded operations to include a Resource Hub. The Resource Hub is located on-site at the County Courthouse Complex and will operate as a co-located collaborative model intended to increase accessibility and urgency of access to county, state, and community-based social service resources for justice-involved individuals with behavioral health needs. Individuals can drop in and connect with a provider for assistance with behavioral health treatment, employment, education, housing, public benefits, healthcare, legal support, and other social services. Immediate need resources such as food, clothing, household items, and hygiene products will also be available. Thurston County is planning to demonstrate improved outcomes in the local criminal justice system and increase cross-system collaboration by connecting justice-involved individuals with resources that can provide stability, safety, and improved mental and physical health.



Providing information on resources (referrals)



Harm reduction strategies



Building partnerships with community providers (ROSC model)



RESULTS

Conclusion

The goal of pretrial supervision is to promote pretrial success. Conditions of release should be individualized and the least restrictive to reasonably assure court appearance and public safety. Supportive service strategies, when used appropriately, may be effective. A success-oriented, care-coordination support model for pretrial services meets individuals where they are and encourages supportive services that promote success and positive behaviors.

The ideal pretrial intervention model incorporates services and supports into a pretrial supervision system. That supervision system, in turn, must be grounded in the legal requirements of bail and consider the reality that needs can rise to the level of risk of negative pretrial outcomes, especially for individuals with substance use disorder. Integrating treatment as a condition of pretrial supervision should be used only in limited circumstances and only when the needs elevate to the level of risk and a clinical assessment has been completed identifying the appropriate level of care. Treatment integration should be reserved for the high-risk/high-need individual whose pretrial release is for an extended period and when resources exist within the pretrial agency or community.

Supplementing pretrial supervision with behavioral health services to address needs should always be voluntary and independent of the matter before the court. Unlike traditional pretrial supervision that places “do” and “do not do” restrictions on individuals, supplemental community-based services and behavioral health strategies should support and assist in success. When used appropriately, recovery-oriented approaches and harm reduction strategies can be incorporated into the processes of pretrial services agencies.

Courts should not order treatment as a condition of liberty, but instead, treatment can be integrated into supervision strategies in limited circumstances or, ideally, serve as supplemental support for individuals on pretrial release. In a success-oriented, pretrial intervention service model, pretrial services agencies should integrate or supplement pretrial supervision with support services that promote success and positive pretrial outcomes.

Notes

¹ Proctor, S., Hoffmann, N., and Raggio, A. (2018). *Prevalence of Substance Use Disorders and Psychiatric Conditions Among County Jail Inmates: Changes and Stability Over Time*. Sage Journals, Criminal Justice and Behavior, 46, 24-41.

² PowerPoint Presentation by the National Association of Counties (March 2019) [Medicaid and County Jails Presentation.pdf \(naco.org\)](#)

³ National Institute on Drug Abuse (2020). *Drugs, Brains, and Behavior: The Science of Addiction*.

⁴ See Virginia Department of Criminal Justice Services (2021). *Virginia Pretrial Risk Assessment Instrument-(VPRAI) Instruction Manual-Version 4.5*. Latessa, E., Lemke, R., Makarios, M., Smith, P., and Lowenkamp, C. *The Creation and Validation of the Ohio Risk Assessment System (ORAS)* (2010). 74(1) Fed. Probation 16. Grommon, E., Ray, B., Sapp, D., Thelin, R., (2017). *Process Evaluation of the IRAS-PAT Pilot Program Implementation. Report to the Indiana Office of Court Services*. Austin, J., and Allen, R., (2016). *Development of the Nevada Pretrial Risk Assessment System Final Report*.

⁵ See Advancing Pretrial Policy and Research (2021). *Pretrial Research Summary: Pretrial Monitoring (Revised April 2021)*. A 2018 study on the 24/7 alcohol testing program in South Dakota showed that individuals charged with a second or third offense DUI and released with a pretrial condition of twice-daily alcohol testing were 49% less likely to be re-arrested or have their probation revoked than non-participants in the program. This study did not differentiate between pretrial “re-arrests” and probation revocations. See Kilmer, B. and Midgette, G., RAND Corporation (2018). *Using Certainty and Celerity to Deter Crime*.

⁶ Advancing Pretrial Policy and Research (2021).

⁷ Substance Abuse and Mental Health Services Administration (2019). *Treatment Episode Date Set (TEDS): Admissions to Discharges from Publicly Funded Substance Use Treatment*.

⁸ Yasgur, B., *Court-Mandated Substance Abuse Treatment: Exploring the Ethics and Efficacy* (2018) Psychiatry Advisor.

⁹ Sheedy, C. K., & Whitter, M. (2013). *Guiding principles and elements of recovery-oriented systems of care: What do we know from the research?* Journal of Drug Addiction, Education, and Eradication, 9(4), 225

¹⁰ See [Recovery and Recovery Support | SAMHSA](#)

¹¹ See [Harm Reduction | SAMHSA](#)

¹² See [Products - Vital Statistics Rapid Release - Provisional Drug Overdose Data \(cdc.gov\)](#) and National Center for Drug Abuse Statistics, 2022. [Drug Overdose Death Statistics \[2022\]: Opioids, Fentanyl & More \(drugabusestatistics.org\)](#)

¹³ See [Overdose Deaths and Jail Incarceration - National trends and racial disparities | Vera Institute](#)

¹⁴ Shabbar, I., et.al., *Opioid Overdose Mortality Among Former North Carolina Inmates: 2000-2015* (2018). American Journal of Public Health. Vol. 108 Issue 9.

¹⁵ <https://www.insidernj.com/press-release/nj-human-services-announces-pilot-program-to-provide-mental-health-screening-support-to-individuals-on-pretrial-release/>.