

Report to the Dane County Criminal Justice Council
Pre-trial Services Subcommittee
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Pre-trial Services Subcommittee Members

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Summary

The Criminal Justice Council has previously recognized the need for evidence based decision-making (EBDM) in Dane County's criminal justice system. EBDM can assist in addressing several system-wide problems including racial disproportionality, the need for evidence based and race neutral assessment tools to enhance judicial decision-making, limited staff resources, and the inability to evaluate the success or failure of programs through sound, system-wide data analysis. Recognizing the importance of decisions made early in the criminal justice process, the Council created this subcommittee to recommend a plan for implementing a comprehensive evidence based pre-trial services program in Dane County.

The aim of a pre-trial services program is to:

- Protect public safety by detaining or supervising those who pose a risk to re-offend
- Eliminate unnecessary detention for those with low risk to public safety
- Protect against the failure of defendants to appear for scheduled court dates

This is accomplished through the use of evidence-based programs and principles that will result in a number of benefits to both the criminal justice system and the community, including:

- Early diversion for appropriate persons eliminating a criminal charge or resulting in a lesser charge
- Maximizing resources and outcomes by targeting programming for individuals using the results of a race neutral, validated assessment tool
- Enhancing collaboration across the criminal justice system and coordinating resources to improve efficiency and effectiveness

To meet these goals and achieve these benefits the Pre-trial Services Subcommittee believes that the services of expert, experienced professionals in this field are necessary to guide the planning and development process. The Subcommittee is actively exploring grant opportunities in this area. The tasks such a consultant would undertake include:

- Determining benchmarks and the data elements necessary to measure results
- Developing the means to collect and analyze baseline, and later, program data
- Selecting and validating an assessment tool(s)
- Crafting policies and operating procedures
- Overseeing a pilot test period and assisting with modifications as needed

The Pre-trial Services Subcommittee respectfully requests the CJC to adopt the motion presented below and to support funding this effort in the 2015 budget. The Subcommittee requests technical assistance and funding to supplement potential grant funding received.

Motion

The Dane County Criminal Justice Council accepts the report of the CJC Pre-trial Services Subcommittee and supports moving forward with the design of a comprehensive pre-trial services program, leading to future implementation. The CJC strongly supports the use of grants

and technical advice from national experts in this field but is aware that progress and success in this effort will require local contributions and resources.

Introduction

At the June 26, 2014 meeting of the Criminal Justice Council, Commissioner Todd Meurer and Judge Nicholas McNamara presented the report of the team that represented Dane County at the Pre-Trial Justice Policy Forum in Washington, D.C. earlier that month. The forum presented a wealth of information regarding pre-trial services; the research supporting the concept, the structure and functions of programs in several jurisdictions from across the country, and what resources are available to assist jurisdictions design and implement their own programs. At the request of the team, the Criminal Justice Council created the Pre-trial Services Subcommittee. The Subcommittee assignment was to report back at the August 2014 meeting of the CJC with a proposal for the next steps in planning for and developing a pre-trial services program in Dane County. This report is submitted to fulfill that assignment.

Dane County law enforcement officers make decisions whether to arrest or not every day. The Dane County jail staff make decisions concerning the status of all those arrested and booked. Dane County judges and court commissioners also make release or detain decisions on a daily basis. These decisions carry enormous consequences for both the community and for the individuals involved.

Research at the local, state and national levels on how key criminal justice decisions are made has shown that too often pre-trial decisions rely largely on subjective assumptions based solely on experience and instinct. The alternative is to include in the decision making process an objective, data-driven assessment of an individual's risk level together with the use of specific, effective methods to protect public safety. Validated social science research demonstrates that a commitment to evidence-based decision making, that relies on accurate data, improved analysis and modern technology, can more accurately achieve the goals of detaining those who pose a risk to public safety and releasing those who do not.

The need for pretrial services programs has been long recognized and many jurisdictions have responded. The National Association of Counties (NACo), the American Bar Association (ABA) and the National Association of Pretrial Services Agencies (NAPSA) all recommend and encourage every jurisdiction to establish pre-trial services programs. The Pretrial Justice Institute estimates there are currently 200-300 jurisdictions across the country, of all sizes, with operational pre-trial services programs. Recent consultant recommendations include the creation of pre-trial services programs in Dane County.

There are many benefits to a pre-trial services program, both practical and on a public policy level:

- Early screening/assessment can divert appropriate persons from the system altogether, or result in a lesser criminal or a civil charge
- A race neutral assessment tool may contribute to reducing racial disparities
- Earlier case disposition reduces overall workload, allows scarce resources to focus on more serious cases

- Applying appropriate dispositions and treatment maximizes use of resources and better serves participants, improving chances of not re-offending
- Identifying high-risk defendants and handling the case accordingly improves public safety
- Identifying those with substance abuse and/or mental health issues allows for earlier, targeted processing
- Enhances collaboration and adds objective, additional information to the process; for law enforcement, prosecution, defense, courts and jail/prisons

Core Principles of a Pre-trial Services Program

A successful pre-trial services program will have a positive effect on all parts of the criminal justice system, from contact on the street by law enforcement through supervision by the Department of Corrections. The design and implementation of a successful program will be built upon principles advanced by the research and tested in jurisdictions across the country.

- Every interaction within the criminal justice system offers an opportunity to contribute to harm reduction; decisions relating to pre-trial release must be fair and evidence based at every stage, not influenced by factors such as an individual's gender, race, or ethnicity.
- Decisions relating to pretrial release after arrest should address: (1) protecting against risks to the safety of the community or to specific persons and (2) protecting against the risk that the individual will fail to appear for scheduled court dates.
- Unnecessary pre-trial detention should be minimized. Detention is detrimental to the individual who is detained, costly to the jurisdiction, and can be counter-productive in terms of its impact on future criminal behavior. In particular, research tells that low risk defendants have a greater risk of recidivism if detained in jail for even a short period of time than if they were not detained.
- Prosecutorial case intake and charging decisions should be made as quickly as possible based on as much information as possible.
- Supervision and monitoring of defendants released from custody should be evidence based and reflect the risk of pretrial failure.

Issues to Address in the Development of a Pre-trial Services Program

Dane County already has nascent pre-trial efforts that should be coordinated and could be built upon. But many questions must be answered as part of the planning process. Much critical information is not known.

- What is the baseline data from which results will be measured? What standards and measures of success will be used after implementation? Who will collect and analyze the data? How can separate information systems communicate or share data?
- What screening and assessment tools are best suited for Dane County? How will they be validated for this population?
- What is the size of the population to be served, at each stage? What staff and facility resources will be needed for assessing and supervising? As an alternative to County-based

- operations, are acceptable private contractors available?
- What impediments to timely prosecution processing exist, such as other holds or missing data, and those identified should be investigated and resolved to the extent possible.
- Do current pre-trial release decisions contribute to racial disparities?
- How would new pre-trial services initiatives meld with existing services (i.e., electronic bail monitoring), other evidence-based programs (i.e., drug court) or other county programs (i.e., community courts)?
- Are police and sheriff resources being applied most effectively in the absence of pre-trial data and screening tools?
- Is there pre-trial detention of persons who pose no real risk to the safety of the community or to fail to appear in court? Or are we releasing high risk defendants who pose a significant risk to public safety and to not appear in court?
- What level of monitoring and supervision is necessary for defendants released pretrial? Are there sufficient resources to adequately monitor and supervise defendants who are at a greater risk to public safety or to not appear in court?
- What resources are needed by local law enforcement, the Sheriff and in the Dane County District Attorneys Office to quicken the case intake process, and by the courts to promote timely case processing?

Moving Forward

The goal of the Subcommittee is the implementation of a pre-trial services program that:

- Produces the benefits described above
- Is firmly based in the research of evidence-based decision making
- Eliminates unnecessary pre-trial detention
- Meets the needs of the community for procedural justice
- Works well with the existing criminal justice infrastructure
- Succeeds as the first step in the introduction of evidence-based decision making throughout the criminal justice system

The functions of the pre-trial services program envisioned for Dane County include:

- Initial, brief screening by law enforcement using a proxy tool
- Alternatives to arrest
- Comprehensive assessment of those booked in the jail using a validated risk and needs assessment tool(s)
- Early diversion
- Pre-trial monitoring and supervision

The Subcommittee is persuaded that to develop an effective, sustainable program the assistance of an outside professional with experience in this field is critical. The Subcommittee has determined there is not an existing model from another jurisdiction that can be borrowed or purchased and dropped into Dane County as a turn key operation. There are obvious similarities in functions across all programs, but each is tailored to the specific environment, structure and goals in each locale.

The Subcommittee believes that, even with the contribution of time and resources to the project by each stakeholder agency, without expert guidance the likelihood of meeting all goals is significantly reduced.

The Subcommittee is vigorously exploring possibilities for technical assistance that is grant funded or otherwise provided without charge to the County. Two sources most closely aligned with the goals of the Subcommittee, and which are currently active in this area, are the National Institute of Corrections and the Laura and John Arnold Foundation. More information on these organizations is included in the appendix.

The assistance the Subcommittee would ask to receive from one or both of these entities would include:

- Determination of benchmarks of success and the data necessary to measure results
- Developing the means to collect and analyze baseline data
- Providing information to and earning the support of the community and leaders on the initiative
- Selecting and validating a risk assessment tool(s) and proxy
- Crafting a program framework and drafting policies, procedures, staff needs
- Overseeing a pilot test period, with an evaluation of results and making system modifications as necessary
- Finalizing a proposal for the ultimate program structure and budget

County Funding

The Subcommittee requests the Criminal Justice Council support the funding for the planning and development of a pre-trial services program during 2015 with the intention of full implementation in 2016. A key objective of the Subcommittee is to obtain for the County a substantial award of outside, grant funded technical assistance. However, as has been the case in Milwaukee and Eau Claire, neither the Arnold Foundation nor the NIC provide funds to pay for the administrative or overhead costs of implementing whatever policies and procedures are adopted. These grants do not fund staff positions or operational costs. Those are local costs. These grants will provide, however, the expertise to help Dane County design the proposed programs using the experiences of others, avoiding costly mistakes and delays.

There will be costs in 2015 associated with any new initiative. Examples include the baseline data collection process, modifications to agency data system to allow that data collection, training for managers and line staff in new procedures, a potential cost for assessment tools and training to use them, and evaluation of a pilot test period. The criminal justice system should prioritize the funding of these functions through the reallocation of existing resources.

Earmarking the requested funds is a serious statement of purpose by the County. It indicates the County's determination to move forward and could help move Dane County to the front of any list of potential award recipients.

If Dane County is not awarded one of the technical assistance opportunities these funds would then

serve as seed money to begin the move towards a pre-trial services program. This effort would be on a smaller scale, at a slower pace. The Subcommittee would propose using these funds to purchase consulting services to address the first stages of planning and development: the determination of benchmarks of success, the data needed to measure and the collection of baseline data. If resources allow, consultant assistance would also be requested to help in the design and dissemination of information about the project to the community and its leaders. Additional grant opportunities will continue to be explored.

Without comprehensive technical assistance in 2015, full implementation at the start of 2016 will be unlikely. Full program funding would not then be required until the planning process is complete. At that time a program budget will be presented to the CJC for comment and consideration.

Conclusion

A fully functional, evidenced based pre-trial services program can help Dane County address a number of serious issues now facing the community. Opportunities for extensive technical assistance are a real possibility. The Criminal Justice Council could lead the way and position Dane County as the best jurisdiction to receive that assistance. This would lead to a successful first step in the expansion of evidence-based practices across the criminal justice system.

The Pre-trial Services Subcommittee respectfully requests the CJC to adopt the motion presented to the members and undertake to fund this effort in the 2015 budget.

Appendix

The Laura and John Arnold Foundation

Located in Houston, Texas, the Laura and John Arnold Foundation (LJAF) state their core objective is to produce substantial, widespread and lasting reforms that will maximize opportunities and minimize injustice in our society. To do this, they identify challenges and address their root causes through innovative, multi-disciplinary solutions. The aim is to foster a culture in which individuals have the best chance to succeed and prosper, while encouraging a sense of responsibility, compassion and reinvestment toward their communities and society as a whole. Their areas of focus include criminal justice, K-12 education and research integrity.

LJAF's Criminal Justice initiative aims to reduce crime, increase public safety, and ensure the criminal justice system operates as fairly and cost-effectively as possible. In order to achieve these goals, the Foundation works to develop, incubate, and spread innovative approaches to criminal justice challenges. Teams of experts from both inside and outside the criminal justice field develop research projects, create tools for practitioners, and partner with local jurisdictions to pilot and test new policies and practices. Their projects use data and technology as a means to drive innovation and accelerate the adoption of proven reforms.

Currently, the focus is on two targeted areas: the front end of the system, which runs from arrest through sentencing, and forensic science. These areas were selected because reforms in these areas can significantly improve safety, cost, and fairness. These areas are also most likely to benefit from the Foundation's collaborative, data- and technology-driven approach to transforming the criminal justice system. The Foundation has conducted studies in the areas of the impact of pre-trial supervision, the hidden costs of pre-trial detention and assessing pre-trial risk.

The Dane County team that attended the June 2014 Pre-trial Policy Forum in Washington heard the LJAF presentation on their assessment tool, and met the Foundation's representative. The Foundation is in the process of expanding the pilot sites currently testing the PSA-Court assessment tool. There are 50 jurisdictions expressing interest. It is expected the Foundation will make a decision in October, 2014. Matt Alsdorf, of the Foundation, has said that for Dane County to be considered it is important to have full buy-in by all stakeholders. The Subcommittee has responded to his request for more information about the Dane County system with a 10 page, detailed response to his questionnaire. A copy of the response is available on request.

National Institute of Corrections

The National Institute of Corrections (NIC) is an agency within the U.S. Department of Justice, Federal Bureau of Prisons located in Washington, DC. NIC provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local corrections agencies. Through cooperative agreements, the Institute awards funds to support program initiatives. It also provides leadership to influence correctional policies, practices, and operations nationwide in areas of emerging interest and concern to correctional

executives and practitioners as well as public policymakers.

In June 2008, NIC awarded the Center for Effective Public Policy, in partnership with the Pretrial Justice Institute, the Justice Management Institute, and The Carey Group, a cooperative agreement to address "Evidence-Based Decision Making in Local Criminal Justice Systems." Dane County has already worked with the Center for Effective Public Policy in the system mapping effort.

The goal of this initiative is to build a systemwide framework (arrest through final disposition and discharge) that will result in more collaborative evidence-based decision making and practices in local criminal justice systems. This effort is grounded in two decades of research on the factors that contribute to criminal reoffending and the methods the justice system can employ to interrupt the cycle of reoffense. There are three phases of NIC's Evidence-Based Decision Making (EBDM) initiative:

- **Phase I Framework Development:** Project partners worked with NIC and a multidisciplinary advisory committee to develop the Framework, with the intent to define risk and harm reduction as fundamental goals of the justice system, summarize the strongest of the evidence-based research, and outline a structure and set of principles for achieving EBDM in local justice systems.
- **Phase II Planning Process:** The initiative competitively selected and worked with seven sites (including Milwaukee and Eau Claire) as they engaged in a planning process to prepare to implement their local interpretation of the Framework. Their implementation plans were submitted to NIC in June 2011.
- **Phase III Implementation:** Since August 2011, NIC has provided support to all seven sites in Phase III.
- **Phase IV Expansion to Statewide Structure:** In September 2013, NIC entered into a cooperative agreement with the Center for Effective Public Policy to expand EBDM to the state level. Work under this phase of the Initiative includes the provision of technical assistance and the development of tools and protocols to expand EBDM to approximately 5 local jurisdictions and to state level policy groups within those states with existing EBDM local sites. In support of this work, NIC and the Center partnered with officials in the State of Wisconsin to develop and pilot a statewide Summit on EBDM in January 2014. Representatives of Dane County attended the Summit.

In early April 2014, the National Institute of Corrections selected five states, including Wisconsin, to participate in Phase IV of NIC's EBDM initiatives. The purpose of Phase IV is to prepare each participating state to expand EBDM to the state level and to add approximately 5 more local jurisdictions. NIC will be working with the Director of State Courts, the Department of Justice and a variety of criminal justice professionals during Phase IV. Doing so will necessitate:

NIC's statewide EBDM implementation will require teams of local stakeholders to work in parallel and in partnership with state representatives and with one another. Local EBDM teams

ideally will include the following stakeholders: elected sheriff, chief of police, pretrial director or equivalent, district attorney, public defender, jail administrator, court administrator, chief judge, chief probation officer, local criminal justice coordinating council coordinator or similar position, city/county manager, commissioner/board of supervisors, and victim advocate.

Dane County was well represented at the NIC's January 2014 statewide Wisconsin Summit on Evidenced Based Decision Making. Currently the project is supporting Milwaukee and Eau Claire with technical assistance. It is anticipated Wisconsin will be chosen as one of the statewide venues for the next phase of the project. The CJC, at their July meeting, completed the Director of State Courts survey to apply for the opportunity to be one of the 5-6 counties selected to participate. There are 20 other counties in Wisconsin that have applied. The statewide Criminal Justice Coordinating Council is expected to make the final decision by the end of the year.