POLICY RESEARCH ASSOCIATES

Creating an Indigent Defense Diversion Team: The Manhattan Arraignment Diversion Project

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Relatively few of the diversion programs developed in response to the overrepresentation of people with mental illness in the United States criminal justice system have targeted initial arraignment or first appearance courts. In 2010, the Legal Aid Society piloted the Misdemeanor Arraignment Project (MAP) in New York City Criminal Court through funding from the Langeloth Foundation. The Project aims to better identify, assess, and represent individuals with mental illness facing criminal charges at the earliest possible stages after arrest.

MAP is an early intervention model that seeks to decrease the frequency of arrest and short jail sentences for individuals with mental illness. MAP enhances the ability of a community to serve people with mental illness and provides them with continuous community-based mental health treatment, appropriate housing, and supports.

The interdisciplinary team includes the attorney and paralegal assigned to the case and a MAP licensed clinical social worker. The attorney is responsible for providing legal representation in arraignments. He/she works together with the other team members to distinguish how and when screening and assessment information should be used in legal advocacy to assist in the successful resolution of the case. The licensed clinical social worker is responsible for identifying and assessing detained clients awaiting arraignment, treatment planning, and court advocacy. The social worker is also responsible for organizing collateral contacts with family, significant others, and community providers. He/she also offers referrals to community treatment and accompanies clients in emergency/crisis situations when necessary.

Individuals who qualify for the target population for MAP:

- are 18 years of age or more
- have a mental illness and/or a substance use disorder
- are at risk of
  - being arraigned and released without supportive services
  - a jail sentence
  - being held in jail pending a court appearance
- consent to accept assessment, referral, and connection to treatment

Many MAP clients face challenges such as intellectual or developmental disabilities and homelessness or the risk of becoming homeless, in addition to behavioral health issues. MAP clients may be dealing with current crises (e.g., suicidal ideation) that require immediate attention in a psychiatric emergency room or may have a history of repeated use of inpatient treatment beds, crisis services, and/or correctional healthcare.

Current engagement in treatment does not preclude a potential client from use of MAP services.

Participants

MAP served 250 clients between July 2010 and April 2012. These clients varied in age: 20 years old and below (10%), 21-29 years old (20%), 30-39 years old (24%), 40-49 years old (25%), 50-59 years old (16%), and 60 years old and above (5%). A majority of the clients were male (72%). About half of the clients were African American (49%), followed by Hispanic (28%), Caucasian (15%), and other varied ethnicities.

Mood disorders (38%) and schizophrenia and other psychotic disorders (34%) were the most frequently seen diagnoses in clients. Overall, 57% of clients had co-occurring mental illness and substance abuse issues; 22% dealt only with mental illness; 7% dealt only with substance abuse issues; and 14% were missing diagnoses.

The crime that preceded enrollment in MAP was most frequently larceny (29.6%), followed by controlled substance offenses (12.4%), assault and related offenses (11.6%), other offenses relating to theft (10%), and burglary and related offences (9.2%).

Outcomes

Between July 2010 and April 2012, MAP completed 223 pre-arraignment assessments and 27 post-arraignment assessments. Of the 223 individuals assessed pre-arraignment, 149 were determined to be jail-divertible at arraignment. Table 1 shows the final determinations of all 149 cases.

Table 1. 149 MAP Jail-Divertible Case Assessments in Arraignments

Status	N	%
Diverted	88	59.1
Judge Denied – DOC	32	21.5
Client Refused	17	11.4
MAP Unable to Place	4	2.7
LAS Relieved	2	1.3
Parole Hold	2	1.3
Transfer (MMTC)	2	1
Open Warrants – DOC	1	0.7
Attorney Denied – DOC	1	0.7
Total	**149**	**100**

Table 2. Legal Outcomes of MAP-Diverted Pre-Arraignment Defendants

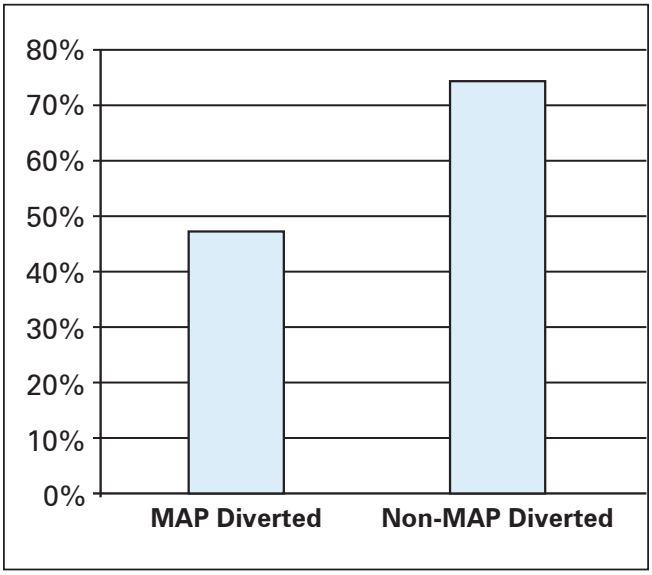
Status	N	%
ROR: Released on own Recognizance	44	50.0
PGSI: Conditional Discharge	24	27.3
PGSI – CASES	7	8.0
PGSI: Time Served	6	6.8
PGSI: Adj. Contemplation of Dismissal	5	5.7
9.43 – Dismissed	2	2.3
Total	**88**	**100**

Eighty-eight individuals (59%) were diverted at arraignment. Table 2 shows the breakdown of legal outcomes for these 88 persons.

Of the 27 people assessed post-arraignment, 16 (59%) were diverted, for a total of 104 persons diverted. Of the 104 clients diverted between July 2010 and April 2012, 52% had no arrests within one year, 16% had one arrest, 13% had two arrests, 12% had three arrests, and 7% had four or more arrests.

The above data was compared to the number of arrests for 61 non-MAP-diverted clients. Twenty-three clients either refused MAP services, were unable to be placed, or their Legal Aid Society attorney was relieved, and 38 clients were either denied diversion by the judge, were on parole hold, were transferred, had an open warrant, or were remanded into custody for adjudicating or sentencing. Of these non-MAP diverted clients, 25% had no arrests within one year, 32% had one arrest, 11% had two arrests, 10% had three arrests, and 21% had four or more arrests. Figure 1 shows the difference in percentage of individuals arrested at 1 year between MAP-diverted clients and non-MAP-diverted clients.

Figure 1. Proportion Arrested 1 Year Post-MAP



Four Keys to Program Success

Education and Engagement of the Judiciary

Judicial buy-in and appreciation of the goals of MAP are essential to its success. Focus groups prior to the initiation of MAP and subsequent follow-up with judges as to their perception of the success and usefulness of MAP are key to evaluating potential and ongoing success of the program. Judicial feedback may indicate potential modifications to procedures in the courtroom. In addition, judicial endorsement of MAP is an incentive for prosecutorial cooperation and overall success.

Attorney Engagement and Endorsement

Attorneys have not generally referred matters to social workers during arraignments but have waited until subsequent appearances to have social workers assist. Continuous education of attorneys, both new and experienced, through presentations by the social worker will help foster understanding of the overall arraignment part defense strategies that can utilize social workers.

Assertive Assessment and Engagement of Clients Throughout Each Arraignment Shift

The social worker in this role must have a skill set suited to working with many different personalities (clients, attorneys, judges) in a fast-paced environment, which can often be highly charged for the client. Social workers must screen files prior to the attorneys and take the initiative to suggest to the attorneys that a client could be diverted to treatment or back to treatment. The social worker in the MAP project has to be on the lookout for appropriate clients in all ways – reviewing files, discussing with the attorneys, and assessing clients visually and through initial interaction. Some clients don't want to speak to anyone other than their attorney or speak to anyone without their attorney. The skill of the social worker in making clients feel at ease in a difficult and potentially traumatizing situation is essential.

Ability to Establish Data Collection Systems Prior to Program Initiation and Conduct Accurate Follow Up

This is a labor-intensive part of the project. If it is possible to secure outside help to conduct extensive data analysis and program evaluation, either through partnership with a university or other outside source, this might be ideal.

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