

Best Practices for Standardized Risk Assessment



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Executive Summary

The judiciary budget for fiscal year 2009 contained boilerplate language requesting that the State Court Administrative Office (SCAO) of the Michigan Supreme Court conduct a survey of trial courts to determine best practices for standardized risk assessment. However, because very few district courts use a formal risk and needs assessment instrument, and the vast majority of circuit courts use the same risk assessment tool, SCAO surveyed only those trial courts operating a drug treatment court program. Twenty-nine percent of Michigan's drug treatment courts reported using a standardized risk and needs assessment instrument. To increase this evidence-based practice, applicants for the Michigan Drug Court Grant Program receive bonus points on their grant application for using a standardized risk and needs assessment tool.

Introduction

The judiciary budget for fiscal year 2009 contained boilerplate language requesting that the State Court Administrative Office (SCAO) conduct a survey of trial courts in order to determine best practices for standardized risk assessment. SCAO was encouraged to explore existing tools and established benchmarks that could be utilized in addressing criminogenic needs of the local community.

Risk assessments identify risk factors. Risk factors are characteristics that make an offender less likely to succeed in traditional forms of rehabilitation. The term “risk” does not indicate risk of committing violent or dangerous acts. However, if an individual identified as having certain risk factors is not rehabilitated, he/she has an increased likelihood of committing new criminal acts (recidivism). Some risk factors include associating with criminals, history of familial crime, age one began using drugs or alcohol, and lack of education. Risk factors that can be changed are called dynamic (e.g., associating with criminals and lack of education). Those that cannot be changed are called static (e.g., history of familial crime and age one began using drugs or alcohol). Dynamic factors are also called criminogenic needs. Criminogenic needs are dynamic risk factors that are strongly correlated with failure in traditional forms of rehabilitation. Doctors Latessa and Lowenkamp (2006) likened criminogenic risk factors to risk factors of heart attacks.

“Your risk can be heightened by your age (over 50), sex (males), family history of heart problems, high blood pressure, being overweight, lack of exercise, stress, smoking, and high cholesterol. Some of these factors are static and others are dynamic. To understand your risk you would factor in all of them; to affect - and lower - your risk you would focus on the dynamic ones.”

SCAO has addressed the Legislature’s request by identifying that trial courts with a drug treatment court are the courts that are most likely to utilize a risk assessment and then surveying those trial courts to determine their use of risk assessment tools. SCAO explored the existing risk assessment tools used nationally and within Michigan and reviewed research regarding risk assessments. However, there is limited research on best practices of risk assessments nationally and no research available on best practices in Michigan. Therefore, SCAO recommends that the following be viewed as informative rather than prescriptive.

Overview of Drug Courts in Michigan

Also known as “problem-solving courts,” specialty courts have steadily gained acceptance as an alternative to imprisonment for nonviolent criminal offenders who abuse drugs or alcohol. Many repeat offenders have substance use disorders, causing them to cycle in and out of the justice system. To break this cycle, specialty courts employ “therapeutic jurisprudence,” which emphasizes treatment, rehabilitation, intensive supervision, judicial status hearings, frequent drug testing, and graduated incentives and sanctions. Core drug court team members consist of judges, probation officers, law enforcement personnel, prosecutors, defense counsel, and substance use disorder treatment providers.

Spurred in part by the problem of jail overcrowding, many Michigan courts have turned to the problem-solving approach. Beginning in the late 1980s, drug courts offered an effective solution to alcohol- and drug-related crime by addressing the underlying cause and treating addiction as a complex disease. Recognizing that repeat criminal offenders often have alcohol and substance use disorders, many judges, prosecutors, and city attorneys have implemented drug treatment courts in their jurisdictions.

Descriptions of Drug Court Types

Although they share the same judicial model of therapeutic jurisprudence, drug treatment courts, family dependency treatment courts, juvenile drug treatment courts, and DWI treatment courts all have program-specific components designed to meet the specific needs of their target population.

Adult Circuit and Adult District Drug Treatment Courts

In 2009, 18 circuit courts and 15 district adult drug treatment courts were operational, and 3 adult drug treatment courts were in the planning phase in 2009. The adult drug court model is the oldest and most frequently-implemented drug court model. It is characterized by a specially-designed court docket focusing on nonviolent drug-related felony and misdemeanor cases. The judge is actively involved in supervising drug court offenders during regularly-scheduled review hearings that involve most of the drug court treatment team members. The primary purposes of a drug treatment court are to achieve a reduction in recidivism and substance abuse; to increase the likelihood of successful rehabilitation through early, continuous, and intense judicially-supervised treatment, mandatory periodic drug testing, community supervision, and use of appropriate sanctions and other rehabilitation services.

Driving While Intoxicated (DWI) Treatment Courts

There were 23 operational DWI treatment courts as of December 2009. DWI treatment courts, also known as “sobriety” courts, target offenders who have been charged with driving while under the influence of drugs or alcohol. Each DWI treatment court contains key program components recommended by the Bureau of Justice Assistance in *The Ten Guiding Principles of DWI Courts*. This target population poses a high risk to the community because, in most cases, their driving privileges have been revoked. Addressing transportation issues is a vital program component of this type of court.

Family Dependency Treatment Courts

As of December 2009, there were nine operational family dependency treatment courts, and one additional family dependency treatment court was in the planning phase. The enactment of the federal Adoption and Safe Families Act of 1997 has given added impetus to the establishment of family drug courts by calling for states to initiate termination of parental rights proceedings for children who have been in foster care for 15 of the previous 22 months. This short time frame makes it more important that court systems develop mechanisms to ensure judicial supervision and coordination of, and accountability for, the services provided to

juveniles and families in crisis. Because many more individuals and entities need to be involved with these family dependency drug court cases, development of family dependency drug courts is proving to be a more complex task than the development of other drug courts.

Family dependency drug court dockets consist of selected abuse, neglect, and dependency cases where parental substance abuse is a primary factor in the allegations of abuse or neglect. Judges, attorneys, child protection services workers, and treatment personnel unite with the goal of providing safe, nurturing homes for children, while simultaneously providing parents the necessary support and services to become drug-free and alcohol-free. Family dependency drug courts aid parents in regaining control of their lives and promote long-term stabilized recovery to enhance the possibility of family reunification within the mandatory legal time frames.

Juvenile Drug Treatment Courts

At the conclusion of 2009, there were 15 operational juvenile drug treatment courts. A juvenile drug court is a docket within the family division of circuit court to which selected delinquency cases, and in some instances status offenders, are referred for handling by a designated judge. The youths referred to this docket are identified as having problems with alcohol and/or other drugs. The juvenile drug court judge maintains close oversight of each case through regular status hearings with the parties involved. The judge both leads and works as a member of a team that is comprised of a defense attorney, and representatives from treatment providers, juvenile justice, social and mental health services, school and vocational training programs, law enforcement, probation, and the prosecutor's office. Over the course of a year or more, the team meets frequently, determining how best to address the substance abuse and related problems of the youth and the youth's family.

Healing to Wellness Tribal Courts

The Tribal Advisory Committee describes its drug courts as Healing to Wellness courts. These courts operate within the tribal justice system to address alcohol- and drug-related crime. The programs use the core principles of drug treatment court and also incorporate customs and traditions of the native community. There were three of these specialty courts in operation in Michigan during 2009.

Table 1
Types of Drug Courts
As of December 2009

Type of Drug Court	Operational Drug Courts	Drug Courts in Development	Total
Adult Circuit	18	1	19
Adult District	15	2	17
Driving While Intoxicated (DWI)	23	0	23
Family Dependency	9	1	10
Juvenile	15	0	15
Tribal	3	0	3
Total	83	4	87

Michigan has been a leader in the drug court movement. In June 1992, the first woman's drug treatment court in the nation was established in Kalamazoo County for the 9th Circuit Court. The program was a success and other courts sought to establish their own drug court programs. The drug courts in operation as of December 2009 are listed by county on the next two pages.

Table 2
Michigan Drug Courts
As of December 2009

County	Court	Type of Drug Court
Alcona	23 rd Circuit Court	Adult
Alger	93 rd District Court	Adult
Barry	Barry County Trial Court	Adult
Barry	Barry County Trial Court	Juvenile
Bay	18 th Circuit Court	Family Dependency
Bay	74 th District Court	DWI
Benzie	19 th Circuit Court	Juvenile
Benzie	85 th District Court	Adult
Calhoun	37 th Circuit Court	Adult – Men
Calhoun	37 th Circuit Court	Adult – Women
Calhoun	10 th District Court	Adult
Cass	4 th District Court	Adult
Cass	43 rd Circuit Court	Family Dependency
Charlevoix	33 rd Circuit Court	Juvenile
Charlevoix	90 th District Court	DWI
Cheboygan	53 rd Circuit Court	Adult
Chippewa	Gwaiak Miicon Drug Court	Tribal
Dickinson	95B District Court	Adult
Eaton	56 th Circuit Court	Adult
Eaton	56 th District Court	DWI
Emmet	57 th Circuit Court	Juvenile
Emmet	Odawa Youth Healing to Wellness Program	Tribal
Genesee	7 th Circuit Court	Adult
Genesee	7 th Circuit Court	Family Dependency
Grand Traverse	13 th Circuit Court	Family Dependency
Grand Traverse	13 th Circuit Court	Juvenile
Grand Traverse	86 th District Court	DWI
Hillsdale	1 st Circuit Court	Family Dependency
Hillsdale	1 st Circuit Court	Juvenile
Ingham	30 th Circuit Court	Family Dependency
Ingham	54A District Court	DWI
Ingham	55 th District Court	DWI
Ionia	64A District Court	DWI
Iron	41 st Circuit Court	Adult
Iron	95B District Court	Adult
Isabella	21 st Circuit Court	Adult
Isabella	21 st Circuit Court	Juvenile
Isabella	76 th District Court	Adult
Jackson	4 th Circuit Court	Adult
Jackson	4 th Circuit Court	Family Dependency
Kalamazoo	8 th District Court	DWI
Kalamazoo	9 th Circuit Court	Adult - Men
Kalamazoo	9 th Circuit Court	Adult - Women
Kalamazoo	9 th Circuit Court	Family Dependency

Table 2
Michigan Drug Courts
As of December 2009

County	Court	Type of Drug Court
Kalamazoo	9 th Circuit Court	Juvenile
Kent	61 st District Court	Adult
Leelanau	Grand Traverse Band Tribal Court	Tribal
Livingston	44 th Circuit Court	Adult
Livingston	53 rd District Court	DWI
Luce/Mackinac	92 nd District Court	DWI
Macomb	16 th Circuit Court	Adult
Macomb	16 th Circuit Court	Juvenile
Macomb	37 th District Court	Adult
Macomb	39 th District Court	DWI
Macomb	41B District Court	Adult
Manistee	19 th Circuit Court	Juvenile
Marquette	96 th District Court	DWI
Midland	42 nd Circuit Court	Adult
Monroe	38 th Circuit Court	Juvenile
Muskegon	60 th District Court	DWI
Oakland	6 th Circuit Court	Adult
Oakland	6 th Circuit Court	Juvenile
Oakland	43 rd District Court	DWI
Oakland	47 th District Court	DWI
Oakland	51 st District Court	DWI
Oakland	52 nd District Court – Division 1	DWI
Oakland	52 nd District Court – Division 2	DWI
Oakland	52 nd District Court – Division 3	DWI
Ogemaw	34 th Circuit Court	Family Dependency
Otsego	87 th District Court	Adult
Ottawa	20 th Circuit Court	Adult
Ottawa	20 th Circuit Court	Juvenile
Ottawa	58 th District Court	DWI
Saginaw	10 th Circuit Court	Family Dependency
Schoolcraft	93 rd District Court	Adult
Van Buren	36 th Circuit Court	Adult
Washtenaw	15 th District Court	DWI
Washtenaw	22 nd Circuit Court	Juvenile
Wayne	3 rd Circuit Court	Adult
Wayne	3 rd Circuit Court	Juvenile
Wayne	16 th District Court	DWI
Wayne	19 th District Court	Adult
Wayne	23 rd District Court	Adult
Wayne	28 th District Court	Adult
Wayne	33 rd District Court	DWI
Wayne	35 th District Court	Adult
Wayne	36 th District Court	Adult

Risk Assessment

Risk Assessment in Michigan Drug Courts

Michigan's enabling drug court legislation, 2004 PA 224 (MCL 600.1060 et. seq.), prescribes operational standards for drug courts. The same legislation also provides the Michigan Supreme Court, State Court Administrative Office (SCAO) parameters for regulating problem-solving courts. In Michigan, risk assessment is mandated by MCL 600.1064 § 3(b), which requires that drug court participants be assessed for risk of danger or harm to themselves, others, or the community.

Notwithstanding, Michigan drug courts do not consistently administer a reliable and valid risk assessment tool as part of their protocol for determining admissions. The results of a 2010 survey of Michigan drug courts indicated that 29 percent of the drug courts currently utilize a risk assessment when participants are considered for drug court admission. This is consistent with national statistics indicating that risk assessments are not commonly used. In testimony given to the Subcommittee on Commerce, Justice, Science, and Related Agencies in March, 2009 relating to Drug Treatment for Offenders: Evidence-Based Criminal Justice and Treatment Practices, Dr. Faye Taxman stated that 33 percent of all adult correctional facilities report using a standardized risk assessment tool. This is unfortunate because relying on a subjective assessment of offenders' risk and needs is not an evidence-based practice and may produce less than optimal performance outcomes.

Table 3
Drug Courts Utilizing a Risk Assessment
As of February 2010

Type of Drug Court	Drug Court Survey Responses	Drug Courts Using Risk Assessment	Percent
Adult Circuit	11	5	45
Adult District	11	4	36
Driving While Intoxicated (DWI)	17	1	6
Family Dependency	8	4	50
Juvenile	5	1	20
Total	52	15	29

Best Practices for High Risk and Low Risk Offenders

Recognizing that assessments are a critical component of the drug court admission process, in 2007 the SCAO contracted with Dr. Douglas Marlowe to provide recommendations on appropriate assessments to employ during drug court admission screenings. Dr. Marlowe is the Chief of Science, Law, and Policy for the National Association of Drug Court Professionals. What follows is a summary of the recommendations Dr. Marlowe provided in his technical assistance report to Michigan. These recommendations reflect the present best practices for risk assessment.

There are two types of risk assessments - risk of causing harm and risk of relapse. Risk of causing harm will be discussed briefly, as it is not the primary definition of a risk assessment. Risk of causing harm can be determined by a legal screening that examines the drug court participant's criminal history. Individuals who have committed violent offenses in the past are more likely to commit violent offenses in the future when compared to individuals without a record of violence. Currently, prosecutors or drug court team members conduct a legal screening to identify prior offenses for each potential drug court participant. If a drug court team wishes to extend beyond the legal screening to further examine risk of causing harm, Dr. Marlowe suggested teams use the Global Appraisal of Individual Needs-Quick (GAIN-Q) assessment instrument. This is a twenty to thirty minute assessment that identifies violence or predatory potential such as bullying behavior, threatening, lying, or conning.

With regard to risk of relapse, the primary definition of risk assessment, risk factors are those characteristics that make offenders less likely to succeed in traditional forms of treatment or rehabilitation, and, therefore, more likely to recidivate. Drug court participants are categorized as high risk or low risk participants based on characteristics established through empirical research. Low risk participants possess few or none of the following high risk characteristics:

- Are currently 25 years old or younger
- Exhibited delinquent behavior prior to age 16
- Began substance use prior to age 14
- Have previously been convicted of a serious offense
- Have failed prior treatment attempts
- Have a familial history of crime or addiction
- Have negative social associations
- Have been diagnosed with Antisocial Personality Disorder

The traditional drug court model was built for high risk offenders and is most effective for high risk offenders. Nevertheless, not all drug court participants are high risk participants. Studies have shown that one-half of misdemeanor drug court participants (Marlowe, Festinger, & Lee, 2003) and one-third of felony drug court participants (Marlowe, Festinger, & Lee, 2004) are low risk offenders, falling below threshold on the Addiction Severity Index (ASI; McLellan, Cacciola, Kushner, Peters, Smith, & Pettinati, 1992) drug composite score resulting in a score similar to the non-using population. Given that low risk participants do participate in drug court programs, it is important to conduct a risk assessment to identify each participant's level of risk and to provide different program requirements for high risk and low risk offenders.

To accommodate low risk offenders in a drug court program, current best practices recommend allowing low risk offenders to attend their court review hearing by telephone rather than in person or to attend court review hearings in court on an "as needed" basis (DeMatteo, Marlowe, & Festinger, 2006). This is because many low risk offenders are employed while participating in drug court. Attending court review hearings in person may interfere with the low risk offenders' employment and present conflicting responsibilities. Examples of behaviors that

would result in an in person appearance include positive drug tests, missing treatment sessions, failing to call in to a review hearing, missing probation officer meetings, or failing to meet program responsibilities such as obtaining job training or enrolling in educational classes. For high risk offenders, current best practices recommend in person court review hearings that occur on a biweekly basis, at minimum (Marlowe, Festinger, Lee, Dugosh, & Benasutti, 2006).

Current best practices also address three areas of treatment for low risk offenders. First, low risk offenders should not participate in the group treatment sessions that include high risk offenders (DeMatteo, Marlowe, & Festinger, 2006). Low risk offenders may learn negative behaviors or become familiarized with areas of the drug use culture they had not previously explored through discussions that occur in group treatment sessions with high risk offenders. Therefore, the current best practice is to ensure high and low risk offenders are not mixed in group sessions. This can be accomplished by either holding separate group sessions for high and low risk offenders or conducting individualized treatment sessions.

A second best practice regarding treatment for low risk offenders involves allowing attendance at 12 step meetings, typically a requirement of drug courts, to be optional for low risk offenders (DeMatteo, Marlowe, & Festinger, 2006). For many 12 step programs, one of the basic tenets of the program is that the drug or alcohol user is powerless over their addiction. Additionally, many 12 step programs hold as a basic assumption that drug or alcohol use occurs because the addict is afflicted with a disease that is physical and/or spiritual. For low risk offenders, these assumptions may not be true. Requiring a low risk offender to commit to these assumptions or proclaim them as true may instead teach the offender that he or she only needs to say what the drug court team wants to hear in order to do well in the program.

A third best practice for treatment of low risk offenders involves examining the underlying philosophy of the treatment techniques utilized and considering adjusting them to accommodate low risk offenders (DeMatteo, Marlowe, & Festinger, 2006). For example, Motivational Enhancement Therapy (MET; Miller, Zweben, DiClemente, & Rychtarik, 1992) is a technique in which a participant's biopsychosocial functioning scores are compared to those of healthy individuals. This technique may be useful for high risk participants. However, low risk offenders' scores may not differ significantly from healthy individuals, leading low risk offenders to the conclusion that they do not have a problem with drugs or alcohol. This technique can be adjusted by displaying anonymous test results of other individuals who are affected by drugs or alcohol and discussing with the low risk offender how drugs or alcohol resulted in the scores or test results. The goal of this technique adjustment is to assist the low risk offender in seeing himself as currently on a journey leading to poor health.

Standardized Risk Assessments

There are several standardized risk assessment tools available. In research conducted by the George Mason University Evidence Based Corrections and Treatment research center, the two most common standardized risk assessments utilized nationally are the Wisconsin Risk and Needs (WRN; Baird, Heinz, & Bemus, 1979) and the Level of Service Inventory - Revised (LSI-R; Andrews & Bonta, 1994). The WRN (Baird, 1981) uses separate risk and need scales to

classify offenders to a supervision level. There are two versions of the risk scale - one for the initial assessment and one for reassessments. Offenders are evaluated on criminal history, drug and alcohol problems, employment, number of address changes, and attitude when utilizing the initial assessment. In addition to the above factors, the reassessment also assesses offenders' current living situation, social identification, response to court or parole board conditions, and use of community resources.

The LSI-R measures ten functional areas including criminal history, education/employment, financial, family/marital, accommodation, leisure/recreation, companions, alcohol/drug problems, emotional/personal, and attitudes/orientation. Responses are totaled into a final score that is used to make decisions about level of supervision and treatment.

The Correctional Offender Management Profiling for Alternative Sanctions version 4.5 (COMPAS 4.5; Northpointe Institute for Public Management, Inc., 2004) is a risk assessment commonly used in Michigan. In 2005, Northpointe was contracted by the Michigan Department of Information Technology to provide the COMPAS Reentry tool to the Department of Corrections probation and parole officers as part of the Michigan Prisoner ReEntry Initiative. Thus, circuit courts in Michigan are already using a COMPAS Northpointe product to assist with offender community placement and parole decisions.

COMPAS allows the assessor to select any combination of its 22 scales to customize the instrument to the assessor's needs. COMPAS also permits for retesting, if desired. Examples of the characteristics measured by COMPAS include criminal attitudes, criminal personality, criminal associates, financial problems, vocational/educational issues, criminal opportunity, violence, flight risk, recidivism, and noncompliance.

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