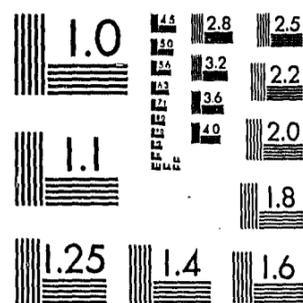


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THE APPROPRIATENESS OF PRESENTENCE DIAGNOSTIC
STUDY REFERRALS

BY

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THE APPROPRIATENESS OF PRESENTENCE DIAGNOSTIC
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ABSTRACT

Although the criminal courts increasingly use the results of presentence study procedures as an aid in the sentencing process, there is an absence of data relating to the appropriateness of the cases actually referred for prison-based study. This is especially true when the individual's loss of freedom and the utilization of costly and scarce evaluative resources are considered. The current study examines the referral characteristics of defendants selected for a prison-based presentence diagnostic study procedure in terms of the appropriateness of the apparent commitment criterion, i.e., the safety of the community and/or the safety or health of the defendant. The resulting analysis suggests that most referrals to the prison-based presentence study procedure are appropriate, with 89% of the cases referred presenting one or more of the predefined characteristics. These results are presented to provide empirical information and selection criteria helpful to both criminal courts and presentence study programs.

I. BACKGROUND

Over the past few decades the criminal courts have begun considering different aspects of the defendant's background and personality during the sentencing process, rather than sentencing the defendant based solely on the crime of conviction. Consequently, these courts have required more information than has been available through the typical trial proceedings. As a result of this need for additional information, evaluation services have become available to assist in sentencing. The presentence investigation report, prepared by probation officers, as well as the descriptive and evaluative reports from public and private mental health professionals, court volunteers, social service agencies, and other such agents and agencies are now available.

Because the safety of the community and/or the safety or health of the defendant are in question in some cases, the evaluation is not always practical within a community setting. Therefore, the Federal Bureau of Prisons, the North Carolina Department of Correction, and a number of other correctional systems have instituted presentence evaluation programs which perform these necessary studies within the confines of a prison setting.¹ Presentence studies within prison settings are more costly due both to the additional expense of incarceration, and the loss of liberty suffered by the defendants. With this increased cost, prison-based evaluative services must have an effective mechanism for screening referrals, thus insuring that only those individuals requiring the more costly evaluation are selected for in-prison study.

Referrals for prison-based presentence diagnostic study are most often based on the court's perceived need for additional information during the final sentencing deliberations.² The court's questions in these referrals are most often related to the offender's mental condition, motivation for the crime of conviction, potential for future criminal behavior, and particular need for intervention and treatment.³ These questions usually can be answered by the prison-based presentence diagnostic study. For the most part, however, the court's questions can be answered equally as well by other agencies. The basic criterion, then, for referral to a prison-based presentence diagnostic study, rather than another agency, should be the safety of the community and/or the safety and health of the defendant. No systematic analysis of the courts' use of this as a criterion for selection is available. The present study seeks to provide information in this area.

The North Carolina program has been in operation since 1967 when it initially received statutory authority.⁴ Since the program's inception, the courts have served as the source of referral and hence, the screening device for the program. Because the courts are already existing components of the criminal justice system, they are a less expensive mechanism than an agency created solely for the screening function. In attempting to evaluate the appropriateness of this screening process, one might question whether or not the clientele need to be incarcerated during the evaluation; and by doing this, the effectiveness of the courts as a decision point between prison and community based evaluative services can be examined.

In North Carolina, the courts usually make referrals to the Presentence Diagnostic Program by telephone. An appointment is made with the Program's

staff, and the offender is subsequently evaluated during a 60-90 day period at one of the eleven Diagnostic Centers operated by the Division of Prisons. The initial decision to refer the defendant to the Presentence Diagnostic Program is based on information and opinions gathered from the defendant's testimony, and from attorneys, state probation officers, and other interested persons. However, the final decision to refer is made by the presiding judge who prepares a commitment order for the study. The amount of information available to the judge varies from case to case, but it is upon this information, however extensive or limited it may be, that the judge makes the final decision.

In examining the ability of the courts to recognize which individuals require prison-based assessments, this study does not include any review of defendants who might have benefitted from an evaluation, but were not referred, or of defendants referred to community-based services. Also, the court's need for evaluative information is not questioned; it is assumed that the court; and specifically the presiding judge, desired and required an evaluation to assist in sentencing. Appropriateness of referral is defined as the presence of certain predefined characteristics suggesting that the well-being of the community or of the defendant might be threatened if the defendant remains in the community. The question is whether or not the defendants referred to the North Carolina Presentence Diagnostic Program require the increased costs, security, and loss of liberty in order to safely provide the courts their needed evaluative information.

II. METHOD OF STUDY

In order to answer the above question, the records of all defendants admitted to the North Carolina Presentence Diagnostic Program in 1974 were used as the study sample. Only the information available to the court prior to admission to the Presentence Diagnostic Program was used. This information included the facts of the crime, the probation officer's report, any evaluations performed prior to the referral, and the information received from the court during the telephone contact. Information acquired or developed during the presentence diagnostic study process was not used.

The characteristics used to determine the appropriateness of a referral were based on the assumption that individuals with these characteristics present an above average threat to the community or otherwise need the security afforded by confinement or the inpatient treatment services offered by the prison mental or physical health staffs. The characteristics used to determine the appropriateness of the referral were:

1. Recidivist - The individual in this category has been convicted of at least one prior criminal offense. This does not include convictions for traffic violations or for juvenile offenses for which an adult could not be charged.
2. Prior Mental Health Treatment - The individual in this category has received a previous psychiatric diagnosis and/or treatment for the identified illness. This does not include individuals who only received mental health evaluations without diagnosis and/or treatment.
3. Unusual or Bizarre Crime - This category includes individuals whose behavior during the crime might be construed by the clinical layman as "crazy." Examples of such behavior include: breaking into a home, not stealing anything, but defecating on the floor; setting fire to a dwelling and masturbating while watching the fire; and walking up to a complete stranger and without any provocation seriously assaulting the stranger.

4. General Behavior Unusual - This category indicated that the offender's crime and its circumstance was rather usual but that the offender's general behavior appeared disoriented and confused and may be construed by the clinical layman as "crazy." Examples of this behavior include apparent hallucinations, incoherent speech, or other such behavior commonly associated with mental illness.
5. Sexual Offenders - These individuals have committed crimes in which they sexually abuse the victim or engage in socially unacceptable sexual behavior such as public exposure. This category does not include persons convicted of crime against nature in which the involved parties were of adult status and apparently consenting.
6. Violent Offenders - These individuals have engaged in aggressive and assaultive behavior in which the victim was physically injured. This category excludes those offenders who committed such crimes as armed robbery, which is normally considered a violent crime, where they did not injure the victim. Offenses such as involuntary manslaughter resulting from traffic accidents were also excluded.
7. Mental Retardation - Individuals in this category are offenders who are known by the court to be mentally retarded to the extent that they are unable to care for themselves and/or protect themselves.

The case records available to the court prior to the referral were carefully reviewed as part of a larger demographic study by Program staff members. The data collectors were carefully trained in the operational definitions of each category and the limitations concerning which data could be used. Twenty-five percent of the cases were cross validated to insure the accuracy of the data collection. The presence, absence, or uncertainty of presence of characteristics per case and the number of characteristics per category was compiled. Categorization by District or Superior Court was also accomplished.

III. RESULTS

Analysis of the total 1974 referral population (N=168) to the North Carolina Presentence Diagnostic Program indicates that 150 (89.3%) of the cases had at least one of the predefined characteristics present. That an individual was a recidivist was not considered to be, in and of itself, a sufficient justification for referral. Therefore, individuals whose only confirming category was Recidivist, are considered to be marginally appropriate referrals. Individuals with any other single characteristic, or with a combination of characteristics, are considered to be appropriate referrals. The results indicate that 127 (75.5%) referrals were appropriate, 23 (13.7%) were marginally appropriate, and 18 (10.7%) were considered inappropriate. Of those considered inappropriate, 12 (7.1%) were without any identifying characteristic and 6 (3.6%) were found to have at least one characteristic coded as uncertain. The referral appropriateness data are presented in Table 1.

INSERT TABLE 1 ABOUT HERE

The number of characteristics present per case averaged 2.16. There was an average of 2.67 characteristics present for each appropriate referral. The marginally appropriate referrals averaged one characteristic, and the inappropriate referrals averaged zero characteristics.

The Recidivist characteristic was the most frequent, single referral characteristic, with 98 cases (58.3%) in this category. Prior Mental Health Treatment, 63 cases (37.5%), was the second most frequent category, and it

was followed by General Behavior Unusual, 56 cases (33.3%). There were 50 (29.8%) Violent Offenders, and 47 (28%) cases were considered as presenting Unusual or Bizarre Crimes. Referrals with suspected Mental Retardation number 25 (14.9%), and 23 Sexual Offenders (13.7%) were referred (See Table 2).

INSERT TABLE 2 ABOUT HERE

A majority of the referral cases, 94 cases (61.9%) were found to have two or more characteristics present (See Table 3). The highest single percentage was for one characteristic present, 46 cases (27.4%), but 40 cases (23.8%) presented at least two characteristics and 34 cases (20.2%) presented at least three characteristics. Only 18 (10.7%) had no characteristic present and 30 (17.9%) had four or more present.

INSERT TABLE 3 ABOUT HERE

Considering the characteristics present for each referral according to the court of origin - District or Superior - District Courts had the larger percentage of referrals considered appropriate. Of the 100 referrals from Superior Courts, 70 (70%) were considered appropriate and 14 (15%) were considered marginal. One third of the Superior Courts' inappropriate referrals had at least one characteristic considered as uncertain. Of the 68 referrals from District Court, 57 (83.8%) were considered appropriate, 8 (11.8%) marginal, and one third of their inappropriate referrals had at least one characteristic considered as uncertain.

Of those 98 referrals defined as Recidivists, only 23 (23.5%) had Recidivist as the only characteristic present, while 75 (76.5%) had at least one additional characteristic present, with an average of 3.2 characteristics per case. Within the Recidivist category, 41.8% had Prior Mental Health Treatment, 38.8% presented the General Behavior Unusual characteristic, 26.5% were Violent Offenders, 24.5% committed an Unusual or Bizarre Crime, 16.3% were possibly Mentally Retarded, and 15.3% were classified as Sexual Offenders.

IV. DISCUSSION AND CONCLUSIONS

This study examined the ability of the courts to serve as an accurate screening mechanism in determining which defendants were appropriate referrals to the north Carolina Presentence Diagnostic Program. Appropriateness of referral was defined as the presence of certain predefined characteristics, suggesting that the well-being of the community or of the defendant would be threatened should the defendant remain within the community during the course of the presentence evaluation. The results indicate that the courts function as a good screening mechanism for referrals to the Presentence Diagnostic Program. With the presence of at least one of the predefined characteristics - recidivist, prior mental health treatment, unusual or bizzare crime, general behavior unusual, violent offender, sexual offender, or mental retardation - indicative of an appropriate referral, the courts consistently and in the majority of instances, 89.3% referred appropriate cases for presentence diagnostic study. Only 10.7% were referred with none of the indicative characteristics. Only 13.7% of the cases were considered marginal referrals, having only the recidivist characteristic present, leaving a balance of over 75% of the referrals as appropriate.

Since additional information was probably available to the court at the time of referral, but not documented or communicated to the study team prior to beginning the presentence evaluation, it is also possible that some of the cases considered inappropriate or marginal in this study were actually appropriate referrals. Nonetheless, and even without this assumption, the data reveals that the courts serve quite adequately as a screening mechanism for referral to the presentence diagnostic study program.

This conclusion seems especially true when the number of characteristics per case is considered. The average referral case was found to have at least two characteristics, and most of these were related to criminal activity and prior contact with mental health authorities, general behavior that could be considered unusual, violent crimes, or an unusual or bizzare offense. With these types of offenders, who present more than one area of difficulty, the adequacy and effectiveness of the courts as a screening mechanism is supported.

Although the percentage rate of inappropriate referrals from Superior Courts was somewhat higher than that from District Courts, one might expect Superior Courts to request additional information in more cases because these courts process offenders with more serious crimes and therefore with longer possible sentences. It might be assumed that the defendants referred from Superior Court are more likely to abscond from bond or escape from the county jail and thus require the additional security of prison. The difference between the appropriateness of referrals from Superior and District Courts does not necessarily indicate that the Superior Courts are less effective in their referrals.

Three fundamental limitations of this study should be noted. First, the data was collected and analyzed after the evaluations were completed. In addition, the data was collected as a part of a larger research effort. Therefore, the data could have been contaminated to the extent that the data collectors were influenced by their knowledge of other case materials. The effect of this possible limitation is not considered to be significant in that the cross validation check of 25% of the cases revealed only a 3.2% error. As noted above the second limitation is that the courts probably had other information at their disposal which was not available to the presentence study teams. If this data had been available, the percentage of appropriate referrals would, most likely, have been larger. The third limitation is that neither the literature nor the law has specified the characteristics that should be used in determining the appropriateness of referrals to presentence diagnostic study programs. The characteristics used in this study were based on the perception of the Presentence Diagnostic Program staff of its purpose and on the type of clientele the program is designed to serve. If different characteristics had been selected, it is probable that the results of this study might have been different. However, the chosen characteristics seem to be intrinsically indicative of the need for incarceration during the presentence study process.

Although these limitations do not necessarily detract from the results of the study, they do suggest the need for additional research in this area. A more rigorous - on site, in the courtroom - study could provide data closer to the source of referral and could allow an analysis of the courtroom dynamics involved in presentence referrals. A survey of the involved judges, attorneys, clerks, and defendants would add insight

into not only the referral process, but into the various attitudes and values of the persons involved in the decision making process. These varying approaches would also permit an analysis of any differences between those individuals who are referred for study and those who are not referred. Lastly, in considering further avenues of research in this area, a similar study might be expanded to collect and analyze the data in such a way that the complex patterns and constellations of defendant characteristics are examined. Little information is available in this area.

Regardless of the limitations of the current study and of the need for additional research, one can conclude with considerable confidence that the North Carolina Courts serve as an effective screening mechanism for selecting and referring defendants for presentence diagnostic study. Based upon these results, the creation of a new screening component or the utilization of an existing agency for screening does not appear warranted. Although certain attitudinal or procedural differences may occur from state to state, it is expected that other states can economically and effectively use the courts as the appropriate decision point for referral to prison-based presentence program. Hopefully, the results of current study will provide empirical information and selection criteria helpful to both the courts and presentence diagnostic programs.

FOOTNOTES

1. C. E. Smith, A Review of the Presentence Diagnostic Procedure in North Carolina, 8 N. C. Cen. L. J. 1, 17-34 (1976).
2. C. E. Smith, Observation and Study of the Defendants Prior to Sentencing. 26 FED. PROBATION 6 (1962).
3. J. L. Gallemore, Jr., Problematic Youthful Offenders, 5 N. C. J. of MENT. H. 5 (1971).
4. N. C. GEN. STAT. #148-12(b) & 148-49-3.

Table I
Appropriateness
of
Referral

Appropriateness Category	Referrals	
	Frequency	Percent
All Referrals: Appropriate, Marginal, and Inappropriate	168	100
Considered Appropriate: Appropriate and Marginal	150	89.3
Appropriate Only Characteristic in addition to Recidivist	127	75.6
Marginal Referrals Recidivist Characteristic Only	23	13.7
Inappropriate Referrals No Characteristic Present or Presence Uncertain	18	10.7

Table 2
Selected Referral Characteristic Frequencies

Presence or Absence	Referral Characteristic						
	Recidivist	Prior Mental Health Treatment	General Behavior Unusual	Violent Offender	Unusual or Bizarre Crime	Mental Retardation	Sexual Offender
Present	98 (58.3%)	63 (37.5%)	56 (33.3%)	50 (29.8%)	47 (28%)	25 (14.9%)	23 (13.7%)
Absent	65	99	102	111	112	128	144
Presence Uncertain	3 (1.8%)	5 (3%)	10 (6%)	7 (4.2%)	9 (5.4%)	14 (8.3%)	1 (.6%)
Missing Data	2 (1.2%)	1 (.6%)	0	0	0	1 (.6%)	0

Table 3
Referral Characteristic Frequency Per Case
By Number and Percent of Cases

Characteristic Frequency Per Case	Number of Cases	Case Percent*	Culminative Case Frequency	Culminative Case Percent*
0	18	11%	168	100%
1	46	27%	150	89%
2	40	24%	104	63%
3	34	20%	64	38%
4	17	10%	30	18%
5	12	7%	13	8%
6	1	1%	1	1%
7	0	0%	0	0%

* Percentages rounded to nearest whole number.

END