Alabama: Evolution of an Effective Program

by Robert M. Rygiel

In 1980, Alabama codified a law making driving under the influence (DUI) illegal. Before the enactment of that law, Alabama maintained a law entitled driving while intoxicated (DWI). Knowing that intoxication from alcohol was not the sole cause of impairment, the Alabama Legislature changed the wording to DUI, an all-inclusive term for the variety of substances that can impair driving: alcohol, cocaine, marijuana, methamphetamine, prescription drugs, etc. This revision initiated Alabama’s stance, which would ultimately become one of the nation’s most progressive against impaired driving.

In 1985, shortly after the language of the statute was amended, Alabama adopted the Court Referral Officer (CRO) Program. There were a limited number of individuals who performed functions similar to those of a contemporary CRO, but they had no professional moniker. Like their predecessors, CROs were to act as a conduit between the sentencing judge and the defendant before the court. The CRO’s role was not that of a punisher, but rather to help a nonviolent alcohol or other drug offender overcome an addiction or other problem related to substance abuse. A CRO conducted frequent drug and alcohol testing on defendants, monitored a defendant’s progress, and reported his or her findings to the sentencing judge. A CRO, however, did not have the ability to arrest a noncompliant defendant. He or she could only report problematic behavior to the court, and the court imposed sanctions accordingly.

Mandatory Treatment Act Passed

The Alabama State Legislature took note of the success of the CRO Program and of CROs’ benefits to the communities. As such, the Legislature passed the Mandatory Treatment Act of 1990 (MTA). This piece of legislation outlined the purpose of a CRO, what a defendant must do in the event of a DUI or other nonviolent drug arrest, and the role in the program of the Alabama Administrative Office of Courts (AOC) and the Administrative Director of Courts (ADC). The Legislature expanded, explaining that the Mandatory Treatment Act was to:

- establish a specialized court referral officer program to promote the evaluation, education, and rehabilitation of persons whose use or dependency on alcohol or drugs directly or indirectly contributed to the commission of an offense for which they were convicted...[and] to provide treatment and rehabilitation for these identified offenders. (Ala. Code 1975 § 12-23-1 et seq.)

The MTA shifted and revolutionized Alabama’s view of DUI offenders. No longer did the state solely perceive these offenders as inherent criminals, but rather as individuals in need of rehabilitation.

Potential for Complete Rehabilitation

The decision for this critical change in viewpoint was essentially two-fold. First, Alabama’s prisons were becoming overcrowded. Second, if sentenced to significant prison time,

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a nonviolent offender was much more likely to become a product of his or her surroundings, and exit the county jail or penitentiary embittered and more marginalized from the society he or she was about to re-enter. Thus, a nonviolent alcohol or other drug offender placed in an inflammatory environment may mimic the amoral or sociopathic behavior of inmates whose crimes were much more serious than nonviolent drug or alcohol offenses. Through education and treatment programs, a nonviolent alcohol or other drug offender has the potential for complete rehabilitation. By providing accurate information in

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The MTA broadly itemizes the duties of a CRO, which include the evaluation, monitoring, reporting, educating, and drug testing of defendants who fall under the provisions of the Act. The CRO's primary role is to rehabilitate, which is the ultimate goal of the MTA. (See A § 12-23-4. Court referral officers or contracting entities; appointment; supervision by Administrative Director of Courts and circuit judges; compensation; duties.)

Participation Criteria. Because the MTA emphasizes rehabilitation over confinement, one provision of the Act authorizes a defendant charged with a drug offense to enter “a drug abuse treatment program in lieu of undergoing prosecution,” but the defendant must meet certain criteria since the ability to participate in deferred prosecution is granted at the prosecutor's discretion. The Act outlines the criteria for participation under Section 12-23-5—the defendant must not have prior felony convictions or pending felony charges and must not exceed certain amounts of substances when arrested (thoroughly described in the section). The last provision of the section describes the privilege a defendant has in entering the program as opposed to traditional prosecution. The provision states: [I]f the defendant fails to complete treatment and pay the required costs, the prosecutor shall initiate charges against the defendant. (A § 12-23-5(4).)

Program Evaluation
Not knowing whether the implementation and use of CROs had been successful, the AOC contracted a prominent researcher to evaluate the CRO Program. In 1991, Auburn University researchers, led by Dr. David Brown, conducted a study on the program's effectiveness. In this study, conducted nearly two decades ago, the researchers found resounding evidence proving the CRO Program's effectiveness in all areas, especially in reducing recidivism. Though the program was still in an early inception stage at the time of the study, researchers concluded that the program simply worked.

Follow-Up Study. Ten years later, the AOC contracted two prominent professors at Troy State University in Alabama to perform a follow-up study to that of the Auburn University's analysis. This study was significantly longer and more in depth due to the growth of the program and participant volume that allowed Drs. Ed Stevens and Henry Findley to have a wider case study, ultimately providing more accurate data. The AOC's intent for contracting a research project of such magnitude was to ascertain whether the CRO Program was still as beneficial as it had been in 1991. The simple answer to the AOC’s inquiry was “yes.” Not only had the program become more than helpful; it had become essential.

The researchers administered an array of questionnaires to judges, CROs, and program participants. The data revealed a common sentiment: The program was vital and helped the defendants, community, and judicial dockets. The reduction of recidivism among participants was astonishing. Many of the participants either lowered their alcohol/other drug use to negligible levels or eradicated use in full. A positive byproduct of the program was a better quality of life for the defendants. Job stability and secure households were now prevalent among former participants. They were better able to reintegrate into society, especially since the CRO Program allowed defendants to avoid prosecution and a criminal record.

Essential Tool. According to the 2000 study, judicial perception of the CRO Program and of the CROs themselves is nothing short of impressive. The staunch majority of judges, approximately 90%, declared that the CRO Program was an essential tool. They agreed that CROs were helpful and professional. However, judges felt that CROs were overworked and carried an overly large caseload. The state and AOC addressed this dilemma by creating more CRO positions. At the present time, there are 118 CROs and 38 monitoring specialists. Additionally, individuals around the state know the value of being a CRO and the rewards that accompany the position. There is no shortage of demand for that position.

Repeat Offenders
As the state has been able to study and witness the results of the program and the regulations in place, the DUI law (§32-5A-191) has changed and has added many caveats since its inception. Over the past couple of decades, one of the most notable changes is an increase in penalties for repeat offenders. Certain fines in the statute have more than doubled, while others have
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Further Insights Into the Genetic Basis of Alcoholism

The genetic factors predisposing patients to alcoholism and its complications have begun to be elucidated, especially those factors contributing to alcoholic liver disease in some patients. It is known that elevated levels of some immune system hormones, cytokines, contribute to alcoholic cirrhosis. While elevation in two cytokines—IL-1 and TNF-α—has been studied, it is not well established that genetic variation leading to changes in levels of another cytokine, IL-6, contribute to the development of cirrhosis. This cytokine suppresses IL-1 and TNF-α, and thus a decreased level should hypothetically increase risk for development of cirrhosis.

Marcos et al. investigated if a polymorphism, or variation, in the gene for IL-10 that influences levels of the cytokine would influence the likelihood for development of alcoholic cirrhosis. The group compared 161 alcoholics without liver disease to 96 subjects with a diagnosis of alcoholic liver cirrhosis (ALC), all of whom met DSM-IV criteria for alcohol abuse or dependence. These were also compared to 100 healthy nonalcoholic patients. All patients were white male Spaniards. The polymorphism, called the -592C>A IL10 polymorphism, was analyzed using polymerase chain reaction and agarose gel electrophoresis.

The authors’ main hypothesis was that specific variations of the polymorphism would predispose subjects to ALC. However, there was no association of the polymorphism in the ALC group when compared to the healthy control group. However, one variation of the polymorphism, the A allele, was associated with alcohol abuse or dependence compared with the controls. While the mechanism is unclear, Marcos et al. hypothesize this may be due to increased levels of TNF-α in the brain and downstream biochemical changes in the central nervous system.

The study examined only male Spaniards and may, therefore, be limited in extrapolation to the general population. Further, the group containing subjects defined as having alcohol abuse or dependence is heterogeneous in definition, and further delineation on the frequency of the A allele in the subgroups may provide further insight into the disease process. Despite these limitations, the study provides interesting information furthering the understanding of both the genetic contribution to alcoholism and the biochemical mechanisms underlying the pathology. (M. Marcos, I. Pastor, R. González-Sarmiento, and F.J. Laso, “Interleukin-10 Gene Polymorphism is Associated With Alcoholism but Not Alcoholic Liver Disease,” 43 (5) Alc. & Alcoholism 523-28 (2008)).

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seen drastic increases. Furthermore, the Alabama State Legislature decreased the percentage of blood alcohol that qualifies as a DUI from 0.10% BAC to 0.08% BAC. Other penalties have gotten stiffer, and no leniency in future change is apparent.

Carrot-and-Stick Approach

In addition to “rehabilitation,” “privilege” is a tenet and operative word of the Mandatory Treatment Act. Though Alabama’s CRO Program is nurturing, it is not something to be taken lightly. A defendant’s compliance and involvement are required to enter, participate, and complete the program. Noncompliance or something as seemingly harmless as abstinence is not tolerated. A CRO is a defendant’s monitor and helper, not a friend or companion. CROs, courts, district attorneys, or municipal court prosecutors do not tolerate a lack of respect for the CRO Program.

District attorneys are simultaneously the facilitators and gatekeepers of the CRO Program. As mentioned earlier, a defendant charged with a drug offense, if eligible and agreed upon by the prosecutor, can pursue treatment instead of prosecution. This option is purely at the discretion of the district attorney and is called “drug diversion” or “deferred prosecution.” By taking this course of action, the defendant does not obtain a criminal record, hence achieving “diversion from the justice system.” The principle is as follows:

If he or she has the privilege of entering the program, the judiciary and district attorney expect the same courtesy in return, which is to prove that the lack of prosecution for the defendant was appropriate.

The inherent positive nature of the statute, however, will not change for first-time offenders. Those defendants will still have the privilege of participating in the CRO Program. Repeat offenders are the targeted group for rigid punishment. Mandatory jail sentences have already been added to the DUI statute. These sentences will only increase in intensity.

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The imminent threat of prosecution if the defendant's unlawful behavior does not change.” (Fulton, supra.) Essentially, recidivism is not an option for a defendant who wants to exist without a criminal record. If he or she has the privilege of entering the program, the judiciary and district attorney expect the same courtesy in return, which is to prove that the lack of prosecution for the defendant was appropriate.

System’s Process

Here is how the system works. The operation of a typical Alabama drug court involves the targeted first-offense, nonviolent, alcohol or substance offender. Following this targeted defendant’s application to the drug court, the supervising CRO refers the defendant to a Court Referral Education Program (CREP), an early intervention program that educates defendants about the negative consequences of continued abuse.

Court Referral Education Program. The CREP is divided into three basic sections: Level I, Level II, and Youth and Juvenile classes. The Level I class consists of four three-hour courses. The more intensive Level II class is comprised of eight three-hour classes. The first four sessions of Levels I and II follow the same material; however, the Level II class continues for four more sessions.

The Change Companies® to create evidence-based interactive journals for the Court Referral Education Program in 2001. This collaboration resulted in a uniform lesson for the instructors to teach and provided the state with consistency throughout the programs while allowing each instructor to use his or her unique skill sets. Prior to the use of interactive journals, there was no set way or method of teaching the DUI/drug class. The instructor had guidelines of what to maintain in a defendant’s individual class file, but no structured coursework to use. Instructors did not have a consistent lesson plan to follow and simply used their own materials. However, with the use of the interactive journals, instructors are able to conduct the sessions in a more linear, consistent manner and incorporate evidence-based practices.

Participant Journals. The Change Companies® participant journals are designed to benefit both participants and instructors. Participants are able to follow the instructor page by page. The participant journals are divided into chapters and arranged by topics in a logical sequence. They also provide the opportunity for participants to interact with one another. This sharing is crucial for a participant’s rehabilitation and learning. By interacting with one another, participants are able to see that their situations are not unique. The camaraderie that develops among the participants through interaction is impressive, and they learn and rehabilitate through the sharing of thoughts, feelings, behaviors, and attitudes.

A key component of the participant journals is the informative and interactive nature. The journals offer statistics and facts about laws as well as information about the effects of alcohol and other drugs on the body, mind, and driving ability. The journals help participants apply the information to their personal circumstances and gain insight into the behavior that led to their involvement in the CREP Program. Participants then develop a personal plan for behavioral change. Essentially, the informative and interactive nature of the journals gives the participants the tools they need to begin to change their negative behavior.

Ultimate Incentive to Participate. When the defendant has successfully completed the course, the CREP agency notifies the CRO who, in turn, notifies the court of the defendant’s completion and completion of the education program. The appropriate judiciary is always aware of the defendant’s progress and adherence to the rules of the drug court. The CREP is the conduit of information and updates the court constantly.

After all fines, drug testing, and CREP courses have been completed, the defendant is released from drug court and does not have a criminal record. Alabama refers to the drug court process as “deferred prosecution,” the ultimate incentive for a defendant to participate in the specialized drug court.

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