

THE EVIDENCE- BASED DECISION MAKING INITIATIVE: AN OVERVIEW FOR PROSECUTORS

JUNE 2017

EBDM



Madeline M. Carter, Principal, Center for Effective Public Policy

ACKNOWLEDGMENTS

We are grateful to the EBDM prosecutors—too many to name—who, throughout their involvement in EBDM, participated in focus groups, interviews, and surveys and took the time to thoughtfully review this brief.

This project was supported by Cooperative Agreement No. 12CS15GKM2 awarded by the National Institute of Corrections. The National Institute of Corrections is a component of the U.S. Department of Justice. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

© 2017 Center for Effective Public Policy. The National Institute of Corrections reserves the right to reproduce, publish, translate, or otherwise use, and to authorize others to publish and use, all or any part of the copyrighted material contained in this publication.

EBDM

BACKGROUND: WHAT IS THE EVIDENCE-BASED DECISION MAKING INITIATIVE?

In 2008, the National Institute of Corrections (NIC) launched the Evidence-Based Decision Making (EBDM) initiative. NIC is a federal agency within the U.S. Department of Justice. It provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local justice system agencies and public policymakers.

The goal of the EBDM initiative is to equip criminal justice stakeholders with the information, processes, and tools that will result in measurable reductions in pretrial misconduct, post-conviction reoffending, and other forms of community harm. The initiative is grounded in three decades of research on the factors that contribute to criminal reoffending and the methods that justice systems can employ to interrupt the cycle of reoffense. The work is guided by [A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems](#) (“EBDM Framework”) and its four key principles.

In 2010, seven local jurisdictions in six states were selected to pilot-test the Framework and a “roadmap” of action steps designed to improve outcomes through collaborative, research-based principles and processes. In 2015, an additional 21 teams—including three state-level teams—joined the national initiative. Collectively, EBDM’s 28 state and local teams represent a range of large urban areas, mid-size communities, and small rural towns.

EBDM FRAMEWORK PRINCIPLES

EBDM Principle 1: The professional judgment of criminal justice system decision makers is enhanced when informed by evidence-based knowledge.

EBDM Principle 2: Every interaction within the criminal justice system offers an opportunity to contribute to harm reduction.

EBDM Principle 3: Systems achieve better outcomes when they operate collaboratively.

EBDM Principle 4: The criminal justice system will continually learn and improve when professionals make decisions based on the collection, analysis, and use of data and information.

Genuine collaboration is a cornerstone of the EBDM process. The collaborative approach of EBDM seeks to overcome the limitations of traditional and nonsystemic approaches to criminal justice problem solving and solution development. EBDM brings together a broad array of stakeholders to develop a common understanding of the justice system, identify common goals, jointly create policies and practices to support the achievement of those goals, and stand together to advocate for those goals, particularly in the event of criticism. Criminal justice system “stakeholders” are defined as those who have a vested interest in justice system processes and outcomes; together they are referred to as “policy teams.”

Policy teams are comprised of the justice system agencies and community organizations that impact, or are impacted by, decisions that will be made by the collaborative team. Their specific composition varies depending upon the structure of each community, but they commonly include those with the positional power to create change within their own organizations. The chief judge, court administrator, elected prosecutor, chief public defender, private defense bar, probation/community corrections director, police chief, elected sheriff, pretrial executive, victim advocates, local elected officials (i.e., city manager, county commissioner), service providers, and community representatives are common policy team members of local teams.

“COLLABORATION” IS THE PROCESS OF WORKING TOGETHER TO ACHIEVE A COMMON GOAL THAT IS IMPOSSIBLE TO REACH WITHOUT THE EFFORTS OF OTHERS.

On state-level teams, the stakeholder composition is similar but includes those with positional influence across multiple communities (e.g., elected president of the state prosecutors' or sheriffs' association; executive director of the state's association of counties), including agencies and individuals with statewide authority or influence (e.g., state legislature, statewide behavioral/mental health agency, department of corrections, attorney general, governor's office, state courts). In addition, state-level teams include local team representatives in order to align state and local interests around justice system reforms. Together and separately, each team member brings valuable information, resources, and perspectives to the collaborative endeavor.

EBDM policy teams devote their first team meetings to building their collaborative team; understanding current practice within each agency and across the system; learning about research-based policies and practices ("evidence-based practices") and their application to decision points spanning the entire justice system, from point of initial contact (arrest) to final discharge; and agreeing upon a set of systemwide values

"HARM REDUCTION," AS USED HERE, REFERS TO DECREASES IN THE ILL EFFECTS OF CRIME EXPERIENCED BROADLY BY COMMUNITIES, VICTIMS, CITIZENS, JUSTICE-INVOLVED INDIVIDUALS, AND THEIR FAMILIES.

and goals. Thereafter, EBDM teams collaboratively develop strategic plans, focusing on key "change targets" for improving the alignment of research with policy and practice, and improving systemwide outcomes. Examples of change targets include expanding pretrial release and diversion options for those who do not pose a danger to the community; instituting or expanding intervention options for specific populations (e.g., justice-involved women, those charged with domestic violence, chronic substance abusers, the seriously mentally ill); expanding evidence-based interventions throughout the justice system; ensuring the appropriate use of risk assessment information; reducing case processing delays; establishing methods to streamline case information flow; and instituting formal processes for professional development and continuous quality improvement. Policy team strategic plans include logic models that describe theories of change, specific methods to measure performance, and a systemwide "score-card"—a method to gauge the overall performance of the justice system in achieving its harm reduction goals, including improved public safety. Policy teams also identify strategies for engaging a broader set of professional and community stakeholders in their justice system reform efforts. Subsequent activities focus on the implementation of these strategic plans, identification of additional areas of improvement, expansion of the stakeholders involved, and increased capacity for the collection of data to monitor and improve performance.

THE PERSPECTIVE OF PROSECUTORS WHO HAVE ENGAGED IN THE EBDM PROCESS

Since the project's inception in 2008, elected prosecutors, deputies, assistants, and state attorneys general representing 25 local jurisdictions and three states have engaged in EBDM work. Through a series of focus groups, interviews, and surveys, prosecutors shared their views on this work.

The Benefits of EBDM

Participating prosecutors report that EBDM brought key decision makers and stakeholders together to engage in important discussions about the vision, mission, and values of the justice

IN THE WORDS OF PROSECUTORS

“The State’s interest in guaranteeing justice is best achieved by ensuring that decision makers have the most effective and reliable tools at their disposal. EBDM makes that goal more likely to be achieved.”

“To be frank, the greatest benefit is that it has stakeholders talking. [Our county] is unique. We have not had any regular organized communication among the stakeholders, ever. EBDM has provided a framework for important conversations.”

“The benefit of EBDM to prosecutors has demonstrably reduced recidivism, crime, and victimization.”

system, and about strategies to achieve greater public and victim safety. Although some participating jurisdictions had previously established criminal justice coordinating councils, most indicated that a much higher level of cross-system collaboration was achieved through EBDM. This, in turn, led to more substantial system change activities, including and particularly those that would directly lead to increased safety of known and potential victims. In some instances, issues that had been intractable for many years became “wins” for the teams. At the discipline-specific level, prosecutors indicated that EBDM provided a structure and a process to inform—but not dictate—decision making around their charging and case resolution decisions. More comprehensive information, sooner, at the individual case level (i.e., information about the individual, including their level of public safety risk and the risk factors that threaten to perpetuate future criminal behavior), in addition to factors that prosecutors have historically considered (i.e., the instant offense and victims’ perspective), has resulted in significant shifts in practice. As stated by one prosecutor: “Access to more comprehensive information earlier in the dispositional process supports the identification and management of lower risk offenders in a manner that will reduce the likelihood of further criminal behavior. It also enables decision makers to structure dispositions for higher risk offenders that provide the best opportunity to address their criminogenic needs (risk factors), thereby reducing the likelihood of reoffense among this population.” And, in the words of another, “More comprehensive information earlier in the dispositional process enables prosecutors’ offices to more effectively manage their caseloads and concentrate primary efforts on those whose risk is higher to jeopardize public safety.”

The Challenges of EBDM

EBDM is not without its challenges for prosecutors, particularly as it relates to changing one’s perspective on how to view cases. As one prosecutor stated, “No politician wants to be seen as weak on crime. Understanding how EBDM can actually make a community *safer* is vital...[It] means progressing beyond the notion that ‘get tough on crime’ means putting everyone in jail or prison, or that diversion or treatment are defense ploys to not hold offenders accountable.” In the words of another prosecutor, EBDM “forces us to challenge our assumptions and judgments on a wide range of justice issues. Keeping an open mind about other perspectives and evidence [i.e., social science research]...is the most challenging aspect of this work.”

This change in perspective can pose its own challenges—some practical, others more personal. From a practical perspective, prosecutors report “having to modify or alter much of our training and intuition around criminal offense and prior criminal history as the only [or primary] factors that we look at in determining how to charge and/or resolve criminal cases.” This must often

be accomplished in the context of “small, cash-strapped, and personnel-poor jurisdictions.” Other prosecutors “see the change as an indictment on how they have been handling cases and [therefore] continue to let their intuition and experience be the deciding factors” rather than trusting social science research on what works, and with whom, to reduce recidivism and having confidence in the EBDM process and its potential for improved outcomes. As one prosecutor stated, “No prosecutor could ever object to a plan for making the community they serve safer. However, we are in the embryonic stages of a paradigm shift and that is difficult for some.”

Trust in using social science research means, in part, that patience is paramount to sorting through the thorny issues that accompany this shift in thinking and practice. These thorny issues include the sometimes contradictory conditions encountered—for example, the low risk defendant who commits a serious or violent offense, or the wishes of a victim that are contradicted by research. While these are conditions faced by the entire team, prosecutors are on the front line in managing them.

Finally, prosecutors report that the very absence of local data, particularly as it relates to the short- and long-term impacts of new crime control and risk reduction strategies compared to those previously employed, has proven to be a significant challenge for all criminal justice stakeholders.

Significant Practice Changes

EBDM prosecutors have been centrally involved in advancing change in their justice systems. These changes have included creating diversion and deferred prosecution options for some types of cases; instituting risk assessment processes and using this information to better inform important release/detention and charging/plea/sentencing decisions; modifying plea negotiation practices; and reexamining how noncompliant behavior of those under pretrial and post-conviction supervision are handled.

Prosecutors were asked to describe some of the ways in which their specific activities have changed over time. What follows is a summary of their responses.

| PRIOR TO EBDM, WE... | SINCE EBDM, WE... |
|--|--|
| ...charged everything that was referred | ...refer appropriate individuals to diversion |
| ...reviewed cases and charged them based solely on offense, criminal history, and victim input | ...incorporate risk assessment, accountability concerns, and risk reduction strategies—along with offense, criminal history, and, importantly, victim input—into case reviews and charging decisions |
| ...lacked a systemwide way to include the victim’s voice and perspective across justice system decision points | ...consider victim satisfaction, safety, and perspective at every decision point |
| ...made assumptions about offenders’ general risk level | ...systematically use the results of research-based risk assessment tools |

| PRIOR TO EBDM, WE... | SINCE EBDM, WE... |
|--|--|
| ...charged criminally individuals with mental illness who might have been appropriate for diversion | ...contact partners to explore alternatives for persons with serious mental illness, rather than routinely charging criminally and incarcerating |
| ...recommended probation disposition and let probation figure out what to do with the offenders when they got there | ...evaluate whether someone is appropriate for probation and, if so, have needs identified prior to disposition so probation has the information they need from day one of supervision |
| ...had limited information about how different departments went about their work | ...meet routinely and, as a result, are better informed about how other departments and agencies perform their work |
| ...only had anecdotal information which formed the basis of our policy decisions | ...systematically collect and review systemwide data which informs our policy decisions |
| ...would identify state-level barriers to changes that would improve the local criminal justice systems, with no way to ever attempt to fix such matters | ...forward these barriers to the state EBDM team and work collaboratively to resolve them |

ADDITIONAL EBDM RESOURCES:

- A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems
- Evidence-Based Decision Making (EBDM) Primer
- EBDM Case Studies: Highlights from the Original Seven Pilot Sites
- Evidence-Based Decision Making: A Guide for Prosecutors
- Evidence-Based Decision Making Starter Kit

For more information or to view other resources on EBDM, visit <http://www.nicic.gov/ebdm> or <http://ebdmoneless.org/>.

EBDM

