

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

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EBDM



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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; using risk assessments across decision points; 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 "scorecard"—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 JUDGES WHO HAVE ENGAGED IN THE EBDM PROCESS

Since the project's inception in 2008, judges—as well as magistrates, court commissioners, and court administrators/clerks of court—representing 25 local jurisdictions and three states have engaged in EBDM work. Through a series of focus groups, interviews, and surveys, they shared their views on this work.

The Benefits of EBDM

Judges and other court officials identified several key benefits to involvement in EBDM. First and foremost, judicial officials indicate that their jurisdictions' involvement in the EBDM process has resulted in more—and better—information about their justice system, about practices that are effective in protecting the public and in changing the behavior of justice-involved individuals

generally, and about the individual cases that come before them. As one judge stated, “[EBDM has provided judges] access to information critical to making life-altering decisions for defendants, their families, and the community.” Others put it more simply: “[EBDM] has led to better decisions with respect to bail, pretrial supervision, and sentencing.”

IN THE WORDS OF COURT ADMINISTRATORS

“We are using data and best practices to change our systems to streamline processes, reduce costs, eliminate waste, and reduce harm.”

“The EBDM process allows administrators to review system practices holistically to gain an understanding of how all criminal justice agency policies and practices impact system outcomes.”

Judges indicated that their court's involvement in EBDM led to greater consistency among the members of their bench which, in turn, has enhanced perceptions of fairness and trust in the court system. They also pointed to increased communication and strengthened collaboration with their partners across the justice system, the outgrowth of which is a higher degree of professional knowledge among colleagues and a greater awareness of one another's roles, responsibilities, and capabilities.

Most significantly, they identified the outcome of the EBDM work as a justice system that is more efficient and effective in its use of resources and more evidence-based, producing positive, harm-reducing outcomes for those it serves.

The Challenges of EBDM

Judges and court officers identified increased collaboration as a key benefit of EBDM; however, they also spoke to the challenges associated with building genuinely collaborative partnerships. To do so requires patience, trust, and openness to viewing others' perceptions from a different vantage point, and a willingness to share one's own perspective. For many, participating in a dialogue with colleagues about vision, values, strengths, weaknesses, and the merits of research and various justice system strategies was neither comfortable nor customary.

Further, in some instances, ethical questions regarding the participation of judges on collaborative teams have arisen. Although judges in many jurisdictions have led or participated on teams that have addressed jail crowding, established specialty courts, revised policy and practice related to the management of a particular offender population, or contributed to improvements in court and justice system operations, this is not common practice in other jurisdictions. And although the *Code of Conduct for United States Judges* and the majority of state judicial rules of ethics support the participation of judges in commissions or policy-level groups that improve criminal and juvenile justice, engaging judges who have not traditionally assumed these roles can nonetheless be a challenge.

Policy discussions around the EBDM table raised for judges, not unlike other discipline groups, the challenges associated with changing the culture of the bench—and expanding the views of their partners. As one judge stated, “Change is not easy. Letting go of ‘the way we have

always done it' and anticipating the effect of change on the whole system requires analysis and planning, and seeing the view of other stakeholders. Achieving maximum benefit requires each group to be invested." Or, as another judge expressed, "Parting with the conventional wisdom we have come to accept [is a challenge]; old habits die hard."

Judges also made note of the vulnerability that comes with change: "Change is hard, scary, and exciting. But judges will take the heat if things go badly." As one judge explained it, "The perception is that there is no accountability for offenders. The majority of the members of the community still believe that incarceration is the answer to all that ails us. As we move away from that model and embrace EBDM, the perception is that we are not seeking justice for the victims and the community." This, then, may be the greatest of all challenges for court officials—indeed, for EBDM policy teams—as they engage in this work. For this reason, incorporating a victim perspective and community education are key components of the EBDM work.

Finally, judges—perhaps more so than many of their counterparts—noted how challenging the process was from a time management point of view. Clearing court calendars to make time for meetings that were frequent and that could be lengthy was difficult. Often, court calendars are booked many months in advance. The commitment of participating judges and the support and assistance of their administrators, clerks, and team members, who made themselves available during the early morning hours or at lunchtime to accommodate court dockets, were supremely important.

Significant Practice Changes

Judges were asked to describe the ways in which their individual actions have changed over time as a result of EBDM. One judge explained: "I am committed to reducing harm to court users, whether they are litigants, victims, or the taxpayers who fund us. I am committed to introducing best practices in all areas of our operations and using evidence and data to drive decisions. This is what the work through the EBDM initiative does." What follows is a summary of judges' responses.

Judges were also asked to describe some of the changes they have experienced at the larger criminal justice system level. What follows is a summary of their responses regarding system-level changes.

BEFORE EBDM, WE...	SINCE EBDM, WE...
...managed failure to appear after the fact by issuing warrants	...are implementing a court notification program to prevent failure to appear
...experienced inconsistent treatment of defendants with mental illness and long delays before they received mental health assessments	...have swift access to mental health evaluations and treatment
...had no access to medication in the jail	...have in place a simple, consistent procedure for accessing medication in the jail for those who need it
...only made diversion from traditional case processing accessible post-conviction	...have diversion and treatment options available pre-conviction
...only occasionally looked for alternative approaches to what we did	...routinely review research and other information to understand best and evidence-based practices
...conducted sentencing hearings on non-felony cases with limited information other than arguments from counsel	...have sentencings informed by needs assessments in addition to other substantive information
...generally followed sentencing guidelines and mandatory minimum sentence provisions in felony cases	...refer presumptive prison non-person offenders for an assessment to inform whether a non-prison sentence could be safe and effective
...brought most probation violations to court and litigated them	...establish agreements among policy team members that support having the probation department resolve many violations administratively
...responded to violations with ever-increasing sanctions	...respond to positive behavior with rewards and make use of targeted sanctions for problem behaviors
...responded to violations based solely on professional judgment	...use a matrix based upon offender risk and severity of the offense to guide consistent and proportional decisions
...experienced defendants coming to their initial appearance with no counsel, resulting in multiple continuances	...provide instructions to obtain counsel or apply for a public defender along with citations/complaints
...were outside of established standards for case processing time	...have a process in place for immediate application for public defender service
...primarily planned training for judges that did not include other stakeholders	...experience much swifter justice
	...coordinate training events and professional development opportunities with and for our team

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 Judges
- 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/>.

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