National Institute of Corrections

USER'S GUIDE

EBDM

EVIDENCE-BASED DECISION MAKING: A GUIDE FOR DEFENSE ATTORNEYS

A DOCUMENT DEVELOPED TO SUPPORT THE NATIONAL INSTITUTE OF CORRECTIONS' EVIDENCE-BASED DECISION MAKING (EBDM) IN STATE AND LOCAL CRIMINAL JUSTICE SYSTEMS INITIATIVE

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EBDM

Center for Effective Public Policy

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PURPOSE OF THE GUIDE

The purpose of this guide is to prepare and assist defense attorneys to become part of an Evidence-Based Decision Making (EBDM) policy team. As such, this guide provides:

- background information on the Evidence-Based Decision Making initiative;
- a description of the goals of EBDM;
- a description of how defense attorneys can become part of the EBDM process and the reasons why their participation is important;
- an explanation of the differences between evidence-based decision making and evidence-based practices;
- an explanation of "harm reduction";
- a description of the implications of key research findings for defense attorneys;
- an overview of how the principles of EBDM apply to defense attorneys' work;
- examples of research-based practices for defense attorneys;
- an exploration of challenges defense attorneys might face while implementing EBDM and possible strategies to ameliorate those challenges;
- links to the EBDM Framework, a primer on EBDM and evidence-based practices (EBP), and other resources that can help defense attorneys learn more about evidence-based decision making; and
- references to key research citations.

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

According to the U.S. Department of Justice, Bureau of Justice Statistics, 67% of individuals released from prison are rearrested within 3 years after discharge and 76% are rearrested within 5 years (Durose, Cooper, & Snyder, 2014). It is estimated that up to one-third (29%) of probationers do not successfully complete their sentences (Kaeble, Maruschak, & Bonczar, 2015). These recidivism rates have remained relatively stable for decades (Durose et al., 2014; Hughes & Wilson, 2003; Kaeble et al., 2015). Furthermore, on any given day, nine out of ten felony defendants detained until trial have a financial release condition but are unable to make the bond amount set by the court (Reaves, 2013). Additionally, research suggests that low-risk defendants who are held in jail pretrial are more likely to be arrested before trial, and are more likely to recidivate post-disposition, than their counterparts who are released pretrial (Lowenkamp, VanNostrand, & Holsinger, 2013).

These statistics are particularly sobering given the tens of thousands of new victims each year[1] and the immense loss of human life, dignity, and sense of safety they experience; the staggering costs of supporting law enforcement, the courts, corrections, and the behavioral and health systems; and, perhaps most importantly, the "ripple effect" of crime on communities in terms of deteriorating neighborhoods, children's exposure to violence, and the shifting of resources from parks and schools to jails and prisons.

However, in recent years advancements in the criminal justice arena have occurred, with important implications for justice system policymakers and practitioners. Over three decades of research have provided information on the factors that contribute to criminal reoffending and on methods that are proven to be most effective in changing the behavior of individuals found responsible for committing illegal acts. Many jurisdictions are working hard to incorporate these evidence-based practices (EBP) into their policies and practices. Often, these changes are identified and implemented by a criminal justice policy team—a multidisciplinary team of professionals representing the justice system at the state, county, regional, and/or city level. These teams are at the core of the Evidence-Based Decision Making (EBDM) in State and Local Criminal Justice Systems Initiative.

The National Institute of Corrections (NIC) launched the EBDM initiative in 2008. 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.

EBDM 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.

[1] In 2009 alone, U.S. residents age 12 or older experienced approximately 20 million crimes. Of these, 15.6 million (78%) were property crimes, 4.3 million (21.5%) were crimes of violence, and 133,000 (<1%) were personal thefts (Truman & Rand, 2010).

The EBDM initiative was developed 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. It was also designed to address a lack of system collaboration around a common set of outcomes and principles. The EBDM initiative is guided by A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems ("EBDM Framework") and its four key principles.

EVIDENCE

In the justice system, the term "evidence" is used in a variety of ways. It can refer to items collected at a crime scene, eyewitness accounts, or security camera footage. These types of evidence are referred to as "legal evidence."

For the purposes of the EBDM Framework and this document, however, the term "evidence" is used to describe findings from empirically sound social science research. The Framework and this document refer to the results of this research as "evidence-based practices."

EVIDENCE-BASED PRACTICES

Evidence-based practices are *policies, practices, and/or interventions* that are supported by research. For example, the use of an empirically based risk tool to determine the appropriate amount of intervention an offender should receive is considered an evidence-based practice.

EVIDENCE-BASED DECISION MAKING

Evidence-based decision making is a *disciplined approach* to using data and research to inform and guide decision making across the justice system. It is a deliberate process undertaken by a collaborative team that includes identifying mutually shared goals, analyzing current practice, understanding pertinent research findings, and adopting change strategies that will improve outcomes for individuals, agencies, systems, and communities.

LINKING EVIDENCE-BASED PRACTICES AND EVIDENCE-BASED DECISION MAKING

The connection between evidence-based practices and evidence-based decision making can be summarized as follows: an EBDM approach seeks to engage and organize the entire justice system in aligning policy and practice with research evidence (EBP) to reduce harm and improve systemwide outcomes.

Examples of successful outcomes achieved by EBDM policy teams can be found in EBDM Case Studies: Highlights from the Original Seven Pilot Sites.

EBDM Policy Teams

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 policy 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.

With genuine collaboration among system partners as its cornerstone, 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. 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.

INFORMATION ABOUT EBDM AND EBP

Before proceeding further with this guide, users may wish to review the following materials to become more familiar with the concepts of EBDM and EBP:

- **A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems. This is the core document for the EBDM process. It identifies the key structural elements of a system informed by evidence-based decision making; defines a vision of safer communities; and puts forward the belief that risk and harm reduction—including improved public safety—are fundamental goals of the justice system, and that these can be achieved without sacrificing defendant/offender accountability or other important justice system outcomes. It defines a set of principles to guide evidence-based decision making and highlights some of the most groundbreaking research in the justice field—evidence that clearly demonstrates that we can reduce pretrial misconduct and offender recidivism.**
- **An Evidence-Based Decision Making (EBDM) Primer. This primer provides an overview of EBDM, EBP, the Evidence-Based Decision Making in State and Local Criminal Justice Systems Initiative, and the EBDM roadmaps.**

WHAT IS HARM REDUCTION?

Harm reduction is a term used to describe a reduction in the ill effects caused by crime experienced by communities. While risk reduction focuses specifically on a justice-involved individual and their potential to reoffend, harm reduction focuses more broadly on the effects of crime on the community, encompassing not only the direct results of a specific crime but also the impact all crimes have on the community. Harm reduction includes financial harm (e.g., costs of incarceration, erosion of property values, loss of business revenue); psychological and emotional harm (e.g., a loss of commitment to, or sense of, community among residents; the influence of criminal behavior from one generation to the next; the disruption of normal day-to-day activities); and the erosion of social structures (e.g., growth of crime cultures, increased distrust of the criminal justice system, the destruction of families). Criminal justice systems measure harm reduction by measuring improvement in four broad categories:

Increases in Public Safety

Reduced harm to primary victims, fewer victims harmed by released justice-involved individuals, fewer victims revictimized by the original perpetrator, a reduction in the number of protection orders/stay-away orders violated, and lower rates of recidivism overall.

Improved Community Wellness

Reductions in the number of drug/alcohol-related traffic accidents, emergency room admissions, and fatalities; reduced child welfare interventions in the families of justice-involved individuals; fewer jail and prison admissions for individuals with mental health issues; increased number of drug-free babies born; and more justice-involved individuals successfully completing treatment programs.

Increased Satisfaction with the Criminal Justice System

An increase in the number of victims expressing satisfaction with the justice system's response; an increase in the number of victims willing to cooperate with the justice system; increased cooperation of the general public; and an increase in positive media reports about the justice system.

Improvements in the Social and Fiscal Costs of Justice System Interventions

Decreases in the costs of incarceration; increased tax base; increases in the amount of child support and court fees collected; improved return on investments from treatment, rehabilitation, and alternatives to incarceration; reduction in the number of family members of known offenders who are likely to become involved with the justice system.

—A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems

BECOMING PART OF THE EBDM PROCESS

A fundamental principle of EBDM policy teams is that all members are equal partners, sharing in the decision making processes and governing of the team. A first step in becoming part of an EBDM process, then, is to engage in thoughtful discussions with other team members about their purpose in coming together, to determine individual roles and responsibilities within the partnership, and to identify any limits that may exist with regard to information and resource sharing. Such transparency on the part of everyone involved encourages trust among the members and minimizes the potential for future conflicts.

Agreements made among the members of the EBDM policy team should be written down and referenced when necessary to resolve concerns. These agreements should contemplate questions such as the following:

- How will decisions be made? True consensus is the ideal, but majority vote may at times be more practical.
- Are proxies acceptable? Most teams have found that the group process is more productive when the same group of decision makers participates in all (or most) of the meetings.
- When will information be kept confidential within the policy team? Confidentiality may include information that maintains trust, honesty, and respect among team members, such as information about the internal functioning of the team during the course of vigorous debate.
- How will team members handle questions from the press? It is critical that members of the team respond "with one voice." This unity is necessary not only to maintain trust within the team but also to gain the trust of the public in those responsible for the administration of justice.

It is particularly useful if the results of these discussions are formalized in a charter, or memorandum of understanding (MOU), and signed by all parties to the policy team.[2]

DIFFERING PERSPECTIVES

From a policy perspective, defense attorneys will likely share many goals endorsed by other EBDM team members, including reducing recidivism and minimizing community harm. From a practice perspective, however, there will be times when defense counsel will seem to be at odds with those goals due to their professional duty to follow their clients' wishes. In order to increase understanding of their roles and responsibilities, defense attorneys will want to educate other team members on a defender's duties to

- provide zealous advocacy;
- obtain the least restrictive and burdensome sentence for clients; and
- cede final say over terms of a plea negotiation to the client.[3]

[2] There are codified steps to building a genuine, collaborative EBDM policy team. These steps are outlined in the EBDM Starter Kit.

[3] Professional obligations in every state make clear that the client has final say over any accepted plea offer. See, for example, the American Bar Association's *Model Rules of Professional Conduct*, Rule 1.2, Scope Of Representation & Allocation of Authority Between Client & Lawyer (http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_2_scope_of_representation_allocation_of_authority_between_client_lawyer.html).

The next steps in becoming part of an EBDM process are to gain an understanding of current practice within each agency and across the system; to develop a shared understanding of research evidence pertinent to key decisions spanning the entire justice system, from point of initial contact (arrest) to final discharge; and to agree upon a set of systemwide values and goals. Thereafter, EBDM teams collaboratively develop strategic plans, focusing on key "change targets" for improving the alignment of research with policy and practice. This, in turn, should imporve systemwide outcomes. Examples of change targets include the following:

- 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 "scorecard"—a method to gauge the overall performance of the justice system in achieving its harm reduction goals. 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.

KEY DECISION POINTS

- **Arrest decisions (cite, detain, divert, treat, release)**
- **Pretrial status decisions (release on recognizance, release on unsecured or secured bond, release with supervision conditions, detain, respond to noncompliance, reassess supervision conditions)**
- **Diversion and deferred prosecution decisions**
- **Charging decisions (charge, dismiss)**
- **Plea decisions (plea terms)**
- **Sentencing decisions (sentence type, length, terms and conditions)**
- **Local and state institutional intervention decisions (security level, housing placement, behavior change interventions)**
- **Local and state institutional/parole release decisions (timing of release, conditions of release)**
- **Local and state reentry planning decisions**
- **Probation and parole intervention decisions (supervision level, supervision conditions, behavior change interventions)**
- **Community behavior change (treatment) interventions**
- **Noncompliance response decisions (level of response, accountability and behavior change responses)**
- **Jail and prison (or local and state) discharge from criminal justice system decisions (timing of discharge)**

WHY SHOULD DEFENSE ATTORNEYS BE PART OF AN EBDM POLICY TEAM?

Defense attorneys—public defenders, court-appointed lawyers, and privately retained counsel—are committed to defending the accused, ensuring the fair administration of justice, and advocating for their clients' best interests. Their very presence serves as a reminder of the fundamental nature of the presumption of innocence in our criminal justice system. Their professional standards establish an affirmative duty to participate in the improvement of criminal justice. Standard 4-1.2(e) of the American Bar Association's *Criminal Justice Standards for the Defense Function* (2015) states, "Defense counsel should seek to reform and improve the administration of criminal justice. When inadequacies or injustices in the substantive or procedural law come to defense counsel's attention, counsel should stimulate efforts for remedial action."

Defenders bring perspectives to the EBDM planning table that other players may not, such as concerns about systemic racial disparity, the financial barriers defendants face, and the onerousness of supervision conditions, all of which could impact their clients in adverse ways. As one EBDM public defender said, reflecting upon the lawyers in various roles in the system: "All of these [attorneys] went to the same law schools, took the same courses, read the same books. It's a mystery how we see the world so differently."

Some defense attorneys may initially be skeptical of evidence-based practices, which are at the heart of EBDM. They may have grown accustomed to the implementation of other measures, such as sentencing guidelines, which, from their perspective, may not take defendant needs and concerns into consideration. However, evidence-based practices can serve the interests of both the defendant and the larger community; defenders have an important role to play in ensuring that the practices are implemented in ways that achieve this potential.

"IT IS GENERALLY UNDERSTOOD AMONG EXPERTS THAT THE IMPLEMENTATION OF EBP REQUIRES COLLABORATION AMONG CRIMINAL JUSTICE STAKEHOLDERS, AND DEFENSE COUNSEL IS RECOGNIZED TO BE A KEY PLAYER IN THE PROCESS. THE IMPORTANCE OF COLLABORATION IN EBP IMPLEMENTATION SETS THE STAGE FOR DEFENSE COUNSEL TO PLAY A PROMINENT ROLE AT THE POLICY-MAKING TABLE, AND DEFENSE COUNSEL SHOULD TAKE ADVANTAGE OF THIS OPPORTUNITY TO IMPACT THE MANNER IN WHICH EBP IS IMPLEMENTED IN THEIR JURISDICTION."

Kimberly A. Weibrecht, *Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations*, p. 1

Evidence-based decision making and practices can benefit defendants in a variety of ways. For instance, a justice system that adheres to the risk principle will limit pretrial detention and release conditions for individuals determined to be unlikely to fail to appear for required court appearances or to engage in pretrial misconduct. Likewise, those who are assessed as appropriate may be provided diversionary options, alternative sentencing options, and/or limited supervision/release conditions. Positive behavior will be acknowledged and rewarded and noncompliance handled proportionally. In these and other ways, justice system decisions are research-informed and can support clients' stabilization in the community.

THE IMPLICATIONS OF KEY RESEARCH FINDINGS FOR AN EBDM DEFENSE ATTORNEY

Defenders are a key influence in the criminal justice process, from initial appearance through final discharge, particularly as it relates to potential opportunities to reduce harm and risk among those they serve. In order to properly advocate for individual clients and for effective public policy, a working understanding of some key criminal justice research findings and their implications is especially important.

1. Use risk/needs assessment tools to identify risk to reoffend and criminogenic needs.

Actuarial instruments are widely used in a variety of fields, perhaps most commonly in the insurance industry to set premium levels for automobile, home, and life insurance. In the criminal justice field, these instruments are referred to as "risk/needs" tools and are used to assess the likelihood of future pretrial misconduct, future criminal behavior, or criminogenic needs. They play a crucial role in helping justice system professionals make evidence-based, harm reduction decisions.

"Risk" refers to the likelihood an individual will engage in future pretrial misconduct or criminal behavior. This information is relevant to justice system decision makers, including and especially defenders, because research demonstrates that the likelihood of harm to the community, defendants, and offenders is diminished when the pretrial decision to hold or release is risk-informed and when the post-conviction decision matches the level of intervention (supervision and programming) to the assessed level of risk. This potential is referred to as the "risk principle" (Andrews, 2007; Andrews & Bonta, 2007; Andrews, Bonta, & Wormith, 2006; Andrews & Dowden, 2007; Andrews, Dowden, & Gendreau, 1999; Bonta, 2007; Dowden, 1998; Gendreau, Goggin, & Little, 1996; Lipsey & Cullen, 2007). Research further demonstrates that the best outcomes with low risk clients are achieved by low levels of intervention. In fact, some research demonstrates that an overreliance on supervision or programming with the low risk population can actually increase their likelihood of reoffending (Andrews & Bonta, 2007; Cullen & Gendreau, 2000; Gendreau, Goggin, Cullen, & Andrews, 2001; Lowenkamp, Latessa, & Holsinger, 2006).

"Criminogenic needs" (addressed more thoroughly on pages 12–13) describe factors that, if addressed, have been demonstrated through research to reduce future criminal behavior (Andrews & Bonta, 2007).

A risk/needs assessment tool is an instrument that measures risk level and criminogenic needs. Typically, a risk/needs assessment tool is administered by conducting a face-to-face, structured interview, consisting of an established set of questions (the questions are determined by the risk/needs assessment tool) following a specific protocol. Some portions of the data collected are typically verified through collateral means (e.g., reported criminal history is confirmed through a records review).

KEY POINTS ABOUT RISK ASSESSMENTS

- Risk assessments are created using actuarial methods and measure risk to reoffend. Risk should not be confused with the seriousness of the offense (i.e., minor vs. serious offenses). For example, a gang member with a lengthy criminal record who is arrested for trespassing may have a minor offense but be at high risk for recidivism. Conversely, a woman charged with a serious offense (manslaughter) for defending herself against her abusive husband may be at low risk for committing a future crime.
- Different types of risk assessment tools are used for different purposes. The most widely used actuarial tools assess general risk (i.e., risk for any type of reoffense), while other tools assess for specific types of behavior (e.g., sexual offending, violence). In addition, there are different types of tools for different uses: some predict behavior over the short-term (i.e., failure to appear and rearrest while on pretrial status) while others predict long-term behavior (the likelihood of reoffense post-conviction over a period of years). Although these tools may contain similar factors, they have been validated on specific types of populations and should only be used for their intended population at their intended stage(s) in the criminal justice system (e.g., the pretrial stage or the sentencing stage).
- Risk assessment tools cannot predict whether a specific defendant or offender will fail to appear or recidivate; the tools can only predict the probability of behavior based on a group of individuals with similar risk factors (e.g., 7 of 10 persons with these conditions will engage in future criminal behavior, but 3 will not).
- The fact that two offenders have similar risk scores or levels does not mean that they have the same criminogenic needs or that a specific need has the same influence on one individual's behavior as it does on another individual's behavior.
- Any risk assessment tool that is used should be validated on or with the local population, if feasible. Testing the risk tool this way will help ensure that the risk factors contained in the tool most accurately predict risk levels with the local defendant or offender population.

Risk/needs assessment tools include an analysis of static (unchangeable) factors (e.g., prior criminal record, current age) and dynamic (changeable) factors (e.g., attitude, use of substances, family/marital situation, coping skills). Assessment tools that are based on static factors alone are referred to as "risk assessments," rather than "risk/needs assessments," and do not have a "needs" (dynamic factors) component. Some risk assessments can determine risk without an interview.

The risk/needs assessment tool responses are weighted based on research that correlates each item to the risk of either short-term or long-term recidivism, depending on the type of tool. An overall score is generated and results in a risk category (e.g., low, medium, high). This score, along with the information collected about the individual's needs, is not intended to determine culpability (guilt or innocence) or degree of harm to the community. Instead, the intended use of these tools is to determine—when appropriate—the intensity and type of interventions that need to be applied for risk reduction purposes.

The information gathered from risk or risk/needs assessments can be of benefit in a variety of ways, including the following:

- identifying defendants who are appropriate for pretrial release;
- identifying defendants who are appropriate for diversion;
- preventing overloading low risk individuals with conditions that may interrupt life factors that support their prosocial behavior; and

- ensuring that conditions imposed address individuals' criminogenic needs and thereby meaningfully contribute to risk reduction.

At the same time, defenders should be mindful of concerns around the use of risk assessment results. Some of these include the fact that assessment interviews may surface information that implicates clients or exposes them to unintended consequences.

POLICY AND PRACTICE IMPLICATIONS FOR DEFENSE ATTORNEYS[4]

- Work with the prosecutor, and local pretrial and probation staff, to assess risk of misconduct at the earliest possible stage of pretrial and to assess the risk of reoffense, as well as criminogenic needs, during the diversion, plea, sentencing, and violation/show cause processes.
- Develop an agreement with prosecution regarding the administration and use of risk/needs assessments, especially at the pre-adjudication stage, to ensure appropriate protections for clients.
- Develop and implement processes to verify the accuracy of the information obtained to score the risk assessment (e.g., records check, collateral contacts, etc.), document the verification sources, and transparently report whether data has been verified.
- Work with prosecutors to identify lower risk defendants who can benefit from diversionary programs and services.
- Review plea procedures with prosecution to ensure they take into account assessment information.

2. Direct programming and interventions to medium and high risk defendants/offenders.

Research demonstrates that the dosage and intensity with which criminogenic needs are addressed are relevant to successful outcomes (Carter & Sankovitz, 2014). Dosage is the amount (e.g., number of hours, intensity, period of time) of correctional intervention (such as programming or reporting requirements) that is imposed. In the same way that patients who receive too little or too much medicine may not respond to treatment and regain their health, offenders who are targeted for too little or too much intervention may fail to achieve the kind of behavioral change necessary to reduce their recidivism risk.

In contrast to research that demonstrates that individuals assessed as low risk to reoffend generally do not benefit from behavior-changing programming (Andrews & Bonta, 2007; Gendreau et al., 1996) and are slightly more likely to recidivate when they are overly supervised or programmed (Cullen & Gendreau, 2000; Latessa, Brusman Lovins, & Smith, 2010; Lowenkamp & Latessa, 2004), recidivism risk among medium and high risk individuals can be reduced on average by 30% when individuals receive appropriate behavior-changing programming (Andrews & Bonta, 2007; Gendreau et al., 1996).

[4] The policy and practice implications included in this section and those that follow are intended to be illustrative rather than comprehensive.

POLICY AND PRACTICE IMPLICATION FOR DEFENSE ATTORNEYS

- Work with justice system stakeholders at both the pretrial and post-convictions stages to match release conditions to risk level (i.e., few or no conditions for the lower risk, with increasing levels of supervision and criminogenic-oriented requirements for the higher risk).

3. Focus interventions for medium and high risk offenders on assessed criminogenic needs.

Addressing criminogenic needs through effective interventions is referred to as the "need principle" (Andrews, 2007; Andrews et al., 1990). The most influential criminogenic needs, or dynamic risk factors, among adults are antisocial attitudes/cognition (thoughts and beliefs); antisocial personality[5] (temperament issues such as coping skills); antisocial associates/peers; family/marital stressors; substance abuse; lack of employment/education stability/achievement; and lack of prosocial leisure activities. Among these, the most impactful are thoughts and beliefs, temperament, and peers.

Individuals involved in the justice system may present a variety of other conditions ("noncriminogenic needs") such as anxiety and stress, mental illness, low self-esteem, and so on. At the present time, there is no research to suggest that targeting these conditions will significantly reduce recidivism (Andrews & Bonta, 2007). This is not to suggest that these conditions may not warrant attention in some fashion but, instead, that emphasizing these conditions over criminogenic factors can interfere with risk reducing efforts.

If needs are addressed effectively and the dosage of intervention is matched to the individual's risk level, research indicates that there is a greater likelihood that the individual will not recidivate. Recidivism is further reduced when multiple criminogenic needs are addressed (Andrews & Bonta, 2007; Andrews et al., 1999; Dowden, 1998). That is, intervention strategies that address four to six criminogenic needs have significantly better outcomes than those that target only one to three (Andrews & Bonta, 2007). Furthermore, by focusing on the most significant among these criminogenic needs, the most significant results can be achieved.

In addressing criminogenic needs, some interventions work better than others. Cognitive behavioral interventions, which address thinking patterns (e.g., accepting responsibility, prosocial values and norms) and build prosocial skills through skill practice (e.g., anger management, problem solving), are significantly more effective than programs that use insight or didactic approaches (Andrews, 2007). In addition, cost effectiveness studies, such as those conducted by the Washington State Institute for Public Policy (2016), indicate that some programs have better outcomes from a cost–benefit point of view than others.

[5] This term should be distinguished from the Diagnostic and Statistical Manual (DSM) classification of "antisocial personality," which has a significantly different meaning and set of criteria.

POLICY AND PRACTICE IMPLICATIONS FOR DEFENSE ATTORNEYS

- Support awareness among fellow members of the defense bar and policy team agency partners of the research around risk, needs, dosage, and effective interventions.
- Advocate that the policy team conduct an analysis of the risk reducing resources available at various decision points throughout the criminal justice process.
- Develop agreements with prosecution and the courts around the assignment of conditions, with an emphasis on those that restore victims and that have been shown through research to be most effective in changing behavior and, where appropriate, have better cost–benefit ratios.

4. Respond to misconduct with swiftness, certainty, and proportionality.

Noncompliant behavior among justice-involved individuals is sometimes more the rule than the exception due to the challenges individuals face regarding substance abuse, mental health, job skills, education, prior criminal involvement, unstable housing, and lack of prosocial connections. Nonetheless, research demonstrates that when certain principles guide responses to these behaviors, increases in prosocial behaviors and compliance levels are more likely to occur. Responses to misconduct that are swift (Hawken & Kleiman, 2009; Paternoster, 2010), certain (National Institute of Justice, 2014), and proportional (Quirk, Seldon, & Smith, 2010) are more effective in changing behavior than actions that are delayed, inconsistent, or disproportionate.

POLICY AND PRACTICE IMPLICATIONS FOR DEFENSE ATTORNEYS

- Work collaboratively with policy team members to develop and implement a set of policies to guide responses to pretrial misconduct.
- Support consistent and proportional responses to noncompliant behavior.
- Streamline procedures to support swift action following noncompliance.
- Deliberate carefully over conditions; ensure that they provide sufficient benefit to warrant the increased likelihood of noncompliance and subsequent costs around violation hearings and sanctioning.
- Consider the level of risk of the individual and the severity of the noncompliant behavior in formulating an appropriate response. Use administrative responses rather than judicial review when public safety is not in danger and liberty is not at stake.

5. Use more carrots than sticks.

Incentives and rewards are powerful tools in shaping behavior. In fact, reinforcement of prosocial behavior may have a more significant influence on future behavior than negative reinforcers (Molm, 1988; Wodahl, Garland, Culhane, & McCarty, 2011). A ratio of four positive expressions (approval for a prosocial attitude or behavior) for every negative expression (disapproval for an antisocial attitude or behavior) is recommended (Andrews & Bonta, 2010; Gendreau et al., 1996). Positive reinforcements can be easy to administer and require nominal or no funding. They may include verbal praise, accommodating a defendant's work or school schedule, offering

desired services, providing positive reports to the court, and recommending modifications of release conditions, among others.

POLICY AND PRACTICE IMPLICATIONS FOR DEFENSE ATTORNEYS

- Work with policy team members to develop and implement a set of policies to guide responses to prosocial behavior during the pretrial phase as well as among diversion and post-adjudication programs, services, and options.
- Work with policy team members to move from time-based discharge policies to early termination when justice-involved individuals successfully complete programming directly tied to their criminogenic needs and meet the dosage targets of 100–300 hours of programming, depending on risk level.
- Request review hearings to affirm achievements when clients reach significant milestones.
- Support the practice of courts conducting hearings during which they publicly acknowledge offender success; attend these hearings whenever possible.
- Attend activities that celebrate the success of justice-involved individuals (e.g., GED or cognitive behavioral treatment graduation ceremonies); when appropriate, provide a public congratulatory message.

6. Deliver services in natural environments where possible.

Research indicates that greater reductions in recidivism are achieved when treatment is provided in "natural"—that is, community—rather than correctional settings (Andrews, 2007; Andrews et al., 1990). While risk reduction programs in correctional settings can have a positive effect, in at least one study, researchers found that they generally achieve about half of the reduction in recidivism as programs that are community-based (Gendreau, French, & Gionet, 2004). Practitioners speculate that the reason for this finding is that individuals who learn new prosocial skills in correctional facilities cannot practice and hone those skills in a real-world setting.

POLICY AND PRACTICE IMPLICATIONS FOR DEFENSE ATTORNEYS

- Work with the collaborative policy team to take inventory of available services to ensure a continuum of service options, particularly at the community level.
- When gaps in services are identified, explore new resources to fill them or work with service providers to shift service slots (e.g., an abundance of substance abuse treatment slots might result in converting some to cognitive behavioral programming).
- Advocate for the use of community-based programs for individual clients when the safety of the community is not in jeopardy.

7. Pair sanctions with behavior change interventions.

The application of evidence-based practices does not discourage the use of sanctions. In fact, sanctions can serve useful purposes, including establishing and affirming positive societal values. However, if sanctions are not paired with interventions designed to address criminogenic needs and change negative behavior, risk reduction will not be achieved (Andrews & Bonta, 2010). Sanctions such as electronic monitoring, intensive supervision, and incarceration can contribute to the protection of society, but they do so only temporarily, through external controls. At least for medium and high risk offenders, they do not reduce recidivism in the long term when they are not combined with interventions that change behavior.

POLICY AND PRACTICE IMPLICATIONS FOR DEFENSE ATTORNEYS

- Work with fellow policy team members and the agencies they represent to develop a shared understanding of the research around shaping behavior.
- Advocate for a policy agreement across decision points and programs around the use of behavior-changing programming—instead of or in addition to sanctions—when behavior change is the goal.
- Be cognizant of the limitations of various sanctions, and be prepared to present these arguments in court when it appears that responses to behavior during sentencing and violation hearings are overly reliant on sanctions to change behavior.

INFUSING THE PRINCIPLES OF EBDM INTO THE POLICIES AND PRACTICES OF DEFENSE ATTORNEYS

As noted earlier, the EBDM Framework is built upon four principles; these principles can guide defense attorneys in their work with the EBDM policy team, their own agencies, and justice-involved individuals.

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

As discussed, there is a large body of EBP research evidence—within the field of corrections, as well as in the fields of behavioral science, communication, psychology, and addiction/mental health—that can both support advancing criminal justice systems towards more effective outcomes and help guide representation in individual plea negotiations and other court proceedings (bail decisions, diversion and specialty court referrals, sentencing and revocation hearings). Arguably, next to the dramatic expansion in the right to counsel for indigent defendants beginning in the 1960s,[6] the introduction of evidence-based practices offers defenders the most meaningful opportunity to assist individuals in recent decades.

"MANY EBP PRINCIPLES ARE VERY POSITIVE FOR DEFENSE CLIENTS; CHIEF AMONG THEM IS THE NOTION THAT YOU STOP LOCKING UP LOW RISK OFFENDERS JUST BECAUSE THE SYSTEM DOESN'T KNOW WHAT ELSE TO DO WITH THEM."

Patrick Kittredge, former Chief Public Defender, Ramsey County, Minnesota

It is, therefore, critical that defense attorneys are familiar with evidence-based research and the tools and strategies that it recommends. To summarize, key among the research findings are the following:

- The most effective way to assess risk of pretrial misconduct and post-conviction reoffense is to use empirically based actuarial instruments; they predict risk better than professional judgment alone (Gottfredson & Moriarty, 2006).
- Low risk individuals should be held accountable using the least amount of resources possible because they are largely self-correcting; instead, the majority of resources should be dedicated to those deemed to be at medium and high risk to reoffend.
- While punishment might enhance short-term compliance, when used in isolation it does not positively effect long-term behavior change, and it can increase the risk of recidivism (Gendreau, Goggin, & Cullen, 1999; Lipsey & Cullen, 2007; Smith, Goggin, & Gendreau, 2002).

[6] The Sixth Amendment to the U.S. Constitution establishes the right to counsel in federal criminal prosecutions. The U.S. Supreme Court expanded the right to counsel for a wide range of indigent defendants in a series of cases decided in the 1960s and 1970s, beginning with the landmark Gideon v. Wainwright (372 U.S. 335 (1963)), which extended the right to counsel to defendants charged with a felony in state courts.

POTENTIAL ACTIVITY IMPLICATIONS FOR DEFENSE ATTORNEYS[7]

- Identify all the points at which defense attorneys make, influence, or could influence decisions regarding justice-involved individuals. Determine the empirical evidence available that will best inform these decisions. For example, defense attorneys might use their understanding of the EBP research and principles to enhance their ability to focus plea bargains and sentences on defendant behavior change rather than solely on accountability.
- Participate on a collaborative criminal justice policy team to share research information that can guide policy and practice.
- Ensure that training for all defense attorneys is based on the most current research available. Use these findings to guide new, or to refine existing, policies and practices.

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

Justice-involved individuals interact with an array of professionals (e.g., law enforcement officers, pretrial staff, defense counsel, prosecutors, judges, probation/parole officers, jailers, etc.) as their cases are processed through the criminal justice system. Research demonstrates that professionals' interactions can have a significant positive—or negative—impact. Given that defenders may have the most extensive interaction with defendants—at least in the preliminary stages of the criminal justice system—the opportunity to have a positive influence is particularly pronounced.

In light of this principle, defenders might consider the following questions:

- How are we interacting with defendants? Are we modeling and reinforcing prosocial attitudes? Are we redirecting defendants' antisocial attitudes? Are we encouraging defendants to participate in programming that will improve their likelihood of staying out of the justice system, or are we seeking court conditions that allow them to avoid addressing the underlying influences of their criminal behavior?
- Are we enlisting the help of a team of professionals to understand the multitude of factors in a client's life that led to their involvement in the justice system? Using the services of a team—including social workers, psychologists, mental health professionals, and lawyers versed in civil legal services or immigration law, in addition to defense lawyers—to advocate

A number of studies have been conducted on "procedural justice." Procedural justice is based on four key concepts: 1) participation in the process and the opportunity to represent one's position to authorities; 2) neutrality of the authority in the process; 3) treatment of participants in the process with dignity and respect; and 4) trust in the authority's motivation, honesty, and ethics (Tyler, 1998, 2004). Defense counsel can serve as role models to other court officials and advocate for policies and practices that reinforce procedural justice processes.

[7] The potential activity implications included in this section and those that follow are intended to be illustrative rather than comprehensive.

for clients is central to the defense approach that is referred to as "holistic" or "client-centered" advocacy.[8] Such representation seeks to address not just the case at hand but the underlying factors that contributed to illegal behavior. As Robin Steinberg, who is credited with putting the concepts of client-centered advocacy into replicable practice with the creation of The Bronx Defenders in 1997, wrote:

> The criminal case is the ideal place for lawyers, expert in criminal and civil law, to deal preemptively and swiftly with not only the criminal case at hand but with the ancillary eviction from public housing, deportation proceedings triggered by the arrest, and imminent removal of children from the home. It is an ideal time for social workers, psychologists, mental health professionals, and other advocates to work with clients on maintaining health treatment that may have been interrupted by the arrest, securing counseling to deal with the trauma and abuse that may have indirectly led to the arrest, and charting out a service plan involving securing employment, remedial services, and fulfilling court mandated programs that will lead to a better disposition and a better life outcome. (2006, p. 3)

This principle also speaks to the fact that within the justice system, an array of professionals—and the agencies they represent—interact with *one another* (e.g., law enforcement with prosecutors, prosecutors with defenders, pretrial staff with judges, etc.). Research demonstrates that systems are most effective in achieving their ultimate outcomes when they operate as "value chains." Under a value chain system, each component of a system provides additive rather than duplicative or detracting value. For this system to work effectively, the components' interactive operations must be fully coordinated with one another.

POTENTIAL ACTIVITY IMPLICATIONS FOR DEFENSE ATTORNEYS

- Develop effective communication skills; consider receiving skill-based training and feedback on effective listening and interviewing techniques. Routinely demonstrate essential traits, including respect, objectivity, compassion, and authenticity.
- Ensure policies and processes are free from intentional or unintentional bias.
- Model prosocial behaviors and attitudes at all times.
- Explain the court process carefully and completely to defendants so they understand the nature of the hearing and what is expected of them.
- Enlist the help of professionals who can help identify the factors that contributed to the client's offense. In some jurisdictions, the public defender employs a social worker or mitigation specialist to assess client treatment needs and formulate alternative treatment plans.
- Present mitigating evidence of a client's individual circumstances or of caring family and community members who can be relied on to help a client stay on track when advocating for alternatives to incarceration.

[8] Early adopters of holistic advocacy practices include The Bronx Defenders; The Neighborhood Defender Service in Harlem; the Knox County, Tennessee, Public Defender's Community Law Office; and the Georgia Justice Project.

- Advocate for sentences that offer offenders opportunities to acquire the skills necessary to lead law-abiding lives.
- Provide clients with the information they need to ensure they fully understand the long-term benefits and consequences of specific plea or court conditions (e.g., a plea to time served without programming compared with a plea consisting of probation with substance abuse, cognitive behavioral, and/or employment programming).
- Seek opportunities to positively reinforce clients' progress. For example, attend or speak at an offender graduation ceremony.
- Participate in the development of policies that support the sharing of information among the different systems that impact justice system participants (e.g., jail, court, lawyers, behavioral health, addiction treatment, veteran affairs, etc.), thereby adding to the "value chain."

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

Research demonstrates that systems achieve more when they work together than when they work in isolation of one another. Working collaboratively, components of the criminal justice system—and the agencies and actors that represent them—can operate with clear priorities and consensus on the outcomes the system seeks to achieve and/or the optimal methods to achieve them. As distinguished from value chain research, which addresses the importance of the interactions of the components of the system, the research on collaboration speaks to the manner in which the *individuals* who represent different interests and organizations (e.g., court administration, jail operations, etc.) work together towards a shared outcome (decreased crime and harm, increased community safety). As one public defender from an EBDM pilot site said, "Not everything is litigation. We want to be instruments to make things better. It's not a case of 'if I win, you lose.'"

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

Madeline M. Carter, Center for Effective Public Policy

POTENTIAL ACTIVITY IMPLICATIONS FOR DEFENSE ATTORNEYS

- Participate in the EBDM policy team or other collaborative planning groups, and engage in activities that help build collaboration.[9]
- Adhere to empirically derived collaboration methods that have been demonstrated to be successful in facilitating goal attainment.[10]
- Identify past challenges that have been resolved with regard to collaborative policy making. Consider how those challenges were addressed and determine if there are opportunities to learn from or build upon those experiences.

[9] See, for example, "Activity 1: Build a genuine, collaborative policy team" and "Activity 2: Build individual agencies that are collaborative and in a state of readiness for change" in the EBDM Starter Kit.

[10] For information about collaboration in the justice system, see http://www.collaborativejustice.org.

- Determine what opportunities exist for increasing collaboration, and develop a plan of action that will take advantage of those opportunities.
- Consider all voices in the development of policies, including voices of victims, individuals formerly involved in the justice system, and community advocates.
- Consider shifts in perspective and practice that benefit the entire justice system and/or the public, not just one or a few agencies.

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.

Learning systems are those that adapt to a dynamic environment through a process of continuous information collection and analysis. Through this process of individual and collective learning, entities—whether a single professional working with an individual case, an agency monitoring its overall operations, or the criminal justice system as a whole monitoring system efficiency and effectiveness—improve their processes and activities in a constant effort to achieve better results at all levels. In addition to facilitating continuous improvements in harm reduction within an agency or system, ongoing data collection adds to the overall body of knowledge in the field about what works and what does not.

"THROUGH DATA AND OTHER PROCESSES, WE ARE GOING TO MAKE VISIBLE WHAT IS GOING ON. HISTORICALLY, A LOT OF THE UGLINESS HAS NOT BEEN TALKED ABOUT…WHEN YOU START TALKING ABOUT IT, MAPPING IT, AND GATHERING DATA, IT STARTS TO PULL THINGS FORWARD IN A NONJUDGMENTAL WAY AND GIVE A PICTURE TO SOMETHING YOU WERE FEELING INTUITIVELY."

Tom Reed, Regional Attorney Manager, Milwaukee Office of Wisconsin State Public Defender

POTENTIAL ACTIVITY IMPLICATIONS FOR DEFENSE ATTORNEYS

- Promote the importance of using social science research, forensics research, and local data to understand and improve defense practices. Such information would include, among others, understanding the predictive accuracy of risk/needs assessment tools and the effectiveness of specific interventions.
- Assess the current capacity of the justice system to collect and analyze the recommended data, and determine what resources may be needed to expand that capacity.
- Analyze locally collected data with other stakeholders to learn from existing practice, making modifications when necessary.
- Develop logic models to examine the purpose, content, and sequence of activities designed to produce positive and measurable justice system outcomes; revisit the models to determine if the intended impacts have been realized.

EXAMPLES OF RESEARCH-INFORMED PRACTICES FOR DEFENSE ATTORNEYS

The following table summarizes some historical practices of defense attorneys around the country and offers suggestions for alternative, research-based practices.

HISTORICAL PRACTICE	RESEARCH-BASED PRACTICE
No client representation at first appearances	**Provide all clients defense representation at initial hearings, ensuring a meaningful first appearance. The first appearance becomes "meaningful" when all parties are present, pretrial assessment information is reviewed, a decision regarding release is made, and other options (e.g., diversion) are considered.**
Subjective information guides justice system stakeholders' decisions	**Implement processes to ensure that objective factors, assessed using validated instruments, inform decisions across decision points**
Negotiate pleas without consideration of risk/needs information	**Negotiate plea agreements that are consistent with the results of a validated risk/needs assessment**
No treatment courts	**Implement and consistently use treatment courts as a cost-effective way to manage offenders in the community**
Settle for numerous conditions in lieu of incarceration	**Seek conditions for low risk offenders that can be accomplished without disrupting prosocial activities; argue against over-conditioning for all risk levels, particularly when conditions are not related to clear public safety risks or criminogenic needs**
Support the use of programming absent knowledge of its effectiveness	**Determine the effectiveness of local programs and understand the criminogenic needs they are designed to address**
Request court hearings on supervision violations	**Seek swift responses to violations (e.g., within 24 to 48 hours) through the use of an administrative process in most cases**

POTENTIAL CHALLENGES; WORKING TOWARD SOLUTIONS

Understanding the research evidence and principles of evidence-based decision making is one of the first steps in the EBDM process. Being part of a team that seeks to apply the research and principles in courtrooms and conference rooms, however, can be challenging for many reasons. Three of the most common challenges for defenders are briefly described below.

Skepticism

Many defenders are, at least initially, skeptical about evidence-based practices and about becoming a part of an evidence-based decision making team. And often for well-founded reasons, they may have concerns that policy and practice changes will adversely impact their clients. For example, some have a general mistrust of assessments. As one EBDM public defender reported, "There's a basic mistrust of some of the instruments; there's a distrust that it can be manipulated." Even when defenders recognize the benefits of assessments, there is concern that the results will be used to enhance penalties rather than benefit the client. Likewise, there may be concern that new programs or services will charge fees that clients cannot afford or establish expectations that they cannot reasonably meet. However, this skepticism can give way to hope through the EBDM planning process, which is built on a foundation of mutual trust. This point was made by another EBDM defense attorney who stated, "You can fight tooth and nail for a client and end up with a bad outcome in the courtroom, whereas if you work on the system, you create better options. [As defense attorneys, we can be] engaged in the process of developing the tools and approaches that ultimately need to be part of our arsenal in fighting for our clients."

> **"I WAS SKEPTICAL ABOUT SPENDING TIME ON THIS PROJECT BECAUSE IT LOOKED LIKE THE FOCUS WAS PRIMARILY ON REDUCING CRIME AND PUBLIC SAFETY. EVEN THOUGH I SUPPORT BOTH, I SAW NOTHING TO INDICATE THERE WAS AN INTEREST IN IMPROVING FAIRNESS, ENDING THE WAR ON DRUGS, OR REDUCING MASS INCARCERATION… [FURTHERMORE], THE EMPHASIS ON COLLABORATION AND COLLABORATIVE TEAMS CAN BE SCARY TO DEFENSE LAWYERS. MANY THINK THEY WILL BE EXPECTED TO COMPROMISE THEIR ROLE AS AN ADVOCATE. [IT NEEDS TO BE CLEAR] THAT ALL PLAYERS IN THE SYSTEM [ARE EXPECTED TO] WORK COLLABORATIVELY ON POLICY, BUT JUDGES, PROSECUTORS, AND DEFENSE LAWYERS WILL BE EXPECTED TO REMAIN FAITHFUL TO THEIR ROLES IN OUR ADVERSARIAL SYSTEM OF ADJUDICATION."**
>
> Larry Landis, Executive Director, Indiana Public Defender Council

Capacity Concerns

Serving on an EBDM team is a major commitment, typically requiring frequent meetings over a substantial period of time to work through the many issues and perspectives involved in making changes to the justice system. This time commitment can pose challenges for many stakeholders, including and especially defenders. Many public defender systems—where these even exist—are under-resourced and may not be able to commit more than one person to this work.

Further complicating matters, where defense representation relies on the private defense bar, attorneys may be reluctant to participate in policy work that demands a great deal of *pro bono* time. Yet, as one public defender noted: "The number of stakeholder voices expressing the traditional law enforcement perspective seriously outweighs those representing the interests of the defendant." A strong effort must be made to secure more than a single defense representative, despite the workload challenges.

Competing Interests

While defense attorneys certainly share their EBDM team members' goals of reducing community harm and recidivism, at times they may feel at odds with their professional responsibility to serve as an aggressive advocate for their clients' needs. As one defender put it, "[The central challenge of EBDM] is how to engage in a collaborative, evidence-based decision making process without sacrificing ethical practice and the zealous representation of individual clients." With time and experience, defense attorneys learn to balance these dual roles to the benefit of their clients.

"CHANGE HAPPENS AT THE SPEED OF TRUST."

Adapted from Stephen M. R. Covey

CONCLUSION

Defense attorneys play a critical role in both advocating for the rights of individual clients and supporting policy changes that promote fairness, justice, and harm reduction. Although they may face challenges around resources and, therefore, capacity to serve on EBDM policy teams, their voice and perspective are essential to a balanced discussion about criminal justice policy.

APPENDIX 1: TOOLS/RESOURCES

Defense attorneys may find the following resources useful when adopting evidence-based approaches:

EVIDENCE-BASED DECISION MAKING

A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems

The Framework is the principal product of the Evidence-Based Decision Making in State and Local Criminal Justice Systems Initiative. The current edition (fourth edition) is a "work in progress" that will be finalized after further testing at the EBDM state and local sites. The Framework identifies the key structural elements of a system informed by evidence-based practice; defines a vision of safer communities; and puts forward the belief that risk and harm reduction are fundamental goals of the justice system, and that these can be achieved without sacrificing defendant/offender accountability or other important justice system outcomes. It also identifies key stakeholders who must be actively engaged in a collaborative partnership if an evidence-based system of justice is to be achieved.

The Framework is complemented by other tools and resources, including the EBDM Primer, EBDM Starter Kit, EBDM Case Studies: Highlights from the Original Seven Pilot Sites, and The Evidence-Based Decision Making Initiative: An Overview for Defense Attorneys.

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

EVIDENCE-BASED SENTENCING

Pamela M. Casey, Roger K. Warren, and Jennifer K. Elek's Using Offender Risk Assessment Information at Sentencing: Guidance for Courts from a National Working Group: A resource to help judges and others involved in sentencing decisions understand when and how to incorporate risk/needs information into their decision making processes.

Justice Management Institute's Smarter Sentencing training: Designed to help prosecutors, judges, defense counsel, and other practitioners develop evidence-based approaches to sentencing.

Kimberly A. Weibrecht's Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations: Explores how EBP affects defense attorneys' role in the justice system as advocates and policymakers.

ADDITIONAL RESEARCH

The Campbell Collaboration

Crime Solutions

University of Cincinnati Center for Criminal Justice Research

Washington State Institute for Public Policy

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