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USER'S GUIDE

EBDM

EVIDENCE-BASED DECISION MAKING: A GUIDE FOR JUDGES

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

JUNE 2017

EBDM

Center for Effective Public Policy

ACKNOWLEDGMENTS

Special thanks to Mark Carey, President of The Carey Group, for the development of this guide and for updating and finalizing the 2017 versions of the EBDM user's guide series.

We are especially grateful to the judges—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 guide.

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.

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PURPOSE OF THE GUIDE

The purpose of this guide is to prepare and assist court officials—elected and appointed judges, commissioners and magistrates, and other court officials[1]—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 judges and other court officials 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 EBDM judges;
- an overview of how the principles of EBDM apply to judges' work;
- examples of research-based practices for judges;
- an exploration of challenges judges 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 judges learn more about evidence-based decision making and evidence-based sentencing; and
- references to key research citations.

[1] Other court officials include court administrators and clerks of court.

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[2] 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.

[2] 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.

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

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

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 EBP, EBDM, 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

The first step in becoming part of an EBDM process is to establish and become a member of the EBDM policy team. 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. This will require court officials, like all other members of the team, 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, among others:

- 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.[3]

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 improve 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);

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

- 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 JUDGES (AND OTHER COURT OFFICIALS) BE PART OF AN EBDM POLICY TEAM?

Elected and appointed judges, commissioners and magistrates, and court administrators/clerks of court each play a distinctive role in, and have a unique perspective on, the justice system. For example, magistrates may be responsible for the initial pretrial bond decisions, court administrators for scheduling, clerks of court for managing records, and judges for interpreting the law, assessing evidence, presiding over hearings and trials, arbitrating, and, most importantly, making decisions that achieve "offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restitution to crime victims, preservation of families, and reintegration of offenders into the law-abiding community," as directed in Section 1.02(2)(a) of the *Model Penal Code* (American Law Institute, 2016). As such, each court official has a tremendous amount of influence on criminal justice policy and practice. Similarly, each is affected by changes instituted by other entities within the justice system. By becoming part of EBDM policy teams, court officials, along with their system partners, can help create a justice system that is more efficient in its use of resources, consistent in terms of its policies and practices, and effective in its outcomes. Doing so does not diminish one's discretion. In fact, the EBDM Framework acknowledges and is specifically designed to honor and respect the important role of discretion in the criminal justice system. The EBDM process enables team members to air diverse perspectives around the policy team table while at the same time allowing for individual discretion in the administration of individual responsibilities.

"I LOOK FORWARD TO A DAY WHEN THERE IS ONE LESS DAMAGED LIFE, BE IT THAT OF A VICTIM OR AN OFFENDER OR A FAMILY MEMBER OR A MEMBER OF THE COMMUNITY, BECAUSE EVIDENCE-BASED DECISION MAKING HAS BEEN IMPLEMENTED AND EMBRACED BY ALL IN THE JUSTICE SYSTEM."

Honorable Judge Robert Downer, District Court Judge, Charlottesville District Court

Stroker (2006) offers five reasons why judges, in particular, should become involved in collaborative, policy-focused teams such as those contemplated under EBDM[4]:

1. The perspective of the judge is unique and must be shared with others in an appropriate context to make meaningful progress on difficult issues.

Judges have a unique perspective regarding court operations, the administration of justice, the work of system partners, and the impact that these and other matters may have on individuals and the broader community. No one else may be able to see or appreciate so many different concerns, or components of issues, from such a neutral, objective position.

2. Judicial participation on teams helps bring other stakeholders to the table.

The fact that a judge wants to be involved in a discussion raises the importance of that issue in the eyes of others. Judges—in large part because of belief by others in their authority,

[4] This summary is extracted with permission from Five Reasons Why Judges Should Become More Involved in Establishing, Leading, and Participating on Collaborative, Policy-Focused Teams (© 2006 Center for Effective Public Policy).

judgment, and neutrality—cannot only help to bring people together from various organizations but they can help to create an atmosphere of trust. When judges lead groups, it encourages others to believe that matters will be dealt with in a fair, comprehensive, and appropriate way, and will not be slanted to serve the interests or desires of a single entity.

3. Collaborative, inter-entity groups need the leadership of judges.

Judges are armed with what might be termed "positional leadership" authority. This is leadership authority that is derived entirely from the nature of one's position. When a person is seen as having positional leadership, other individuals expect that certain actions will be taken or qualities demonstrated. Even though a problem or issue may be appreciated by a variety of other individuals, little work might be done to resolve the matter until the judge or positional leader identifies the existence of the issue or problem and directs someone to do something about it. Therefore, both because judges are viewed as leaders and because others will wait for direction to be provided or instructions to be given, leadership by judges is often required to address significant issues that involve the court.

4. Collaborative teams are more successful at achieving meaningful outcomes when judges are involved.

Successful policy-focused team efforts are ones that identify the most basic or significant problems, involve the right people in meaningful discussions, produce appropriate and achievable solutions, see those solutions implemented, and are evaluated over time to determine if the objectives of the effort have been met. For all of the reasons mentioned thus far, when judges demonstrate leadership and become involved with inter-entity groups, these results are simply more likely to occur. Perhaps this is true because judges are in excellent positions to help create the neutral, reflective, future-oriented, optimistic atmosphere that is necessary for successful teams to possess. When judges are involved, team members can easily believe that the work they are engaged in is important, and that meaningful outcomes will be realized. This, in turn, encourages the commitment of time and energy that is so critically required in order to make meaningful progress on difficult issues.

Also, as positional leaders, judges can exert great influence over the actions, attitudes, and work efforts of others. A positive or encouraging word from a judge can work wonders on an individual's perspective, demeanor, and general willingness to help with the work of a group. Teams that are trying to solve complex issues often need to find ways of encouraging changes in the activities of many actors or system partners. Judges who are sensitive to the dynamics of groups, exercise personal leadership in effective ways, stay focused on overall objectives, are willing to share credit, do not show favoritism, and know how to influence behaviors with positive observations can be instrumental in fostering these changes.

5. Participation on collaborative teams can be entirely consistent with a judge's ethical responsibilities.

The language of the American Bar Association's *Model Code of Judicial Conduct* (2011) conveys the importance of judges acting as impartial and neutral arbiters, preserving the integrity of the judicial branch, not being unduly influenced by others or becoming involved in matters that may give rise to controversy, and accepting no appointment that might interfere with the proper performance of judicial duties. For judges, then, the participation on inter-branch teams may raise ethical concerns. However, the commentary to Canon 4 in the Administrative Office of the Courts' *Code of Conduct for United States Judges* (2014) seems to address these concerns:

Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law.

THE IMPLICATIONS OF KEY RESEARCH FINDINGS FOR AN EBDM JUDGE

Judges perform many functions and seek to achieve one or more sentencing purposes on an individual case. However, a central outcome in most cases is to promote public safety through reductions in future crime. Research points to at least seven key ways to reduce recidivism. The following describes the research findings and lists implications for judges' sentencing decisions.

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 14–15) 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).

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.

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.

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 JUDGES[5]

- Work with the local pretrial, probation, and prosecutor's offices to assess risk to reoffend and criminogenic needs at the earliest possible stage of pretrial, plea, sentencing, and violation/show cause processes.
- Use the results of risk assessments, as well as other information and experience, to inform pretrial release and pretrial supervision decisions.
- Review plea procedures with prosecution and defense to ensure that these procedures take into account assessment information and do not limit the judge's ability to hand down a sentence consistent with assessed criminogenic needs.
- Use the results of risk assessments, as well as other information and experience, to inform sentencing and supervision decisions.

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. As a general rule, medium and high risk adult offenders need somewhere between 100 and 300 hours of "dosage," or intervention, over 3–18 months (Bourgon & Armstrong, 2005; Sperber, Latessa, & Makarios, 2013).

"CONDITIONS OF PROBATION SHOULD ONLY INCLUDE THOSE CONDITIONS THAT THE JUDGE BELIEVES ARE ESSENTIAL TO ADDRESS THE OFFENDER'S RISKS AND NEEDS. IMPOSITION OF ADDITIONAL CONDITIONS BEYOND THOSE DIRECTLY RELATED TO THE OFFENDER'S RISK LEVEL OR NEEDS ONLY DISTRACTS AND IMPEDES THE OFFENDER AND PROBATION OFFICER AND UNDERMINES THE ABILITY OF BOTH THE COURT AND THE PROBATION OFFICER TO HOLD THE DEFENDANT ACCOUNTABLE FOR COMPLIANCE WITH ESSENTIAL CONDITIONS."

Judge Roger Warren, "Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy," page 606

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

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

by 30% when individuals receive appropriate behavior-changing programming (Andrews & Bonta, 2007; Gendreau et al., 1996).

POLICY AND PRACTICE IMPLICATIONS FOR JUDGES

- Work with justice system stakeholders at both the pretrial and post-conviction 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).
- Ensure that low risk offenders are held accountable using the least amount of resources possible.
- Target medium and high risk offenders for programming designed to positively influence behavior. Increase the dosage and intensity of interventions with the offender risk level.
- Until high risk individuals are motivated to change behavior and are actively engaged in risk reduction programming, seek to structure their day in prosocial activities.

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[6] (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.

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.

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.

[6] 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.

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.

"IT IS IMPORTANT THAT COURTS PROVIDE THE OFFENDER THE APPROPRIATE TYPE OF TREATMENT SERVICES ACCORDING TO THE OFFENDER'S CRIMINOGENIC NEEDS. COURTS THAT PLACE THE OFFENDER IN A TREATMENT PROGRAM NOT DESIGNED TO ADDRESS THE OFFENDER'S PARTICULAR CRIMINOGENIC NEEDS WASTES TREATMENT RESOURCES AND ACTUALLY HARM THE DEFENDANT BY IMPEDING OPPORTUNITIES FOR SUCCESS"

Judge Roger Warren, "Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy," page 605

POLICY AND PRACTICE IMPLICATIONS FOR JUDGES

- Support awareness among fellow members of the judiciary 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.
- Ensure that sentencing conditions align with specific criminogenic needs.
- Focus on the most influential criminogenic needs, although not to the exclusion of the others.
- Choose interventions that have been shown through research to be most effective in changing behavior and, where appropriate, have better cost–benefit ratios.
- Avoid ordering non-criminogenic conditions unless necessary to achieve an important sentencing goal.

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 JUDGES

- Work collaboratively with policy team members to develop and implement a set of policies to guide responses to violation behavior that take into account the risk level of the offender and the severity of the behavior.

- Streamline procedures to support swift action following noncompliance.
- Create a specialized court to hold violation hearings using a structured decision making process grounded in research-based values such as swiftness, certain, and proportionality.
- Deliberate carefully over sentencing conditions; ensure that they provide sufficient benefit to warrant the increased likelihood of noncompliance and subsequent costs around violation hearings and sanctioning.

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). Achieving this 4:1 ratio may be even more important with higher risk offenders as they usually have long histories of being punished and have learned to adapt and dismiss the negative effects that accompany the sanction. Positive reinforcements can be easy to administer and require nominal or no funding. They may include verbal praise, rewarding program participation by reducing work service hours, and writing a note of acknowledgment for the achievement of a prosocial task.

POLICY AND PRACTICE IMPLICATIONS FOR JUDGES

- Work collaboratively with policy team members to develop and implement a set of policies to guide responses to prosocial behavior.
- Bring the offender into court for a public acknowledgment of their successes.
- Write a letter of congratulations for the accomplishment of a goal or extend the acknowledgment to a significant other, such as the parent of a justice-involved youth.
- Attend a GED or cognitive behavioral treatment graduation ceremony; 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 JUDGES

- 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 cognitive behavioral programming).
- Use community-based rather than residential or institution-based programs 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 serve a number of useful purposes, including but not limited to establishing and affirming positive societal values. However, if a judge imposes sanctions without also providing 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 will contribute to the protection of society, but they will do so only temporarily, through external control and surveillance. At least for medium and high risk offenders, they will not reduce recidivism in the long term without being combined with programming.

POLICY AND PRACTICE IMPLICATIONS FOR JUDGES

- Work with fellow policy team members and the agencies they represent to develop a shared understanding of the research around shaping behavior.
- Be cognizant of the limitations of various sanctions, and be clear about what they will and will not likely achieve.
- Employ a combination of sanctions and behavior-changing programming for purposes of risk reduction.

INFUSING THE PRINCIPLES OF EBDM INTO THE POLICIES AND PRACTICES OF THE COURT

As noted earlier, the EBDM Framework is built upon four principles; these principles can guide court officials 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.

In the course of the performance of their duties, judges make countless decisions and are expected to do so independently, objectively, and dispassionately. In some cases, those decisions are made pursuant to case law, statute, or administrative rule. In other cases, judges must apply their discretion and judgment while weighing such factors as the seriousness of the offense, the harm caused to the victim and/or community, the expressed interests and needs of the victim, the offender's background, the offender's risk to commit a future offense, the perceived likelihood of the offender's success in the community or treatment, and the sentencing of other, similar cases for purposes of fairness and proportionality. Fortunately, the large body of research evidence from the field of corrections, as well as from the fields of behavioral science, communication, psychology, and addiction/mental health, can help inform the decisions of the court. Using research evidence to help inform their discretionary decisions provides judges—as well as their justice system partners, defendants/offenders, victims, the community, and other stakeholders—with enhanced confidence that they will "do no harm" as directed in Section 1.02(2)(g) of the *Model Penal Code* (American Law Institute, 2016), and that their decisions will likely achieve the desired goal—fewer victims and safer communities.

"TOO MANY OF OUR PROCEDURES HAVE BEEN DRIVEN BY HISTORY, INERTIA AND FUNDING, RATHER THAN EVIDENCE."

Judge Michael Schumacher, Eau Claire County

POTENTIAL ACTIVITY IMPLICATIONS FOR JUDGES[7]

- Identify all the points at which judges make, influence, or could influence decisions regarding justice-involved individuals. Determine the empirical evidence available that will best inform these decisions. Keep in mind the objectives of these decisions. For example, if the goal of a sentencing decision is to reduce risk of reoffense through programming, then the evidence around what interventions are most effective should be explored. If, however, the purpose of sentencing is restitution to crime victims, then another body of research will be more relevant.

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

- Review plea procedures with prosecution and defense to ensure that these procedures take into account assessment information and do not limit the judge's ability to hand down a sentence consistent with assessed criminogenic needs.
- Develop a list of "never events"[8]—a term from the medical field to describe actions that lead to no impact or, worse, to an increase in harm (National Quality Forum, 2011). Never events in the medical field include wrong site surgery (i.e., performing surgery on the wrong body part or patient), medication error, and operation complication (e.g., retention of foreign object in a patient after surgery), among others. Examples of never events in the criminal justice field include:
  - placing low risk defendants or offenders in correctional settings or programs with high risk offenders when it is avoidable. The result is that low risk offenders tend to adopt the antisocial traits of the higher risk offenders.
  - applying a "one size fits all" policy, such as requiring that all offenders with an illicit drug history participate in the same substance abuse program. This might result in drug *dealers* being placed in the same program as drug *users*.
  - paying little attention to offender traits when setting conditions. As an example, placing an offender who has a group anxiety disorder into a cognitive behavioral group will likely result in failure and possibly revocation.
  - using techniques such as "scared straight" to scare youthful offenders into law-abiding behavior. Not only are high risk youth not scared into changing their behavior but they often come to identify more with those in confinement and with an illegal lifestyle.
- Participate on a collaborative criminal justice policy team to share research information that can guide policy and practice.
- Ensure that training for all judges 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 on both justice-involved individuals and victims. Studies on procedural and restorative justice are particularly relevant to these myriad interactions.

[8] The term "never event" was first introduced in 2001 by Ken Kizer, MD, former CEO of the National Quality Forum (NQF).

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). The research on procedural justice demonstrates that the process by which cases are decided has a direct effect on a person's willingness to accept the outcomes; that is, they will more likely have positive views of the outcome when they are treated fairly and given an opportunity to be heard in a meaningful way (Tyler & Huo, 2002). Moreover, these findings hold true even in cases where the stakes are high and among felony offenders, and are not necessarily related to whether the case is resolved by plea or trial (Casper, Tyler, & Fisher, 1988). One study that examined drug courts and their effect on desistance from drug use and criminality found that the effects are greatest when judges spend time with offenders, support them, demonstrate respect and interest in them as individuals, and give them opportunities to participate in the proceedings. According to the study, "The primary mechanism by which drug courts reduce substance use and crime is through the judge" (Rossman et al., 2011, p. 7).

The concept of restorative justice is to connect offenders with the positive aspects and people in their lives, while holding them accountable for their offense, and repairing the harm that was done to victims. Ultimately, these connections are shown to create personal expectations about offenders' behavior that they commit to following into the future and to provide victims with the opportunity to face the offender and to understand the reasons behind their victimization (Sherman & Strang, 2007; Tyler, 2006; Tyler, Sherman, Strang, Barnes, & Woods, 2007). The research shows that restorative justice conferences, such as victim–offender dialogues, community conferencing, and sentencing circles, have a positive influence on the perceptions of fairness (by the victim, offender, and community) and increased satisfaction with the process (Barnes, 1999). Furthermore, a number of studies suggest that the use of restorative justice programs that focus on the disapproval of their behavior, that invoke remorse, and that work to repair social ties lead to reductions in recidivism (Latimer, Dowden, & Muise, 2005; Bonta, Jesseman, Rugge, & Cormier, 2006). This seems to be especially true if the restorative model is embedded within a "responsive regulatory framework that opts for deterrence when restoration repeatedly fails and incapacitation when escalated deterrence fails" (Tyler et al., 2007, p. 105). Further research is required in this area.

Principle 2 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 JUDGES

- Explain the court process carefully and completely to courtroom participants so they understand the nature of the hearing and what is expected of them.
- Take ample time in the courtroom to allow participants to speak directly to the court on matters involving their case, when appropriate.
- Hand down sentences that offer offenders opportunities to acquire the skills necessary to lead law-abiding lives, when discretion is possible.
- Ensure that victims have ample opportunity to have input at every meaningful stage in the court process, where appropriate.
- Gather input from victims to inform important policy considerations around safety, court sensitivity, and judicial decisions.
- Encourage restorative practices, especially those where the victim and offender can meet face to face with a trained facilitator and in programs where the offender has the opportunity to restore the harm that their crime caused victims and community members.[9]
- Seek opportunities to contribute to harm reduction outside the courtroom. For example, attend or speak at offender graduation ceremonies, or participate in victim focus groups.
- Participate in the development of policies and practices that support the sharing of information, coordination, and alignment among the different systems (e.g., behavioral health, addiction treatment, veteran affairs, workforce development, etc.) that impact criminal justice participants
- Consider receiving skill-based training and feedback on presence and interaction style in the courtroom.

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 reach 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

"'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

[9] Research evidence indicates increased victim satisfaction when victims participate in restorative processes compared to victims who participate in the traditional justice system process (Latimer, Dowden, & Muise, 2005). In addition, this research indicates that offenders who participate in a restorative process are substantially more likely to comply with restitution payments than those who are processed more traditionally by the justice system.

organizations (e.g., court administration, jail operations, etc.) work together towards a shared outcome (decreased crime and harm, increased community safety).

Judges are pivotal to the collaborative process. With their position of authority and recognized knowledge and experience, they can help bring together the various components of the justice system and add legitimacy to the collaborative process as well as to the issues being explored.

POTENTIAL ACTIVITY IMPLICATIONS FOR JUDGES

- Participate in the EBDM policy team or other collaborative planning groups, and engage in activities that help build collaboration.[10]
- Adhere to empirically derived collaboration methods that have been demonstrated to be successful in facilitating goal attainment.[11]
- 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.
- Determine what opportunities exist for increasing collaboration, and develop a plan of action that will take advantage of those opportunities.
- Provide leadership formally by, for example, serving as chair of the EBDM policy team or of a subcommittee, or informally in one-on-one discussions with other justice system stakeholders.
- 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.

"BEING A JUDGE IS LIKE GOLFING IN THE FOG."

Minnesota judge

[10] 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.

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

While judges make decisions every day that impact people's lives, they are often the last to know if those decisions are benefiting people and achieving the intended outcome. As one Minnesota judge put it, "Being a judge is like golfing in the fog." When obscured by a bank of fog, the golfer receives no feedback as to whether the ball landed on the green or bounced into a sand trap. The goal of collecting, analyzing, and using data is to remove the fog and provide information about the results of decisions made by justice system players, including judges.

POTENTIAL ACTIVITY IMPLICATIONS FOR JUDGES

- Promote the importance of using social science research, forensic research, and local data to understand and improve judicial practices. Such information includes understanding the predictive accuracy of risk/needs assessment tools (see "Use risk assessment tools to identify risk to reoffend and criminogenic needs," below), the benefits of specific offender programming, and the effects of justice system decisions on victims and communities.
- Assess the current capacity of the judiciary 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.
- Identify case, court, and system performance measures, for example, percent of offenders placed on community supervision by risk level, court user perceptions of procedural fairness, and percent of criminal court cases disposed or otherwise resolved within established timeframes.
- 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 JUDGES

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

HISTORICAL PRACTICE	RESEARCH-BASED PRACTICE
Base pretrial decisions on a bond schedule and/or on the seriousness of the present offense.	**Use risk assessments to inform pretrial release decisions.**
Impose pretrial release conditions in every case and often with the same standard conditions.	**Impose individualized conditions of pretrial release based on assessment results.**
Determine plea negotiations prior to the availability of information that is key to effective risk reduction	**Accept pleas that are consistent with the risk/need assessment; send back for reconsideration those pleas that contradict or do not address information contained in the assessment.**
Accept offense-based pleas	**Work with system stakeholders to ensure that risk/need assessment data is collected prior to pleas being established, or establish a policy agreement that limits pleas to sentence length and accountability-related conditions (e.g., restitution), thereby leaving programming conditions up to the court and/or probation after the risk/need assessment is completed.**
Lecture from the bench.	**Use "Motivational Interviewing" techniques (e.g., reflective listening, use of open-ended questions).**
Withhold the use of rewards until discharge.	**Provide incentives (e.g., take away or reduce restrictive conditions) throughout the court process as prosocial behavior is demonstrated. Consider holding review hearings to affirm progress made or providing written encouragement when milestones are achieved (e.g., earning a GED).**
Base sentences almost solely on the severity of the present offense.	**Consider whether the individual can be safely supervised in the community and, for those who can, determine which interventions might reduce the likelihood of reoffense. Use longer periods of incarceration for low risk offenders only when the facts and circumstances of the offense warrant them.**
	Consider increasing the supervision intensity for high risk individuals even when the instant offense is low level or non-serious.
Impose sentences with many conditions, most of them non-criminogenic.	**Limit the conditions to those that will best accomplish the sentencing goals. Avoid over-conditioning, especially those that do not reduce the risk to reoffend.**
	Provide conditions for the low risk offender that can be accomplished without disrupting their prosocial activities.

HISTORICAL PRACTICE	RESEARCH-BASED PRACTICE
Include specific programming in sentences.	Give probation the discretion to adjust programming, given the fact that risk factors and the conditions that underlie them change—sometimes quickly.
Give graduated sanctions based on previous violations, increasing the number or severity of the sanctions as the number of violations increase.	Consider which criminogenic needs underlie the violation behavior and target those needs accordingly.
	Avoid automatically increasing the sanction based on the number of previous violations, recognizing that it is certainty and swiftness (rather than severity) that is most important in shaping behavior.
Hold violation hearings when the case can be placed on the docket.	Arrange for swift responses to violations (e.g., within 24 to 48 hours) through the use of an administrative sanction process, a violations court, or some other means.
Keep offenders on supervision until their sentence expires.	Provide incentives for early discharge, contingent on the completion of programming that directly addresses criminogenic needs.
	Consider using "dosage probation," in which individuals are sentenced to a set number of hours of programming instead of a set amount of time (e.g., three years).[12] When the dosage is satisfactorily met, and objective indicators suggest risk to reoffend has diminished, consider early termination.

[12] For more information on dosage probation, see Dosage Probation: Rethinking the Structure of Probation Sentences and Spotlight on EBDM Pilot Site: Milwaukee County, Wisconsin.

POTENTIAL CHALLENGES; WORKING TOWARD SOLUTIONS

Understanding the research evidence is one of the first steps in the EBDM process. Applying that research in the real world, however, can be challenging for many reasons. Some jurisdictions have supervision agencies that are so underfunded that they do not have the staff to complete risk/need assessments. Some courts are so inundated with cases that there is insufficient time to review cases in advance, plan ways to address criminogenic needs, or exchange the meaningful dialogues that lead to improved outcomes for court participants. Other common challenges include the very complexity of sentencing, problems associated with a case "going bad," and plea agreements. These challenges are described below, along with ways in which research evidence might be used to help overcome them.

Complex role of sentencing

As noted above, the court must consider multiple sentencing objectives, each of which has some research evidence to support it.[13] Sometimes sentencing objectives, such as risk reduction, can conflict with other objectives. As an example: A law-abiding and otherwise responsible community member drives home from a local fundraising event and accidently hits and kills a pedestrian with his car. Since his blood alcohol content is just over the legal limit, he is charged and convicted of manslaughter. A risk assessment indicates that he is at low risk to reoffend and suggests that he can be supervised safely in the community. Nevertheless, since the action resulted in the loss of life, most would argue the crime calls for a significant penalty: a prison sentence. However, research indicates that a prison sentence will probably have little or no impact on the likelihood he will repeat the behavior and, in fact, could actually increase his risk of offending because of the contact he will have with the antisocial individuals in jail or prison and/or because of the loss of prosocial supports such as employment, financial stability, and so on. To minimize the likelihood of a negative outcome, if possible, he would be housed separately from high risk offenders in prison, and policies and programs to maintain prosocial supports, such as family visitation, furloughs, and so on, would be enforced. Whatever the sentencing outcome, risk reduction should be considered in conjunction with, as opposed to separately from, other sanctioning purposes.

Detailed plea agreements

While it is ultimately the judge's responsibility and role to sentence offenders, plea agreements are commonplace and can be an efficient method of resolving cases. If the terms of the plea agreement dictate only whether and for how long an individual is confined or placed on community supervision, and other conditions are left to the court's discretion, the judge will have the opportunity to apply research evidence to the disposition. However, defense counsel often need to articulate a detailed plea agreement to secure the client's consent even though risk/

[13] See the Justice Management Institute's Smarter Sentencing training curriculum, listed in Appendix 1: Tools/Resources section, for the research on sentencing objectives.

need information is often not available at the time of the plea. As a result, pleas are frequently negotiated and presented without sufficient information to craft an evidence-based sentence. This process can impede the ability of the court to hand down risk reduction-oriented sentences. The judge is not bound to accept the plea, but returning the case for further negotiation impedes efficiency and swift case disposition.

Several methods are used to address this issue:

- Assessments are conducted during the plea stage. In these cases, agreements between prosecution and defense ensure the proper use of the assessment information (for example, that the prosecution's offer will not be based upon the defendant's risk level, but conditions will be informed by the results of the needs portion of the assessment).
- The parties agree that the court conditions will not be a part of the plea package; instead, non-incarceration conditions will be determined by the court at sentencing based upon the results of an assessment.
- The court grants the community supervision agency with the authority to establish programming conditions based upon the assessment results.
- Review hearings are held to reconsider sentence conditions following the completion of an assessment by a supervision agency.

When a case "goes bad"

No actuarial tool or risk assessment can predict with certainty whether an individual will commit a future crime. False positives and false negatives are unavoidable; some offenders assessed as high risk will never reoffend, while some assessed as low risk will. The value of assessment tools is their improved predictive ability; research demonstrates that they outperform professional judgment (Grove, Zald, Lebow, Snitz, & Nelson, 2000).

The fact that risk prediction is an imperfect science means that even with the best available information, sometimes outcomes are—unpredictable. When the unpredictable outcome is a negative one, it is common for people to blame someone or something (Domurad, 2005). In the worst case, the decision making of the court (and perhaps others in the justice system) is targeted and criticized. Claims of "soft on crime" and demands for a "get tough" stance may follow. It is not surprising in these instances that the resolve for evidence-based decision making weakens, policies and practices are revised, and even successful programs and services are terminated. This is why educating the public is key.

"MOST OF THE LITERATURE ON EBPP CALLS FOR THE ESTABLISHMENT OF LEARNING ORGANIZATIONS. IT TELLS OUR MANAGERS AND STAFF TO TAKE RISKS, TO INNOVATE AND TO TRY NEW THINGS BASED ON KNOWLEDGE AND EXPERIENCE. BUT WE ALL KNOW THAT WHEN A POLICY OR A PROGRAM FAILS, THE TEMPTATION IS TO SEEK A SCAPEGOAT, AN INDIVIDUAL OR GROUP OF INDIVIDUALS WHO CAN BE BLAMED."

Frank Domurad, "Doing Evidence-Based Policy and Practice Ain't for Sissies"

It is important for the judge and other justice system players to explain the research evidence underlying their decisions and to affirm that implementing research-based policies and practices offers the justice system the greatest opportunity to achieve positive outcomes, even though the research is imperfect. Similarly, research in the medical field is not perfect. A procedure that is effective 90% of the time will not have the hoped-for consequences 10% of the time.

It is imperative that justice system stakeholders support each other when decisions are made based on research evidence yet something "goes bad." Such support is an indication of the trust that team members have in one another and is important in gaining the trust of the public, especially when trying to advance change on a systemwide level. This level of support is also consistent with the collaborative spirit that is at the root of EBDM and that is essential to addressing this as well as other challenges the EBDM policy team will encounter.

CONCLUSION

The critical role of judges and other court officials on the EBDM policy team is undeniable. They bring important perspectives, knowledge, and information to the team. To maximize their effectiveness as team members, court officials should become as familiar as possible with research evidence ("evidence-based practices") so that they can work with their partners to identify the ways in which outcomes can be improved throughout the system. Most importantly, judges can provide compelling leadership both formally or informally in their role as contributing members of the team. They can also model for their justice system partners progressive thinking, openness to social science research "evidence," and the willingness and courage to explore strategies to reduce harm and improve justice system outcomes.

APPENDIX 1: TOOLS/RESOURCES

Judges 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 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 Judges.

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.

National Center for State Courts' Evidence-Based Sentencing to Improve Public Safety and Reduce Recidivism: A Model Curriculum for Judges: A curriculum to help judges develop evidence-based sentencing practices.

Roger K. Warren's Evidence-Based Practice to Reduce Recidivism: Implications for State Judiciaries: A discussion of the implications of evidence-based practices for the judiciary.

ADDITIONAL RESEARCH

The Campbell Collaboration

Crime Solutions

University of Cincinnati Center for Criminal Justice Research

Washington State Institute for Public Policy

APPENDIX 2: REFERENCES

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