



USER'S GUIDE

EVIDENCE-BASED DECISION MAKING: A GUIDE FOR PRETRIAL EXECUTIVES

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

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PURPOSE OF THE GUIDE

The purpose of this guide is to prepare and assist pretrial executives 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 pretrial executives 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 legal and evidence-based practices;
- an explanation of “harm reduction”;
- a description of the implications of key research findings for EBDM pretrial executives;
- an overview of how the principles of EBDM apply to pretrial executives’ work;
- examples of legal and research-based practices for pretrial executives;
- an exploration of challenges pretrial executives might face while implementing EBDM and possible strategies to ameliorate those challenges;
- links to the EBDM Framework, a primer on EBDM, and other resources that can help pretrial executives learn more about evidence-based decision making; and
- references to key research citations.

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

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 pretrial misconduct and post-conviction reoffending. 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.

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.

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

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.

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 policy and practice.”

LEGAL AND EVIDENCE-BASED PRACTICES

Legal and evidence-based practices (LEBP) are policies and procedures supported by statute, case law, and research on bail. Legal and evidence-based practices recognize the justice system’s limited objectives at the pretrial stage, the different definition of “risk” at this stage, and the greater expectation of rights that defendants, as compared to sentenced offenders, retain. The use of an empirically based risk assessment tool to determine the likelihood of pretrial misconduct (i.e., rearrest or failure to appear in court) is an example of a legal and 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 LEGAL AND EVIDENCE-BASED PRACTICES AND EVIDENCE-BASED DECISION MAKING

The connection between legal and 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 applicable laws and research evidence (LEBP) 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 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

“EBDM IS A CULTURE CHANGE THAT INVOLVES DEEP AND BROAD SYSTEM REFORM THAT WILL REQUIRE COURAGE AND RESOLVE TO UNDERSTAND VARYING PERSPECTIVES.”

Phase V EBDM pretrial official

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

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

- **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 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, 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.¹

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 applicable laws and 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 laws and 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);

¹ There are codified steps to building a genuine, collaborative EBDM policy team. These steps are outlined in the [EBDM Starter Kit](#).

- expanding legal and 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 conditions, 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 PRETRIAL EXECUTIVES BE PART OF AN EBDM POLICY TEAM?

The American Bar Association, in their *Standards for Pretrial Release* (2007), describe the evolution of pretrial justice in America:

In the early days of the bail reform movement, pretrial services often were viewed as advocacy-oriented programs for defendants. The concept of pretrial services under these Standards is different: the pretrial services function is considered an integral part of a process to promote and implement fair and effective judicial decisions resulting in the release or detention of defendants. Because pretrial services are designed to support this judicial decision-making process, by definition they cannot ‘compete’ with or somehow work against it. (p. 56)

Indeed, recognition of the critical decisions made at the pretrial stage of the criminal justice process—and the role of pretrial executives in those decisions—is increasing rapidly, likely due to a recognition of the magnitude of pretrial detention. Recent data reflects that, on any given day, roughly 450,000 people in the United States are held in jail awaiting trial (Minton & Zeng, 2015). A review of this data suggests that the vast majority of pretrial detainees cannot post bond, and that even a charge of several hundred dollars can present a significant obstacle to those who are poor (Council of Economic Advisers, 2016). This fact has significant consequences, as is described below.

Regarding the prevalence of pretrial services in the United States, the National Association of Pretrial Services Agencies estimates that approximately 350 such agencies operate nationwide and in Puerto Rico. In addition, the U.S. Administrative Office of the Courts operates a pretrial system to serve the federal courts. Kentucky and New Jersey have statewide pretrial systems. Additionally, a single vendor provides statewide pretrial services in Maine; in Virginia, pretrial agencies receive funding from the Commonwealth (S. Kennedy, personal communication, December 23, 2016). With localities across the country totaling in the thousands, it is clear that, today, most criminal justice systems lack a formal pretrial component.

Where they do exist, pretrial services differ from jurisdiction to jurisdiction depending upon local structure and resources. Still, ideally, pretrial services staff:

- interview pretrial defendants prior to their first court appearance;
- use a validated pretrial risk assessment tool to determine the defendant’s likelihood of pretrial misconduct (defined as failure to appear for required court appearances and/or new law violations during pretrial release);
- conduct verifications as appropriate;
- present, in writing, the findings of the investigation, along with a recommendation, to the court, prosecution, and defense;
- identify potential cases for diversion from traditional case processing;

- monitor court-imposed conditions of release to reasonably ensure public safety and court appearance;
- monitor or supervise, as appropriate and based upon level of risk, released defendants;
- respond to defendant behavior, both prosocial and noncompliant;
- provide information to the court and other parties regarding defendant compliance during the supervision period;
- review on an ongoing basis those individuals who are not granted release to determine if conditions are such that release becomes possible; and
- collect and analyze data to measure the performance of pretrial services and the outcomes of pretrial defendants.

To successfully carry out these functions, pretrial staff interact with a variety of other system stakeholders on a day-to-day basis. These include:

- law enforcement, to receive information pertinent to the arrest and charges made;
- jail staff, to gain access to defendants for the initial interview and to obtain information relevant to the pretrial investigation;
- judicial officers, prosecutors, and defense attorneys at initial appearance, to present information relevant to the pretrial release decision;
- victim advocates and service providers, to share pertinent release and safety information, per court orders;
- prosecutors and defense attorneys, to discuss select defendants' suitability for participation in diversionary programs and services;
- service providers, including those who conduct drug, alcohol, or mental health assessments or treatments, to establish and monitor services during the period of pretrial release;
- judicial officers, prosecutors, and defense, to report on compliance, and/or to suggest additional conditions to support a successful pretrial supervision period or reductions in supervision requirements;
- court clerks and administrators, to gather information about appearance dates;
- law enforcement, to locate defendants who have failed to appear for court and have an active warrant; and
- probation, to provide relevant information for the presentence report.

Because of the key role that the pretrial phase plays in the effective administration of justice, the impact of pretrial decision making on the lives of defendants, and the extensive interaction that pretrial staff have with defendants and other system stakeholders, it is clear that pretrial executives are in a strong position to contribute to the EBDM policy team.

THE IMPLICATIONS OF KEY RESEARCH FINDINGS FOR EBDM PRETRIAL EXECUTIVES AND THEIR STAFF

Pretrial research is more limited than post-conviction research; however, that is changing. Important new studies using large and generalizable populations are helping guide jurisdictions toward assessing and mitigating pretrial risk. The following describes some of the research findings—some more established than others—and lists implications for pretrial executives’ decisions.

1. Use risk assessment tools to identify risk of pretrial misconduct.

According to Standard 10-1.10 of the American Bar Association’s *Standards for Criminal Justice: Pretrial Release* (2007), pretrial services programs should “collect and present the necessary information, present risk assessments, and, consistent with court policy, make release recommendations required by the judicial officer in making release decisions (p. 5).” Risk assessments are most accurate when assessors use validated instruments.

Empirically based actuarial instruments used at the pretrial stage assess a defendant’s likelihood of misconduct (i.e., new criminal arrests during the pretrial period and/or failure to appear). Pretrial risk assessment tools typically include a combination of static risk factors (i.e., those that are unchangeable, typically relating to justice system history or involvement, such as history of failure to appear or prior convictions) and dynamic factors (i.e., those that are changeable, typically pertaining to community stability, such as employment or residence; VanNostrand & Lowenkamp, 2013). Of the two groups of risk factors, static factors are emerging as the strongest predictors of pretrial misconduct (Bechtel, Clark, Jones, & Levin, 2011; VanNostrand & Lowenkamp, 2013).

Pretrial risk assessment tools differ in important ways from those used post-conviction; whereas pretrial tools assess short-term misconduct, their post-conviction counterparts assess long-term recidivism risk. Additionally, long-term risk assessments typically include an assessment of criminogenic needs—the dynamic factors that contribute to ongoing criminal behavior. These dynamic factors ultimately are the target for intervention in the post-conviction phase of the case, once culpability has been established.

“A GROWING NUMBER OF JURISDICTIONS ARE NOW REFORMING THEIR PRETRIAL SYSTEMS TO CHANGE THE WAY THEY MAKE PRETRIAL RELEASE AND DETENTION DECISIONS. THESE COMMUNITIES ARE SHIFTING AWAY FROM DECISION MAKING BASED PRIMARILY ON A DEFENDANT’S CHARGE TO DECISION MAKING THAT PRIORITIZES THE INDIVIDUAL’S LEVEL OF RISK—BOTH THE RISK THAT HE WILL COMMIT A NEW CRIME AND THE RISK THAT HE WILL FAIL TO RETURN TO COURT IF RELEASED BEFORE TRIAL. THIS RISK-BASED APPROACH CAN HELP TO ENSURE THAT THE RELATIVELY SMALL NUMBER OF DEFENDANTS WHO NEED TO BE IN JAIL REMAIN LOCKED UP—AND THE SIGNIFICANT MAJORITY OF INDIVIDUALS WHO CAN BE SAFELY RELEASED ARE RETURNED TO THE COMMUNITY TO AWAIT TRIAL.”

Laura and John Arnold Foundation, *Public Safety Assessment: Risk Factors and Formula*, p. 1

The implications of making release or detention decisions without the use of a validated pretrial risk assessment include increasing the public safety risk by releasing high risk defendants and/or using ineffective strategies to manage risk (Milgram et al., 2015) and increasing the risk of low and moderate risk defendants through the collateral consequences associated with detention or over-supervision. Research has demonstrated that detaining low and moderate risk defendants, even for short periods of time (i.e., 2–3 days), can increase their risk for misconduct both

Detaining defendants who can be safely released pending adjudication can result in a variety of collateral consequences including:

- the loss of housing, medical assistance, and other benefits;
- separation from the positive influences in their lives, such as prosocial family members, friends, and employment; and
- increases in the jail population, contributing to the inefficient use of resources.

short- and long-term (Lowenkamp, VanNostrand, & Holsinger, 2013).

Furthermore, research has shown that defendants who are detained during the pretrial period are more likely to receive an incarcerative sentence upon conviction than those who were released pretrial, even when controlling for other factors (Goldkamp, 1979).

The following are criteria for a pretrial risk assessment instrument (VanNostrand, 2007):

- A pretrial risk assessment instrument should be proven through research, using generally accepted research methods, to predict risk of failure to appear and danger to the community pending trial.
- The instrument should equitably classify defendants regardless of their race, ethnicity, gender, or financial status.
- Factors utilized in the instrument should be consistent with state statutes.
- Factors utilized in the instrument should be limited to those that are related either to the risk of failure to appear in court or danger to the community.

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 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). 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 be rearrested during the pretrial period; 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).
- 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.

POLICY AND PRACTICE IMPLICATIONS FOR PRETRIAL EXECUTIVES AND THEIR STAFF²

- Use empirically based pretrial risk assessment tools to assess the risk of pretrial misconduct of all defendants, including those perceived as higher risk.
- Train (and certify, as may be required) assessors in the administration and scoring of the pretrial risk assessment tool, as well as any other tools used to assess pretrial risk, and require assessors to participate in periodic “booster trainings.”
- 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.
- Use the results of risk assessments, as well as other information and experience, to inform pretrial release and pretrial supervision recommendations.

2. Develop policy-driven release recommendations.

There has been growing interest across the country in developing pretrial decision making frameworks to determine release types and conditions. These frameworks combine level of risk and, in some instances, charge categories (or other factors) with agreed-upon release and/or supervision strategies to help staff make better and more consistent pretrial release recommendations (VanNostrand, Rose, & Weibrecht, 2011). As stakeholder groups create these frameworks, they must wrestle with a variety of issues (e.g., the constitutional right to release, the consequences of oversupervision, tolerance for certain types of risk) and, ultimately, build consensus around pretrial release conditions. In addition, jurisdictions must constantly evaluate outcomes to ensure that they are not over-detaining, over-supervising, or experiencing a disproportionate amount of failure with certain categories of defendants, and they must adjust frameworks as needed. A recent study analyzing decisions made using such frameworks showed that proper training and use of the frameworks positively affected pretrial staff’s recommendations, judicial decisions, and level of pretrial release supervision (Danner, VanNostrand, & Spruance, 2015). Furthermore, following the release decision, pretrial staff should conduct a sequential review of the status of detained defendants to identify those who remain in detention past the point at which release was expected to have occurred. This process should include, as appropriate, a review of changes in circumstances and recommendations for conditions that would meet concerns about nonappearance or public safety (National Association of Pretrial Services Agencies, 2004).

POLICY AND PRACTICE IMPLICATIONS FOR PRETRIAL EXECUTIVES AND THEIR STAFF

- Engage in policy discussions with team members regarding pretrial decision making frameworks; publish and train on consensus-built frameworks.
- Collect data on the concurrence rate with the frameworks; track defendant outcome data based upon release decisions.

²The policy and practice implications included in this section and those that follow are intended to be illustrative rather than comprehensive.

- Create a differential supervision policy that matches risk level and supervision intensity.
- Review the status and release eligibility of detained defendants on an ongoing basis to identify defendants who remain in detention past the point at which release was expected to have occurred or whose circumstances have changed favorably.

3. Make sure that pretrial release conditions are the least restrictive means needed to reasonably ensure public safety and court appearance.

ABA Standards (2007) indicate that “when conditional release is appropriate, the conditions should be tailored to the types of risk that a defendant poses, as ascertained through the best feasible risk assessment methods” (p. 35). Standard 10-1.2 further defines the nature of release conditions as “the least restrictive condition(s) of release that will reasonably ensure a defendant’s attendance at court proceedings and protect the community, victims, witnesses, or any other person” (p. 39). This means that over-conditioning is inappropriate. In fact, research on post-conviction populations demonstrates that over-conditioning can have deleterious effects. And, where conditions are determined essential to ensure court appearance and/or public safety, they should be customized to reflect the specific risk posed by the individual defendant rather than be a standard set of conditions established or recommended for all defendants.

POLICY AND PRACTICE IMPLICATIONS FOR PRETRIAL EXECUTIVES AND THEIR STAFF

- Limit pretrial release conditions to those essential to increase the likelihood of court appearance and decrease the likelihood of pretrial misconduct.
- Customize condition recommendations to address the potential risk of the individual.
- Offer service referrals (e.g., mental health services, drug treatment) strictly on a voluntary basis.

4. In those instances where bonds are explicitly called for in state statutes, use unsecured bonds.

As noted earlier, the reliance on money to gain release from pretrial detention is widely challenged today under the Equal Protection Clause of the 14th Amendment and the Excessive Bail Clause of the 8th Amendment. Nonetheless, data reflects that the vast majority of pretrial defendants are detained because they cannot post even a nominal amount of bail (Heaton, Mayson, & Stevenson, 2016).

When financial conditions are ordered, judicial officers can use unsecured bonds

“OUR BEST UNDERSTANDING OF HOW TO MAKE MEANINGFUL IMPROVEMENTS TO CRIMINAL JUSTICE SYSTEMS POINTS TO JUSTICE STAKEHOLDERS CULTIVATING A SHARED VISION, USING A COLLABORATIVE POLICY PROCESS, AND ENHANCING INDIVIDUAL DECISION MAKING WITH EVIDENCE-BASED PRACTICES. [U]SING SECURED MONEY TO DETERMINE RELEASE AT BAIL THREATENS TO ERODE EACH OF THESE INGREDIENTS. MONEY CARES NOT FOR SYSTEMWIDE IMPROVEMENT, AND THOSE WHO BUY THEIR STAKEHOLDER STATUS FROM MONEY HAVE LITTLE INTEREST IN COMING TOGETHER TO WORK ON EVIDENCE-BASED SOLUTIONS TO SYSTEMWIDE ISSUES.”

Tim Schnacke, *Fundamentals of Bail: A Resource Guide for Pretrial Practitioners and a Framework for American Pretrial Reform*, executive summary

(financial conditions due and payable only if the defendant defaults on the conditions of the bond), as opposed to secured bonds (those backed by collateral, such as money, a mortgage or lien, etc.). According to research, jurisdictions could release significantly more defendants on unsecured bonds versus secured bonds without experiencing differences in court appearance or public safety rates (Jones, 2013).

POLICY AND PRACTICE IMPLICATIONS FOR PRETRIAL EXECUTIVES

- Engage in discussions with policy team members about the efficacy of bond schedules and replace with risk-based delegated authority.
- Discontinue the practice of recommending financial release conditions.

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

Data from pretrial agencies across the country indicate that the majority of pretrial defendants are compliant with court-imposed release conditions. Yet, noncompliant behavior among pretrial defendants sometimes occurs 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 most 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 PRETRIAL EXECUTIVES AND THEIR STAFF

- Work collaboratively with policy team members to develop and implement a set of policies to guide responses to pretrial misconduct.
- Consistently respond to noncompliant behavior.
- Streamline procedures to support swift action following noncompliance.
- 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.

6. 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, Goggin, & Little, 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 PRETRIAL EXECUTIVES AND THEIR STAFF

- Work collaboratively with policy team members to develop and implement a set of policies to guide responses to prosocial behavior.
- Consistently respond to compliant behavior.
- Customize rewards to ensure they are meaningful to the individual.
- Include in sequential review policies a review of a defendant’s compliance, and allow for court consideration of reduced conditions.

INFUSING THE PRINCIPLES OF EBDM INTO PRETRIAL POLICIES AND PRACTICES

As noted earlier, the EBDM Framework is built upon four principles; these principles can guide pretrial executives in their work with the EBDM policy team, their own agencies, and the defendants with whom they work.

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

As key participants in the pretrial phase of the criminal justice system, pretrial executives make countless decisions as they work to maximize public safety and pretrial release (through appropriate release recommendations) and court appearance (through supervision that matches identified risk, appropriate notification and reminder systems, and supervision monitoring;

Schnacke, 2014). Key to achieving these goals is the application of LEBPs, including determining a defendant’s risk of failure to appear for required court appearances and/or risk of engaging in criminal misconduct while on pretrial release.

The decision to release or detain a defendant during the pretrial phase of a criminal case has both short- and long-term consequences for all involved—defendants, family members of defendants, victims, witnesses, the criminal justice system, and the general public. The pretrial legal foundation, applicable laws, and research are helping pretrial staff better assess risk of misconduct; this leads to improved “bail” (release) decisions.

As discussed, a growing body of legal decisions and research in the field of pretrial justice points to the need for systematic use of empirically based pretrial risk assessments in making release decisions (Milgram, Holsinger, VanNostrand, & Alsdorf, 2015). Furthermore, emerging evidence points to the importance of matching pretrial interventions (conditions of release) to risk. Studies conducted by Goldkamp and White (2006) and Lowenkamp and VanNostrand (2013) suggest that pretrial super-

vision generally can help achieve better court appearance and public safety rates. Other studies show that placing conditions on lower risk defendants can actually increase their overall risk both pretrial and post-conviction (Lowenkamp & Latessa, 2004; VanNostrand & Keebler, 2009).

IMPACTS OF PRETRIAL DETENTION

A recent research study using a quasi-experimental design found that, when compared with defendants who are released, detained defendants:

- are assessed higher court fees, at the average rate of \$128;
- receive sentences of incarceration that are 5 months longer; and
- plead guilty at significantly higher rates, even when controlling for other factors (Stevenson, 2016).

THE USE OF MONEY IN PRETRIAL RELEASE DECISION MAKING

Perhaps one of the most significant areas of debate in recent years has been the use of money in pretrial decision making. To be sure, the requirement for posting a cash/surety bond to gain one's release from detention is wrought with potential consequences such as the release of individuals at high risk of committing a crime simply because they have the financial resources to bail themselves out of jail, while other defendants—oftentimes those at low risk to engage in pretrial misconduct—are held in detention due to their inability to post a bond of even a nominal amount. This circumstance raises legal concerns regarding the Equal Protection Clause of the 14th Amendment and the Excessive Bail Clause of the 8th Amendment. At the same time, research suggests that, in most cases, the use of secured bonds over unsecured bonds (personal recognizance) does not improve a defendant's appearance in court or law-abiding behavior pending court proceedings (Jones, 2013).

POTENTIAL ACTIVITY IMPLICATIONS FOR PRETRIAL EXECUTIVES³

- Identify all the points at which pretrial staff make or influence decisions regarding defendants. Determine the empirical evidence available that will best inform these decisions.
- Assess pretrial risk using a validated, empirically based pretrial tool at the earliest possible stage; base recommendations on the results of these assessments.
- Participate on a collaborative criminal justice policy team to share research information that can guide policy and practice.
- Ensure that training for all pretrial professionals is based on the most current research available. Use these findings to guide new, or to refine existing, pretrial 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 with individuals in the justice system can have a significant positive—or negative—impact. Given that pretrial staff often are among the earliest professionals to interact with defendants—as well as

“IN MISDEMEANOR CASES, PRETRIAL DETENTION POSES A PARTICULAR PROBLEM BECAUSE IT MAY INDUCE OTHERWISE INNOCENT DEFENDANTS TO PLEAD GUILTY IN ORDER TO EXIT JAIL, POTENTIALLY CREATING WIDESPREAD ERROR IN CASE ADJUDICATION...WE FIND THAT DETAINED DEFENDANTS ARE 25% MORE LIKELY THAN SIMILARLY SITUATED RELEASEES TO PLEAD GUILTY, 43% MORE LIKELY TO BE SENTENCED TO JAIL, AND RECEIVE JAIL SENTENCES THAT ARE MORE THAN TWICE AS LONG ON AVERAGE. FURTHERMORE, THOSE DETAINED PRETRIAL ARE MORE LIKELY TO COMMIT FUTURE CRIME, SUGGESTING THAT DETENTION MAY HAVE A CRIMINOGENIC EFFECT.”

Paul S. Heaton, Sandra G. Mayson, and Megan Stevenson, *The Downstream Consequences of Misdemeanor Pretrial Detention*, abstract

³The potential activity implications included in this section and those that follow are intended to be illustrative rather than comprehensive.

with defendants' significant others—the opportunity to demonstrate professionalism, objectivity, and compassion is especially pronounced.

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.

THE IMPORTANCE OF EFFECTIVE INTERVIEWING AND INVESTIGATION TECHNIQUES

The process by which staff gather information as part of the risk assessment is critical to the results of the assessment. For example, one interviewer may conclude after a brief interview and verification that a defendant has lived at their current address with family for one year; that may be worth (hypothetically) 2 points on the validated risk assessment instrument. A second staff person may conduct a more detailed interview, using more effective interviewing techniques, and discover that the defendant claims his family residence as his own but has not, in fact, been staying with family and, instead, has been living with various friends. This may result in 0 points. Likewise, one staff person might see a warrant on the defendant's prior criminal history and conclude that the warrant is for a failure to appear in court; points would accrue on the risk assessment. A second staff person might investigate the warrant and find that it was for failure to pay a fine, which would have no bearing on the risk assessment score. Detailed protocols on how to complete the pretrial investigation, documentation of the completion of each step, and strict verification procedures and quality control checks are necessary to ensure the reliability of the assessment results. Equally, and in keeping with Principle 2, staff training and competency in effective interaction skills and interviewing techniques is of paramount importance.

POTENTIAL ACTIVITY IMPLICATIONS FOR PRETRIAL EXECUTIVES AND THEIR STAFF

- Develop effective communication skills 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.
- Conduct observations of staff's communications with defendants; provide feedback on strengths and areas of improvement; and provide skill-building where needed.
- Participate in victim awareness and sensitivity training.
- 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 clarity of, 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).

“‘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 PRETRIAL EXECUTIVES

- Participate in the EBDM policy team or other collaborative planning groups, and engage in activities that help build collaboration.⁴
- Adhere to empirically derived collaboration methods that have been demonstrated to be successful in facilitating goal attainment.⁵
- 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.
- 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

⁴See, 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](#).

⁵For more information about collaborative justice, see <http://www.collaborativejustice.org>.

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.

Recent advances in pretrial research are particularly significant and growing rapidly. To this end, pretrial executives must be vigilant in following this research, sharing it with their EBDM policy team members, and applying it to their local practices. Doing so will likely impact determinations around those who are suitable for pretrial release, establishment of court notification systems, and strategies for matching level of pretrial supervision to risk level, among others.

In addition to following national research and applying its findings locally, in order to operate a learning system, pretrial executives must establish systems to collect and analyze key outcome, performance and mission critical data (see “Outcome, Performance, and Mission Critical Data for Pretrial Agencies,” page 20).

COURT DATE REMINDERS

Data collected about court date reminders point to their effectiveness in significantly increasing appearance rates. For example, a 2006 pilot test found that when defendants were successfully contacted and reminded of their court dates one week in advance of their arraignments, the FTA rate was reduced from 23% to 11%. Furthermore, the method of contact made a difference. While both messages left for the defendant by voicemail or directly with the defendant were effective at ensuring court attendance, the messages given directly to the defendant were more effective (Jones, 2006). In another study, researchers found that defendants who received a postcard reminder of their upcoming court date that also included a statement regarding the sanctions they would face if they failed to appear had a court appearance rate of 92%, compared to 87.6% for a control group that received no reminder (Herian & Bornstein, 2010).

POTENTIAL ACTIVITY IMPLICATIONS FOR PRETRIAL EXECUTIVES

- Promote the importance of using both social science research and local data to understand and improve pretrial practices.
- Assess the current capacity of the pretrial program to collect and analyze the recommended data, and determine what resources may be needed to expand that capacity.
- Establish clear, specific, and transparent performance measures related to outcome, performance, and mission-critical pretrial functions.
- 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.

OUTCOME, PERFORMANCE, AND MISSION CRITICAL DATA FOR PRETRIAL AGENCIES

The National Institute of Corrections (2011) has identified the following key pretrial justice performance measures.

Outcome Measures

- **Appearance rate:** The percentage of supervised defendants who make all scheduled court appearances.
- **Safety rate:** The percentage of supervised defendants who are not charged with a new offense during the pretrial stage.
- **Concurrence rate:** The ratio of defendants whose supervision level or detention status corresponds with their assessed risk of pretrial misconduct.
- **Success rate:** The percentage of released defendants who (1) are not revoked for technical violations of the conditions of their release, (2) appear for all scheduled court appearances, and (3) are not charged with a new offense during pretrial supervision.
- **Pretrial detainee length of stay:** The average length of stay in jail for pretrial detainees who are eligible by statute for pretrial release.

Performance Measures

- **Universal screening:** The percentage of defendants eligible for release by statute or local court rule that the program assesses for release eligibility.
- **Recommendation rate:** The percentage of times the program follows its risk assessment criteria when recommending release.
- **Response to defendant conduct rate:** The frequency of policy-approved responses to compliance and noncompliance with court-ordered release conditions.
- **Pretrial intervention rate:** The pretrial agency's effectiveness at resolving outstanding bench warrants, arrest warrants, and capiases.

Mission-Critical Measures

- **Number of defendants released by release type and condition:** The number of release types ordered during a specified time frame.
- **Caseload ratio:** The number of supervised defendants divided by the number of case managers.
- **Time from nonfinancial release order to start of pretrial supervision:** Time between a court's order of release and the pretrial agency's assumption of supervision.
- **Time on pretrial supervision:** Time between the pretrial agency's assumption of supervision and the end of program supervision.
- **Pretrial detention rate:** Proportion of pretrial defendants, by assessed risk level, who are detained throughout pretrial case processing.

EXAMPLES OF RESEARCH-INFORMED PRACTICES FOR PRETRIAL EXECUTIVES AND THEIR STAFF

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

HISTORICAL PRACTICE	RESEARCH-BASED PRACTICE
Rely on subjective criteria and/or criteria not supported by research to assess pretrial risk.	Use validated instruments developed specifically for the assessment of pretrial risk.
Exclude some categories of defendants from the pretrial interview and investigation process based on charge type.	Interview and conduct risk assessments on all defendants to ensure that decision makers have risk assessment data to inform release decisions.
Recommend standard conditions of pretrial release in every case.	Recommend conditions of pretrial release that are tailored to the risk posed by the individual defendant.
Complete the pretrial investigation without verifying key pieces of information.	Use official records to verify assessment data where possible, and collateral contacts otherwise. Transparently report verification sources.
Recommend numerous release conditions; recommend money bail.	Recommend the least restrictive non-monetary conditions necessary to decrease the likelihood of pretrial misconduct.
Provide limited or no pretrial supervision.	Provide pretrial supervision commensurate to risk level.
Rely solely on defendants to remember court appearance dates.	Provide one or more court reminder services such as text messages, postcards, or phone calls.
Track few if any performance measures.	Track and report key performance measurements to policy team.

POTENTIAL CHALLENGES; WORKING TOWARD SOLUTIONS

A lengthy discussion of the challenges associated with implementing and administering legal and evidence-based pretrial justice systems is beyond the scope of this guide, but some are nonetheless worthy of mention. To be sure, this area of work is fraught with challenges, some practical (gaining access to defendants quickly following arrest in order to conduct a pretrial risk assessment; encountering defendants who are intoxicated, traumatized, or resistant; the inability to verify housing due to the hour of the day or lack of reliable phone service; etc.) and others systemic (the challenges associated with the absence of both resources and data, long-held beliefs and long-standing practices, and concerns regarding the presumption of innocence).

Lack of Resources for Pretrial Services

Conducting pretrial risk assessments requires adequate staffing and training—necessitating resources that are often quite scarce. This is particularly significant when considering the desirability of conducting proper assessments on all defendants before the release decision occurs. Yet, not conducting risk assessments at the pretrial stage has significant downside implications as previously identified, most especially victim and community safety when high risk individuals are released without adequate supervision or other safeguards, and the iatrogenic impacts for defendants who are detained needlessly. Still other impacts include the costs associated with failure to appear for those improperly assessed/released, the safety of law enforcement officers tasked with executing warrants, and jail bed costs, to name a few. Beyond resources for pretrial risk assessments is the need for funding to support supervision of moderate and high risk individuals; services for some portions of the defendant population (e.g., mental health treatment); court notification systems; and staffing and automation to collect and analyze pertinent data.

Data Collection

Many pretrial agencies encounter difficulties in collecting the outcome, performance, and mission-critical data described previously. Often their systems operate on paper or utilize legacy automation systems that have limited data collection fields and fewer reporting features that reflect pretrial-specific outcome and performance measures.

Presumption of Innocence

Perhaps most challenging of all is the constitutional protection of the presumption of innocence in the American legal system. With this presumption comes obligation. As stated in Standard 10-1.1 of the ABA's *Standards for Criminal Justice: Pretrial Release* (2007):

The law favors the release of defendants pending adjudication of charges. Deprivation of liberty pending trial is harsh and oppressive, subjects defendants to economic and psychological hardship, interferes with their ability to defend themselves, and, in many instances, deprives their families of support. These Standards limit the circumstances under which pretrial detention may be authorized and provide procedural safeguards to govern pretrial detention proceedings. (p. 1)

This obligation extends further still, for example, necessitating agreements among the parties regarding how certain information obtained through the pretrial process will be protected, and ensuring that release is provided under the least restrictive conditions possible. The absence of a pretrial process or, where one exists, the absence of a validated risk assessment tool, the use of money bail to leverage the detention of those who could otherwise be safely released from pretrial confinement and the absence of research-supported practices all run counter to a justice system that favors innocence and protects the rights of all.

These are without a doubt all matters of great complexity and perhaps present the best argument of all for the establishment of an EBDM policy team. An acknowledgement that systems are better served by collaborative processes, a commitment to using laws and research to guide decisions, an appreciation for the fact that every interaction has the opportunity to cause—or reduce—harm, and an appreciation for data and information to inform practice are precisely the foundation upon which a high functioning pretrial justice system will be built.

CONCLUSION

For too long, criminal justice resources, attention, and even the research has focused on criminal justice decision points well past the pretrial stage. Recent research and a growing national interest⁶ have brought pretrial policy and practice into the spotlight. Findings from studies over the past several decades underscore the importance of ongoing advancements in legal and evidence-based practices.

EBDM policy teams are encouraged to include pretrial executives as core members of their teams; to examine with great care the research, the law, and their own current practices in this area; and to strive to establish high functioning pretrial justice systems and agencies. Both research and experience demonstrate the significant impact that doing so will have on the well-being of defendants and the greater community the justice system is designed to serve.

⁶We respectfully acknowledge the work of the many individuals and organizations that have committed their work to pretrial reform, including, among others, the National Association of Pretrial Services Agencies and the Pretrial Justice Institute.

APPENDIX 1: TOOLS/RESOURCES

Pretrial executives may find the following resources useful when adopting legal and 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 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 Pretrial Executives](#).

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

LEGAL AND EVIDENCE-BASED PRETRIAL SERVICES

[National Association of Pretrial Services Agencies and National Institute of Corrections’ A Framework for Pretrial Justice: Essential Elements of an Effective Pretrial System and Agency:](#)

This publication is a guide for jurisdictions interested in improving current elements of their pretrial systems or creating needed procedures and practices. It serves as a resource for practitioners and policymakers to compare current pretrial release and diversion practices with recognized evidence-based and best practices and national standards.

National Institute of Corrections’ [Topics in Community Corrections: Applying Evidence-Based Practices in Pretrial Services:](#) Explores topics such as developing a framework for implementing EBP in pretrial services, improving pretrial risk assessment, and revictimization by, and rearrests among, domestic violence defendants.

Pretrial Justice Institute’s [The D.C. Pretrial Services Agency: Lessons from Five Decades of Innovation and Growth:](#) A case study of an agency that has successfully implemented a pretrial release decision making process that results in the safe release of the majority of defendants and virtually eliminates the use of money bail.

Pretrial Justice Institute’s [Pretrial Services Program Implementation: A Starter Kit:](#) Designed for jurisdictions that are planning to implement a pretrial services program or to enhance an existing program that provides minimal services.

Pretrial Justice Institute’s [State of the Science of Pretrial Risk Assessment](#): An overview for justice system stakeholders of the research behind, and critical issues related to, pretrial risk assessment.

Pretrial Justice Institute’s [The Transformation of Pretrial Services in Allegheny County, Pennsylvania: Development of Best Practices and Validation of Risk Assessment](#): Describes the transformation of Allegheny County’s pretrial system in key areas such as target population, pretrial interview, verification, risk assessment, submission of reports to the court, supervision of release conditions, court date notification, and staff training.

Timothy Schnacke’s [“Model” Bail Laws: Re-Drawing the Line Between Pretrial Release and Detention](#): Considers a series of questions that jurisdictions should ask before reforming pretrial release and detention policies and procedures, introduces analyses to use for any proposed model of pretrial change, proposes a “model” process and holds up the model to the three analyses, and articulates elements of bail statutes and court rules that must be in place in order for the model to succeed.

Marie VanNostrand’s [Legal and Evidence-Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services](#): Summarizes six critical principles found in the law, as well as legal and evidence-based practices, that guide effective pretrial services programs.

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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