



USER'S GUIDE

# EVIDENCE-BASED DECISION MAKING: A GUIDE FOR PROSECUTORS

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 Elaine Borakove, President of the Justice Management Institute, for her early contributions to this guide. We also thank Mark Carey, President of The Carey Group, for updating and finalizing the 2017 versions of the EBDM user's guide series.

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

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



## TABLE OF CONTENTS

<b>Purpose of the Guide</b> .....	<b>1</b>
<b>Background: What Is the Evidence-Based Decision Making Initiative?</b> .....	<b>2</b>
<b>Becoming Part of the EBDM Process</b> .....	<b>6</b>
<b>Why Should Prosecutors Be Part of an EBDM Policy Team?</b> .....	<b>8</b>
<b>The Implications of Key Research Findings for an EBDM Prosecutor</b> .....	<b>9</b>
<b>Infusing the Principles of EBDM into the Policies and Practices of the Prosecutor</b> .....	<b>16</b>
<b>Examples of Research-Informed Practices for Prosecutors</b> .....	<b>22</b>
<b>Potential Challenges; Working Toward Solutions</b> .....	<b>23</b>
<b>Conclusion</b> .....	<b>25</b>
<b>Appendix 1: Tools/Resources</b> .....	<b>26</b>
<b>Appendix 2: References</b> .....	<b>27</b>

## PURPOSE OF THE GUIDE

The purpose of this guide is to prepare and assist prosecutors 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 prosecutors 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 prosecutors;
- an overview of how the principles of EBDM apply to prosecutors’ work;
- a summary of research-based changes in policy and practice a prosecutor participating in EBDM might experience;
- an exploration of challenges prosecutors 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 prosecutors learn more about evidence-based decision making and evidence-based sentencing; and
- references to key research citations.

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

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

These statistics are particularly sobering given the tens of thousands of new victims each year<sup>1</sup> 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.

### A NOTE ABOUT RESEARCH SKEPTICISM

Some stakeholders express skepticism toward research for a variety of reasons, including the fact that studies are often inconclusive, contradictory, or show weak effects. The EBDM process encourages stakeholders to question the research and examine its veracity before changing policy. This is discussed in more detail under Potential Challenges; Working Toward Solutions.

### 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.

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.

<sup>1</sup>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 (.67%) were personal thefts (Truman & Rand, 2010).

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.

---

## 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

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

common goals, jointly create policies and practices to support the achievement of those goals, and stand together to advocate for those goals, particularly in the event of criticism. Criminal justice system “stakeholders” are defined as those who have a vested interest in justice system processes and outcomes; together they are referred to as “policy teams.”

Policy teams are comprised of the justice system agencies and community organizations that impact, or are impacted by, decisions that will be made by the collaborative team. Their specific composition varies depending upon the structure of each community, but they commonly include those with the positional power to create change within their own organizations. The chief judge, court administrator, elected prosecutor, chief public defender, private defense bar, probation/community corrections director, police chief, elected sheriff, pretrial executive, victim advocates, local elected officials (i.e., city manager, county commissioner), service providers, and community representatives are common policy team members of local teams. On state-level teams, the stakeholder composition is similar but includes those with positional influence across multiple communities (e.g., elected president of the state prosecutors’ or sheriffs’ association; executive director of the state’s association of counties), including agencies and individuals with statewide authority or influence (e.g., state legislature, statewide behavioral/mental health agency, department of corrections, attorney general, governor’s office, state courts). In addition, state-level teams include local team representatives in order to align state and local interests around justice system reforms. Together and separately, each team member brings valuable information, resources, and perspectives to the collaborative endeavor.

#### INFORMATION ABOUT EBDM AND EBP

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

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

## WHAT IS HARM REDUCTION?

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

### **Increases in Public Safety**

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

### **Improved Community Wellness**

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

### **Increased Satisfaction with the Criminal Justice System**

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

### **Improvements in the Social and Fiscal Costs of Justice System Interventions**

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

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



## BECOMING PART OF THE EBDM PROCESS

A fundamental principle of EBDM policy teams is that all members are equal partners, sharing in the decision making processes and governing of the team. A first step in becoming part of an EBDM process, then, is to engage in thoughtful discussions with other team members about their purpose in coming together, to determine individual roles and responsibilities within the partnership, and to identify any limits that may exist with regard to information and resource sharing. Such transparency on the part of everyone involved encourages trust among the members and minimizes the potential for future conflicts. Agreements made among the members of the EBDM policy team should be written down and referenced when necessary to resolve concerns. These agreements should contemplate questions such as the following, 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.<sup>2</sup>

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;
- ensuring the proper use of risk assessment information so that people who are at high risk to reoffend are appropriately managed and those at low risk are not inadvertently harmed;

---

<sup>2</sup> There are codified steps to building a genuine, collaborative EBDM policy team. These steps are outlined in the [EBDM Starter Kit](#).

- reducing case processing delays;
- expanding sources of support and protection for victims;
- establishing methods to streamline case information flow;
- instituting or expanding intervention options for specific populations (e.g., justice-involved women, those charged with domestic violence, chronic substance abusers, the seriously mentally ill);
- expanding evidence-based interventions throughout the justice system; 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 PROSECUTORS BE PART OF AN EBDM POLICY TEAM?

According to the National District Attorneys Association’s *National Prosecution Standards* (2009), the prosecutor’s primary responsibility is “to seek justice...This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected” (p. 2). Furthermore, as the Standards explain:

A prosecutor is not a mere advocate and, unlike other lawyers, a prosecutor does not represent individuals or entities, but society as a whole. In that capacity, a prosecutor must exercise independent judgment in reaching decisions while taking into account the interest of victims, witnesses, law enforcement officers, suspects, defendants, and those members of society who have no direct interest in a particular case but who are nonetheless affected by its outcome. (p. 3)

Prosecutors, then, have a unique perspective on, and play a distinctive role in, the justice system—especially in the early stages of a case. They determine whether and how to charge an individual with an offense, divert someone from the formal justice system, negotiate the criminal charge or the sentence terms and conditions as part of the plea process, and make recommendations to the courts about sanctioning. In this capacity, they hold tremendous discretionary power that significantly shapes the course of action that follows and that impacts almost all areas of the justice system.

As essential members of an EBDM team, prosecutors have the opportunity to bring to their professional discretion and experience research about the most effective ways to increase public safety, reduce recidivism, and contribute to overall harm reduction. They can build a coalition of support for prosecutorial practices that are aligned with this research evidence and that are likely to result in positive public safety outcomes. They also have the opportunity to collaborate with justice system partners to create a system that is more efficient in its use of resources, consistent in terms of its policies and practices, aligned with research (evidence-based practices), and effective in its public safety and victim protection outcomes. They have a powerful influence on system changes such as pretrial reform, violence reduction efforts, diversionary programs and alternatives to incarceration, victim restoration activities, and prevention efforts.

**“PROSECUTORS OCCUPY A UNIQUE LEADERSHIP ROLE THAT CARRIES SIGNIFICANT INFLUENCE AND CAN BE USED TO BRING TOGETHER BOTH TRADITIONAL AND NONTRADITIONAL PARTNERS IN COLLABORATIVE RELATIONSHIPS TO ADDRESS CRIME PROBLEMS.”**

Roy Hubert and Lindsey Carlson, *The Prosecutor’s Policy Guide: A Roadmap to Innovation*, p. 17

## THE IMPLICATIONS OF KEY RESEARCH FINDINGS FOR AN EBDM PROSECUTOR

Prosecutors are the central decision makers at three of the thirteen criminal justice decision points: diversion and deferred prosecution, charging, and plea decisions. They are also actively involved and influential in at least seven other decision points: arrest, pretrial status, sentencing decisions, community behavior change (treatment) interventions, violation (noncompliance) responses, reentry planning, and discharge from the criminal justice system. Important research findings can shape decisions at each of these points. The following describes some key research findings and identifies implications for prosecutors' 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 prosecutors, 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) matched 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 offenders are achieved by low levels of intervention. In fact, some research demonstrates that an overreliance on supervision or programming with the low risk population can actually increase their likelihood of reoffending (Andrews & Bonta, 2007; Cullen & Gendreau, 2000; Gendreau, Goggin, Cullen, & Andrews, 2001; Lowenkamp, Latessa, & Holsinger, 2006).

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

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

Risk/needs assessment tools include an analysis of static (unchangeable) factors (e.g., prior criminal record, current age) and dynamic (changeable) factors (e.g., attitude, use of substances,

family/marital situation, coping skills). Assessment tools that are based on static factors alone are referred to as “risk assessments,” rather than “risk/needs assessments,” and do not have a “needs” (dynamic factors) component. Some risk assessments can determine risk without an interview.

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

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

- identifying defendants who are appropriate for pretrial release;
- identifying defendants who are appropriate for diversion;
- preventing overloading low risk individuals with conditions that may interrupt life factors that support their prosocial behavior; and
- ensuring that conditions imposed address individuals’ criminogenic needs and thereby meaningfully contribute to risk reduction.

---

#### 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.

### **POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS<sup>3</sup>**

- Work with defense counsel, and local pretrial and probation staff, to assess risk of misconduct at the earliest possible stage of pretrial and to assess the risk of reoffense, as well as criminogenic needs, during the diversion, plea, sentencing, and violation/show cause processes.
- Use the results of risk assessments, as well as other information and experience, to inform pretrial release decisions, diversion eligibility and placement, and plea negotiations, as well as recommendations made at sentencing and violation hearings.
- Document decisions to *not* follow risk assessment information, and the reasons why.
- Explain the purpose and science supporting risk/needs assessments to victims, especially when lower risk offenders are placed on diversion or other community-based options.
- Ensure that processes are in place that result in accurately obtaining, verifying and scoring risk assessment instruments.
- Ensure that risk assessment tools used locally are validated on the local defendant/offender population.

### **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 intervention or too much intervention may fail to achieve the kind of behavioral change necessary to reduce their recidivism risk.

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

### **POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS**

- Ensure that low risk offenders are held accountable using the least amount of resources possible. Use diversion and deferred prosecution for low risk offenders whenever possible.

---

<sup>3</sup>The policy and practice implications included in this section and those that follow are intended to be illustrative rather than comprehensive.

- Ensure that plea or sentencing conditions for the medium and high risk target programming designed to positively influence behavior (i.e., address assessed criminogenic needs).
- 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).

### 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<sup>4</sup> (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 before discharge (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 influential among these criminogenic needs, the most significant results can be achieved.

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

---

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.

---

<sup>4</sup>This term should be distinguished from the Diagnostic and Statistical Manual (DSM) classification of “antisocial personality,” which has a significantly different meaning and set of criteria.

#### POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS

- Seek plea and sentencing conditions that include programming to address individuals' criminogenic needs.
- Focus conditions on those programs that have been shown through research to be most effective in changing behavior (i.e., cognitive behavioral programming).
- Ensure that services for the medium and high risk are directed towards individuals' most influential criminogenic needs.
- Advocate for independent assessments of local risk reduction services to ensure that they adhere to evidence-based practices.
- Where possible and appropriate, utilize programs that have higher cost–benefit ratios.

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

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

#### POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS

- Work collaboratively with policy team members to develop and implement a set of policies to guide responses to pretrial misconduct.
- Support consistent and proportional responses to noncompliant behavior.
- Streamline procedures to support swift action following noncompliance.
- Consider the level of risk of the individual and the severity of the noncompliant behavior in formulating an appropriate response. Use administrative responses rather than judicial review when public safety is not in danger and liberty is not at stake.

#### 5. Use more carrots than sticks.

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



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

**POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS**

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

**6. Deliver services in natural environments where possible.**

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

**POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS**

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

### 7. Pair sanctions with behavior change interventions.

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

#### POLICY AND PRACTICE IMPLICATIONS FOR PROSECUTORS

- Work with fellow policy team members and the agencies they represent to develop a shared understanding of the research around shaping behavior.
- Advocate for a policy agreement across decision points and programs around the use of behavior-changing programming—instead of or in addition to sanctions—when behavior change is the goal.
- Request that offenders participate in behavior-changing programming as a result of violation behavior.
- Work with the local probation department and other stakeholders to ensure that the violation decision making guidelines include access to both accountability measures and behavioral change response options.

## INFUSING THE PRINCIPLES OF EBDM INTO THE POLICIES AND PRACTICES OF THE PROSECUTOR

As noted earlier, the EBDM Framework is built upon four principles; these principles can guide prosecutors 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, prosecutors make countless decisions. In some cases, those decisions are made pursuant to case law, statute, or administrative rule. In other cases, prosecutors 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 prosecution and sentencing of other, similar cases for purposes of fairness and proportionality.

Research on prosecutorial practices is limited but helpful. For example, a review of case screening and plea negotiation practices supports a more intensive approach to case processing. Specifically, rigorous screening practices that consist of four elements—early assessment, reasoned selection of charges that are appropriate for the offense that occurred and can be proven in court, restricted use of charge bargaining, and internal enforcement by management to ensure uniformity in charging practices and plea negotiations—produce better charging decisions and less charge bargaining during the plea negotiation process (Wright & Miller, 2002).

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 prosecutors' decisions. Using this research provides prosecutors—as well as their justice system partners, defendants/offenders, victims, the community, and other stakeholders—with enhanced confidence that their decisions will likely achieve the desired goal: fewer victims and safer communities.

**“POLICIES BASED UPON EMPIRICAL EVIDENCE THAT UTILIZE RECOGNIZED BEST PRACTICES HAVE THE HIGHEST PROBABILITY OF SUCCESS.”**

Roy Hubert and Lindsey Carlson, *The Prosecutor's Policy Guide: A Roadmap to Innovation*, p. 37

### POTENTIAL ACTIVITY IMPLICATIONS FOR PROSECUTORS<sup>5</sup>

- Identify all the points at which prosecutors make, influence, or could influence decisions through their work with justice-involved individuals. Determine the empirical evidence that will best inform these decisions.

<sup>5</sup>The potential activity implications included in this section and those that follow are intended to be illustrative rather than comprehensive.

- Participate on a collaborative criminal justice policy team coordinating council to share research information that can guide policy and practice.
- Ensure that training for all prosecutors is based on the most current research available. Use these findings to guide new, or to refine existing, prosecution 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.

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). A related study of procedural justice in policing of spousal assault cases found that the use of fair procedures and perceptions of fairness on the part of the defendant reduced the rate of subsequent violence (Paternoster, Brame, Bachman, & Sherman, 1997).

The principle that every interaction is an opportunity to reduce harm also applies to how the justice system engages victims and community members, such as within a restorative justice model. 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

---

Professionals' interactions with victims can promote a sense of safety, satisfaction, and fairness. For prosecutors in particular, concerns about the protection of victims' rights, victim safety, victim restoration, and justice for victims are paramount. These concerns are demonstrated through the ways in which prosecutors interact with victims, the services they offer victims (e.g., assistance in obtaining property that is being held in evidence, assistance in obtaining restitution orders, reducing the time the victim has to wait before a court appearance), and the ways in which they share information and engage victims in the judicial process.

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, Ruge, & 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.

**“OFTEN VICTIMS ARE RACKED WITH UNCERTAINTY REGARDING A DEFENDANT’S DETENTION STATUS AT THE PRETRIAL PHASE. AS A PROSECUTOR, IT IS DIFFICULT TO TELL A VICTIM THAT THEIR HIGH RISK PERPETRATOR (SERIAL RAPIST, ARMED ROBBER, DOMESTIC BATTERER, OR OTHER HIGH RISK INDIVIDUAL) CAN BE RELEASED AT ANY POINT AFTER ARREST AND BEFORE THEY SEE A JUDGE AS LONG AS THEY HAVE MONEY. THE PROCESS WE ARE CONSIDERING WITH EBDM ALLOWS FOR A GREATER CHANCE THAT A VICTIM WILL COME TO AN INITIAL HEARING AND TELL THE COURT ABOUT THE OFFENDER AND THE OFFENSE PRIOR TO A RELEASE DECISION BEING MADE.”**

Loren Delp, Deputy Prosecutor, Hendricks County, Indiana

#### POTENTIAL ACTIVITY IMPLICATIONS FOR PROSECUTORS

- Develop effective communication skills; consider receiving skill-based training and feedback on effective listening and interviewing techniques. Routinely demonstrate essential traits, including respect, objectivity, compassion, and authenticity.
- Ensure policies and processes are free from intentional or unintentional bias.
- Model prosocial behaviors and attitudes at all times.
- Participate in victim awareness and sensitivity training.
- Lead local efforts to establish victim assistance programs and services, including organizing victim awareness and sensitivity training for all justice system stakeholders, forming victim crisis response teams, instituting victim-witness programs within the prosecutor’s office, establishing orientation classes for victims on navigating the criminal justice process, ensuring restitution collection, and so on.

- Work with pretrial release agencies to ensure that the appropriate steps are taken to supervise potentially dangerous defendants and ensure compliance with protection orders.
- Use notification services to keep victims engaged in the process and to contribute to their safety throughout all decision points. Work with victim advocates to coordinate notification of changes in case and release status.
- Provide opportunity for the victim and offender (often through defense counsel) to represent their positions at pretrial release hearings, in plea negotiations, and in sentencing recommendations. In particular, elicit victims' input on safety concerns throughout the case. Weigh risk assessment information against these concerns as part of pretrial release decisions and plea and sentencing recommendations.
- Consider restorative justice programs as a way to fully understand and address the harm caused to victims.
- Explain prosecutorial decisions to victims and defendants/defense counsel.
- Gather input from victims to inform important policy considerations around safety, victim sensitivity, and the decisions of justice system decision makers.
- Establish victim-witness/victim service provider programs/units in the prosecutor's office.
- Organize geographic case assignment processes (or establish community prosecutors) to facilitate direct interaction with local communities to ensure open communication around the impact of crime and measures the policy team is taking to ameliorate it.
- Participate in the development of policies that support the sharing of information among the different systems that impact justice system participants (e.g., jail, court, lawyers, behavioral health, addiction treatment, veteran affairs, etc.), thereby adding to the "value chain."

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

Research demonstrates that systems achieve more when they work together than when they work in isolation of one another. Working collaboratively, components of the criminal justice system—and the agencies and actors that represent them—can operate with clear priorities and consensus on the outcomes the system seeks to achieve and/or the optimal methods to achieve them. As distinguished from value chain research, which addresses the importance of the interactions of the components of the system, the research on collaboration speaks to the manner in which the *individuals* who represent different interests and organizations (e.g., court administration, jail operations, etc.) work together towards a shared outcome (decreased crime and harm, increased community safety).

**“‘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 PROSECUTORS

- Participate in the EBDM policy team or other collaborative planning groups, and engage in activities that help build collaboration.<sup>6</sup>
- Adhere to empirically derived collaboration methods that have been demonstrated to be successful in facilitating goal attainment.<sup>7</sup>
- 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 continuously collecting and analyzing key outcome, performance, and mission-critical data. 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.

#### POTENTIAL ACTIVITY IMPLICATIONS FOR PROSECUTORS

- Promote the importance of using social science research, forensics research, and local data to understand and improve prosecutorial practices. Such information includes understanding the predictive accuracy of risk/needs assessment tools, effective use of evidentiary gathering processes such as DNA analysis and police lineups, and the effects of justice system decisions on victims and communities.
- Assess the current capacity of prosecution to collect and analyze the recommended data, and determine what resources may be needed to expand that capacity.

---

<sup>6</sup>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](#).

<sup>7</sup>For information about collaboration in the justice system, see <http://www.collaborativejustice.org>.

- Establish clear, specific, and transparent performance measures related to outcome, performance, and mission-critical prosecutorial functions, for example:
  - change in the perception of neighborhood crime;
  - change in the level of community satisfaction with the criminal justice system;
  - change in fear of crime;
  - decrease in neighborhood disorder;
  - change in victim satisfaction with criminal justice system response;
  - victim level of satisfaction with case outcomes;
  - frequency of victim participation in court proceedings;
  - percentage of cases in which risk assessments were conducted;
  - percentage of cases in which there were deviations from risk assessments;
  - number and types of plea conditions and sentences compared to those recommended by risk level;
  - number and percentage of defendants/offenders successfully completing diversion/deferred prosecution programs;
  - number and percentage of defendants held in pretrial custody by risk level; and
  - number and percentage of offenders who re-offended by risk level<sup>8</sup>.
- 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.

---

<sup>8</sup> Adapted from *Criminal Justice Performance Measures Literature Review Calendar Years: 2000 to 2010*, by Pennsylvania Commission on Crime & Delinquency Office of Criminal Justice Systems Improvement.



## EXAMPLES OF RESEARCH-INFORMED PRACTICES FOR PROSECUTORS

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

HISTORICAL PRACTICE	RESEARCH-BASED PRACTICE
Request pretrial release conditions (and/or monetary requirements) unrelated to a defendant's risk/needs	Recommend the least restrictive non-monetary conditions necessary to increase the likelihood of appearance and diminish the likelihood of new criminal behavior while on pretrial release
Limit eligibility for diversion/deferred prosecution programs to first-time nonviolent offenders	Use risk level as a determinant for diversion eligibility
Assign case screening responsibilities to less experienced attorneys	Place the responsibility for case screening and charging with seasoned prosecutors
Determine charge and plea decisions—as well as sentence recommendations—without benefit of risk/needs information	Use risk assessment tools to inform decisions—particularly those pertaining to risk reduction—about release/sentence terms and conditions
No treatment courts	Implement and consistently use treatment courts as a cost-effective way to manage offenders in the community
Consider programs and services to be less effective than incarceration in terms of changing behavior	Support the use of interventions demonstrated through research to reduce recidivism
Recommend a myriad of sentencing conditions based on office policy and/or prosecutorial discretion to “maximize” accountability	Recommend conditions that target offenders’ criminogenic needs
	Avoid over-conditioning, especially for the low risk population
	Allow supervising agencies to set conditions based upon risk/needs assessments
Advocate for lengthy “tails” on supervision periods for all offenders	Advocate for system changes that utilize incentives for early discharge, contingent on the completion of programming that directly addresses criminogenic needs

## POTENTIAL CHALLENGES; WORKING TOWARD SOLUTIONS

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

### Research Doubts

Many prosecutors speak to their reluctance to accept some of the core risk reduction research findings. To be sure, some findings are counterintuitive at best and, at worst, rail against long-held beliefs and operating practices. For instance, the notion that punishment—particularly incarceration—can result in the opposite of the desired effect, or that a risk tool more reliably predicts reoffense than experience, can be hard to accept. Complicating matters is the fact that all research studies are not, in point of fact, reliable: some are biased; others are poorly designed or improperly characterized. For these and other reasons, prosecutors may have trepidation about involving themselves in an effort like EBDM. As one prosecutor put it, “I am being asked to take a leap of faith.”

Questioning the validity of the research is healthy, even strongly recommended. Research findings can be complicated, contradictory, and, in some cases, flawed. Many instructors of criminal justice research urge policymakers and practitioners to become savvy as it relates to what constitutes “good” research; to read the research studies themselves; to look for consistent findings across multiple studies; and/or to engage the services of an objective partner to study and interpret the growing body of literature in the field of criminal justice.

### Perception

A second and equally important concern for prosecutors is the perception that engagement in the kinds of efforts undertaken by EBDM teams will somehow be perceived as “soft on crime.” Most prosecutors across the country are themselves publicly elected officials or work for elected prosecutors. This means that their work is in the public eye and their careers are dependent upon the beliefs and perceptions of the voting community. There likely isn’t a community in the country that doesn’t want an increase in public safety, and many look to their elected prosecutor—as the “chief law enforcement officer”—to see that it is achieved. As a result, prosecutors have very real concerns that promoting and implementing evidence-based practices—which some people interpret as attempts to save money or reduce jail/prison usage instead of improving public safety or reducing victimization—will result in criticism of their intentions and doubts about their commitment to their public safety role.

Prosecutors involved in EBDM have worked with their fellow team members to consider how best to represent their very complicated work. They have synthesized research and collected data to demonstrate to themselves—and to provide evidence to supporters and critics alike—that the policies and practices they are advocating are effective ones. They have undertaken

efforts to create and carry out communication strategies and “message triangles” representing the three primary outcomes the EBDM policy team strives to achieve (e.g., increased public safety, data-driven decision making, cost efficiency). These and other strategies can go a long way toward building a more robust dialogue between justice system policymakers and the public they serve.

---

### SELECTED STRATEGIES FOR INCREASING THE PUBLIC’S UNDERSTANDING ABOUT EBP AND EBDM

- Define evidence-based practice (EBP) and evidence-based decision making (EBDM).
- Be clear about the goals: victim safety, public protection, reduced harm to all concerned (or other messages agreed upon by the policy team). EBP and EBDM are not about choosing between punishment and risk reduction; rather, they are intended to ensure that risk reduction components are incorporated into whatever type of punishment is deemed most appropriate.
- Suggest that EBP and EBDM do not equate to “soft on crime” policies but, instead, approaches that hold individuals accountable for their actions in ways that support long-term behavior. In fact, some responses to crime can actually perpetuate criminal thinking and behavior.<sup>9</sup>
- Share national (or, where available, local) data about crime, recidivism, and its fiscal impact.
- Present information that will help the public understand crime and punishment in perhaps a new light. For example, the research on rational choice demonstrates that most higher risk offenders do not think consequentially about their behavior in the way that law-abiding citizens do (De Haan & Vos, 2003; Tunnell, 1990) and do not fear serious punishment in the same way.
- Share public opinion research indicating that most citizens find current recidivism rates unacceptably high and support approaches that will produce better outcomes.<sup>10</sup>

---

<sup>9</sup>Myths & Facts: *Why Incarceration Is Not the Best Way to Keep Communities Safe*, by the Community Corrections Collaborative Network, presents five myths and facts, along with relevant research, that support the idea that EBP is “smart on crime” rather than “soft on crime.”

<sup>10</sup>Results are from a 2009 Zogby International national public opinion survey commissioned by the National Institute of Corrections and its partners for the EBDM initiative.

## CONCLUSION

The important role of the prosecutor in the criminal justice system is undeniable. Prosecutors play a key part in most of the critical decision points and have significant influence on how decisions are made. Furthermore, as those responsible for charging and prosecuting offenders who have harmed individuals and communities, they are viewed by the public as protectors and, as such, bring an important perspective and credibility to the policy team. By becoming involved in EBDM, and working in an open, collaborative manner, prosecutors can make a strong contribution to policy and practice changes that achieve the goal shared by all members of the policy team: fewer victims and safer communities.

## APPENDIX 1: TOOLS/RESOURCES

Prosecutors 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 Prosecutors](#).

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.

Jennifer A. Fahey’s [Using research to promote public safety: A prosecutor’s primer on evidence-based practice](#): A summary of evidence-based practices and their importance to prosecutors’ diversion determinations, charging decisions, plea negotiations, sentencing arguments, and revocation requests.

Justice Management Institute’s [Smarter Sentencing](#) training: Designed to help prosecutors, judges, defense counsel, and other practitioners develop evidence-based approaches to sentencing.

### ADDITIONAL RESEARCH

[The Campbell Collaboration](#)

[Crime Solutions](#)

[University of Cincinnati Center for Criminal Justice Research](#)

[Washington State Institute for Public Policy](#)

## APPENDIX 2: REFERENCES

- Andrews, D. A. (2007). Principles of effective correctional programs. In L. L. Motiuk & R. C. Serin (Eds.), *Compendium 2000 on effective correctional programming*. Retrieved from Correctional Service Canada website: [http://www.csc-ccc.gc.ca/005/008/compendium/2000/chap\\_2-eng.shtml](http://www.csc-ccc.gc.ca/005/008/compendium/2000/chap_2-eng.shtml)
- Andrews, D. A., & Bonta, J. (2007). Risk-need-responsivity model for offender assessment and rehabilitation (2007-06). Retrieved from Public Safety Canada website: <https://www.publicsafety.gc.ca/cnt/rsrscs/pblctns/rsk-nd-rspnsvty/index-eng.aspx>
- Andrews, D. A., & Bonta, J. (2010). *The psychology of criminal conduct* (5th ed.). <https://doi.org/10.4324/9781315721279>
- Andrews, D. A., Bonta, J., & Wormith, J. S. (2006). The recent past and near future of risk and/or need assessment. *Crime and Delinquency*, 52, 7–27. <https://doi.org/10.1177/0011128705281756>
- Andrews, D. A., & Dowden, C. (2007). The risk-need-responsivity model of assessment in human service and prevention and corrections crime prevention jurisprudence. *Canadian Journal of Criminology and Criminal Justice*, 49, 439–464. <https://doi.org/10.3138/cjccj.49.4.439>
- Andrews, D. A., Dowden, C., & Gendreau, P. (1999). *Clinically relevant and psychologically informed approaches to reduced reoffending: A meta-analytic study of human service, risk, need, responsivity, and other concerns in justice contexts* (Unpublished manuscript). Ottawa, Canada: Carleton University.
- Andrews, D. A., Zinger, I., Hoge, R. D., Bonta, J., Gendreau, P., & Cullen, F. T. (1990). Does correctional treatment work? A clinically relevant and psychologically informed meta-analysis. *Criminology*, 28, 369–401. <https://doi.org/10.1111/j.1745-9125.1990.tb01330.x>
- Barnes, G. C. (1999). *Procedural justice in two contexts: Testing the fairness of discretionary conferencing for intoxicated drivers* (Unpublished doctoral dissertation). University of Pennsylvania, Philadelphia, PA.
- Bonta, J. (2007). Offender assessment: General issues and considerations. In L. L. Motiuk & R. C. Serin (Eds.), *Compendium 2000 on effective correctional programming*. Ottawa: Correctional Service Canada. Retrieved from <http://www.csc-ccc.gc.ca/005/008/compendium/2000/index-eng.shtml>
- Bonta, J., Jessemann, R., Ruge, T., & Cormier, R. (2006). Restorative justice and recidivism: Promises made, promises kept? In D. Sullivan & L. Tiftt (Eds.), *Handbook of restorative justice: A global perspective* (pp. 108–120). New York, NY: Routledge.
- Carter, M., & Sankovitz, R. J. (2014, January). *Dosage probation: Rethinking the structure of probation sentences*. Retrieved from National Institute of Corrections website: <http://nicic.gov/library/027940>
- Casper, J. D., Tyler, T. R., & Fisher, B. (1988). Procedural justice in felony cases. *Law and Society Review*, 22, 483–507. <https://doi.org/10.2307/3053626>
- Cullen, F. T., & Gendreau, P. (2000). Assessing correctional rehabilitation: Policy, practice, and prospects. In J. Horney (Ed.), *Criminal justice 2000: Policies, processes, and decisions of the criminal justice system*. Retrieved from [https://www.d.umn.edu/~jmaahs/Correctional Assessment/cullen and gendreau\\_CJ2000.pdf](https://www.d.umn.edu/~jmaahs/Correctional%20Assessment/cullen%20and%20gendreau_CJ2000.pdf)
- De Haan, W., & Vos, J. (2003). A crying shame: The over-rationalization conception of man in the rational choice perspective. *Theoretical Criminology*, 7, 29–54. <https://doi.org/10.1177/1362480603007001199>
- Dowden, C. (1998). *A meta-analytic examination of the risk, need and responsivity principles and their importance within the rehabilitation debate*. Retrieved from <https://curve.carleton.ca/d453a97b-6cc9-4b72-8a13-50586b31b262>
- Durose, M. R., Cooper, A. D., & Snyder, H. N. (2014). *Recidivism of prisoners released in 30 states in 2005: Patterns from 2005 to 2010*. Retrieved from Bureau of Justice Statistics website: <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>
- Gendreau, P., French, S. A., & Gionet, A. (2004). What works (what doesn't work): The principles of effective correctional treatment. *Journal of Community Corrections*, 13, 4–30.

- Gendreau, P., Goggin, C., Cullen, F. T., & Andrews, D. (2001). The effects of community sanctions and incarceration on recidivism. In L. L. Motiuk & R. C. Serin (Eds.), *Compendium 2000 on effective correctional programming*. Ottawa: Correctional Service Canada. Retrieved from <http://www.csc-scc.gc.ca/005/008/compendium/2000/index-eng.shtml>
- Gendreau, P., Goggin, C., & Little, T. (1996). *Predicting adult offender recidivism: What works!* (User Report No. 1996-07). Ottawa: Solicitor General of Canada.
- Gottfredson, S., & Moriarty, L. (2006). Statistical risk assessment: Old problems and new applications. *Crime and Delinquency*, 52, 178–200. <https://doi.org/10.1177/0011128705281748>
- Hawken, A., & Kleiman, M. (2009). *Managing drug involved probationers with swift and certain sanctions: Evaluating Hawaii's HOPE* [NCJRS no. 229023]. Retrieved from <http://www.ncjrs.gov/pdffiles1/nij/grants/229023.pdf>
- Hubert, R., & Carlson, L. (2012). *The prosecutor's policy guide: A roadmap to innovation*. Retrieved from Association of Prosecuting Attorneys website: <http://www.prosecutingattorneys.org/wp-content/uploads/The-Prosecutors-Policy-Guide-4.26-1.pdf>
- Hughes, T., & Wilson, D. J. (2003). *Reentry trends in the United States: Inmates returning to the community after serving time in prison*. Retrieved from Bureau of Justice Statistics website: <http://www.bjs.gov/content/pub/pdf/reentry.pdf>
- Kaeble, D., Maruschak, L. M., & Bonczar, T. P. (2015, November). *Probation and parole in the United States, 2014* (NCJ 249057). Retrieved from <http://www.bjs.gov/content/pub/pdf/ppus14.pdf>
- Latessa, E. J., Brusman Lovins, L., & Smith, P. (2010). *Final report: Follow-up evaluation of Ohio's community-based correctional facility and halfway house programs – Outcome study*. Cincinnati, OH: Center for Criminal Justice Research.
- Latimer, J., Dowden, C., & Muise, D. (2005). The effectiveness of restorative justice practices: A meta-analysis. *The Prison Journal*, 85, 127–144. <https://doi.org/10.1177/0032885505276969>
- Lipsey, M. W., & Cullen, F. T. (2007). The effectiveness of correctional rehabilitation: A review of systematic reviews. *Annual Review of Law and Social Science*, 3, 297–320. <https://doi.org/10.1146/annurev.lawsocsci.3.081806.112833>
- Lowenkamp, C. T., & Latessa, E. J. (2004). Understanding the risk principle: How and why correctional interventions can harm low-risk offenders. *Topics in Community Corrections*, 3–8. Retrieved from University of Cincinnati website: [http://www.uc.edu/content/dam/uc/ccjr/docs/articles/ticc04\\_final\\_complete.pdf](http://www.uc.edu/content/dam/uc/ccjr/docs/articles/ticc04_final_complete.pdf)
- Lowenkamp, C. T., Latessa, E. J., & Holsinger, A. M. (2006). The risk principle in action: What have we learned from 13,676 offenders and 97 correctional programs? *Crime and Delinquency*, 52, 77–93. <https://doi.org/10.1177/0011128705281747>
- Lowenkamp, C. T., VanNostrand, M., & Holsinger, A. (2013). *The hidden costs of pretrial detention*. Retrieved from the Laura and John Arnold Foundation website: [http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF\\_Report\\_hidden-costs\\_FNL.pdf](http://www.arnoldfoundation.org/wp-content/uploads/2014/02/LJAF_Report_hidden-costs_FNL.pdf)
- Molm, L. D. (1988). The structure and use of power: A comparison of reward and punishment power. *Social Psychology Quarterly*, 51, 108–122. <https://doi.org/10.2307/2786834>
- National District Attorneys Association. (2009). *National prosecution standards* (3rd ed.). Retrieved from <http://www.ndaa.org/pdf/NDA%20NPS%203rd%20Ed.%20w%20Revised%20Commentary.pdf>
- National Institute of Justice. (2014, July). *Five things about deterrence*. Retrieved from <https://ncjrs.gov/pdffiles1/nij/247350.pdf>
- Paternoster, R. (2010). How much do we really know about criminal deterrence? *The Journal of Criminal Law and Criminology*, 100, 765–824. Retrieved from <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7363&context=jclc>
- Paternoster, R., Brame, R., Bachman, R., & Sherman, L. W. (1997). Do fair procedures matter? The effect of procedural justice on spouse assault. *Law and Society Review*, 31, 163–204. <https://doi.org/10.2307/3054098>

Pennsylvania Commission on Crime & Delinquency Office of Criminal Justice Systems Improvement. (n.d.). *Criminal justice performance measures literature review calendar years: 2000 to 2010*. Retrieved from [http://www.jrsa.org/pubs/sac-digest/documents/PA\\_PerformanceMeasures.pdf](http://www.jrsa.org/pubs/sac-digest/documents/PA_PerformanceMeasures.pdf)

Quirk, H., Seldon, T., & Smith, G. (Eds.). (2010). *Regulation and criminal justice: Developing a new framework for research and policy development*. New York, NY: Cambridge University Press.

Reaves, B. A. (2013). *Felony defendants in large urban counties, 2009: Statistical tables* (NCJ 243777). Retrieved from Bureau of Justice Statistics website: <https://www.bjs.gov/content/pub/pdf/fdluc09.pdf>

Sherman, L. W., & Strang, H. (2007). *Restorative justice: The evidence*. London, UK: The Smith Institute.

Truman, J. L., & Rand, M. R. (2010, October). *Criminal victimization, 2009* (NCJ 231327). Retrieved from Bureau of Justice Statistics website: <https://www.bjs.gov/content/pub/pdf/cv09.pdf>

Tunnell, K.D. (1990). Choosing crime: Close your eyes and take your chances. *Justice Quarterly*, 7, 673–690. <https://doi.org/10.1080/07418829000090811>

Tyler, T. R. (1998). Public mistrust of the law: A political perspective. *University of Cincinnati Law Review*, 66, 847–876. Retrieved from [http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4035&context=fss\\_papers](http://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4035&context=fss_papers)

Tyler, T. R. (2004). Procedural justice. In A. Sarat (Ed.), *The Blackwell companion to law and society* (pp. 435–452). Malden, MA: Blackwell.

Tyler, T. R. (2006). Restorative justice and procedural justice: Dealing with rule breaking. *Journal of Social Issues*, 62, 307–326. <https://doi.org/10.1111/j.1540-4560.2006.00452.x>

Tyler, T. R., & Huo, Y. J. (2002). *Trust in the law: Encouraging public cooperation with the police and courts*. New York: Russell-Sage.

Tyler, T. R., Sherman, L. W., Strang, H., Barnes, G. C., & Woods, D. (2007). Reintegrative shaming, procedural justice and recidivism: The engagement of offenders' psychological mechanisms in the Canberra RISE drinking-and-driving experiment. *Law & Society Review*, 41, 553–585. <https://doi.org/10.1111/j.1540-5893.2007.00314.x>

Washington State Institute for Public Policy. (2016, June). Benefit-cost results. Retrieved from <http://www.wsipp.wa.gov/BenefitCost?topicId=2>

Wodahl, E. J., Garland, B., Culhane, S. E., & McCarty, W. P. (2011). Utilizing behavioral interventions to improve supervision outcomes in community-based corrections. *Criminal Justice & Behavior*, 38, 386–405. <https://doi.org/10.1177/0093854810397866>

Wright, R., & Miller, M. (2002). The screening/bargaining tradeoff. *Stanford Law Review*, 55, 29–118. <https://doi.org/10.2307/1229590>



# EBDM

