

THE EVIDENCE- BASED DECISION MAKING INITIATIVE: AN OVERVIEW FOR DEFENSE ATTORNEYS

JUNE 2017

EBDM

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ACKNOWLEDGMENTS

We are grateful to the EBDM defense attorneys—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 brief.

This project was supported by Cooperative Agreement No. 12CS15GKM2 awarded by the National Institute of Corrections. The National Institute of Corrections is a component of the U.S. Department of Justice. Points of view or opinions in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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

In 2008, the National Institute of Corrections (NIC) launched the Evidence-Based Decision Making (EBDM) initiative. NIC is a federal agency within the U.S. Department of Justice. It provides training, technical assistance, information services, and policy/program development assistance to federal, state, and local justice system agencies and public policymakers.

The goal of the EBDM initiative is to equip criminal justice stakeholders with the information, processes, and tools that will result in measurable reductions in pretrial misconduct, post-conviction reoffending, and other forms of community harm. The initiative is grounded in three decades of research on the factors that contribute to criminal reoffending and the methods that justice systems can employ to interrupt the cycle of reoffense. The work is guided by [A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems](#) (“EBDM Framework”) and its four key principles.

In 2010, seven local jurisdictions in six states were selected to pilot-test the Framework and a “roadmap” of action steps designed to improve outcomes through collaborative, research-based principles and processes. In 2015, an additional 21 teams—including three state-level teams—joined the national initiative. Collectively, EBDM’s 28 state and local teams represent a range of large urban areas, mid-size communities, and small rural towns.

EBDM FRAMEWORK PRINCIPLES

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

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

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

EBDM Principle 4: The criminal justice system will continually learn and improve when professionals make decisions based on the collection, analysis, and use of data and information.

Genuine collaboration is a cornerstone of the EBDM process. The collaborative approach of EBDM seeks to overcome the limitations of traditional and nonsystemic approaches to criminal justice problem solving and solution development. EBDM brings together a broad array of stakeholders to develop a common understanding of the justice system, identify common goals, jointly create policies and practices to support the achievement of those goals, and stand together to advocate for those goals, particularly in the event of criticism. Criminal justice system “stakeholders” are defined as those who have a vested interest in justice system processes and outcomes; together they are referred to as “policy teams.”

Policy teams are comprised of the justice system agencies and community organizations that impact, or are impacted by, decisions that will be made by the collaborative team. Their specific composition varies depending upon the structure of each community, but they commonly include those with the positional power to create change within their own organizations. The chief judge, court administrator, elected prosecutor, chief public defender, private defense bar, probation/community corrections director, police chief, elected sheriff, pretrial executive, victim advocates, local elected officials (i.e., city manager, county commissioner), service providers, and community representatives are common policy team members of local teams.

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

On state-level teams, the stakeholder composition is similar but includes those with positional influence across multiple communities (e.g., elected president of the state prosecutors' or sheriffs' association; executive director of the state's association of counties), including agencies and individuals with statewide authority or influence (e.g., state legislature, statewide behavioral/mental health agency, department of corrections, attorney general, governor's office, state courts). In addition, state-level teams include local team representatives in order to align state and local interests around justice system reforms. Together and separately, each team member brings valuable information, resources, and perspectives to the collaborative endeavor.

EBDM policy teams devote their first team meetings to building their collaborative team; understanding current practice within each agency and across the system; learning about research-based policies and practices ("evidence-based practices") and their application to decision points spanning the entire justice system, from point of initial contact (arrest) to final discharge; and agreeing upon a set of systemwide values

"HARM REDUCTION," AS USED HERE, REFERS TO DECREASES IN THE ILL EFFECTS OF CRIME EXPERIENCED BROADLY BY COMMUNITIES, VICTIMS, CITIZENS, JUSTICE-INVOLVED INDIVIDUALS, AND THEIR FAMILIES.

and goals. Thereafter, EBDM teams collaboratively develop strategic plans, focusing on key "change targets" for improving the alignment of research with policy and practice, and improving systemwide outcomes. Examples of change targets include expanding pretrial release and diversion options for those who do not pose a danger to the community; instituting or expanding intervention options for specific populations; expanding evidence-based interventions throughout the justice system; ensuring the appropriate use of risk assessment information; reducing case processing delays; establishing methods to streamline case information flow; and instituting formal processes for professional development and continuous quality improvement. Policy team strategic plans include logic models that describe theories of change, specific methods to measure performance, and a systemwide "scorecard"—a method to gauge the overall performance of the justice system in achieving its harm reduction goals, including improved public safety. Policy teams also identify strategies for engaging a broader set of professional and community stakeholders in their justice system reform efforts. Subsequent activities focus on the implementation of these strategic plans, identification of additional areas of improvement, expansion of the stakeholders involved, and increased capacity for the collection of data to monitor and improve performance.

THE PERSPECTIVE OF DEFENSE ATTORNEYS WHO HAVE ENGAGED IN THE EBDM PROCESS

Since the project's inception in 2008, public defenders as well as private defense attorneys representing 25 local jurisdictions and three states have engaged in EBDM work. Through a series of focus groups, interviews, and surveys, defenders shared their views on this work.

The Benefits of EBDM

Defense attorneys have played a critical role in the success of their jurisdictions' EBDM efforts. They have been at the table from the very start—from the formation of the policy team to learning about social science research, identifying system shortcomings, and proposing and implementing solutions. In reflecting on the benefits of this process, they indicate that “EBDM creates the opportunity for long-term dialogue with other system actors” and that “[the EBDM process] forces people out of their normal way of doing things. When you change the way people interact, it changes the whole dynamic.”

One of the most impactful ways to begin this dialogue is to develop a “system map.” Similar to an architectural diagram, a system map depicts how a jurisdiction processes a case, beginning with police contact and ending with the point in time when the case terminates. Its purpose is to develop a shared understanding of how the system “works,” provoke discussions about research-informed practice, surface areas of further inquiry, and identify areas of potential

improvement. As one defense attorney commented, “The mapping process was ridiculously hard and valuable.”

IN THE WORDS OF DEFENSE ATTORNEYS

“You can fight tooth and nail for your client in the courtroom while working side by side with your colleagues on creating a better system in the conference room.”

“We really want to stem the tide of distrust by putting all the statistics out there so we can learn to use them as a group and not use them just to serve our own purposes.”

The process of working together to understand the justice system led to discussions about the social science research and “what works” in preventing future illegal behavior, and EBDM’s emphasis on data enabled teams to objectively assess the system’s strengths and weaknesses. In many cases, the process uncovered “the hidden tragedies of the way our system treats defendants.” According to one defense attorney, “It was amazing how many people would point to the same part of our current process and all agree ‘this isn’t working.’”

Finally, defenders report that the EBDM process served to build trust across disciplinary boundaries and removed previously intractable barriers to open communication which led to a variety of system improvements.

The Challenges of EBDM

The process was not without its challenges for defenders. Defense attorneys on EBDM teams often began the work skeptically; some were resistant to change and openly expressed the view that new ideas and programs are routinely instituted to the detriment of their clients. However, as noted by several defenders, the plight of clients is fairly poor in most systems and, therefore, any sincere effort to improve the system was seen to have significant upside potential. Still, for defense attorneys, engaging in the EBDM process offered a significant challenge around assuming a new professional role. That role requires defenders to become critical users of social science research and to be engaged in developing the performance data that will allow the team and the community it serves to aggressively work toward improving outcomes. At times, this poses a conflict for defenders who have an ethical obligation to support what their client wants, even if it is not in their long-term best interest.

Defense attorneys' participation in collaborative decision making around the design and improvement of criminal justice processes and options concerned those who felt that they would be expected to compromise their role as aggressive advocates for defendants. As one defender put it, "[the central challenge of EBDM] is how to engage in a collaborative, evidence-based decision making process without sacrificing ethical practice and the zealous representation of individual clients."

Finally, some defenders, particularly those who operate in systems without robust public defense systems, were challenged to find the staff resources to participate in EBDM work while contending with ever-growing caseloads.

Significant Practice Changes

EBDM defenders have played a critical role in promoting improved processes and expanding options at the pretrial and pre- and post-disposition stages. Some of these changes include modifying practices around assessing and determining eligibility for pretrial release; providing defense counsel representation sooner in the justice system process; establishing agreements around the use of risk assessment information and discovery agreements related to defendants' interviews with pretrial officers; creating alternatives to traditional case processing (e.g., diversion from the justice system of individuals with serious mental illness, the creation or expansion of specialty courts); modification of eligibility and participation requirements for various sanctioning options; and development of structured processes for administrative responses to noncompliant behavior among pretrial and post-conviction individuals.

Defenders were asked to describe some of the ways in which their specific activities have changed over time. What follows is a summary of their responses.

PRIOR TO EBDM, WE...	SINCE EBDM, WE...
...did not have ready access to social science research	...created an online library of social science research for our lawyers
...lacked risk assessment information at the pretrial stage	...have pretrial risk assessments available at all bail hearings
...lacked diversion options	...have implemented options to divert appropriate cases away from traditional case processing
...lacked an effective method for speedy evaluation of the mentally ill, resulting in lengthy incarceration	...instituted a rapid mental health assessment process
...had inadequate criteria for identifying appropriate candidates for diversion/deferred judgment/specialty courts	...have clearly defined risk-informed criteria for our intervention options
...observed multiple incarcerations of defendants for minor offenses (e.g., driving on a suspended license, failure to pay fines)	...have a system in place for restoration of licenses and payment plans for fine collection

PRIOR TO EBDM, WE...	SINCE EBDM, WE...
...advocated for our clients based upon our personal observations, criminal records, prior evaluations, and work or educational history	...include research evidence in our advocacy of clients
...used to think that a trial might be the only option	...collaborate where possible with prosecutors to identify an appropriate case disposition

ADDITIONAL EBDM RESOURCES:

- A Framework for Evidence-Based Decision Making in State and Local Criminal Justice Systems
- Evidence-Based Decision Making (EBDM) Primer
- EBDM Case Studies: Highlights from the Original Seven Pilot Sites
- Evidence-Based Decision Making: A Guide for Defense Attorneys
- Evidence-Based Decision Making Starter Kit

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

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