

Evidence-Based Sentencing Practices to Reduce Recidivism: 25 Frequently Asked Questions (FAQs)

1) **What are evidence-based sentencing (EBS) practices?**

Evidence-based sentencing practices are sentencing practices based on the practices of community corrections programs and agencies that have been demonstrated by scientific research to reduce recidivism among offenders under probation or community corrections supervision. (The concepts of probation and community corrections are used interchangeably in this document.)

2) **What is the goal of evidence-based sentencing practices?**

The goal is to reduce the risk of offender recidivism by facilitating pro-social changes in probationer attitudes and behaviors. The goal is to reduce the risk of recidivism not merely control risk while under supervision.

3) **Why is EBS important?**

EBS is important because three of the world's leading corrections researchers have concluded that in light of what we now know about what works to reduce offender recidivism, "what is done [today] in corrections would be grounds for malpractice in medicine." Latessa, Cullen, & Gendreau, *Beyond Correctional Quackery...* (2002)

4) **What do you mean by "risk of recidivism"?**

Risk of recidivism refers to the risk (or likelihood) that an offender will re-offend within a certain period of time (e.g. 3 years). It does not refer to the relative seriousness of either the crime committed or the potential re-offense.

5) **What are the basic principles of evidence-based practice?**

Three basic principles of evidence-based practice have been distilled from the scientific research about what works to reduce recidivism among offenders under community supervision: 1. the risk principle; 2. the needs principle, and 3. the treatment principle.

6) **What is the "risk principle"?**

The "risk principle" prescribes that the level of supervision or services provided an offender should match the risk level of the offender, i.e., that higher risk offenders should receive more intensive levels of supervision, reporting requirements, and treatment services. In practice, the risk principle cautions that we should avoid significant intervention with low risk offenders. Intensive intervention with low risk offenders is an inefficient use of probation resources and tends to actually increase

recidivism rates among low-risk offenders. Significant interventions should target medium to high risk offenders. Extremely high risk offenders tend not to be amenable to currently available risk reduction strategies. Effective supervision of extremely high risk offenders should therefore utilize the most intensive levels of supervision, reporting, surveillance, and behavioral controls.

7) **What do you mean by an “intervention”?**

Intervention refers to any planned activity to change offender behavior, which can include a rehabilitation program, probation supervision practice, or even a judge’s courtroom conversation with the offender-if undertaken for that purpose.

8) **What are “static” and “dynamic” risk factors?**

First, “risk factors” are offender characteristics that are associated with higher likelihood of future criminality. “Static” risk factors are risk factors such as age, gender, age at first arrest and prior criminal history that predict future criminality but are static and cannot be changed or reduced in order to reduce the risk of re-offense. Risk of recidivism is dynamic; it changes over time, increasing and decreasing in light of changing circumstances in an offender’s life and choices made by the offender. Risk is also changeable: it can be changed by effective intervention. “Dynamic” risk factors (also known as “criminogenic needs”) refer to those risk factors that predict future criminality but that also can be changed or reduced in order to reduce the risk of re-offense.

9) **What is the “needs principle”?**

The “needs principle” prescribes that the targets for effective intervention should be those dynamic risk factors that have the most effect on the likelihood of re-offending. Among medium and high risk felony offenders, the dynamic risk factors that generally have the most effect on the likelihood of re-offense are, in approximate order of importance:

- a) Anti-social attitudes; criminal thinking; attitudes, values, beliefs and rationalizations supportive of crime
- b) Anti-social friends and peers
- c) Anti-social personality pattern (e.g., lack of self-control, risk taking, impulsivity, poor problem solving skills, lack of empathy, narcissism, anger and hostility)
- d) Lack of pro-social family, marital, or other personal support
- e) Substance abuse
- f) Lack of education
- g) Lack of employment
- h) Anti-social leisure activities

10) **How can risk level and dynamic risk factors be accurately determined in an individual case?**

An individual felony offender’s risk level and specific dynamic risk factors should be identified through use of validated risk/needs assessment tools coupled with sound professional judgment. Although use of properly administered, validated, and reliable

risk/needs assessment tools is many times more accurate than reliance on professional judgment alone, assessment information is intended to inform not replace professional judgment.

11) What is risk/needs assessment (RNA) information used for?

RNA information is primarily used today by the supervising agency in the development of an effective community supervision and treatment plan for the felony offender. The community supervision and treatment plan is designed to target the offender's most critical dynamic risk factors. Use of RNA information also allows the supervising probation officer to focus on those specific risk factors in his or her personal interactions with the probationer.

12) Is RNA information also helpful to the court in the sentencing process?

Yes. Increasingly courts are finding that the availability of accurate RNA information at sentencing allows judges to ensure that the special conditions of probation ordered by the court with respect to the felony probationer's level of supervision, treatment, monitoring, and control are properly designed to address the offender's specific and most critical dynamic risk factors. Those special conditions establish the legal framework (the terms and conditions) for the offender's supervision, and thus provide appropriate direction and authority to the supervising probation officer. Imposition by the court of special probation conditions that do not address the individual offender's most critical dynamic risk factors are ineffective and needlessly distract and impede both the supervising agency and the offender. Dynamic risk factors also change over time; special probation conditions must therefore also provide maximum flexibility to the supervising officer.

13) Is RNA information used by courts in the sentencing process for purposes other than setting appropriate probation conditions?

Yes. With regard to felony offenders who are eligible for probation or community supervision, RNA information is used in a couple of ways to help decide whether a prison sentence should be suspended, i.e. whether probation should be granted. First, in accord with the risk principle that more intensive interventions should be reserved for higher risk offenders, a low risk assessment score may be an important factor in a judge's determination not to imprison an offender who presents a low risk of re-offense.

Further, RNA information regarding the defendant's dynamic risk factors is often valuable in deciding whether the defendant is amenable or suitable for probation or community supervision. In considering the defendant's dynamic risk factors the court makes a qualitative assessment whether in light of those factors, and the supervision, treatment, and intermediate sanctions available in the community, the defendant can be safely and effectively supervised in the community.

However, it would appear to be improper for a court to deny probation to a probation eligible felony offender on the basis of a high risk score without a careful weighing of the specific risk (and protective) factors involved in determining whether the defendant can be safely and effectively supervised in the community. As we have noted, risk is dynamic. An assumption that a defendant who scores high risk today is

necessarily unamenable to a risk reduction program and will continue to present a high risk tomorrow would be contrary to the research. Some high risk offenders recidivate; many do not. Generally speaking, many high risk offenders are good candidates for recidivism reduction programs in the community. Denial of probation on the basis of a high risk score would constitute a prison sentence based neither on the offense committed nor the defendant's prior criminal record, but merely on the risk that the offender might commit a future offense. Absent specific statutory authorization and due process protections, it would seem to be inconsistent with our criminal justice jurisprudence for judges to imprison offenders solely because of what they might do in the future.

14) Should courts use RNA information in deciding what an offender's appropriate penalty or punishment should be?

No. RNA information is intended for use in determining how best to manage and reduce the risk that the offender will commit another offense in the future. It is not intended for use in determining the just or appropriate punishment for the offender's past criminal acts. In virtually all states the appropriate punishment is determined by the seriousness or gravity of the crime committed, the extent of the defendant's culpability, and the defendant's prior criminal record. In the first state supreme court case to consider the use of RNA information at sentencing, the Indiana Supreme Court specifically noted that the risk/needs assessment instrument was not designed to assist in establishing the just penalty and ruled that it is improper to use risk/needs assessment scores in deciding what the appropriate length of a prison sentence should be. *Malenchik v. State*, 928 N.E.2d 564 (2010)

15) What is the "treatment principle"?

The "treatment principle" specifies that the most effective interventions in reducing recidivism among medium and high risk offenders are "cognitive behavioral" interventions based on "social learning" research.

16) What is the research on "social learning"?

One of the things we have learned from the research on social learning is that over time offenders (and others) tend to behave in ways that result in the most rewards and fewest sanctions. Among higher risk offenders rewards (positive reinforcement) and the promise of rewards (incentives) are more effective than sanctions (negative consequences) and the threat of sanctions in shaping behavior. Ideally, rewards should be used in a ratio of 4 rewards for each sanction.

Swift and certain sanctions can also be effective in shaping offender behavior and reducing recidivism. The severity of the sanction is unlikely to influence its deterrent effect; overly severe sanctions tend to have a counter-productive effect on the behaviors of higher risk offenders. The severity of any sanction should always be proportionate to the severity of the underlying offense or violation.

Many medium and high risk offenders do not have the ability or skills to regularly behave in pro-social ways. The research on social learning also demonstrates that "behavioral" techniques are the most effective in the teaching of new behaviors and skills. Among the behavioral techniques that have been proven most effective with

medium and high risk offenders are use of role models, demonstration of new behaviors and skills, role playing by the instructor and trainee, provision of constructive positive and negative feedback to the trainee, and skill practice by the trainee in both therapeutic and natural settings.

17) What are “cognitive behavioral” interventions?

“Cognitive behavioral” interventions typically consist of small group sessions designed to reduce recidivism by changing the anti-social thinking, attitudes, values, and beliefs that underlie and drive anti-social behaviors among higher risk offenders.

18) What kinds of interventions have proven to be ineffective in reducing recidivism?

Non-behavioral interventions (those that do not focus on shaping and teaching pro-social behaviors and skills) have generally proven to be ineffective in reducing recidivism among higher risk offenders. Non-behavioral interventions include shaming programs, drug education programs, drug prevention classes focused on fear or emotional appeal, non-action oriented group counseling, bibliotherapy, Freudian approaches, unstructured rehabilitation programs, self-esteem programs, and non skill-based education programs.

19) How effective are traditional criminal justice sanctions in reducing offender recidivism?

Although traditional sanctions may serve other purposes of sentencing such as punishment, general deterrence, or incapacitation, the research is unequivocal that absent an effective treatment component, sanction themselves do not reduce offender recidivism. Such sanctions include prisons, jails, incarceration, fear-based programs such as Scared Straight, physical challenge programs, military models of discipline and physical fitness such as boot camps, and intensive probation supervision.

20) Do courts have a responsibility to ensure the effectiveness of offender treatment programs in their communities?

Yes. Although courts do not have direct responsibility for the management or operation of offender treatment programs in their communities, courts do have a responsibility to ensure that their sentencing decisions and orders are effectively implemented in order to achieve their intended objectives. To that end, the Conference of Chief Justices’ 2007 Resolution In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism urges judges “to educate themselves about the effectiveness of community-based corrections programs in their jurisdictions and to advocate and, when appropriate, make use of those programs shown to be effective in reducing recidivism.” The important showing is not that programs have low recidivism rates (which programs can accomplish by admitting low risk offenders into those programs in violation of the risk principle) but that programs effectively reduce recidivism rates from what they would have been absent program participation.

21) With effective intervention, how quickly can we realistically expect to observe significant change in offender behaviors?

Changing the chronic and long-term anti-social attitudes and behaviors of higher risk offenders often does not happen overnight. Frequently the offender must learn new skills, acquire new abilities, and first become intrinsically motivated to change his or her behaviors. Periodic relapse is common. Courts and supervising agencies should be aware of the “stages of change” model which provides a useful tool for understanding offenders’ readiness to change and the corresponding strategies that have proven most effective in facilitating behavioral change.

22) How important is the offender’s motivation to change?

It is critical. Although coercion (extrinsic motivation) is often effective in getting an offender into treatment or compliance, or keeping an offender in treatment or compliance for a period of time, “intrinsic motivation” is ultimately a critical precondition for sustained offender behavioral change. The judge can be an agent of positive change by encouraging the offender’s engagement in the change process. Procedural fairness also promotes law-abiding behaviors. “Motivational interviewing” techniques (e.g., reflective listening, developing discrepancy, use of open-ended questions, promoting self-efficacy, and deflecting resistance) are effective in promoting intrinsic motivation. Threatening, lecturing, shaming, arguing, or sympathizing with the offender are counter-productive in promoting intrinsic motivation.

23) What else can courts do to support the felony offender’s successful completion of probation?

The felony probationer’s successful completion of probation without commission of any serious re-offense is the shared goal of all: the court, supervising probation or community corrections agency, offender, victim, prosecutor, defense attorney, program provider, and community at large. As described in FAQ 12 above, the special conditions of probation ordered by the court should be specifically designed to achieve that objective. In addition to the actions previously described, courts should therefore also support probation supervision policies and practices that promote offender compliance with conditions of probation and respond appropriately to probation violations. Incentives and rewards (e.g., oral and written acknowledgement of progress, reduced levels of supervision, monitoring, control, or testing, presentation of small tangible items of value, early termination) should be used by probation to promote compliance and avoid violations. Probation should respond to all violations promptly, fairly, and with certainty, and through use of a graduated continuum of sanctions, services, and behavioral controls.

To promote offender compliance and accountability, and ensure that probation can respond promptly to technical violations of probation not constituting commission of a new criminal offense, probation officers should have and regularly exercise administrative authority, with consent of the probationer or proper due process protection, to impose appropriate sanctions up to and including short periods of incarceration (e.g., for periods of up to a week and not to exceed 30 or 60 days during the probation period) without returning the probationer to the court for hearing.

24) How should the supervising agency respond to specific kinds of violations?

There are no “one size fits all” responses to particular kinds of violations. Not all failed drug test violations warrant the same response for example. Although all violations warrant a prompt and effective response, to determine the most appropriate response to a particular violation of probation, the probation officer is required to conduct a re-assessment (formal or informal) of the risk that the probationer presents to the community in light of the probationer’s current dynamic risk factors and considering the nature of the underlying and prior offenses, the nature and purpose of the condition violated, the nature and severity of the violation, and the extent of prior compliance by the probationer. In some instances, the principal response may be a treatment-oriented response: a reassessment of the treatment plan to determine what changes may be needed.

25) Under what circumstances should non-compliance with conditions of probation result in termination of probation and revocation to prison?

In most instances, technical violations and commission of new misdemeanor or low-level offenses will not warrant termination of felony probation and removal from the community. In considering termination and revocation to prison, what is required is a thoughtful re-assessment of the likelihood of success in continuing to manage the probationer in the community without incurring further serious criminal behavior. Termination and revocation is an appropriate response when a re-assessment of the offender’s dynamic risk factors in light of the offender’s overall criminal history and record of compliance and non-compliance including the most recent violation concludes that the offender can no longer be safely and effectively supervised in the community. In order to avoid unnecessary court appearances, and maintain a climate of trust and cooperation between the court and probation, it is important that the court and probation agency achieve a clear, consistent, and shared understanding about how these factors and objectives will be weighed by the court and the agency.