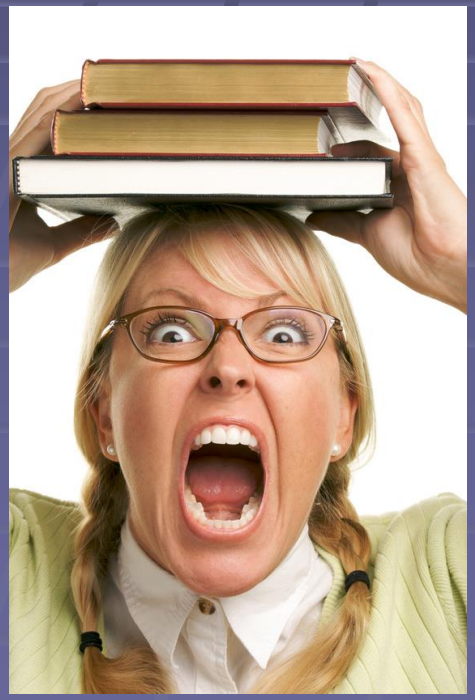
Evidence Based Sentencing Advocacy



for Defense Attorneys

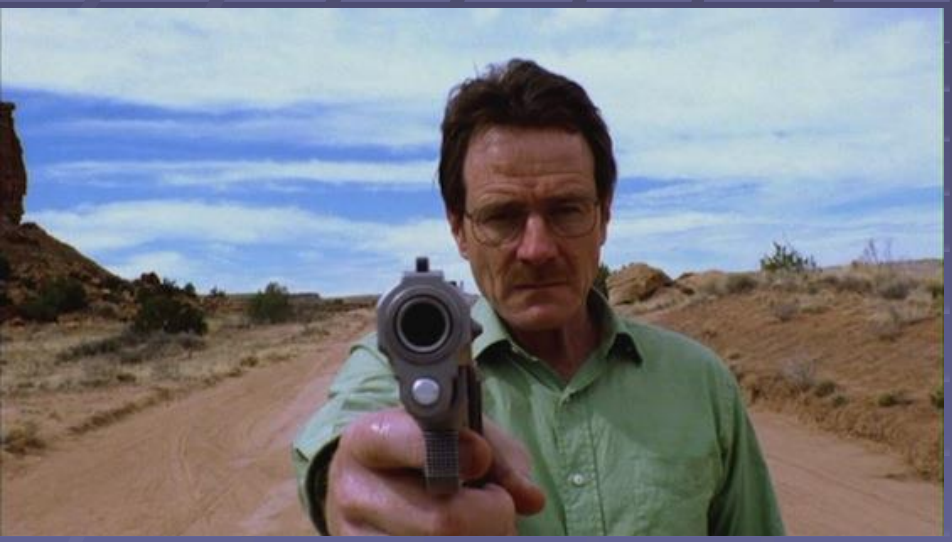
By: **Dana Smetana**

Eau Claire County

- Received grant from NIC
  - (National Institute of Corrections)
- System wide approach reaching from arrest to post sentencing
- One of three counties selected to advance to phase III of the grant initiative
  - Eau Claire County will receive technical assistance from experts in the field

What is Evidence Based?

- Process of using the latest research to make smarter decisions in the CJ system
- There are different forms of evidence:
  - The lowest form is anecdotal evidence; stories, opinions, testimonials, case studies, etc – but it often makes us feel good
  - The highest form is empirical evidence; research, data, results from controlled studies, etc – but sometimes it doesn't make us feel good



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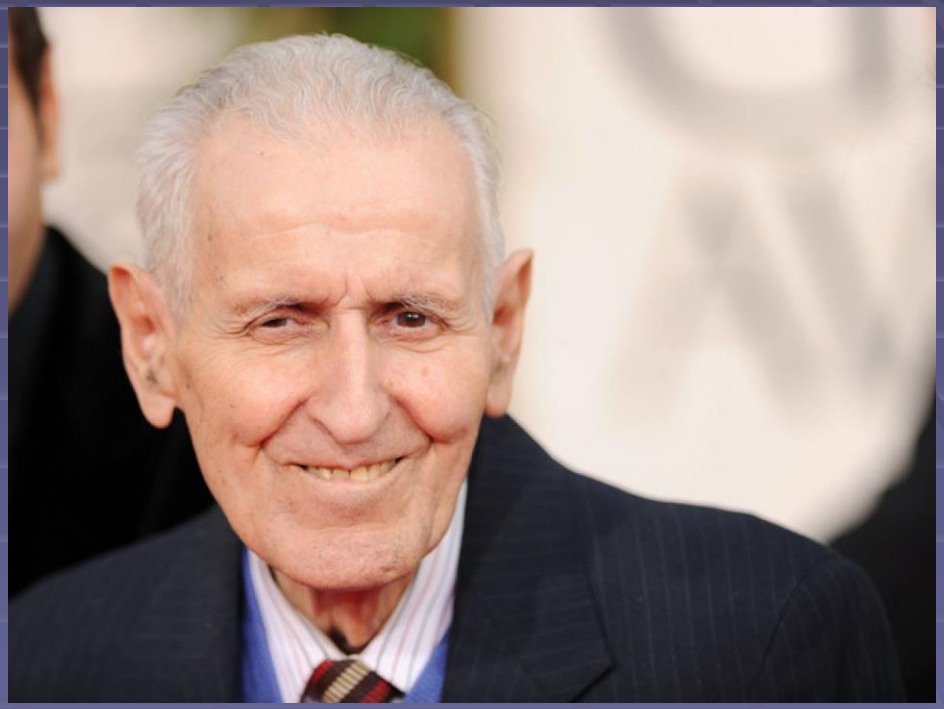

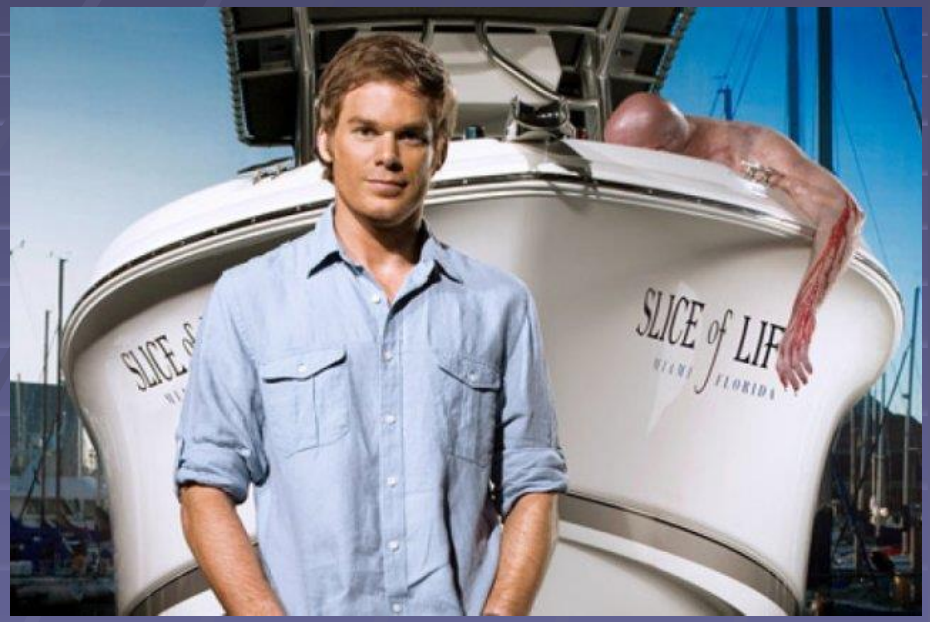
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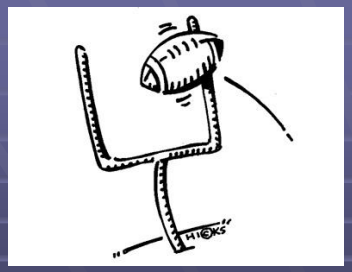
Evidence Based Practice is…

- **1. Easier to think of as *Evidence Based Decision Making***
- **2. Involves several steps and encourages the use of validated tools and treatments**
- **3. Not just about the tools you have, but also *how* you use them**
- **Intent is that persons in the position of making decisions can use this information**
  - **Policy decisions related to arrest, charging, sentencing, & supervision**



GOAL of EBDM

- GOAL: The use of evidence-based practices permits us to utilize the limited resources available for those that most need them and will most benefit from them, and will permit us to provide those resources more efficiently and effectively.

- This will improve community safety and reduce recidivism

Why Should We Care About Using EBP?

- Improves outcomes
  - Recidivism
- Reduces victimization
- Prevents harm
- Enhances collaboration
- Establishes research driven decision making
- Targets funding toward interventions with greatest returns

E.D.B.M. Requires:

1. Assessment information
2. Relevant research
3. Available programming
4. Evaluation
5. Professionalism and knowledge from staff

Key Principles: Risks/Needs

- **Accurate assessment of offenders risk and needs to determine type of intervention needed**
  - **Low risk offenders = minimal interventions**
  - **High/medium risk offenders = more intense programming and interventions**
  - **Low risk offenders receiving intensive interventions may actually increase their chances for recidivism and may be potentially harmful**

Key Principles: Risks/Needs

- **Interventions should target an individual's specific criminogenic needs**
  - **based on a risk assessment**

- **Low risk offenders should be handled separately from medium and high risk offenders**
  - **due to the likelihood of high risk offenders influencing low risk offenders**

Criminogenic Risk/Needs Factors

- 1. History of Antisocial Attitudes
- 2. Antisocial Associates
- 3. Antisocial Personality
- 4. Family / Martial issues
- 5. Substance Abuse
- 6. School
- 7. Employment issues
- 8. Leisure and Recreation

History of Antisocial Attitudes

- #1 predictor for recidivism
- Includes negative impressions:
  - About the law
  - About social conventions (work)
  - About self – management
- Includes a lack of empathy

Antisocial Attitudes & Personality

- 2. Antisocial peers
  - Including:
    - Pro-criminal associates
    - Isolation from pro-social persons

- 3. Antisocial personality
  - Including:
    - Impulsivity
    - Criminal thought
    - Egocentrism
    - Aggressiveness
    - Risk taking

Major Risk and/or Need Factor and Promising Intermediate Targets for Reduced Recidivism

Factor	***Risk***	***Dynamic Need***
History of Antisocial Behavior	**Early and continued involvement in a number of antisocial acts**	**Build noncriminal alternative behaviors in risky situations**
Antisocial Personality	**Adventurous, pleasure seeking, weak self control, and restlessly aggressive**	**Build problem-solving, self-management, anger management and coping skills**

Major Risk and/or Need Factor and Promising Intermediate Targets for Reduced Recidivism

Factor	***Risk***	***Dynamic Need***
Antisocial Cognition	**Attitudes, values, beliefs and rationalizations supportive of crime, cognitive emotional states of anger, resentment, and defiance**	**Reduce antisocial cognition, recognize risky thinking and feelings, build up alternative less risky thinking and feelings, adopt a reform and/or anticriminal identity**
Antisocial Associates	**Close association with criminals and relative isolation from prosocial people**	**Reduce association with criminals, enhance association with prosocial people**

Major Risk and/or Need Factor and Promising Intermediate Targets for Reduced Recidivism

Factor	***Risk***	***Dynamic Need***
Family and/or marital	**Two key elements: nurturance and/or caring better; monitoring and/or supervision**	**Reduce conflict, build positive relationships, communication, enhance monitoring and supervision**
School and/or work	**Low levels of performance and satisfaction**	**Enhance performance, rewards, and satisfaction**

Major Risk and/or Need Factor and Promising Intermediate Targets for Reduced Recidivism

Factor	***Risk***	***Dynamic Need***
Leisure and/or recreation	**Low levels of involvement and satisfaction in anti-criminal leisure activities**	**Enhancement of involvement and satisfaction on prosocial activities**
Substance Abuse	**Abuse of alcohol and/or drugs**	**Reduce SA, reduce the personal and interpersonal supports for SA behavior, enhance alternatives to SA**

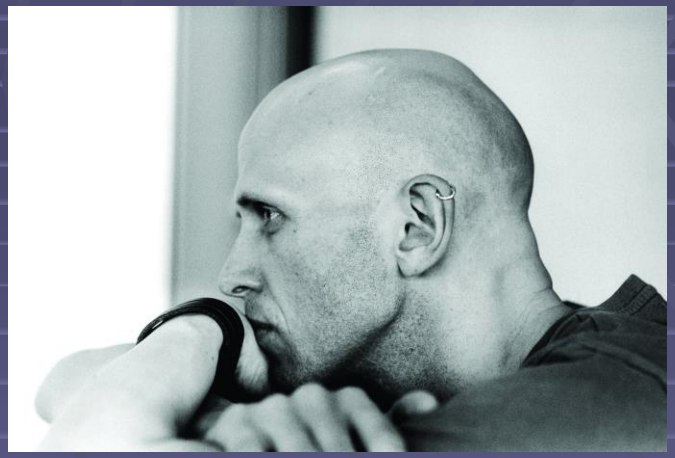
Criminogenic Needs

- To be successful with an offender, any intervention must address the risk/need factors
- Realize that some risk factors are static and slow to change (substance abuse) while others are acute and change quickly (employment)
- You must look at the responsivity of each offender and treatment should be geared toward their needs

Non – Criminogenic Needs

- Anxiety or stress
- Low self esteem
- Intelligence
- Health and physical conditioning
- Mental health

Responsivity Factors



- Consider the following:
  - Individual's motivation
  - Learning style
  - Gender/Age
  - Culture
- Research suggests that the top two risk factors need to be addressed early and intensely
  - However, many in counties there is little programming
  - Advocate to get cognitive programming

Treatment / Services

- Treatment and providing services in one's natural environment compared to institutional and prison settings
  - Natural environment proven to be more effective
  - Skills acquired in treatment should be practiced
- Punishment and sanctions should be graduated and swift
  - Rewards for good behavior should given 4x more than punishments
  - Use more positive reinforcements for better outcomes

As A Defense Attorney, We Need to Understand Gender Specific Responses

- Dr. Pat Van Voorhis is an expert on Women's assessments and spoke with and trained members of the criminal justice community in Eau Claire on the use of Women's scales in doing assessments to determine the risk and needs of our female population.

- Eau Claire County will be doing a Women's scale to the COMPAS to address the needs of female clients. This will be used as an addendum until the COMPAS women's scale is turned on.

Defense Attorneys Should Be Aware That

- With women, there are certain risk factors that do have an effect on recidivism. These factors are specific to women and include the following:

  1. relationship dysfunction
  2. family conflict
  3. child abuse
  4. adult victimization
  5. parental stress
  6. housing safety
  7. anger
  8. depression/anxiety

  There is some dispute with the experts whether these are risk factors or responsivity factors, but the latest research indicates these are actual risk factors.

Defense Attorneys Should Be Aware That

- Responsivity factors for women include transportation and childcare. These require a less intensive amount of intervention but do need to be addressed. They are barriers that women need to address to get to their risk factors.
- The risk factors for women are best addressed by cognitive behavioral therapy but with less emphasis on empathy for the victim because women are less likely to blame the victim than men. Women's programs should work on trauma, healthy relationships, and parental skills. We also need to look at women's strengths such as self efficacy, family support, parental involvement, and educational needs when designing their case plan.

Defense Attorneys Should Be Aware That

- With women, as with men, we need to prioritize risks. You will need to look at the Core COMPAS and women's scale. You should consider practical considerations, program availability, and impediments to further readiness. Only work on few risk factors at a time and involve the women in the decision making.
- In regards to the COMPAS risk scales, Dr. Van Voorhis believes these are valid scales even for women. If the women's appendage is not added into the score. She indicates that if we have women with many high needs on the women's scales and they are still coming out low risk on the COMPAS risk scale, we should report this to COMPAS to see about reviewing the validation of the risk scales.

Defense Attorneys Should Be Aware That

Dr. Van Voorhis has questions about the validity of the URICA in that there is instability on the validation of these scales. There is some indication that motivation is not stable and that women may be in denial one day and not the next. She feels that if we need to cut back on our assessment, this may be a good place to start.

Treatment / Services

- **Supervision should include treatment**
  - **Criminogenic needs should be addressed, but throughout a time span**
- **Do not distract offenders and impede probation by imposing conditions that don't relate to their risks and needs**

Treatment /Services

- **Select treatment and programming that best assists in changing the risk factors for an individual**

- **The most effective services in reducing recidivism are cognitive behavioral interventions based upon social learning principles**

Treatment / Services

- Intensive supervision programs without treatment
  - Waste money
  - Do not reduce recidivism

- Programs such as "scared straight" and boot camps have not shown to be effective

Treatment / Services

- Treatment programs need to be evaluated continually
- Poorly implemented treatment can increase recidivism
- Focus on current issues and avoid past issues
  - Focusing on the past is not an effective strategy for treatment

COMPAS Evaluation

- Validated risk/needs assessment
  - D.O.C. currently in contract with COMPAS and will be completing this on all new probation cases
  - Assessment carries through with client
- Some specialty scales (e.g. mental health, female offenders, sex offenders, etc)

COMPAS Tool

- **Addresses:**
  - **Offender's risk of recidivism**
  - **Risk of violent recidivism**
  - **Risk of failure to appear**
- **Measures:**
  - **Criminogenic needs**
- **Was not designed to determine length or need for incarceration**

COMPAS Tool

- Risk factors
  - static factors completed by COMPAS evaluator
- Need factors
  - based on client's self report
- Some studies questioning validity of the COMPAS tool
  - Studies can be found on the internet

Reminder to Defense Attorneys

- COMPAS Assessment is just a tool, therefore, it is not always accurate
- It *cannot* measure, an individual's risk of re-offending on a specific charge
- Some believe that it is not a good tool for sex or domestic violence offenses
- Always review the COMPAS to make sure it was accurately completed

But, Be Aware…

- COMPAS tool will require persons to provide incriminating information
- Always measure the benefits of taking the COMPAS against the risks
- Scales which measure the truthfulness of responses
  - In Eau Claire, the DA has given assurance that there will be incentives for defendants to take the COMPAS and to report honestly their needs

Evidence Tells Us

- Only 10% of low risk offenders recidivate
- Resources should be used for high risk offenders (60% recidivism) and medium risk offenders (33% recidivism)
- High risk offenders should be getting high doses of treatment (200+ hrs)
- Low risk offenders should be left to self correct
  - If low risk offenders have high needs, resources outside the CJ system should be sought

What is a Proxy?

- Three question screening tool assessing the offender's risk level
- Law enforcement completes proxy tool upon arrest
- Proxys being completed on "in custody" and out of custody defendants

Proxy Results

- **Low risk felons**
  - **May be released from custody and summoned to court for appearances**
- **Low risk misdemeanants**
  - **Targeted for diversion program**
- **Proxy result can be used at pretrial**
  - **Argue for diversion in lieu of probation**

Proxy Accuracy

- Inconsistent results with COMPAS tool
- Possible bias for young adult offenders screening higher risk than older offenders
- Regardless, prevents some felons from being held in custody and possibly allows first offenders to be diverted

EBDM

SENTENCING ADVOCACY

Use of EBDM at Sentencing

- Judges require a COMPAS presentencing in all contested felony sentencing hearings
  - Be aware of benefits and drawbacks of using assessment tools.
  - Must be completed accurately and used appropriately.
- DOC incorporating the COMPAS into their presentence investigations
- Use of transition centers to begin treatment
  - Alternative to incarceration / prevent a prison sentence
  - Swift treatment is better than delayed treatment

Recidivism Outcomes & Sentencing

- Incarceration compared to probation increases recidivism
- Offenders given harsher sentences are more likely to recidivate
  - Severity of sentencing has weakest effect on recidivism
- Punishment without treatment has not been shown to reduce recidivism and may actually cause an increase

EBDM Process in Eau Claire

- COMPAS evaluations required on all probation cases
  - Only medium and high risk offenders are placed on probation and needs are met
  - Low risk offenders should have minimal intervention (e.g. deferral, fines, community service) and never placed on probation unless it is an unusual situation
- Results can be used at pretrial
- Relationship with District Attorneys, Agents, and Judges
- Will determine how you use the evaluation

As Defense Attorneys

- Understand the basic principles of EBDM
- Early representation may result in no charges.
  - Know local diversion options in your areas.
- At bond argue for conditions that are relevant to your client's needs
  - Low risk offenders should be released prior to initial appearance, and you should argue for a deferred agreement pre charging
- You should be preparing for sentencing beginning at bond.
- You should determine a risk level as early as possible.
  - At/prior to trial you may want to request a COMPAS evaluation
  - Determine if risk of incrimination is worth the benefit

As Defense Attorneys

- Know your area. Your sentencing strategy will depend on where you practice
- Rural vs. urban
- Know your Judge
- Know your DA
- Know your client

As Defense Attorneys

- If risk assessment is unavailable consider using a PROXY.
- Responsibility to understand basic research purpose of COMPAS evaluations used in court
- COMPAS evaluations should not be used as a determine a prison sentence recommendation rather than probation.

As Defense Attorneys

- Clients should understand that they will be expected to participate in programming
- Defense Attorneys always have a duty to weigh the wavier of confidential information against the risk of incrimination
- Keep up to date on the latest research to insure sentences are evidence based!

As Defense Attorneys

- Address gender and cultural differences.
- Be aware of responsivity factors.
- Don’t ignore these when making sentencing recommendations

What Not to Do

- Know what resources are available in your area. Don’t advocate for resources you don’t have.
- Don’t go in unprepared to address why treatment has not worked in the past
- Don’t allow risk assessments to be misused.

Examples of how to use at sentencing

- Argue against probation for low risk offenders
- Argue for stayed jail sentences
- Diversion
- Deferred prosecution to keep low risk offenders away from high/med offenders
- Get creative, postpone sentencing to allow criminogenic needs to be met

Examples of how to use at sentencing

- For high risk offenders review past treatment history.
- What needs were addressed? Were they one of the top four risk factors?
- Know research that treatment in natural environment more effective
- Know research that punishment alone not effective.

Examples of how to use at sentencing

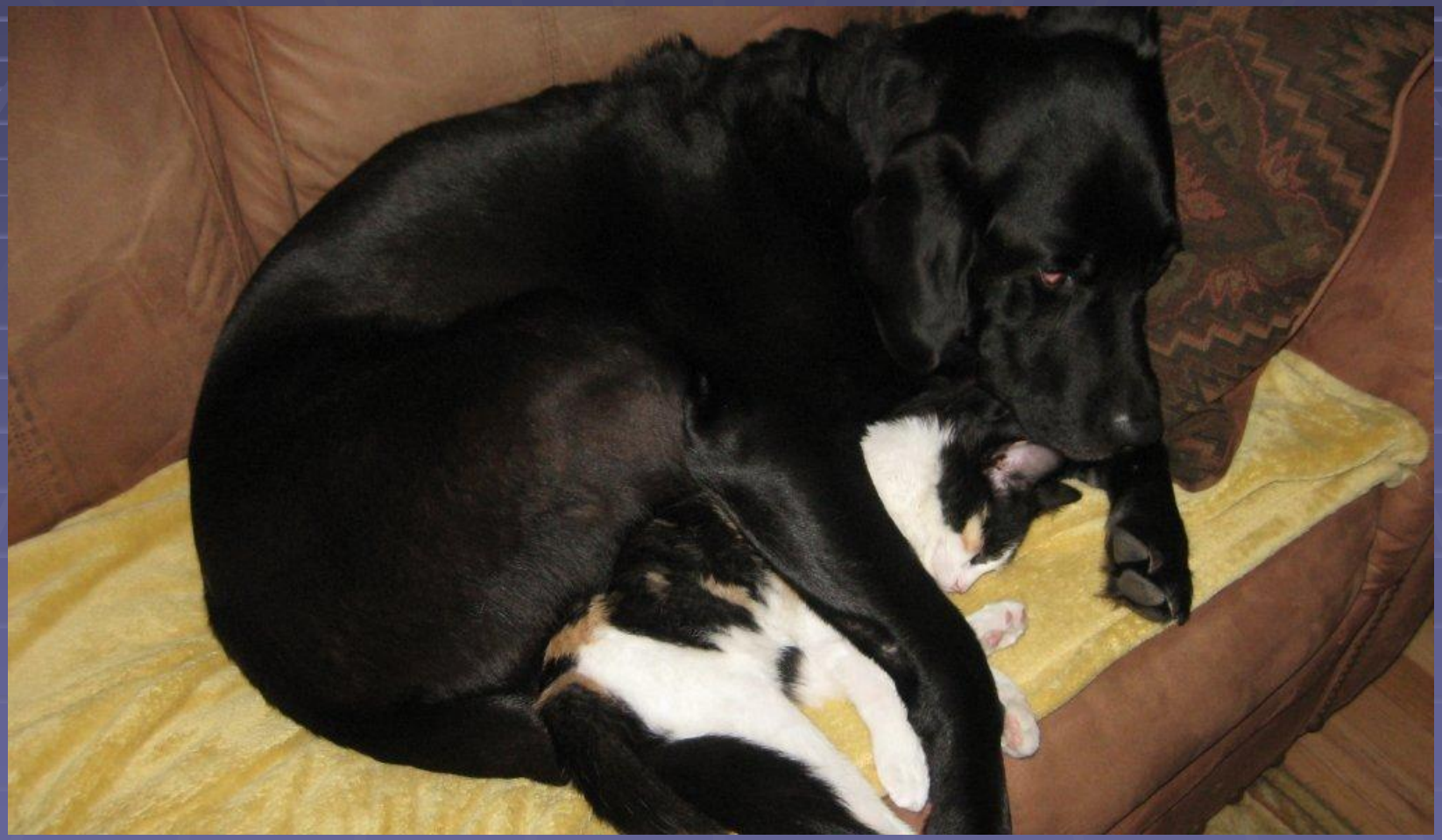
- Have incentives like stayed jail time to encourage treatment of relevant risk and needs
- Don’t place on persons irrelevant conditions of probation or bond
- If can’t get a risk assessment use proxy.
- Make sure clients are on board

Revocation Hearings

- Agents expected to follow COMPAS recommendations in their treatment plans
  - Agent has evaluation and list of programming
  - Prioritize based on need
  - Check programming for effectiveness and fidelity
- Possible referral to the CTC to address unmet needs
- Agents are trained on COMPAS and motivational interviewing

Conclusions

- EBDM should begin at time of arrest and continue through sentencing
- Cooperation with treatment recommendations should result in a lower incarceration time for clients
- Make sure the COMPAS was completed accurately and understand what it means
  - Question inaccuracy when needed
- Know the research
- EBP should result in better sentence recommendations for many clients
- Get creative at pretrial and sentencing



THANK YOU

Eau Claire State Public Defender's