

# Wisconsin 2014 Annual Criminal Defense Conference

## Developing EBDM in Your Community

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# Defense Wears Two Hats

- As a defense attorney participating in EBDM at the local level, you need to wear two hats –
- First, the fierce ***advocate*** for clients in individual case representation
- Second, a ***policy maker*** contributing to decisions about how to get better outcomes
- Participating on a policy team doesn't mean you agree with everything, but it is important that the defense perspective is “at the table.”

# Genuine Collaboration is Central to the EBDM Process

- “Collaboration is the process of working together to achieve a common goal that is impossible to reach without the efforts of all stakeholders.”
- The effort to build relationships of trust and respect that cross discipline boundaries has enormous value.
- “EBDM creates the opportunity for long term dialogue.” Jim Hingeley, defense attorney, VA.

# Genuine Collaboration is Central to the EBDM Process

- Defense attorneys have been involved from the very start of the process –
- Identifying how the system works and doesn't work, learning about the research and proposing solutions.
- “You have to force people out of their normal way of doing things, and when you change the way they interact, it changes the dynamic.”  
Tom Reed, Chief Public Defender, Milwaukee

# Defense Contributions to Work Groups concerning Specific Change Strategies

## Example: Mesa County

Public and private attorneys served on cross-disciplinary work groups that did the hard work of developing policies to improve decision making on –

- Pretrial release/detention decisions and pretrial supervision
- Revision of the Presentence Investigation (PSI) content and format and “standard conditions” of probation
- Developing local sentencing guidelines that take into account risk level and sentencing purposes

# Participation Reaps Other Benefits

- *System mapping:* “The mapping was ridiculously hard and valuable.” “It was amazing how many people would point to the same part of our current process and all agree ‘this isn’t working’.”  
Dana Smetana, Eau Claire County, WI
- *The principle of applying research to decision making:* “This is not saying we are doing everything wrong, but that we can do better when our decisions are informed by research.”  
Pat Kittridge, Ramsey County, MN

# Participation Reaps Other Benefits

- *The use of hard data about how the system really operates:* This helps make visible current practice, both its strengths and weaknesses, and the hidden tragedies of the way the system treats defendants.
- The focus on data pulls the discussions forward in more non-judgmental ways.
- “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 just for our own purposes.” Bert Nieslanik, Mesa County, CO

# Key Research Findings

- Don't over-condition low-risk defendants (low-risk as determined by validated tools).
- There are effective interventions for many risk levels and factors (like criminal thinking and antisocial peers).
- Higher risk offenders can be supervised and treated in the community *if there are effective treatment options*.

# Key Research Findings

- Understanding the distinction between high risk and high need is critical.
- The research or science on offender behavior change creates a neutral framework for talking with judges and prosecutors. The new vocabulary is powerful. It's not just the defense attorney advocating for particular conditions, it's the science.

# Challenges

- Defense attorneys are often skeptical; they think “all these new ideas and programs are done at the expense of the client.”
- “The plight of the client is very bad in most systems, so it is easy to describe why some system improvements will help.” Tom Reed
- Example: universal pretrial screening that is risk based leads to fewer clients in jail.

# Challenges

- Defendant/offender risk assessments are critical to applying research to decision making.
- The use of these assessments results in more information being shared about clients, and there is deep concern about the confidentiality of sensitive (possibly self-incriminating) information.
- Important to establish clear purposes, protocols and MOU's for the sharing of risk assessment information.

# Challenges

- EBDM requires a great deal of training and re-training, not just for defense attorneys but for all stakeholders and agencies.
- *Back to the beginning:* Defense attorneys must embrace their new professional role as members of a collaborative team making decisions about the design of improved decision making processes and dispositional options.

# Resources

- Evidence Based Practice and Criminal Defense: Opportunities, Challenges and Practical Considerations.  
<http://nicic.gov/library/023356>
- A Framework for Evidence-Based Decision Making in Local Criminal Justice Systems.  
<http://nicic.gov/library/024372>
- Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders, Drs. Christopher Lowenkamp and Edward Latessa.  
[http://sedgwickcounty.org/corrections/resources/Risk\\_Need\\_Responsivity/risk\\_principle.pdf](http://sedgwickcounty.org/corrections/resources/Risk_Need_Responsivity/risk_principle.pdf)