

Defense Attorneys

Evidence-based practice (EBP), in its simplest form, is the objective and balanced application of scientific research to guide decision making, with the goal of achieving successful outcomes for people involved in the justice system. Defense attorneys, whose primary responsibility is to advocate for their clients and defend their rights, can do so more effectively when they implement EBP. The following are some specific benefits of EBP and suggestions for ways defense attorneys can get involved.

Benefits of Evidence-Based Practices

Increased Collaboration

All justice system stakeholders share a common goal of reducing recidivism and increasing community well-being and safety, yet their approaches can sometimes be in opposition to one another. When all stakeholders are committed to EBP, there is increased opportunity for collaboration and for the system as a whole to work together to identify solutions that are in all parties' best interests.

Ability to Identify Mitigating Factors

EBP encourages the use of risk/needs assessments to identify mitigating factors that may support a reduced sentence or a more targeted justice system response.

Increased Use of Diversion

EBP supports the use of diversion programs to redirect people at low risk of recidivism. EBP recognizes that people who are low risk will often self-correct and that higher levels of intervention can actually increase their risk of recidivism.

Increased Use of Interventions to Target Needs and Stabilization Factors

To reduce the probability of future illegal behavior, conditions and programming need to focus on those factors associated with a person's negative behaviors (criminogenic needs) and stabilization factors such as mental health and housing. EBP also recognizes that too many conditions and programs can overwhelm a person and lead to unnecessary violations.

Reduced Reliance on Incarceration

EBP encourages the effective and efficient utilization of resources and recognizes the potential negative impact of incarceration when public safety is not at risk.

RACIAL BIAS

There is a real and legitimate concern about the impact of risk/needs assessments on racial and ethnic disparities in the justice system. Among the factors considered by these tools is a person's criminal history, and arrest records reflect a history of systemic racism. Yet, risk/needs assessments also include noncriminal history items, including attitudes, associates, and substance abuse, that predict recidivism similarly without regard to race. And, studies suggest that actuarial assessments are more accurate, more consistent, and less biased than professional judgment alone. Therefore, the use of risk/needs assessments is recommended to guide sentencing and supervision decisions.¹

¹ For more information on this topic, see *Risk Assessment and Racial Fairness: The Proper Use of Risk-Needs Assessments* (<http://www.ccappoap.com/public/ebpimplementation/#s-123ea509-c68f-432a-a75e-c72284deda11>), written by Ret. Judge Roger K. Warren.

How Should Defense Attorneys Get Involved?

Become Sophisticated Consumers

To best advocate for clients, defense attorneys should seek out EBP training and other resources, especially related to risk/needs assessments.

Get Involved in Policymaking

Defense attorneys should be actively involved in EBP policymaking and implementation, ensuring that policies (e.g., around what information is collected during pretrial assessments and how that information is used) protect clients' rights.

Encourage Positive Reinforcement and Rewards

Defense attorneys should encourage policies and sentences that positively reinforce a person's success and enhance their intrinsic motivation to change. When appropriate, they should advocate for early release or early termination of supervision.

Become Knowledgeable About Programs

Defense attorneys should know which programs and interventions exist in the community to address a person's needs. When programs are not effective or do not exist, they should advocate for services to fill the gap.

Measure Outcomes

Defense attorneys should ask for system accountability. They should request data that shows how well the system is doing in terms of improving client outcomes and community well-being and then use the data to identify needed system and service changes.

What Challenges Might Defense Attorneys Have to Overcome

Conflict Between What the Client Wants and What They Need

Clients may argue they would rather serve a sentence than attend a needed program. Representing what a client wants is core to defense work. An EBP-educated defense attorney can help a client understand the benefits of programming so the client can make a more informed decision about their future.

Concerns with Risk/Needs Assessments

Stakeholders may question the predictive accuracy of assessments, oppose imposing sentences based on the possibility of a future crime, and express concern that assessments exacerbate racial and other disparities. Defense attorneys should develop a thorough understanding of how, when assessments are properly administered and used, they can be integral to the decision-making process and help achieve fairness and equity. And, they should raise concerns if, after developing this understanding, they see any potential bias or inequity.

Tendency to "Widen the Net"

Justice system decision makers may divert a person into the system (or into a higher level of the system than is necessary) so that they can benefit from a particular program that, for example, is not available within the community. This is known as "net widening." While the program may be helpful, there are negative repercussions when a person is drawn deeper into the system. Defense attorneys must ensure their practices do not contribute to net widening. They should also work with their client to weigh the pros and cons of accepting an offer that may appear to be attractive but that keeps them under the continued jurisdiction of the court and that may, in the end, result in harsher penalties than had they not chosen to participate in the program.