Judges' Role in an Evidence-Based System

The justice system is uniquely positioned to improve the lives of individuals involved in the system, the lives of their families, and the well-being of local communities when it follows practices supported by research.

Judges, as objective yet influential leaders, can bring together stakeholders to support the effective administration of justice. Here are the top 10 things judges can do to bolster evidence-based practices.

1 Understand the purpose of actuarial assessments.

Actuarial assessments are used at various stages of the justice process (e.g., arrest, pretrial, detention, reentry, and community supervision) to determine the likelihood of certain behaviors (e.g., court appearances, risk of recidivism) and to understand the factors that contribute to harmful behavior. In this way, assessments can be used to aid in decision making.

Judges can work with stakeholders to ensure assessments are conducted as early as possible, and they can use the results of assessments to inform pretrial release decisions and to help determine supervision length and intensity.

2 Consider whether diversion is appropriate.

Diversion can be pursued when the interests of justice do not require traditional case processing or when an expedited process achieves a better outcome, such as getting a person into treatment sooner.

Judges can encourage stakeholders to refer to diversion programs those people who do not pose a danger to the community.

3 Direct programming and interventions to people at medium and high risk.

People who are low risk need little to no intervention as they are likely self-correcting. People who are moderate to high risk benefit from more intensive intervention.

Judges can work with other justice system stakeholders to match release conditions to risk levels, with few or no conditions and programming for people at low risk and higher levels of supervision and programming for people at higher risk.

4 Focus interventions on assessed criminogenic needs.

Risk of recidivism can be reduced when interventions are focused on the factors that contribute to illegal behavior, such as antisocial cognition, antisocial personality/temperament, and antisocial associates.

Judges can ensure that sentencing decisions align with a person's criminogenic needs, recommend interventions that research has shown to be effective in changing behavior, and, whenever possible, avoid conditions not associated with criminogenic needs.

5 Collaborate with stakeholders on rewards/incentives.

Incentives and rewards are most effective when they are administered in concert with appropriate responses to noncompliance, with rewards outnumbering responses to noncompliance by a ratio of at least 4:1. The more significant the behavior and the higher the person's risk level, the more significant the reward or response.

Judges should collaborate with probation departments and stakeholders to create and implement policies and practices (including a structured matrix) to guide rewards and responses to noncompliant behaviors. The focus should be on ensuring that responses are swift, certain, and proportional.

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6   Develop policies that support early termination.

One of the most impactful incentives is the use of early termination when public safety/risk is no longer an issue. Jurisdictions should develop clear policies that incentivize prosocial behavior and the completion of conditions, resulting in people being able to shorten their supervision period.

Judges should encourage policies that allow departments to request early termination for people who have completed conditions and are low risk. These policies should include a process for automatic reviews of eligibility.

7   Encourage the collection and analysis of data.

Justice system agencies must collect and analyze data related to processes (i.e., how well they are performing their duties) and outcomes (i.e., how effectively they are reducing risk of recidivism) to ensure accountability to stakeholders and the public, measure fidelity to processes, and identify strengths and areas for improvement.

Judges should request and regularly examine justice system data from all stakeholders and engage in efforts to ensure that the system continually improves its practices.

8   Engage in procedural justice practices.

Procedural justice research shows that how people feel the system treats them influences their acceptance of the outcomes. People charged with or convicted of an offense who think they are treated fairly and transparently are more likely to comply with the court's requirements. Objective court operations that provide an opportunity for victims to be heard contribute to their ability to accept the case's outcome regardless of what it is.

Judges should ensure that all interested parties have the opportunity to be heard and to understand the process. Judges can utilize specific skills in the courtroom to further understanding, such as asking open-ended questions, using reflective listening, and clearly explaining why a particular sentence is being imposed, how conditions address the person's criminogenic needs, and what incentives and sanctions will support the desired behavior change.

9   Actively collaborate with key stakeholders to support evidence-based decision making.

Implementing and continually using evidence-based practices is a daunting task that requires collaboration among all key stakeholders. The courts have a tremendous amount of influence on their local justice system. When the courts are involved and provide leadership, key stakeholders come to the table, and implementation teams are more successful.

Judges can be driving forces and leaders in local justice system planning and collaboration efforts.

10   Support chiefs in the implementation of evidence-based practices.

Implementing evidence-based practices does not occur overnight. Departments will need the court's support throughout the process.

Judges should be trained in the most recent research and engage in regular discussions with chiefs about how to better align the court's and departments' policies and procedures with the current literature and what support the court can provide to break down barriers to implementation.