



AOC Briefing

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EVIDENCE-BASED PRACTICE AND THE JUVENILE DELINQUENCY COURT: INTEGRATING JUSTICE PRACTICES



ADMINISTRATIVE OFFICE
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SERVICES DIVISION

CENTER FOR FAMILIES, CHILDREN & THE COURTS

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Judicial Council of California
Administrative Office of the Courts
Judicial and Court Operations Services Division
Center for Families, Children & the Courts
455 Golden Gate Avenue
San Francisco, California 94102-3688
cfcc@jud.ca.gov
www.courts.ca.gov

Prepared by the AOC Center for Families, Children & the Courts

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Center for Families, Children & the Courts

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Director

Charlene Depner, PhD
Assistant Director

Audrey Fancy
Supervising Attorney

David Meyers, Author
Senior Attorney





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INTRODUCTION

This briefing is intended for juvenile probation officers, community service providers, and others whose work may take them into California's juvenile justice courts. The document explains the concept of evidence-based practice (EBP) and describes the application of EBP tools, techniques, and programs in juvenile delinquency courts, as well as what happens to evidence-based work once it arrives inside the courtroom.

By looking at the roles of the judicial officer, prosecutor, defense, probation officer, and others and how the courtroom process intersects with EBP, this briefing offers an overview of the delinquency process as well as a commitment to use this knowledge to best serve the youth and families in the delinquency system.

WHAT IS MEANT BY EVIDENCE-BASED PRACTICE (EBP)?

Evidence-based practice refers to a method, program, or tool proven to work through empirical research. Evidence-based practices may be tools (e.g.; validated risk assessment instruments), methods (e.g., Motivational Interviewing) or program models (e.g., family-based treatment approaches like Multi-Systemic Therapy).

Evidence Based Practice (EBP) in the juvenile court is broadly defined as the use of practices and programs that have been empirically tested and shown to reduce recidivism and improve outcomes among offenders.¹ While EBP as a conceptual approach has far broader reach than this definition, EBP in this paper refers to a tool, practice, or service used in a juvenile court context and designed to facilitate one or more of the following activities²:

- Assessing offender risk and/or need
- Encouraging offenders' motivation to change
- Targeting higher-risk offenders with appropriate interventions

Evidence-based practice (EBP)

in the juvenile court is broadly defined as "the use of practices and programs that have been empirically tested and shown to reduce recidivism and improve outcomes among offenders."

- Training offenders through directed practice
- Increasing positive reinforcement when appropriate
- Engaging ongoing community support for juveniles in their communities
- Measuring outcomes
- Providing feedback

Determining which practices and programs actually work requires a well-designed evaluation that measures the effectiveness of the practice or program on a desired outcome—in this case, the reduction of recidivism. For more information on how delinquency practices and programs become evidence-based, please see the earlier briefing from this series and additional resources from a recent training provided by an expert in the field of evidence-based practices.^{3,4}

EBP IN THE COURTROOM

California's juvenile delinquency courts are charged with ensuring the safety and protection of both the public and the youth who appear before them. While rehabilitation and reduced recidivism are goals for both adult and juvenile offender populations, California law gives juvenile courts and their stakeholders clear direction to strive for these goals.⁵

Judicial officers and attorneys in the juvenile court must work closely in partnership with probation officers to meet system goals. Probation departments work to 1) train probation staff to employ the most effective, proven practice tools and techniques, and 2) refer children and families to the most effective community programs and services.

The probation department can inform the court about changes in practices and services through system meetings and training events. As judges and attorneys receive this information, they may question how these changes will affect children and families and how the information in reports will differ, but they may not always consider how this information will influence their own decisionmaking process. New practices or community services often have no direct effect on attorney and judicial roles, the court process, or the tasks a judicial officer or attorney must perform. As such, probation departments, service providers and others who employ evidence-based practices will not necessarily experience the full impact of their work in the courtroom, and sometimes they may even perceive that the court process disregards their work.

Juvenile probation departments committed to incorporating EBP may spend significant time and resources researching and investing and training staff evidence based practices; therefore, it can be frustrating for probation officers when judicial officers and attorneys appear not to consider the depth and scope of their work. This frustration may be compounded when attorneys take positions or judicial officers make decisions counter to a probation officer's recommendations. Probation officers may perceive such actions as arising from one or more of the following:

- judges' and attorneys' lack of knowledge about EBP
- judges' and attorneys' indifference to the work and recommendations of the probation department
- judges' and attorneys' giving greater weight to their own personal experiences⁶

A closer look at the relationships among probation, EBP, and the delinquency court process will reveal that the intersection between EBP and the court process is complex and stakeholder actions more often consistent with roles and mandates than with any of the perceptions listed above.

PRINCIPAL ROLES IN THE ADVERSARIAL SYSTEM

Although the purpose of the delinquency court includes a rehabilitative component,⁷ the court process is still rooted in and modeled on the adversarial system. The parties to a controversy present their arguments, gather and submit evidence, call and question witnesses, and—within the confines of certain rules—control the process. The fact-finder—in delinquency court, a judicial officer—remains neutral throughout the proceeding and renders a decision by comparing the weight of the submitted evidence against the controlling law and applicable burdens of proof. Through this process, courts assure that all parties to a given case or controversy are held accountable to the rule of law.

Even though the vast majority of decisions in delinquency court result from informal negotiation or collaborative discussion, these exchanges still occur within the context of this adversarial system. As such, judicial officers do not accept agreements that run counter to legal mandates, and attorneys do not abandon their advocacy roles. Indeed, attorney compromise only comes about as a result of a weaker bargaining position or likelihood of a better long-term result for the client. Therefore, an understanding of the role EBP may play in these proceedings requires a more detailed examination of each of the stakeholder roles.

The judicial officer.

Judicial officers make many of the critical decisions that impact youth in delinquency court. A judicial officer who decides that a minor is responsible for some alleged misconduct must then make a number of subsequent decisions relative to public safety, restoration of the victim, and rehabilitation of the offender. All of these decisions raise a multitude of nuanced issues that require detailed information to consider fully.

It is the constraints on judicial decisionmaking authority, however, that are sometimes overlooked. Judicial officers are first and foremost required to follow the law and its mandates. Filing and sentencing laws place clear limitations on what a judicial officer can do, and even discretionary decisions are influenced by these legal mandates (e.g., the weight of the evidence does not meet the burden of proof). Further, judicial officers have no investigative ability and must rely on the legally admissible information provided by probation and the parties, often leaving judicial officers to wonder what they do not know about a child or family. As former attorneys themselves, judicial officers know how advocates are trained to highlight strengths and downplay weaknesses in their cases. A judicial officer may recognize that a particular order would be best for a child yet be unable to make such an order for a variety of reasons: overburdened local service providers may have shortages of availability, the probation department may have funding issues that prohibit access to services, or public safety concerns or a victim's wishes might outweigh the child's best interests.

Finally, judicial officers who preside in delinquency court weigh a number of considerations before making any decision. In many cases, the probation report and recommendations constitute the entire body of evidence, but the attorneys can also introduce evidence, which may include additional information or expert testimony. Along with the evidence presented (only a portion of which includes EBP-based information, recommendations, or services), judicial officers consider other factors such as public safety, observed family dynamics, victim impact, arguments of counsel, case law precedent, their own personal experiences and training, and any number of other factors. Indeed, confidence in their ability to weigh and balance all of these comes with being entrusted as a judicial decision-maker. Given all of the factors that must be considered judicial officers may give little or no weight to an EBP-based recommendation or service.

The prosecutor.

The prosecutor, typically a deputy district attorney, has a role not just in prosecuting criminal and juvenile cases but also in community protection, policymaking, and victim advocacy. As the People's representative, the prosecutor attends all court proceedings in a case as the attorney who advocates the position of the People.

Understanding exactly how a prosecutor formulates the People's position is important for understanding the prosecutorial view of EBP. Unlike a defense attorney, the prosecutor does not have one individual client from whom to take direction. Like judicial officers, prosecutors must synthesize their own training and experience, but the prosecutor can also draw from a number of other sources in formulating the People's position. Public safety and victims' rights are always paramount concerns, and input from the community and the victim may heavily influence the position a prosecutor takes in a case. While juvenile court prosecutors consider and support effective rehabilitative practices, an offender's need for rehabilitation is but one factor that goes into formulating their positions.

The weight that a prosecutor gives to the probation officer's assessment and recommendations varies from case to case. While prosecutors are often persuaded by good probation work, they are very "risk averse." This means that a prosecutor is more inclined to advocate a position that maximizes public safety, even in the presence of a recommendation tailored to address an offender's risk factors. While risk, safety, and rehabilitative factors are not mutually exclusive, a prosecutor will invariably give greater weight to risk and safety concerns.

The lead prosecutor is typically an elected position, and prosecutors are sometimes accused of allowing political concerns to influence their decisionmaking. Prosecutors who educate other prosecutors teach that preferential treatment should never have a bearing on how a prosecutor handles a particular case.⁸ Like judicial officers, prosecutors are beholden to legal and ethical mandates and must always weigh the facts and circumstances of an individual case against these mandates. And once a position is formed, the job of the attorney in any kind of proceeding is to advocate for the client's wishes and obtain the best possible result for the client—even when that client is "The People."

The defense attorney.

Whether appointed or retained, the defense attorney's legal and ethical mandates are clear: advocate the client's stated interest, even if that means taking positions in court that are not supported by evidence or conflict with the attorney's personal belief. These mandates exist because an accused individual is innocent until proven guilty, and government intervention into a person's private life, such as a court proceeding, must occur only when absolutely necessary.⁹ As such, defense attorneys are charged with the responsibility to protect every client's fundamental rights and liberties. Defense attorneys are compelled to argue against any charge or recommendation that isn't supported by the client, regardless of perceived appropriateness or benefit. This can sometimes include making requests to strike certain terms and conditions that are not supported by the evidence, for example participation in an anger management class for a client charged with a drug offense, even if a client is willing to accept such an order. Conversely, a defense attorney may be willing to champion any evidence-based recommendation, service, or tool that produces a favorable outcome for their client.

This does not mean that defense attorneys abandon all reason and common sense. The place for a defense attorney to exercise these qualities is in confidential client communications and also, to some extent, in settlement negotiations. Defense attorneys can be very influential with their clients, and even though they cannot force a client to accept or agree to anything, many outcomes are a direct reflection of these conversations with opposing counsel, probation, and their clients. Defense attorneys are equally vested in reducing recidivism, especially in the juvenile context, and may support evidence-based recommendations or services by attempting to persuade clients to acquiesce to them. Again, these conversations will occur in private. Once a client has made a decision, the attorney must advocate for that position, regardless of his or her personal beliefs.

A more in-depth overview of the intersection between the defense attorney role and evidence-based practices is available for those readers interested in obtaining more information.¹⁰

The probation officer.

Though independent from the judiciary, the probation officer serves as the arm of the court, providing mandated information to the court and making recommendations on a large number of issues. Probation officers in delinquency cases are not parties. Probation officers execute court orders by linking offenders and victims to community-based services, provide all manner of case

management services, and report back to the court periodically on the progress of a case. Except in rare instances, probation officers are not represented by counsel and have no independent right to make arguments, challenge outside evidence, or appeal a court's order, yet they have a mandated responsibility to present evidence and recommendations. While probation can present evidence prior to a hearing, the court has discretion to allow or exclude the probation officer's presentation of additional evidence during the hearing. This is yet another restriction on the probation's role in the courtroom.

Probation officers are responsible for many duties involving interaction with offenders and therefore spend more time with the youth than anyone else involved in the process. Despite this, the probation officer in a juvenile delinquency proceeding may not offer more information in court than what has already been submitted in a formal report to the court.

NEGOTIATING INSIDE THE COURTROOM

In many delinquency cases, the probation department's report and recommendations constitute a significant source of information that the judge considers. More and more, these reports and recommendations are developed using evidence-based assessment tools and evidence-based services. In no case, however, will these documents be the sole source of information. Both prosecutors and defense attorneys can perform independent investigations and, in addition to speaking with the accused minor, victims, or family members, will often contact any number of collateral sources or community service providers. Defense attorneys can choose to keep these communications confidential and are obligated only under certain circumstances to disclose the information they receive, and the same is true to a lesser extent for prosecutors. In addition, some situations call for legal research, and attorneys' positions can be formulated based on statutory interpretation or case precedent. In many cases, the opposing attorneys have met, conferred, and engaged in some negotiating before having even seen the probation report. Attorneys come into court with all this knowledge and information, and any single piece may influence a case's outcome.

Before going on the record, the first order of business in a delinquency case typically involves informal discussion among the court, parties, and probation. To supplement the information already available to the parties and probation officer, the court can also inquire about particular services, programs, or alternatives; such inquiries may lead to the development of additional questions or negotiating points, or even orders, which ultimately may not be consistent with recommended findings or best practice.

Most disputed preliminary issues resolve with the parties reaching stipulated agreements. These agreements must be consistent with the law and the evidence but do not have to reflect the probation officer's recommendations. Attorneys willingly enter into such agreements for only one reason: their clients' interests are best served. Given every attorney's mandate to advocate for the client, client interests must hold paramount importance and these interests may not necessarily be consistent with probation-recommended findings. Judicial approval means the judicial officer has weighed the evidence and found a given agreement to be consistent with the court's statutory mandates to protect the public and rehabilitate the minor.

Arguments made on the record, while recorded and more formal, mirror the same process described above. The order of events is as follows: evidence is received and considered; attorneys argue for their desired results; the court asks questions; and the court makes a decision. While the probation office shares the same goals as the court, it is ultimately the court's responsibility to make key decisions affecting the juvenile defendant. As noted, the court will then delegate some of this authority to the probation department, which will be expected to execute the orders in the most effective manner possible.

WHEN EBP BECOMES THE FOCUS OF A COURTROOM CONTEST

In some cases, EBP itself can be the subject of the court proceeding. This typically occurs when a probation officer's recommendation appears inconsistent with cultural norms established in the community—i.e., the punishment seems not to fit the crime—or when the defense or the prosecution seeks to challenge a particular program or assessment. If the attorney is challenging some aspect of EBP, the attorney often attempts to portray the service or recommendation as being either supportive or dismissive of their clients' position.

In rare cases, the probation officer or a service provider may be called to testify. When this occurs, it is important to keep in mind the essential witness, advocacy, and decision-making roles. Many probation officers have no training in actuarial principles or statistical analysis and may be unqualified to testify about the science behind EBP tools and techniques, yet may nonetheless be expert in their use. Much like a psychologist testifying about the results of a Minnesota Multiphasic Personality Inventory (MMPI) exam, a probation officer need not understand all the underlying mechanics to attest that the results a tool produces with proper application are scientifically proven to be in accord with research and best practices.

Probation officers and other professional witnesses must at all times be prepared to account for their own professional training as well as the actions they have taken in a case. Judges and attorneys must be able to distinguish the worth of the tools themselves from the abilities of the professionals who use them.

CONCLUSION

Judicial officers and attorneys view EBP in the larger context of the juvenile court process and, like all stakeholders, are vested in producing the best outcomes for children and families. Bench and bar alike typically wish to know about new tools, techniques, and services in use by probation departments and the community at large.

Inside the courtroom and within the framework of its adversarial system information gathered via EBP is viewed in a much different context: as scientific data, gathered by trained experts, to inform and persuade court stakeholders. Once this information is submitted, however, it becomes the advocates' role to use EBP to support or defend against, and the judicial officer's role to consider it as one piece of the puzzle, weigh its influence, and make decisions.

This briefing notes that EBP, generally in the form of evidence-based assessments or service referrals, is not the only source of information that makes its way into the courtroom and may not be the primary influence on the position an attorney forms. Further, judicial decisionmaking is profoundly influenced by applicable law and burdens of proof, the weight of the evidence (which may include EBP), the credibility of those who present evidence, and the skills of the advocates.

This relationship between EBP and courtroom practices must be understood by all juvenile court stakeholders. To further this understanding, all stakeholders are encouraged to have ongoing dialogue about EBP at regularly scheduled justice systems meetings. Such meetings will offer a forum for frank discussion, transcend and even help resolve case-specific disputes, and help all who participate to stay informed about the latest developments in practice and research.

For more information about EBP and juvenile court procedure, please visit the delinquency resources section of the California Courts website at www.courts.ca.gov/cfcc-delinquency.htm.

NOTES

¹ LaRon Hogg-Haught, "Evidence-Based Practice in Juvenile Delinquency Courts", workshop presentation at Beyond the Bench XXI: Coming of Age in Tough Times: Building Our Strength Together (San Francisco, Dec. 14, 2011), www.courts.ca.gov/documents/Evidence-Based_Practice_and_the_Delinquency_Court_Process.pdf (as of Nov 28, 2012).

² Crime & Justice Inst., *Implementing Evidence-Based Policy and Practice in Community Corrections* (Nat. Inst. Corrections, 2nd ed. Oct. 2009), <http://static.nicic.gov/Library/024107.pdf> (as of Nov 28, 2012).

³ Judicial Council of Cal./Admin. Off. of Cts., AOC Briefing: *How Practices and Programs Become Evidence-Based: A Review of Juvenile Justice Research (2012)*, www.courts.ca.gov/documents/AOCBrief_JuvenileJusticeResearch_efile_021612.pdf (as of Nov 28, 2012).

⁴ Edward J. Latessa, "What Works and What Doesn't in Reducing Recidivism: The Principles of Effective Intervention," presentation to various audiences in California (Apr. 2010), www.acgov.org/probation/documents/Latessa-WhatWorksInProbation.pdf (as of Nov 28, 2012).

⁵ See Welf. & Inst. Code, § 202(a).

⁶ Hogg-Haught, *supra* note 1.

⁷ See generally Welf. & Inst. Code, § 202 et seq.

⁸ *Ibid.* See also Jennifer A. Fahey, Crime & Justice Inst., *Using Research to Promote Public Safety: A Prosecutor's Primer on Evidence-Based Practice* (Nat. Inst. Corrections, Aug. 2008), http://b3cdn.net/crjustice/3338d4bc9ddfc9db41_0fm6ibkr9.pdf (as of Nov 28, 2012).

⁹ Hogg-Haught, *supra* note 1.

¹⁰ Kimberly A. Weibrecht, Crime & Justice Inst., *Evidence-Based Practices and Criminal Defense: Opportunities, Challenges, and Practical Considerations* (Nat. Inst. Corrections 2008), <http://static.nicic.gov/Library/023356.pdf> (as of Nov 28, 2012).



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