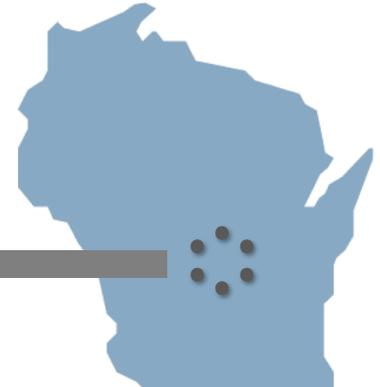


Implementing Pretrial Justice in Wisconsin



Rhonda Frank-Loron, JD
Pretrial Program Manager
Office of Court Operations
Madison, Wisconsin

Tiana Glenna, MS
Criminal Justice Director
Eau Claire, Wisconsin



Roadmap

- Basics of Pretrial Justice
- Legal and Evidence-Based Decision Making
- EBDM in Wisconsin
- Pretrial Pilot Program
- Future



What is Pretrial?



- Pretrial period is from initial arrest through case disposition
- Many key decisions occur during this phase, including but not limited to:
 - Book or cite and release
 - Charge or not charge
 - Divert
 - Detain or not detain
 - **Bail** and **conditions of release**
- Period prior to case disposition
 - Throughout this phase there is a presumption of innocence
 - People have not been convicted during this phase of a case



What is Bail?

- Bail is a process of release.
- The lawful purposes of limitation on pretrial freedom in Wisconsin are:
 - Court appearance
 - Public safety
 - Prevention of the intimidation of witnesses.





Legal and Evidence-Based Decision Making



Wisconsin Court System, 2020

Legal Principles



- Presumption of Innocence
- Right to Bail (Release)
 - Release must be the norm
 - Two constitutionally valid purposes for limiting pretrial freedom:
 1. Court appearance and
 2. Public safety
- “[D]etention prior to trial... is the carefully limited exception.”

U.S. v Salerno (U.S. Supreme Court, 1987)
- Right to Non-excessive Bail
 - Lease restrictive conditions
- Right to Due Process
- Right to Equal Protection
- Individualized Bail Setting



To intentionally detain someone, courts have historically required a very high likelihood to flee and/or to commit a violent or other very serious offense.



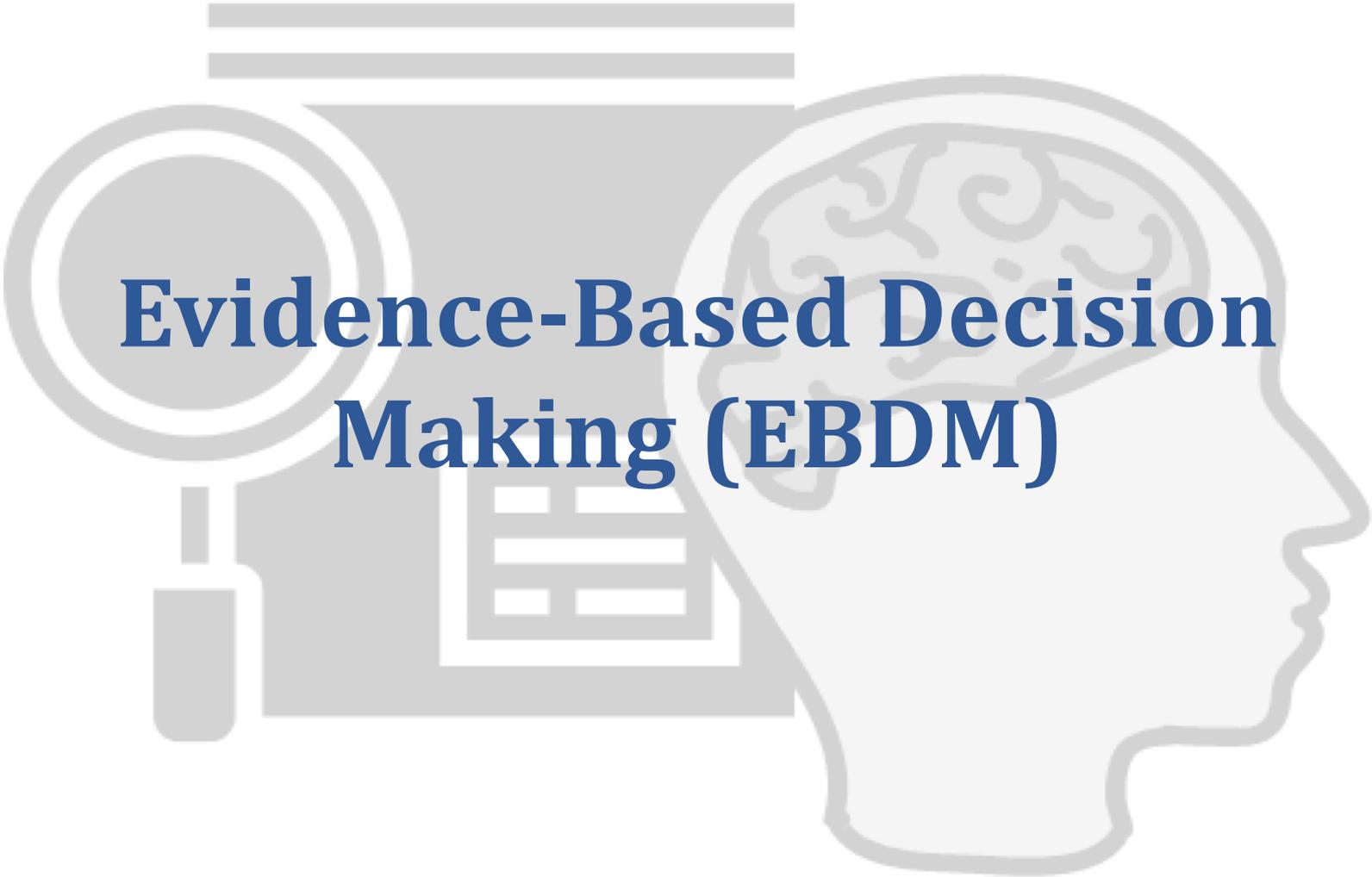


Presumption of Release in Wisconsin



**Release Decisions Must be
INDIVIDUALIZED**

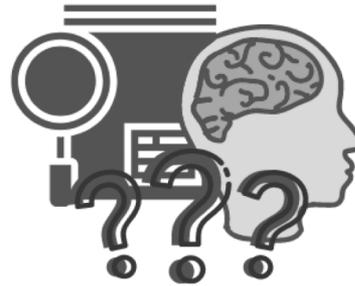




Evidence-Based Decision Making (EBDM)



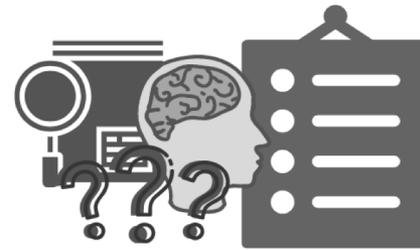
Why EBDM?



- Growing body of evidence that can (and does) inform justice system agencies' performance and increase effectiveness.
- Historically, there have been demonstrations of successful approaches/changes within **individual** operating agencies around the country, **not system wide**.
- A primary perceived barrier is the lack of system collaboration around a common set of outcomes and principles.
- EBDM is a systemic approach that uses research to inform decisions at all levels (*EBDM Framework*).



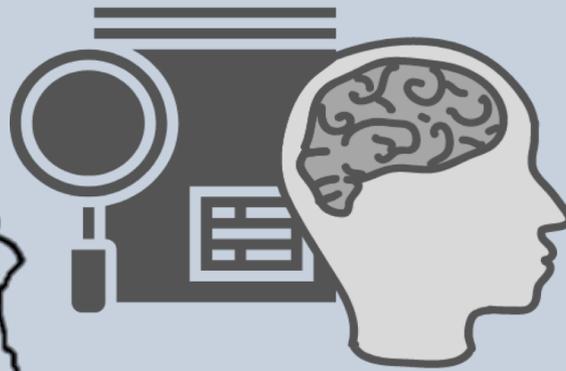
EBDM Principles



- **EBDM Principle 1:** The professional judgment of criminal justice system decision makers is enhanced when informed by evidence-based knowledge.
- **EBDM Principle 2:** Every interaction within the criminal justice system offers an opportunity to contribute to harm reduction.
- **EBDM Principle 3:** Systems achieve better outcomes when they operate collaboratively.
- **EBDM Principle 4:** The criminal justice system will continually learn and improve when professionals make decisions based on the collection, analysis, and use of data and information.



EBDM in Wisconsin



Phase I-III: Overview of Local Level EBDM 2008-2013

Phase I

Framework Development
May 2008-March 2010

Phase II

Planning Process
June 2010-August 2011

Phase III

Implementation
August 2011-Dec 2013

- NIC began its sponsorship of the *Evidence-Based Decision Making in Local Criminal Justice Systems* (EBDM) initiative in May 2008
- In Phase I, NIC built the EBDM “Framework”
- In August of 2010, NIC selected, on a competitive basis, seven local jurisdictions from across the country (*including Eau Claire and Milwaukee*) to participate in Phase II
- The same seven sites continued on to the Implementation Phase (Phase III)



Phase IV-VI: Overview of Statewide EBDM to Date

Phase IV

Preparation for Expansion
Sep 2013 – Dec 2014

Phase V

Planning Process
Mar 2015 – July 2016

Phase VI

Implementation
Began Nov 1 2016

- Participate in a process designed to prepare teams within the state for the EBDM planning phase
- Engage in EBDM planning (V) and implementation (VI) activities at state level and in multiple local jurisdictions
- Currently moving forward on additional technical assistance starting fall 2018
- More than 40 additional counties have expressed an interest in becoming involved with EBDM



Why Pretrial?



Pretrial Pilot Program



- Guided by:
 - Evidence-Based Decision Making (EBDM) principles
 - National Institute of Correction’s (NIC) *A Framework for Pretrial Justice Essential Elements of a Pretrial System and Agency*.
 - NIC’s *Measuring What Matters*
 - National Association of Pretrial Services Agencies (NAPSA) *Standards on Pretrial Release*



Pretrial Pilot Program Mission

Develop and implement policies and operational procedures which follow legal and evidence-based practices in pretrial release and detention, to support the goals of **maximizing public safety, maximizing court appearance, and maximizing release.**



What is Pretrial Success?

Pretrial success occurs when a released defendant appears in court and does not engage in new criminal activity during the pretrial period.

Pretrial success rates are better than often assumed.





What is Risk?

- In context of pretrial, risk is connected to a person's likelihood, during the pretrial period, of:
 - Not appearing for court
 - Being arrested on a new criminal offense
- Different from long-term, criminogenic risk.



Public Safety Assessment (PSA)

- **The PSA is an actuarial pretrial assessment—** it uses research-based factors to predict pretrial success or failure.
- These factors are characteristics (such as a prior conviction) that, when present, indicate an increased likelihood of pretrial failure.
- Pretrial assessment results, along with other information, can help inform pretrial decisions.



PSA Development

- Preliminary research indicated the following:
 - Criminal history factors are the strongest predictors of pretrial failure.
 - Community ties and stability factors do not improve predictability.
- The PSA was developed using 750,000 cases from seven state court systems (CO, CT, FL, KY, ME, OH, and VA), the federal pretrial system, and Washington, D.C.
- Researchers tested hundreds of correlations among potential factors and pretrial outcomes.



What makes the PSA unique?

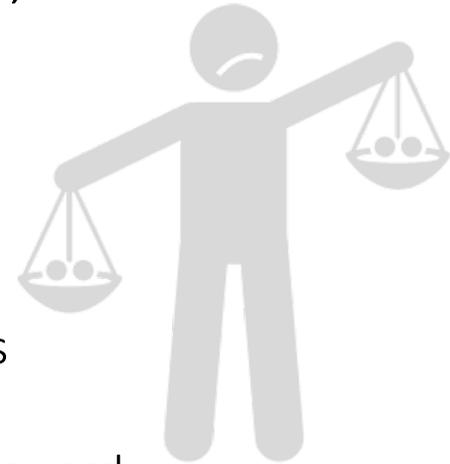
Arnold Ventures sought to develop a pretrial assessment that would:

- Predict the likelihood of **failure to appear** and **new criminal arrest separately**.
- Predict the likelihood of **new violent criminal arrest**.
- Assess factors that **did not depend on interviews**.
- Improve overall predictive accuracy.
- Be applicable anywhere in the United States
- Be available without cost.



Use of Risk Assessment and Bias

- On-going discussion about relationship between risk assessment and bias
 - Some concern that risk assessment tools can add to issues of disparity
 - However, the alternative of no tool has not alleviated the issue
- Goal is to utilize tools that have demonstrated fewer differences (are more neutral) in terms of race/ethnicity, gender, and socioeconomic status
- Use of static factors can be an improvement
 - Removes factors such as where someone lives
 - But still impacted by systemic factors
- Highlights the continued need for:
 - Judicial discretion in the decision making process
 - On-going research and evaluation in this area
 - Critical look at the impact of these tools going forward



PSA Example



Eau Claire County Pretrial Report

721 Oxford Ave. Eau Claire, WI 54703

Assessment Date: 9/15/2020

Screened By: James Deziel



NAME: [REDACTED] **DOB:** 3/11/1972
Address: [REDACTED] **Veteran Status:** No Entry **Gender:** Female
Identifies As: No Entry

ARREST SUMMARY

Current Charge(s)	Booking Date: 9/12/2020	Case Filing Date: 9/15/2020	Charge Count	Severity
946.49 Bail Jumping			1	Misdemeanor
941.20(1)(a)			1	Misdemeanor
961.41 (3g)(g) Possession of Metham			1	Felony
961.573 Possession of Drug Paraphem			1	Misdemeanor
FELON IN POSSESSION OF FIREARM 941.29(1m)			1	Felony

PSA (PUBLIC SAFETY ASSESSMENT)

PSA Completion Date: 9/15/2020

Response	Response
1. Age at current arrest:	48
2. Current violent offense:	No
2a. Current violent offense and 20 years old or younger	No
3. Pending charges at time of offense:	Yes
4. Prior misdemeanor conviction:	Yes
5. Prior felony conviction:	Yes
5a. Prior conviction:	Yes
6. Prior violent conviction:	0
7. Prior failure to appear pretrial in last two years:	2+
8. Prior failure to appear pretrial older than two years:	No
9. Prior sentence to incarceration:	Yes

FTA Score: 5
(Failure to Appear)

NCA Score: 6
(New Criminal Activity)

NVCA Flag: No
(New Violent Criminal Activity)

Based on the Release Conditions Matrix, the defendant's recommended monitor level is:

Level 4

SUGGESTED TERMS AND CONDITIONS

Level 4 Suggested Conditions

- Yes **Court Reminders**
- Weekly **Face-to-Face Contact:**
- No **Alternative Contact:**
- Yes **Criminal History Checks:**

	NCA 1 (80%)	NCA 2 (81%)	NCA 3 (77%)	NCA 4 (70%)	NCA 5 (52%)	NCA 6 (42%)
FTA 1 (90%)	Level 1	Level 1				
FTA 2 (85%)	Level 1	Level 1	Level 1	Level 2	Level 4	
FTA 3 (89%)		Level 1	Level 1	Level 2	Level 4	Level 4
FTA 4 (89%)		Level 1	Level 2	Level 3	Level 4	Level 4
FTA 5 (85%)		Level 1	Level 2	Level 3	Level 4	Level 4
FTA 6 (89%)				Level 3	Level 4	Level 4



Did you know that...

- Most pretrial defendants present low to moderate risk of pretrial failure
 - Majority of defendants show up to court and are not arrested during the pretrial period
- Based on risk principle, should match supervision to risk level
 - Intervention should match risk
 - Poor matching of supervision levels to risk levels may increase pretrial failure rates



Future

- Data Collection
- Time to look at Performance Outcomes and Measures
- Local validation
- Support



PSA Validation



- Researchers validated the PSA with data from more than 500,000 new cases:
 - Data came from localities in the U.S. Northeast, Southwest, and Midwest.
- Results confirmed the predictive value of the nine factors and the weighting of each factor.



Pretrial Pilot Program

Along with implementing the PSA, Pretrial Pilot counties are helping create tools and processes that can be replicated in other Wisconsin counties. The Pretrial Pilot counties have generated guiding documents to assist other counties implement the PSA and to ensure it is implemented the same way.



PSA Support



The Pretrial Pilots along with their technical assistance provider are completing final review of documents to be used in other Wisconsin counties rolling out the PSA. Upon approval by the statewide Criminal Justice Coordinating Council (CJCC), these documents will be published on the Wisconsin Department of Justice CJCC website.



Brief Legislative Update



Criminal Justice reforms, including pretrial reform related legislation previously have been proposed. However, the Constitutional Amendment related to bail reform failed to pass. That Amendment would have led to the increased use of cash bail, which is contrary to bail reform efforts nationwide. The Assembly and State Senate are scheduled to reconvene in January 2021.



Recap

- Basics of Pretrial Justice
- Legal and Evidence-Based Decision Making
- EBDM in Wisconsin
- Pretrial Pilot Program
- Future



Additional Resources

- National Institute of Corrections (NIC)
- National Association of Pretrial Services Agencies (NAPSA)
- Advancing Pretrial Policy and Research (APPR)
- Arnold Ventures



