

INTRODUCTION TO THE EVIDENCE-BASED JUDICIAL DECISION MAKING CURRICULUM

The National Center for State Courts (NCSC) first developed an Evidence-Based Sentencing (EBS) curriculum for felony defendants in 2007 when the Conference of Chief Justices (CCJ) called for the adoption of state sentencing and corrections policies based on “evidence-based practices” (EBP), the best research evidence of practices shown to be effective in reducing recidivism.¹ The original EBS curriculum incorporated Risk, Needs, Responsivity (RNR) principles of recidivism reduction into felony sentencing practices, sentencing practices affecting defendants facing potential state prison sentences. The curriculum evolved over the succeeding ten years to incorporate new research and address new issues. In one form or another, however, the NCSC’s original EBS curriculum has been presented to judges and other state criminal justice stakeholders in over 30 states, often on multiple occasions.

Over the past decade there have been requests that the NCSC develop a similar curriculum regarding pretrial and sentencing practices affecting defendants facing potential local jail sentences. Although a great deal of professional, academic, and public attention has focused over the past ten years on the use of EBP in the supervision, treatment, and sentencing of defendants facing state prison sentences, most criminal cases in the U.S. are in fact misdemeanor cases, in which the maximum potential penalty is typically up to one year in a local jail, or lower-level felony cases in which any term of incarceration is served in a local jail not a prison.

Development of this Evidence-Based Judicial Decision Making curriculum has been supported with funding from the MacArthur Foundation Safety and Justice Challenge (SJC). The SJC supports efforts across the country to safely reduce jail populations. Nearly 75% of jailed persons, whether detained pending trial or sentenced, are incarcerated on non-violent offenses. Thirty-eight percent of jailed persons are serving a sentence (i.e., not detained pretrial) and are convicted of a misdemeanor offense, such as Driving Under the Influence (DUI) or Domestic Violence (DV),² or a lower-level felony offense.³ Jails also often serve as “warehouses for people with mental health and substance abuse issues.”⁴ Almost 15% of men and over 30% of women admitted to jails have serious mental illness (SMI).⁵ Sixty percent of Americans favor rehabilitation or treatment over punishment or incapacitation for non-violent offenders, and 71% favor rehabilitation or treatment for those suffering from mental illness.⁶

The underlying RNR principles of effective corrections interventions, and supporting research, are not dependent on



the nature of the specific criminal offenses involved. But the application of RNR principles to pretrial and sentencing decisions affecting defendants charged with a misdemeanor or lower-level felony offense are often quite different and even more challenging than the application to defendants facing a state prison sentence. This is true for many reasons.

First, there are many more such defendants. The NCSC estimates that almost 18 million criminal cases were filed in U.S. state courts in 2016. Over 13 million of those cases, more than 75%, were misdemeanor filings alone. The sheer numbers of misdemeanor and lower-level felony defendants present a challenge to the courts in seeking to tailor appropriate sanctions and services to individual defendants.

Second, a fundamental principle of sentencing is that “the punishment should fit the crime,” i.e., that the severity of punishment should be proportionate to the seriousness of the crime committed. It is for that reason that state prison is not a sentencing option for a misdemeanor or lower-level felony offense. The maximum punishment proportionate to the seriousness of most misdemeanor crimes is probably a few days, weeks, or months in jail, and/or six months or a year on probation. Maximum punishment for a lower-level felony offense is often 12 months in jail. Therefore, the court’s forms of “leverage” to facilitate behavioral change on the part of a typical misdemeanor defendant, or lower-level felony defendant, whether in the form of monitoring, supervision, incentives, sanctions, or services, are quite different than the leverage available in supervising a felony defendant facing potentially years in prison. Less intensive, shorter, and lower dosage interventions must be designed and put into effect more quickly.

Third, corrections, supervision, and treatment resources for defendants convicted of lower-level crimes are more often locally and poorly funded, or even non-existent, compared to the resources available for persons convicted of felony offenses warranting potential prison sentences.

And, fourth, courts and corrections agencies typically have less information about misdemeanor and lower-level felony defendants and are less likely, for example, to have the benefit of comprehensive assessments and presentence reports in

attempting to craft an effective disposition.

Recognizing these distinctive features of the sentencing and corrections resources available to misdemeanor and lower-level felony defendants, this Evidence-Based Judicial Decision Making curriculum first reviews the underlying RNR principles of effective corrections interventions, and supporting research, and then applies those principles and that research to address the special needs of persons with mental and/or substance use disorders, and those charged with DUI and DV offenses who are frequently subject to local jail sentences.

In addition to this Introduction, the curriculum resources include:

- PowerPoint slides and notes pages for the Courts and Jails: Evidence-Based Judicial Decision Making curriculum;
- Companion briefs:
 1. Effective Court Responses to Persons Charged with Driving Under the Influence (DUI)
 2. Effective Court Responses to Persons Charged with Domestic Violence Offenses
 3. Effective Court Responses to Persons with Mental Disorders
 4. Effective Court Responses to Persons with Substance Use Disorder

Each of these resources is available on the NCSC Courts and Jails webpage at <http://www.ncsc.org/Topics/Criminal/Courts-and-Jails/Safety-and-Justice-Challenge.aspx>.

SUMMARY

1. This EBS curriculum for those charged with misdemeanor and lower-level felony offenses first reviews and then applies RNR principles of EBP and other research to pretrial, diversion, and sentencing practices with respect to persons with mental and/or substance use disorders, and persons charged with DUI and DV offenses.
2. Jails often serve as “warehouses for people with mental health and substance abuse issues.” Almost 15% of men and over 30% of women admitted to jails have SMI, and most persons with SMI are arrested for minor offenses.
3. Nearly 75% of jailed persons are incarcerated on non-violent offenses, and 38% are convicted of a crime, typically a misdemeanor or lower-level felony offense. DUI cases are estimated to constitute over 20% of all misdemeanor filings, and DV cases to constitute over 8% of misdemeanor filings.
4. Application of RNR principles to pretrial and sentencing decisions affecting persons charged with misdemeanor or lower-level felony offenses is often quite different and even more challenging than application to felony defendants: higher volume, less leverage, fewer resources, and less offender information.

ACKNOWLEDGEMENTS

The curriculum and accompanying resources were created with support from the John D. and Catherine T. MacArthur Foundation as part of the Safety and Justice Challenge, which seeks to reduce over-incarceration by changing the way America thinks about and uses jails. The Safety and Justice Challenge supports a network of competitively selected local jurisdictions committed to identifying and addressing local drivers of over-incarceration to improve the justice system as a whole. More information is available at www.SafetyandJusticeChallenge.org.

The curriculum and accompanying resources were authored by Judge Roger K. Warren (Ret.) in collaboration with Dr. Pamela Casey, Dr. Jennifer Elek, Ms. Susan Keilitz, and Ms. Sara Ward-Cassady as part of the National Center for State Courts’ work on the Safety and Justice Challenge. Points of view or opinions expressed in the curriculum and companion briefs are those of the authors and do not necessarily represent the official position of the MacArthur Foundation or the National Center for State Courts.



Supported by the John D. and Catherine T. MacArthur Foundation



ENDNOTES

1. Conference of Chief Justices & Conference of State Court Administrators. (2007, August). Resolution 12: In support of sentencing practices that promote public safety and reduce recidivism. Williamsburg, VA: National Center for State Courts. Retrieved from <https://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/08012007-Support-Sentencing-Public-Safety-Reduce-Recidivism.ashx>.
2. DUI cases are estimated by the NCSC to constitute over 20% of all misdemeanor filings. Similarly, DV cases are estimated to constitute over 8% of misdemeanor filings. Data provided by the National Center for State Courts' Court Statistics Project in May 2017. For more information on the Court Statistics Project, see <http://www.courtstatistics.org/>.
3. See Safety and Justice Challenge website at <http://www.safetyandjusticechallenge.org/>.
4. See Safety and Justice Challenge, About Jails webpage at <http://www.safetyandjusticechallenge.org/about-jails/>.
5. See Safety and Justice Challenge website at <http://www.safetyandjusticechallenge.org/>.
6. Ibid.