

Pretrial Services Legal & Evidence Based Practice (LEBP)



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Evidence-Based Practice

- The term **evidence-based practice (EBP)** is widely used in numerous fields including medicine, social services, education, and other fields – including criminal justice
- EBP is used to describe the adoption of interventions and practices that are informed by research
- Evidenced based approaches are not new

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Evidence-Based Practice

- NIC presents **A** definition of EBP:
 - *"Progressive organizational use of direct, current scientific evidence to guide and inform efficient and effective correctional services."*

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Evidence-Based Practice

- NIC and CJJ developed a suggested model for Evidence-Based Practice & Policy for community corrections and identified eight principles of effective intervention¹

¹Implementing Evidence-Based Practice in Community Corrections: The Principles of Effective Intervention (Crime and Justice Institute, 2004)

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Evidence-Based Practice

- Practices and policies are considered effective when they reduce offender risk and subsequent recidivism
- Research indicates that certain programs and intervention strategies, when applied to a variety of offender populations, reliably produce sustained reductions in recidivism

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The Integrated Model



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8 Principles of Effective Intervention

1. Assess Actuarial Risk/Needs
2. Enhance Intrinsic Motivation
3. Target Interventions – risk, need, responsivity, dosage, treatment
4. Skill Train with Directed Practice - use cognitive behavioral treatment methods
5. Increase Positive Reinforcement
6. Engage Ongoing Support in Natural Communities
7. Measure Relevant Processes/Practices
8. Provide Measurement Feedback

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Pretrial Services

- There are 3 primary distinctions between Pretrial Services & Community Corrections
 1. Pretrial Services practices must be consistent with the pretrial legal foundation – the framework within which Pretrial Services programs must operate
 - Six critical principles that serve as the legal foundation
 - There are other legal protections not included for the purposes of guiding programs

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Pretrial Services

- Pretrial Legal Foundation
 - Presumption of Innocence
 - Right to Counsel
 - Right Against Self-incrimination
 - Right to Due Process of Law
 - Right to Equal Protection Under the Law
 - Right to Bail that is Not Excessive
 - Presumption of release on least restrictive terms and conditions with an emphasis on non-monetary terms

“In our society liberty is the norm and detention prior to trial or without trial the carefully limited exception” (U.S. v. Salerno, 1987)

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Pretrial Services

- There are 3 primary distinctions between Pretrial Services & Community Corrections
 2. The legal status of the person [pretrial defendant vs. convicted offender]

“The rationales of rehabilitation and punishment often applied to convicted persons are inappropriate and inapplicable to pretrial defendants” (U.S. v. Cramer - U.S. Court of Appeals 5th Circuit, 1971)

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Pretrial Services

- There are 3 primary distinctions between Pretrial Services & Community Corrections
 3. The intended outcomes of the programs are different [court appearance and community safety pending trial vs. reduce recidivism]

“The post-conviction field seeks to impact long-term criminal behavior while the pretrial field is limited to impacting criminal behavior and court appearance solely during the pretrial stage” (VanNostrand, 2007)

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Legal & Evidence Based Practice

Pretrial Services Legal and Evidence Based Practice (LEBP) –

interventions and practices that are consistent with the pretrial legal foundation, applicable laws, and methods research have proven to be effective in decreasing failures to appear in court and danger to the community during the pretrial stage

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Legal & Evidence Based Practice

Pretrial Services Legal and Evidence Based Practice (LEBP) –

The term is intended to reinforce the uniqueness of the field of pretrial services and ensure that criminal justice professionals remain mindful that program practices are often driven by law and when driven by research, they must be consistent with the pretrial legal foundation

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Pretrial Services LEBP

- Pretrial Services Legal and Evidence Based Practice is a developing approach
- NIC and CJI are in the process of publishing a document about Pretrial Services LEBP and a review and consideration of the applicability of the 8 principles of effective intervention identified for community corrections to the pretrial services field.²

²Legal and Evidence Based Practices: Application of Legal Principles, Laws, and Research to the Field of Pretrial Services (Crime and Justice Institute, 2007 – publication pending release)

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Pretrial Services LEBP

- Pretrial Services LEBP relate primarily to
 - Risk Assessment
 - Bail Recommendation
 - Supervision
- Review and consideration of the applicability of the 8 principles of effective intervention identified for community corrections to the pretrial services field

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Pretrial Services LEBP

Risk Assessment

- Purpose – identify the likelihood of failure to appear and danger to the community posed by a defendant during the pretrial stage
- Common research based predictors
 - Current charge(s)
 - Outstanding warrants at arrest
 - Pending charges at arrest
 - Active community supervision at time of arrest
 - History of criminal convictions
 - History of failure to appear
 - History of violence
 - Residence stability
 - Community ties
 - History of substance abuse

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Pretrial Services LEBP

Risk Assessment

- **A pretrial risk assessment instrument should be proven through research to predict pretrial failure [risk of failure to appear and danger to the community pending trial]** – A pretrial risk assessment instrument should be validated to ensure it is an accurate predictor of pretrial failure in the community or communities in which it is being applied.

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Pretrial Services LEBP

Risk Assessment

- **The instrument should equitably classify defendants regardless of their race, ethnicity, gender, or financial status** –An instrument may accurately predict pretrial risk generally, but may also over-classify defendants of a particular race or socioeconomic status. Over-classification involves the classification of a group of defendants into higher risk levels than the actual risk level of the group. The result of such over-classification is the unequal and unfair treatment of certain defendants; frequently minorities and the poor.

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Pretrial Services LEBP

Risk Assessment

- **Factors utilized in the instrument should be limited to those that are related either to risk of failure to appear or danger to the community pending trial** –Factors that are often considered for post-conviction offenders, such as those related solely to recidivism or criminogenic needs, which do not demonstrate a relationship to predicting pretrial risk should be excluded from pretrial risk assessment instruments.

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Pretrial Services LEBP

Risk Assessment – status

- Several county/city specific and one state study conducted over past 30 years
- No “off the shelf” instrument that meets the criteria listed previously
- Significantly more research needed
 - The nature and severity of the danger to the community being assessed
 - Potential portability of an instrument

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Pretrial Services LEBP

Pretrial Risk Assessment contrasted with 2 related principles of effective intervention

- Principle One: Assess actuarial risk/needs
Programs are encouraged to develop and maintain a complete system of ongoing offender risk screening/triage and needs assessments. Screening and assessment tools that focus on dynamic and static risk factors, profile criminogenic needs, and have been validated on similar populations are preferred.

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Pretrial Services LEBP

- Similarity – encouraged to utilize actuarial risk assessment instruments which have been validated on similar populations
- Distinctions – intended outcome of instruments and limitation of instrument factors to those that are related either to risk of failure to appear or danger to the community pending trial

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Pretrial Services LEBP

- Principle Three: Target Interventions
 - Risk Principle: Prioritize supervision and treatment resources for higher risk offenders.
 - Need Principle: Target interventions to criminogenic needs
 - Responsivity Principle: Be responsive to temperament, learning style, motivation, culture, and gender when assigning programs.
 - Dosage: Structure 40-70% of high-risk offenders' time for 3-9 months.
 - Treatment: Integrate treatment into the full sentence/sanction requirements.

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Pretrial Services LEBP

- Risk Principle: Prioritize supervision and treatment resources for higher risk offenders
 - Target offenders with higher probability of recidivism
 - Provide most intensive treatment to higher risk offenders
 - Intensive treatment for lower risk offenders can increase recidivism
- Appears consistent with pretrial services

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Pretrial Services LEBP

- **Need Principle:** Target interventions to criminogenic needs
 - “Big 6”
 - Anti-Social Values
 - Criminal Peers
 - Low Self-Control
 - Dysfunctional Family Ties
 - Substance Abuse
 - Criminal Personality

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Pretrial Services LEBP

- Recommended modifications for pretrial services due to the pretrial legal foundation
 - Conditions of bail, including supervision and treatment, must relate to the risk of pretrial failure. Criminogenic needs should be targeted only when they are related to pretrial failure.

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Pretrial Services LEBP

- **Responsivity Principle:** Be responsive to temperament, learning style, motivation, culture, and gender when assigning programs.
 - Appears consistent with pretrial services
- **Dosage:** Structure 40-70% of high-risk offenders' time for 3-9 months & **Treatment:** Integrate treatment into the full sentence/sanction requirements.
 - Treatment should be required and a defendant's time structured based on the specific risk posed and be the least restrictive reasonably calculated to assure court appearance and community safety pending trial.

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