

EBDM Decision Point: Plea Negotiations

Why this Decision Point is Important:

- Negotiations offer an opportunity to fairly resolve cases by the two parties most knowledgeable about the facts and circumstances surrounding the case, and are ratified by a judge as a neutral third party.
- Negotiations are used to expedite fair and equitable conclusions to the criminal justice process, which can be of benefit to the defendant, the victim, witnesses, the community, and to the justice system.
- Negotiations are critical to managing the workload of the courts, the district attorney's office, as well as the public defender's service. Without these more expeditious and less resource-intensive methods for case processing, the justice system would be unable to effectively manage the volume of cases flowing through the court system and devote resources to the highest risk individuals.

What Should Happen at this Decision Point:

1. The uniform application of the law results in fair and equitable outcomes for all persons regardless of race, religion, or socio-economic status.
2. Defendants have as much information as needed to make informed decisions around accepting/rejecting plea offers.
3. Defense attorneys effectively prepare clients to understand the plea process and the terms and consequences of their particular offer.
4. Victim input is sought and earnestly considered.
5. The District Attorney and the defense have the information necessary to make evidence-based plea decisions.
6. Harm reduction principles apply, to include victims, defendants, and the community.
7. Defense and prosecution have "right-sized" workloads that provide for effective decision making regarding pleas.
8. Mentorship and guidance is provided to lawyers around effective and evidence-based plea negotiation practices.

Selected Research:

- Diversion of non-violent drug offenders into substance abuse treatment as opposed to incarceration produces long-term cost savings. *Primary Citation:* Anglin, Nosyk, Jaffe, Urada, & Evans (2013)
- Drug court participants should be selected based on risk level (i.e., the risk principle holds in drug court settings; drug court is most effective with high risk individuals). *Primary Citation:* Marlowe et al. (2006)
- Drug courts should consider adopting a pre-plea or post-plea model, providing offenders with incentives for completion, and using cognitive behavioral techniques. *Primary Citation:* Wilson, Mitchell, & MacKenzie (2006)
- Intermediate sanctions [options between probation and incarceration] should be utilized with recognition of both their ability to achieve certain outcomes and their limitations, such as accountability as opposed to risk reduction. Careful controls should be put in place when implementing intermediate sanctions to avoid unintended net widening. *Primary Citation:* Gendreau, Goggin, Cullen, & Andrews (2001)
- Sanctions on their own do not change offender behavior or reduce recidivism. More severe sanctions (i.e., longer prison sentences) may increase recidivism. *Primary Citation:* Smith, Goggin, & Gendreau (2002); Gendreau & Goggin (1996)
- Stringent supervision conditions tend to produce more technical violations and more incarceration and do not reduce recidivism by themselves. *Primary Citation:* Petersilia & Turner (1993)

Resources:

Further resources on the topic

