



Let's examine these concepts a little closer

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# What About Probation

No legal counsel

Not a party

Must present evidence and recs.

Adversarial Environment

PROBATION

COURT OFFICE

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# Must be frustrating

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# What did we mean by "Immutable Roles?" Let's examine ...

Bench

DA

PD

Probation

ADM. OF THE COURTS

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## Judicial Officer Constraints

- Bound by Facts**
  - Cannot present evidence
  - Must weigh credibility
- Bound by Law**
  - Can only order that which the law allows
  - Evidence must be sufficient to meet burden of proof
- Blank Canvas**
  - Every case is new
  - Garbage in garbage out?

ADMINISTRATIVE OFFICE OF THE COURTS

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## Prosecutorial Duties: Juvenile

- Justice
  - Community Protection
  - System Gatekeeper
  - Offender Accountability and Rehabilitation
  - Ensure sufficient evidence
  - Anticipate defense challenges

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## Defense Counsel Must Always Defend

- Client Wishes Above All Else
- Legal Obligation to Defend
- Not a Child Advocate, except ...

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## In the setting of a confidential communication

(p.s. And if you're not a defense attorney, you'll never see this happen)



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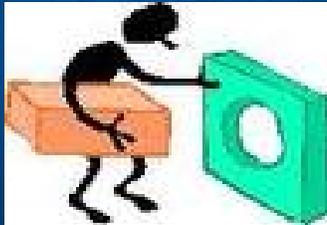
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## So: how do Courts come across EBP?



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## It Depends

But let's see how this plays out

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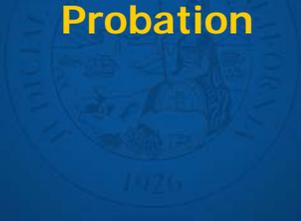
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## Evidence in Delinquency Court Starts with Probation



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## Probation Officers Are Experts

- Information Gathering
- Assessment
- Protecting public safety
- Rehabilitating Minors



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## Probation uses evidence-based tools:



Efficacy of the EBP Tools



Skill/integrity of the Probation Officer



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### Probation not the only source of information:

Defense Counsel's confidential communications with client

Prosecutor's communication with victims

Someone's independent investigation

Other collateral sources

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### Info Gathering is a Concurrent Process:

Prosecutor's Information

Probation's EBP-based information

Defense Counsel's Information

The Stage is Set

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### So What Happens Next?

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## Before we even go on the record:

Probation Shows Their Cards

- Report and recommendations come out
- All parties review

Parties form positions/strategies

- If no additional evidence needed, parties proceed
- If additional evidence needed:
  - Contested or uncontested evidence?
  - **Are info/rec's in report contested?**



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## On the Record

- Discussion
- Arguments
- Decisions



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## Of all possible scenarios, in only one could a probation-used EBP tool take center stage:

- Info/rec's in report are contested AND additional evidence needed
- And that's not most cases

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## But let's go there anyway

Testing EBP in the Courts

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### Contesting party will challenge:



Efficacy of the EBP Tools



Skill/integrity of the Probation Officer

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### Why?

- Remember the immutable roles?
- Remember the adversarial system?

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## Typical Challenges to EBP Tools:

- Is the tool designed to assess relevant factors?
- Has the instrument been validated (How reliable is this)?
- Has the tool been tested to our demographic?

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## Typical Challenges to those who use the tools:

-  How were you trained to use this?
-  How many times have you used this?
-  What kind of supervision/quality control is there?

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## And of course ...

What were you thinking when you recommended [...] !?!

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### Tips for Probation Officers

**You are experts**

Attorneys must do their jobs	Judicial Officers must follow the law	Remember these truths: <ul style="list-style-type: none"><li>• Immutable roles</li><li>• Belief in the system</li></ul>
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### Tools and Roles Tested At Every Step of the Way



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### Now, a closer look at what we mean by EBP



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## Judicial Officers

- Navigate political minefield
- Juvenile Court opportunities
- Secondary Role in Courtroom
- Consensus
- Accept menu of services?



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## Judicial Officers

- Stakeholder influences: vary depending upon point in time
  - Rely heavily on probation at detention
  - Benchmark Guide: What will allow young person to thrive
  - Critical liaisons to service providers



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## Judicial Officers

- Important to have discussions off the bench with stakeholders
- DA can provide first look at minor through petition
- DPO is lifeline
- Key source of information
- Anchors the dispositional side



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## Judicial Officers

- Aware of PD's confidential relationship
- Aware that there's more to the story
- Dynamic nature of court process influences outcome



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## Judicial Officers

- Maintain respectful and civil tone
- Bring young lawyers along in collaborative process
- Important to distinguish conflict from advocacy



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## Judicial Officers

- Good advocacy essential
  - Must bring minor into the process
  - Conflict tends to come from others (statements contrary to rehabilitation)



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## Judicial Officers

- Don't always follow recommendations
  - First look at dynamic between minor and family
  - School challenges
  - Behavioral concerns



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## Judicial Officers – Detention Influences

- First look to parent engagement
- Assessment is one tool
- Additional information also influences



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## JO's: Detention Influences

- Wary of reports that speak in conclusions (“incurrable”)
- Looking for factual information
- Concerned with public protection



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## JO's: Family-Centered Services

- Treatment may seem distracting at first, but can create opportunities
  - Information sharing is key
  - Don't forget about ICWA



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## JO's: Family-Centered Services

- Have to match services with family needs
- Demystify the process (safely)
- Know your kids



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## JO's: Family-Centered Services

- Insure reunification is well-timed
- Family is primary, dynamic need
- "Parent Project" has had success



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## JO's: Family-Centered Services

- Serving the family serves the minor
- EBP says: Detention increases risk
  - Contaminates kids (after 48 hours)
  - Begin family work ASAP



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## JO's: Family-Centered Services

- Placement Cases: if you send them home the same family situation: expect the same results
- Ongoing dialogue with stakeholders can be beneficial
  - Compel parents to attend?



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## Judicial Officers

- Make eye contact with your families: they are resources
- Kids rise to the level of expectation
- Cases are not static



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## JO's

- DPO's are minor's "anchor" and the closest thing to a role model they have
- Wary of personalities
- Working with parents: art, not science



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## JO's

- Compelling parents:
  - Recognize where they are (may be beaten down)
  - Engage them in conversation
  - Take advantage of captive audience and technology
- Share challenges with



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## JO's

- Know one size does not fit all
- Wary of demographics and particular challenges
- Everyone responds to empathy
  - Cultural Competency



Demographic Competency

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## JO's

- Be consistent
- Demonstrate Integrity
- Tools and services must align
- Everyone can hit the re-set button: starts with the people they're directly engaged in



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## JO's

- Modeling is important
  - People will react to what you do, and may ignore what you say
  - Positive reinforcement
- Parentage: who get along with



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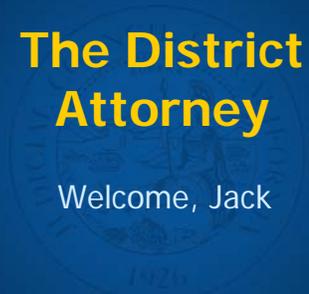
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## The District Attorney

Welcome, Jack



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## DA

- Probation handles the bulk of the work
- Different expectations in juvenile court
- Learning how to get along



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## DA

- Juvenile assignment not a sentence for DA's
- Important to meet with stakeholders
- Also short on resources



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## DA

- Politics has no bearing on whether DA issues a case
  - Shouldn't be ... ever
- Compare this with responsibilities to victims



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## DA

- Important for DA to do rotation in juvenile court
- Important for DA to engage in positive way and to view work as valuable



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## DA - Filing

- Cases come to us in two ways
  - Detained – what's the issue?
  - Non-detained – don't let cases linger
- Victim Statements



Proof

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## DA - Filing

- Will call probation
- Consider 654/602, etc.
- Always looking to get victim's input
  - Often sympathetic to minor



Manage expectations

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## DA: EBP

- If not mandated case: Probation can do assessment
- If DA has to see or Probation chooses to show DA: Dialogue will occur



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## DA: Charging Kids as Adults

- May be mandated
- If discretionary: Tremendous Scrutiny re: Decision



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## DA: Getting to the table

- EBP: Soft or smart on crime?
  - Account for victims?
  - Restorative Justice Programs can be successful
  - Must improve outcome
- Low risk, heinous crime: Balance



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### DA: Balance

- EBP is about kid not coming back
- Judicial system may demand accountability
  - Victims may just want to be heard: need to give them that chance



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### DA: Relationship with Probation

- Receive reports/rec's prior to hearing
- Won't discuss dispo in adjudication settlement hearings
- Typically satisfied with probation's rec's



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### DA: Relationship with Probation

- When Disagree:
  - Often it's minor who disagrees with recs, not DA
  - Can't have expectation, but good attorneys and PO's can anticipate



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## DA: EBP and Graduated Sanctions

- Research shows that “just locking them up” won’t aid rehabilitation
  - If anything, it’ll increase recidivism (contamination)
- Would want to start with least restrictive



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## DA

- Can be adversarial process
- System designed to be more holistic
- Balance due process with rehabilitation?



Speaks to roles and mandates

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## Defense Bar

Anything interesting here?

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## PD

- More than a “confinement broker”
- EBP is key to defense
  - What are child’s/family’s needs
  - Really works – client reduction



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## PD

- Thinking about risk from the first meeting
- Meetings are frequent, nauseating, but worthwhile
- Collaborative model can work most of the time



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## PD

- EBP cannot impact the innocent minor?
- “Justice Team” ... are they the ones out to screw our clients?



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## PD

- Will ALWAYS file appropriate motions and fight for clients
- Will talk to minor re: rec's
  - Many times no client resistance
  - Will not substitute attorney judgment for client's



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## PD: Devise a Plan

- Work with client
- Work with other stakeholders
- Always advocate using as much knowledge at your disposal as possible



Be the client's voice

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## PD: Think Big Picture

- Expressed vs. best interest
- Watch for table pounders; can't lose sight that we're talking about a kid
- Reconciling EBP and Adversarial System



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## PD

- Positive Reinforcement: 4 x 1
- EBP can impact filing



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## PD: Meet with Families

- Obtain client consent
- Can be potential witnesses
- Knowledge is power
  - Want to know what they'll say
  - Can "provide them info"



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## PD: Meet with families

- Client driven
- Tool for everyone
  - *PD Can leverage strengths identified from tools to get best results*
  - Contests over EBP when necessary



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## PD: Best Interest

- Kids love to talk
- Defining when and how to discuss "best interest" with client can be tricky
  - Presentation is key
  - Must be client's voice



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## PD

- Advocate 24/7
- Leverage: Take info given, work within construct of duty
- Like to hear what probation has to say



• Use info to formulate argument and position

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## PD

- Best result can come from honest conversation with DA
- Your credibility matters
- Often aligned with juvenile probation because they can be advocates for clients too.



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## PO

- Validated Risk Assessment Tools are helpful
- Look to accuracy of information



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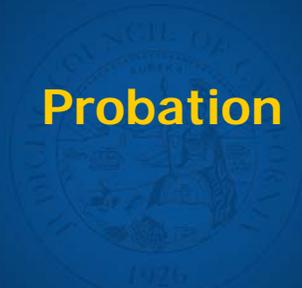
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## Probation



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## PO

- EBP is NOT EASY
  - Technical skills can be
  - Defining recidivism is problematic (many variables)
  - Work in progress



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## PO

- Skepticism is o.k.
  - Part of science, like EBP
- Cynicism can be dangerous



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## PO

- EBP not touchy-feely, it's tools proven to work
- Involving community partners work
- Importance of Research



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## PO: Utilizes Research

- Assist with resource allocation
- Directing to appropriate services



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## PO: Dealing with bench

- Helps when they're willing to learn
- PO must educate themselves about court process
  - Frustrating when courts don't adopt recommendations



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## PO: Bench

- Understand not personal, part of the game
- Trust that there's usually a good reason why court does what it does
- Convincing a judge when they might be doing too much



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## PO to Bench:

- Courts can trust PO to use discretion when ordered
- Once courtroom door closes: "Kid is mine"
- Goal for you not to see kid



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## PO: Court Process

- Importance of Meetings
- Sometimes right thing may not be legally appropriate



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## PO Goals

- What can we do with kid
  - Accountability
  - Culpability
- How can we keep him from coming back



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## PO

- Credibility is key
- Hardest working
- Relationships matter too
- Your name is on the report
  - Sometimes that's all they need to know



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## PO

- How adversarial is the adversary system?
  - Reasoned debate?
  - Enhances credibility
- Locking them up can impact recidivism (they're not out there committed crimes)



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## PO: Resource Issues

- Scant resources conflict with appropriate sentencing
- If the decisions are being made based upon budget shortfalls, it's NOT EBP



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## PO: Incentives & Sanctions

- Try to be consistent among minors and PO's
- Swift/certain sanctions are EBP
- Also look at what's going on in your camp/ranch/hall
- Hold programs accountable as well



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## PO

- Getting a lot thrown your way
  - Have to re-learn their job to incorporate EBP
  - Under the bus?



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## EBP: Incarceration/Disabled Children

- Evidence shows that locking kids up doesn't work most of the time
  - It's what we do with them when they're in that matters
  - Must address risks/needs



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## EBP: Incarceration/Disabled Children

- Disabled Children:
  - Responsivity Principal applies
  - Look at all factors to treat individual
  - No magic bullet



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## E-mail LaRon

- [Lhogghaught@assessments.com](mailto:Lhogghaught@assessments.com)
- Will provide research on all kinds of EBP-related topic



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## Actual EBP Tools PO's Use

- PACT Assessment Tool
- Motivational Interviewing
- Impacts who comes in
  - Caseload reduction
- Hall uses D-RAI



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## D-RAI

- Detention Risk Assessment Instrument
  - Uses Legal Criteria to assess detention risk
  - Looks at other criminogenic factors



Removes snarky

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## Motivational Interviewing

- Evolving practice: OARS
  - Open-ended
  - Affirmative comments
  - Reflective listening
  - Summarization



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## Services/Correctional Settings

- Another tool to help PO's to engage with minors
- Taught as Role Play Technique
  - Walks minors through potentially high-risk situations
- Gives homework: "Tell me how it worked out"



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## PACT Assessment Tool

- Measures static and dynamic factors
- Gives you low to high risk level
- Identifies top 3 criminogenic needs



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## Tools Cost Money

- Constantly looking to fund efforts re: EBP (like everything)
- Research can demonstrate cost savings or *reallocation*
- Sustainability on everyone's mind
- Collaboration can pool resources



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## Sustainability

- Skill sets and culture change can be passed down without cost
- Other things are less certain
- Occasionally, difficult times create opportunities



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## Low Risk Defined

- DEJ Kids: Some 790's actively supervised, others on low-risk case load
- Low-risk not supervised
- 790 doesn't necessarily mean low-risk



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**3483-062853**

STC Certification

Sign blue sheet when you turn  
in your evaluation on back table

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**Final Thoughts**

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**In Sum**

- Collaboration Creates New Opportunities
- EBP can generate positive changes



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## Let's begin the debate

- Sometimes the Court blows it all up
- Law is not void of direction for us in making difficult decisions
  - Find the basics in the law



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## Overriding Law

- WIC 202 – System Goals
  - (a) Favors family/keeping kids in home
  - (b) Focus on the minor: start from bottom and work up



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## Other system accountability

- Least restrictive alternatives
- Courts of Appeal scrutinize
- We're all responsible for rehabilitation
- No two cases are alike



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## Responsible for:

- Ensuring zealous representation
- But don't abandon notion of kids' best interest/system goals
  - EBP Plays role here



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## Losing Resources

- EBP Helps
  - Seen results
  - Have to
- Skepticism is healthy



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## Judicial Officers

- Will consider everything and make decisions accordingly



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