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Legislating Evidence-Based Policymaking

A look at state laws that support data-driven decision-making

Overview

Under increasing pressure to demonstrate effectiveness and do more with less, many governments are expanding their use of evidence-based programs—those shown in rigorous evaluations to be effective. Committing to such proven programs can help governments strengthen efficiency and accountability and achieve better outcomes for residents.

Legislators across the country have enacted laws that promote the use of evidence-based programs and practices. To examine this trend, the Pew-MacArthur Results First Initiative reviewed more than 100 state statutes passed between 2004 and 2014 and identified five different approaches to promoting data-driven program choices:

1. Require agencies to inventory and categorize funded programs by their evidence of effectiveness.
2. Provide incentives for the use of evidence- and research-based programs.
3. Restrict funding of programs shown to be ineffective.
4. Require the use of evidence- or research-based programs.
5. Dedicate funding to evidence- or research-based programs.

This brief examines several of these laws and looks at how state governments have used them to expand the use of evidence-based policymaking.

What Is Evidence-Based Policymaking?

Evidence-based policymaking uses the best available research and data on program results to inform government budget, policy, and management decisions. It focuses on what works—those programs that rigorous evaluations have shown to achieve positive outcomes. By using this approach, governments can:

- **Reduce wasteful spending.** Targeting funding based on evidence of effectiveness enables policymakers to identify and eliminate programs that have failed to deliver expected results, freeing dollars for other uses.
 - **Expand successful programs.** Comparing programs allows policymakers to direct funding to those that deliver the highest return on investment.
 - **Strengthen accountability.** Focusing on outcomes makes it easier to hold agencies, managers, and providers accountable for results.
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Types of laws that support evidence-based programs

Require agencies to inventory and categorize funded programs by their evidence of effectiveness

Governments often lack data on the programs they operate, limiting policymakers' ability to make informed budget decisions. For example, states typically do not have a comprehensive list of the programs that they fund or reliable information on the outcomes those programs produce. To fill this gap, some states have enacted legislation requiring agencies to create an inventory of funded programs and categorize them based on the extent to which they have been proved through rigorous research to be effective. For example:

- In 2012, the **Washington** legislature passed House Bill 2536 to strengthen its mental health, child welfare, and juvenile justice services.¹ The law requires the Department of Social and Health Services, the Washington State Institute for Public Policy, and the University of Washington Evidence-Based Practice Institute to establish criteria for three standards of program effectiveness—evidence-based, research-based, and promising practice²—and to compile a list of programs that meet these standards.³ As part of this process, Washington-based providers can nominate their own programs for consideration.⁴ The state's mental health, child welfare, and juvenile justice agencies are required to report on the extent to which their funded programs meet the evidence standards and to identify service gaps.

The state reports that this process has achieved several benefits. For example, the Department of Social and Health Services was able to identify the number of people served in evidence-based programs, the percentage of total funds directed to those programs, and the number of people who were eligible but did not receive services. In juvenile justice, the department identified eight programs operating throughout the state that met the evidence standards and determined that approximately 67 percent of treatment funds were being spent on those programs.⁵

- **Mississippi** passed H.B. 677 in 2014, establishing four categories for ranking programs—evidence-based, research-based, promising practices, and lacking evidence of effectiveness. It also mandates that the Legislative Budget Office and Joint Committee on Performance Evaluation and Expenditure Review work with the state's corrections, health, education, and transportation agencies to catalogue and categorize all funded programs based on these standards.⁶ The state reports that this mandate has helped shift the culture toward evidence-based policymaking.

Leaders in Mississippi noted the importance of the mandate providing clear definitions and standards for the evidence that will be used to categorize programs. These criteria help make the inventory process transparent, avoid confusion among providers, and create options for using the standards in the budget process.

“Legislative leadership was interested in reinvigorating evidence-based budgeting using cost-benefit analysis. ... [W]e selected four agencies whose budgets could really benefit from a clearer understanding of what programs they administer. We want the program inventory to become a performance management tool for agencies. Every program has to tie back to some state strategic goal and, if it doesn't, let's talk about the rationale for continuing it.”

— **Max Arinder**, executive director of the Mississippi Legislature's Joint Committee on Performance Evaluation and Expenditure Review

Provide incentives for the use of evidence- and research-based programs

Several states have used grants and other funding strategies to promote implementation of evidence-based programs. For example, Wisconsin, California, and Massachusetts have supported evidence-based interventions through the use of financial incentives:

- The **Wisconsin** Treatment Alternatives and Diversion (TAD) program, enacted in 2005, provides grants to counties to fund alternatives to prosecution and incarceration of nonviolent offenders with histories of alcohol and drug abuse.⁷ The grants are awarded to counties through a competitive process that requires recipients to provide services consistent with evidence-based practices. The program is funded through a combination of state and federal funds, with counties required to provide a 25 percent match. Between 2006 and 2014, 36 of the state's 72 counties and tribes received grants.⁸ A recent evaluation found that TAD programs helped reduce incarceration by 231,533 days across all participants and that 57 percent of participants had not been convicted of a new crime three years after being discharged from the program.⁹
- **California's** Community Corrections Performance Incentives Fund Act (Senate Bill 678) of 2009 encourages counties to reduce the number of offenders that county probation programs send to the state prison system. Counties that do so receive a portion of the savings generated by reductions in the state prison population and must reinvest those funds in evidence-based probation programs. Participating counties also must report outcome data quarterly and undergo annual assessments of program effectiveness.¹⁰

The program has saved a total of \$919.6 million since 2010, of which counties have received \$449.5 million in incentive funding to support local evidence-based programs.¹¹ A 2014 Judicial Council of California report to the Legislature noted that counties have expanded their use of evidence-based programs and practices, including risk and needs assessments, offender supervision, treatment programs, and more effective management strategies.¹² In addition to the substantial savings, the state has reduced probation failures by 23 percent while the overall state crime rate has remained below the 2008 baseline.
- In 2014, **Massachusetts** created a competitive grant program aimed at testing or expanding evidence-based, research-based, or promising practice approaches to reducing recidivism.¹³ To be eligible for funding, providers must inventory their current programs and classify each by evidence of its effectiveness, demonstrate efforts to support quality implementation and independent evaluation, and commit to increasing the number of

evidence-based programs they deliver. The state will use a customized cost-benefit model to evaluate the programs and ensure that those selected are implemented with fidelity to their original designs. The \$2.6 million program is funded by federal dollars provided through the Edward Byrne Memorial Justice Assistance Grant Program.

Restrict funding of programs shown to be ineffective

Legislators in some states have promoted accountability and reinforced the importance of evidence-based practice by restricting agencies and providers from implementing programs shown in rigorous research to be ineffective or harmful to target populations. Missouri and Ohio have enacted laws that apply such restrictions:

- The **Missouri** Legislature passed S.B. 17 in 2013, creating “Bryce’s Law” to provide scholarships for children with autism spectrum disorders, Down syndrome, Angelman syndrome, and cerebral palsy to attend qualified schools.¹⁴ In addition to utilizing specific evidence-based education principles, participating schools are prohibited from using any interventions listed as ineffective by the Missouri Autism Guidelines Initiative’s *Autism Spectrum Disorders: Guide to Evidence-Based Interventions*, which is grounded in the findings of six nationally recognized research reviews. The guide specifies that an intervention is ineffective when sufficient evidence finds that it did not yield the intended outcomes.¹⁵
- In 1993, **Ohio** enacted Ohio Revised Code Section 5139.43, creating the Reasoned and Equitable Community and Local Alternatives to the Incarceration of Minors (RECLAIM) program, which provides funding to counties to implement community-based alternatives for juvenile offenders, including those who would otherwise be committed to detention facilities.¹⁶ In addition to encouraging the use of evidence-based programs, the law was amended in 2007 to state that “moneys in the fund shall not be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective.” Independent evaluations of the program cite substantial savings (as much as \$45 for every \$1 invested) and reduced juvenile reoffending as major benefits.¹⁷

Require the use of evidence- or research-based programs

Some legislatures have mandated that certain state agencies implement only those programs that demonstrate at least a minimum standard of effectiveness. Although this approach is feasible only in policy areas that have a robust evidence base on what works, it increases the likelihood that public spending is limited to activities shown to produce positive outcomes. Michigan and Kentucky have passed legislation requiring specific agencies to implement evidence-based programs in key policy areas:

- In 2012, **Michigan** passed Act 291, requiring the state departments of Community Health, Human Services, and Education to allocate funding to those home visiting programs that have strong evidence of effectiveness.¹⁸ The law specifies that two categories of programs are eligible for funding: evidence-based programs—those that are supported by rigorous research and have clear designs and implementation standards—and promising programs. To be eligible for continued funding, promising programs are required to undergo an evaluation of their effectiveness. Because effective implementation plays a critical role in achieving expected outcomes, all programs are required to maintain fidelity with key elements of their designs.
- **Kentucky** passed the Public Safety and Offender Accountability Act in 2011, with the goal of helping control corrections costs. The law seeks to prioritize expensive prison beds for the highest-risk offenders and mandates the use of evidence-based programs for the supervision and treatment of pretrial defendants, inmates, probationers, and parolees.¹⁹ The act provides a definition of “evidence-based” and directs the Department of Corrections to create objective criteria for determining which programs meet the standard. It also phased in a

requirement for using evidence-based programs, with 75 percent of program funding expected to come from prison savings by 2016. In 2014, Kentucky passed a similar requirement for its juvenile justice system.²⁰

Since the law passed, the Department of Corrections has expanded its use of evidence-based programs and practices in prisons across Kentucky, investing \$13.9 million in fiscal 2012 in education and vocational training, substance abuse treatment, and sex offender treatment interventions that have proved effective.²¹

Dedicate funding to evidence- or research-based programs

Some states have required that specific percentages of appropriated funds be used for programs that meet defined standards of evidence. These mandates are typically phased in over several years to give agencies time to implement and expand evidence-based programs. For example, Oregon and Tennessee have passed laws dedicating funds for evidence-based programs:

- In 2003, **Oregon** passed S.B. 267, which requires five state agencies to gradually increase the amount of funding allocated to evidence-based drug and alcohol treatment, mental health treatment, adult recidivism prevention, and juvenile crime prevention programs.²² The agencies are required to report the percentage of their total budgets allocated to evidence-based programs every two years. To begin the process, the agencies received guidance from stakeholder groups on developing criteria to identify evidence-based programs. For example, the Oregon Youth Authority and Department of Corrections met with stakeholders to identify the interventions operating in the state that were subject to provisions of the 2003 law and then used the Correctional Program Checklist, a research-based assessment tool used to determine whether those programs included characteristics associated with reducing recidivism.

Beginning in the 2005-07 biennium, the five agencies were required to demonstrate that at least 25 percent of their funds were used to support evidence-based programs. That increased to 50 percent by the end of the 2007-09 biennium and 75 percent by the end of 2009-11. By 2012, all agencies reported that they had achieved these targets.²³

- **The Tennessee Legislature enacted Public Chapter 585 in 2007, requiring the Department of Children's Services (DCS) to restrict the use of state funds to evidence-based juvenile justice prevention and treatment programs.²⁴ The law requires the department to increase the percentage of funds allocated to evidence-based programs from 25 percent to 75 percent over five years.** To qualify for funding, programs must meet state-defined standards for evidence, which include requirements that they have implementation protocols or manuals that specify the nature, quality, and amount of services provided and that they demonstrate positive outcomes in at least two evaluations.

An advisory panel, consisting of the Tennessee Supreme Court's Administrative Office of the Courts, Tennessee Commission on Children and Youth, and provider representatives named by the DCS commissioner, identified the approaches and practices that met the evidence-based standard and should be used to evaluate programs operating in the state. The Peabody Research Institute at Vanderbilt University conducted an independent evaluation to determine the extent to which the state's juvenile justice programs, including those delivered by private provider organizations, were aligned with these proven approaches and practices and the percentage of funding supporting those programs.

Lead evaluator Mark Lipsey noted: "The way in which the legislation defined evidence was pivotal. Specifically, the law requires programs to include key elements proven by rigorous research to affect important outcomes; however, providers don't have to necessarily implement national model programs. This allowed locally developed programs where the interventions follow evidence-based design to be included."²⁵

In its most recent report, issued in October 2010, the evaluator noted that DCS “appeared to be on a trajectory” to meet the goal of 75 percent of funding supporting evidence-based programs by the end of fiscal 2012.²⁶

“The next phase of the work is to move beyond just identifying which programs are evidence-based to looking at how those programs are being implemented to ensure fidelity to design,” said Lipsey.

Key considerations

Legislators can play a critical role in expanding the use of evidence-based programs and helping their states achieve better outcomes for residents. When developing legislation that supports the implementation, funding, and oversight of evidence-based programs, policymakers may wish to consider several issues:

- **Create clear standards for evidence.** It is important to provide clear definitions and standards for programs and the evidence needed to qualify for each standard. These criteria make the inventory and categorization process transparent, avoid confusion among providers, and offer options for using standards in the budget process. Policymakers may consider using the definitions and categories adopted by other states or those used by national research clearinghouses.
- **Consider the available evidence base when choosing policy areas for legislation.** In many policy areas, such as adult criminal and juvenile justice and adult and child mental health, a significant body of research exists on the effectiveness of alternative programs. Focusing legislation on areas with a robust evidence base makes it easier to assess existing programs and identify evidence-based options.
- **Require monitoring and outcome reporting.** Research has shown that even the best programs will fail to deliver expected outcomes (and may even cause harm) if they are poorly managed. Legislators may wish to consider requiring agencies to monitor evidence-based programs for compliance with key elements of their implementation models. Policymakers can also mandate that agencies regularly measure and report data on program outcomes, recognizing that some results may take longer to achieve than others.

Although legislation is important, leaders can also use other tools to support evidence-based programs. For example, executive branch policymakers can incorporate specific language into budget guidance and issue executive orders or agency directives. Agency leaders also play an important role in creating monitoring systems to ensure that programs are implemented according to their research-based model and in tracking program outcomes to ensure they achieve expected results.

To learn more about these other approaches, Results First is undertaking a 50-state analysis of efforts to support evidence-based policymaking. The study will explore how states use laws, administrative rules, executive orders, appropriations, budget guidance, and other policies and practices across several policy areas to expand the use and quality of effective, evidence-based programs.

Appendix: Methodology

Results First researchers conducted a LexisNexis search for laws enacted between 2004 and 2014 using the following search terms: evidence-based policymaking (or policy making), evidence-based decision making, evidence-based program(s), evidence-based practice, research-based decision making, research-based practice, research-based program(s). Citations were returned for all state legislation containing one or more of these terms with an excerpt of the relevant line(s) containing the term(s). This preliminary list of laws was supplemented by additional laws identified through other Pew research.

The researchers then reviewed the laws for relevance to this project, identified those laws that exemplify the five legislative approaches profiled in this report, and conducted interviews with individuals familiar with the legislation, including officials from agencies affected by the law or researchers responsible for evaluating and reporting on the law's impact. Results First researchers did not conduct a comprehensive analysis of the extent to which these laws have affected the use of evidence-based programs. Further, although the laws were separated into five primary categories, many include aspects from multiple categories.

Endnotes

- 1 Washington Legislature, House Bill 2536, 2011–12 Regular Session, <http://apps.leg.wa.gov/documents/billdocs/2011-12/Pdf/Bills/House%20Passed%20Legislature/2536-S2.PL.pdf>.
- 2 State definitions for a promising practice vary. In general, it indicates that a program or intervention has not been rigorously evaluated but does have some evidence of effectiveness.
- 3 These categories are based on standards developed by the Washington State Institute for Public Policy. See Inventory of Evidence-Based, Research-Based, and Promising Practices for Prevention and Intervention Services for Children and Juveniles in the Child Welfare, Juvenile Justice, and Mental Health Systems (Sept. 30, 2012), http://www.wsipp.wa.gov/ReportFile/1332/Wsipp_Inventory-of-Evidence-Based-Research-Based-and-Promising-Practices_Full-Report.pdf. The Washington State Institute for Public Policy and the University of Washington recently updated the definitions of these categories. See Updated Inventory of Evidence-Based, Research-Based, and Promising Practices for Prevention and Intervention Services for Children and Juveniles in the Child Welfare, Juvenile Justice, and Mental Health Systems (September 2014), http://www.wsipp.wa.gov/ReportFile/1565/Wsipp_Updated-Inventory-of-Evidence-Based-Research-Based-and-Promising-Practices-for-Prevention-and-Intervention-Services-for-Children-and-Juveniles-in-Child-Welfare-Juvenile-Justice-and-Mental-Health-Systems_Report.pdf.
- 4 Providers submitted 65 programs for consideration, of which 26 (39 percent) were accepted as evidence-based; these included three that met the criteria for an evidence-based designation, two that met the criteria for research-based, and 21 that met the criteria for promising programs. The remaining 39 programs were rejected due to insufficient evidence of effectiveness. See Washington State Institute for Public Policy, Updated Inventory of Evidence-Based, Research-Based, and Promising Practices for Prevention and Intervention Services for Children and Juveniles in the Child Welfare, Juvenile Justice, and Mental Health Systems (Jan. 31, 2013), http://www.wsipp.wa.gov/ReportFile/1537/Wsipp_Updated-Inventory-of-Evidence-Based-Research-Based-and-Promising-Practices_Full-Report.pdf.
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- 9 Kit R. Van Stelle, Janae Goodrich, and Stephanie Kroll, *Treatment Alternatives and Diversion (TAD) Program: Participant Outcome Evaluation and Cost Benefit Report* (2007–2013) (July 2014), <http://uwphi.pophealth.wisc.edu/about/staff/van-stelle-kit/tad-2014-outcomes-report.pdf>.
- 10 California Legislature, Senate Bill 678, 2009 Regular Session, <http://www.courts.ca.gov/documents/sb678.pdf>.
- 11 Pew-MacArthur Results First Initiative interview with Arley Lindberg, research analyst, Criminal Justice Services, Judicial Council of California, and Shelley Curran, senior manager, Criminal Justice Services, Judicial Council of California, July 25, 2014.
- 12 Judicial Council of California, *Report on the California Community Corrections Performance Incentives Act of 2009: Findings From the SB 678 Program* (June 2014), <http://www.courts.ca.gov/documents/jc-20140627-itemC.pdf>.
- 13 Massachusetts General Court, House Bill 4242, 188th Legislature (June 29, 2014), <https://malegislature.gov/Bills/BillHtml/137923?generalCourtId=11>.
- 14 Missouri General Assembly, Senate Bill 17, 2013 Regular Session, <http://legiscan.com/MO/text/SB17/id/851510/Missouri-2013-SB17-Enrolled.pdf>.

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Contact: Gary VanLandingham, director, Pew-MacArthur Results First Initiative
Email: gvanlandingham@pewtrusts.org
Phone: 202-540-6207

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