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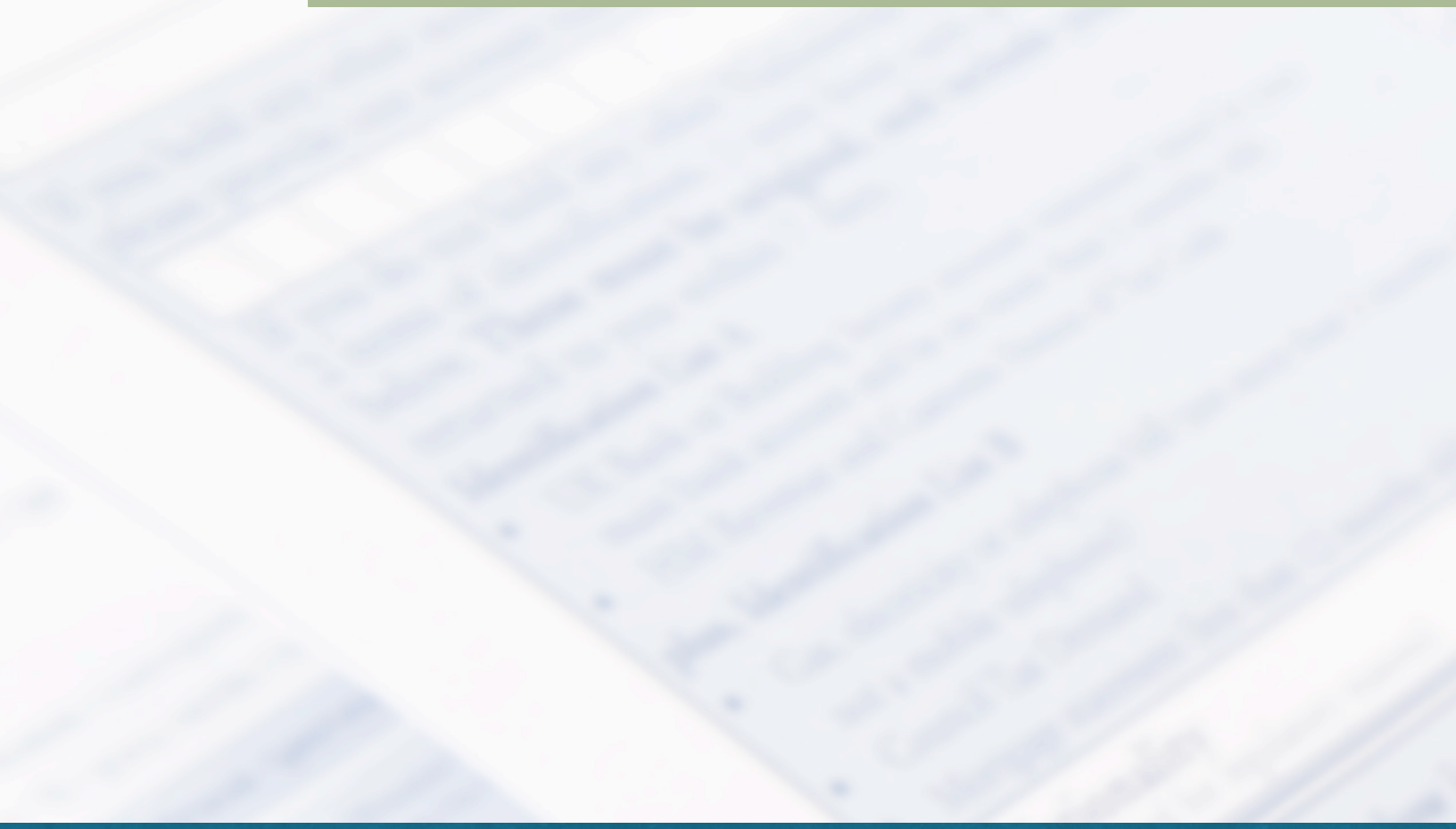
Using Offender Risk and Needs Assessment Information at Sentencing

Guidance for Courts from a National Working Group



In preparing presentence reports in accordance with § 40-35-207, the board of probation and parole shall include information identifying the defendant's

RISKS AND NEEDS

as determined through the use of a validated assessment instrument…

TENN. CODE ANN. §41-1-412

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Guidance for Courts from a National Working Group

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Note: All blue underlined copy is hyperlinked in the online version of the document, available at www.ncsconline.org/csi.

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Introduction

During the last two decades, substantial research has demonstrated that the use of certain practices in criminal justice decision making can have a profound effect on reducing offender recidivism. One of these practices is the use of validated risk and needs assessment (RNA) instruments to inform the decision making process. Once used almost exclusively by probation and parole departments to help determine the best supervision and treatment strategies for offenders, the use of RNA information is expanding to help inform decisions at other points in the criminal justice system as well. The use of RNA information at sentencing is somewhat more complex than for other criminal justice decisions because the sentencing decision has multiple purposes—punishment, incapacitation, rehabilitation, specific deterrence, general deterrence, and restitution—only some of which are related to recidivism reduction. This document provides guidance to help judges and others involved in the sentencing decision understand when and how to incorporate RNA information into their decision making process.

Given the research evidence, the National Working Group recommends that judges have offender assessment information available to inform their decisions regarding risk management and reduction.

The *Guide* begins with a discussion of why courts should consider the use of RNA information in their sentencing decisions, reviews the principles of a research- or evidence-based approach to sentencing, identifies other uses of risk assessments not covered in the *Guide*, and offers a set of Guiding Principles for incorporating RNA information into the court's sentencing decisions. The *Guide* and its Principles are the result of the deliberations of a National Working Group on Using Risk and Needs Assessment Information at Sentencing, interviews with practitioners in jurisdictions that have or are considering using RNA information at sentencing, and a review of relevant literature. The National Working Group offers the *Guide* as a starting point for courts using offender assessment information with the understanding that its advice will continue to be refined as new research and lessons from the field expand current knowledge.

As used in this *Guide*, "recidivism reduction" refers to reduced reoffending of *any* offense; it does not refer to a particular category of offenses such as violent offenses.

Significant work has been underway during the last three decades to identify evidence-based sentencing and corrections practices that work. The *Guide* does not include a full review of this voluminous work; rather it provides an overview of key concepts and findings and provides references for those readers interested in learning more. When available, the authors cite internet sources that can be accessed directly from the online version of the *Guide*.

Why the Need to Change?

State court judges sentenced a staggering 1.1 million felony offenders in 2004 (Durose & Langan, 2007). A sample of felony defendants from the nation's 75 most populous counties during that same year revealed that more than 75 percent had a prior arrest history, and 53 percent had at least five prior arrest charges (Kyckelhahn & Cohen, 2008). Another study of nearly 275,000 prisoners released in 1994 found that two-thirds were rearrested for a new offense within three years (Langan & Levin 2002). Recent reports by the Pew Center on the States (2008, 2009) revealed that 1 in 100 adults is behind bars, and 1 in 31 adults is under some form of criminal supervision. Judges know these statistics first-hand. Their crowded dockets are filled with offenders they have seen before or, unfortunately, are likely to see again; and they understand the toll these statistics take on public safety, system resources, and, ultimately, the public's trust in the criminal justice system.

The public understands these statistics, too. A 2006 survey of the public sponsored by the National Center for State Courts (NCSC) found that 75 percent of the respondents thought sentencing practices needed some or major changes, 79 percent thought that many offenders could be rehabilitated, 59 percent thought prisons are unsuccessful at rehabilitation, and 88 percent thought that alternative sentences for non-violent offenders should be used often or sometimes (Princeton Survey Research Associates International, 2006). When asked who should lead sentencing reform efforts, 66 percent of the respondents thought that judges should have a leading or big role in the effort.
The Conference of Chief Justices (CCJ) and the Conference of State Court Administrators (COSCA), the policy leaders of the state

courts, agree. In 2006, they supported the establishment of the NCSC's national sentencing reform project "Getting Smarter about Sentencing." As part of that effort, the NCSC surveyed CCJ and COSCA members regarding priorities for the project. The court leaders identified (a) expanding use of evidence-based practices and risk and needs assessment tools and (b) promoting community-based alternatives to incarceration for appropriate offenders as the most important objectives for the project (Peters & Warren, 2006, p. 11). In 2007, CCJ and COSCA passed a resolution "In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism" that called for adoption of sentencing and corrections policies and practices that are effective, as determined through research and evaluation, in reducing recidivism. The resolution specifically noted the importance of using validated offender RNA tools in reducing recidivism and elevated recidivism reduction as an important consideration in the sentencing process, a sentiment since echoed by many court leaders such as Missouri's Chief Justice Ray Price (2010) in his State of the Judiciary speech:

> "There is a better way. We need to move from anger-based sentencing that ignores cost and effectiveness to evidence-based sentencing that focuses on results — sentencing that assesses each offender's risk and then fits that offender with the cheapest and most effective rehabilitation that he or she needs."

The Better Way

Using Practices That Reduce Recidivism

Many evidence-based practices for reducing recidivism are incorporated into the Risk-Needs-Responsivity (RNR) model. The three core principles of the RNR model are described below.

The Risk principle holds that supervision and treatment levels should match the offender's level of risk. In practice, this means that low-risk offenders should receive less supervision and services, and higher-risk offenders should receive more intensive supervision and services. Though judges and criminal justice professionals may be tempted to focus intervention services on low-risk offenders in the hope of stopping further penetration into the system, this strategy has not been found effective in terms of recidivism reduction or system costs. Lowenkamp and Latessa (2004, pp. 3-8) identify several meta-analyses (analyses of the results of multiple studies) supporting the risk principle and also discuss their own research that tracked over 13,000 offenders in 53 community-based correctional treatment facilities. The authors report that the majority of the programs were associated with increased recidivism for low-risk offenders and decreased recidivism for high-risk offenders. One program, in particular, is most illustrative of the risk principle: it showed (relative to a comparison group) a *decrease* in recidivism of 32 percent for high risk offenders and an *increase* in recidivism of 29 percent for low-risk offenders. In part, the likely reasons for increased recidivism among low-risk offenders are exposure to higher-risk offenders with procriminal attitudes and disruptions to prosocial networks and support mechanisms such as a job and family (e.g., Latessa, 2004).

> Rule #1 in EBP (evidence based practice) is that high risk offenders should be placed into appropriate treatment services, and that low and moderate risk offenders should not receive the same intensity of services. (Note: The use of the term "services" here includes both treatment and control techniques.)
>
> Taxman (2006)

The Needs principle maintains that treatment services should target an offender's criminogenic needs—those dynamic risk factors most associated with criminal behavior. Criminogenic needs are considered dynamic

risk factors because they can be changed. They are in contrast to static risk factors such as age of first offense and criminal offense history that are related to recidivism but cannot be altered through the delivery of services. The table below displays the dynamic risk factors most associated with offending based on research. The focus on criminogenic risk factors recognizes that while offenders often have a variety of needs, only some are related to the risk to reoffend and can be changed over time. Numerous studies and meta-analyses have identified the first three factors in Table 1 as the dynamic risk factors most predictive of recidivism (Andrews & Dowden, 2007). The remaining four factors are related more weakly to recidivism, and some factors, such as self-esteem, personal/emotional stress, major mental disorder, and physical health issues, that might seem to be related to reoffending, have a very limited or no relationship to recidivism (Andrews & Bonta, 2006; Bonta & Andrews, 2007).

The Responsivity principle contends that treatment interventions should use cognitive social learning strategies and be tailored to the offender's specific learning style, motivation, and strengths (Bonta & Andrews, 2007; Crime and Justice Institute, 2004b). Andrews and Bonta (2006, p. 337) conducted a meta-analysis of 374 statistical tests of the effects of judicial and correctional interventions on recidivism and found nearly a six-fold reduction in recidivism when

Table 1. Major Criminogenic (Dynamic Risk) Factors

Most Related to Recidivism	*Also Related to Recidivism*
Antisocial Personality Pattern impulsive, adventurous pleasure seeking, restlessly aggressive and irritable	**Substance Abuse** abuse of alcohol and/or drugs
Procriminal Attitudes rationalizations for crime, negative attitudes towards the law	**Family/Marital Relationships** inappropriate parental monitoring and disciplining, poor family relationships
Social Supports for Crime criminal friends, isolation from prosocial others	**School/Work** poor performance, low levels of satisfactions
	Prosocial Recreational Activities lack of involvement in prosocial recreational/leisure activities

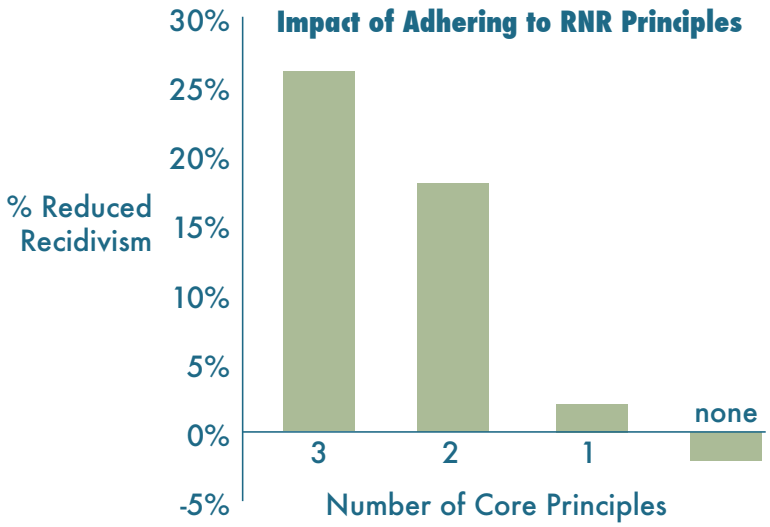
Bonta & Andrews (2007, p. 6)

behavioral approaches (including social learning and cognitive behavioral types of programs) were used (see also Hansen, 2008; Landenberger & Lipsey, 2005). Behavioral approaches require offenders to practice the skills they acquire in treatment and rely on strategies such as modeling/demonstrating a skill, reinforcement for appropriate behavior, role playing, graduated practice of skills, and extinction of inappropriate behavior. Meta-analyses of the effectiveness of sanctions such as intensive supervision, electronic monitoring, boot camps, and incarceration that do not include behavioral intervention components show little or no reduction in recidivism; and, in some cases, the sanctions have been found to actually increase recidivism (e.g., Drake, Aos, & Miller, 2009; Lipsey & Cullen, 2007; and Smith, Goggin, & Gendreau, 2002).

Taken together, the three preceding RNR principles call for assessing an offender's risk of reoffending, matching supervision and treatment to the offender's risk level, and targeting the offender's criminogenic needs or dynamic risk factors with the social learning and cognitive-behavioral programs most likely to effect change in the offender's behavior given specific offender characteristics. Research has demonstrated that adherence to any one of the three principles is associated with a reduction in recidivism rate, and adherence to all three principles is associated with the greatest reduction, i.e. 26 percent, in the recidivism rate (see Figure 1 and Andrews & Bonta, 2006, pp. 73-74; Andrews & Dowden, 2007). A potential decrease of even 5 or 10 percent in the rate of recidivism is significant given current rates of reoffending.

> Today, however, there is a voluminous body of solid research showing that certain "evidence-based" sentencing and corrections practices do work and can reduce crime rates as effectively as prisons at much lower cost.
>
> Warren (2009, p. 1)

Figure 1. RNR Principles and Recidivism Reduction (adapted from Andrews & Bonta, 2006)



Correctional agencies have been incorporating RNR principles into their work for several years (Hubbard, Travis, & Latessa, 2001). However, their effective use of these principles is limited, in part, by the terms of the sentencing decisions and conditions of probation specified by the judge. If the judge's sentence is inconsistent with RNR principles (e.g., the judge sentences a low-risk offender to boot camp or requires participation in a non skill-based education program), the correctional agency is required to implement the sentence even though it is not an effective use of resources and may even increase the offender's likelihood of reoffending.

Judges may determine not to follow RNR principles in a particular case because they are basing their sentences on purposes other than recidivism reduction—a legitimate sentencing practice (see Guiding Principle 1). However, judges' sentences may also be inconsistent with RNR principles because judges do not know the research, do not have adequate offender assessment information to apply the principles, and/or are basing their assessments of offenders' likely recidivism on factors unrelated or less strongly associated with reoffending.

With regard to the last reason, research clearly demonstrates that the use of standardized objective assessment instruments enhances decision making (Harris, 2006; Taxman, 2006). Gottfredson and Moriarty (2006, p. 1) offer the following reasons for the superiority of statistical methods of prediction compared to intuitive methods: decision makers may not use information reliably, may not attend to base rates, may inappropriately weight predictive items, may weight items that are not predictive, and may be influenced by causal attributions or spurious correlations.

Given the research on RNR principles and the increased predictive accuracy of standardized assessment instruments, the National Working Group recommends that judges have offender assessment information available to inform their decisions regarding risk management and reduction. According to the National Working Group, incorporating offender assessment information into sentencing decisions has several advantages such as:

- Contributing to public safety/avoiding further victimization by reducing recidivism;
- Reducing prison admissions resulting from recidivism by felony probationers and probation revocations;

- Demystifying the sentencing decision and enhancing the process with scientifically-based decision tools;
- Focusing on offender accountability by requiring offenders to address their dynamic risk factors rather than placing them in programs that do not work and do not require much effort on their part;
- Reducing social, economic, and family costs associated with inappropriate, and often counter-productive, interventions with low-risk offenders;
- Ensuring sufficient prison beds for the most violent and serious offenders; and
- Reducing prison spending by identifying offenders who can be safely and effectively supervised in the community rather than incarcerated.

Though incorporating offender assessment information into sentencing decisions can have great benefits, using it incorrectly (e.g., deciding a course of action without a proper understanding of what assessment results mean or placing an offender in an available rather than needed program) will be ineffective and could have the consequence of increasing recidivism. Jurisdictions need to carefully plan the incorporation of offender assessment information into the sentencing process to optimize its benefits. The *Guide* helps with this planning process by identifying key issues and offering implementation strategies to consider.

Uses of Risk Assessment in Sentencing Not Covered in this Guide

During discussions of the National Working Group, participants recognized that there are good reasons for using an actuarial risk assessment to place offenders into different categories for purposes other than addressing recidivism reduction. At the direction of the Virginia General Assembly, for example, the Virginia Criminal Sentencing Commission (VCSC) developed a risk assessment instrument to identify prison-bound offenders who were low risk to reoffend for purposes of diverting them to a non-prison alternative. The instrument focuses on offenders convicted of certain nonviolent drug, fraud, and larceny offenses and was found to be effective in predicting recidivism (Ostrom, Kleiman,

Cheesman, Hansen, & Kauder, 2002). The instrument, however, does not assess needs for the purpose of recidivism reduction:

> The VCSC risk assessment instrument was designed to assess an offender's risk to public safety. It was not designed to gauge the needs of individual offenders, or recommend a specific alternative punishment. This is the task of needs assessment, which identifies offenders' needs and matches offenders to programs designed to address those needs. (Ostrom, et al., 2002, p. 4)

Other states also use or are contemplating using some form of risk assessment in their sentencing guidelines as one criterion for determining an offender's sentencing range (e.g., Bergstrom & Mistick, 2010).[1] Although these efforts involve using a risk assessment instrument for placing offenders in sentencing categories or ranges, they contrast with the *Guide*'s focus on using risk and needs assessment information for the purpose of reducing offender recidivism.[2]

Guiding Principles for Using Risk and Needs Information in Sentencing

Risk assessment can be used at different points in the criminal justice system for different purposes: by law enforcement in making arrest decisions, by prosecutors and judges in making deferred prosecution and diversion decisions, by pre-trial release agencies and judges in making pre-trial release recommendations and decisions, and by prosecutors in making charging decisions (e.g., National Institute of Corrections, 2010). As noted above, it can also be used for different purposes within the sentencing context. The purpose of the *Guide* is to discuss the use of risk and need assessment (RNA) information to inform the judge's sentencing decision regarding risk reduction and management within the community, including probation revocation. The *Guide* does

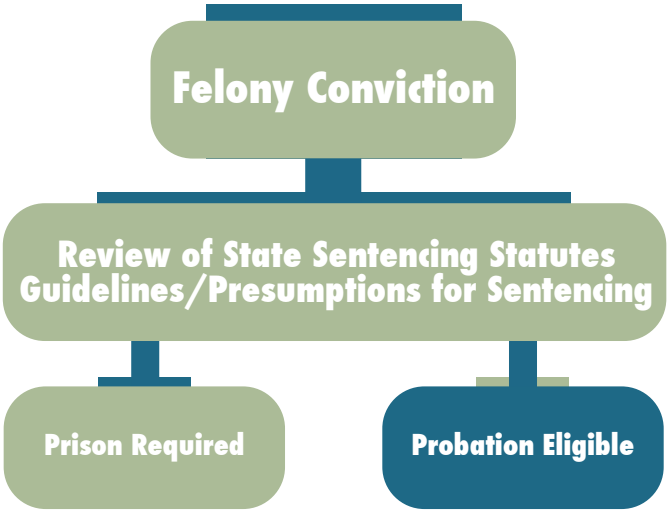
[1] The American Law Institute (ALI) is revising the Model Penal Code's sentencing provisions and is considering the role of risk and needs assessments in sentencing guidelines systems. See ALI (n.d.) for information on the revision project.

[2] Recent legislative changes in Pennsylvania and Wisconsin allow a judge to identify offenders for a reduced sentence if the offenders agree to submit to an assessment by the Department of Corrections and participate in programming aimed at reducing their risk of recidivism. The judge determines if the offender is eligible for the reduced sentencing program based on factors such as seriousness of offense and identifiable problems such as substance abuse contributing to criminal activity. A risk and needs assessment is not currently required to determine eligibility for these programs and *is not required prior to sentencing*. However, once eligibility is determined, the Department of Corrections conducts an assessment and uses the results to place the offender in appropriate recidivism reduction programs while incarcerated. See Pennsylvania Commission on Sentencing (n.d.) and Sankovitz (2010, p. 6) for more information.

not cover risk assessment issues pertaining to offenders who, by state statutes and/or sentencing guidelines, are not eligible for some type of community supervision. It covers only probation-eligible felony offenders (see Figure 2).

Although RNA information is also critical in determining classification, supervision and services for offenders while in prison and on parole, and to help plan for their successful reentry into the community (e.g., Council of State Governments, Reentry Policy Council, 2005; Serin, 2005), issues regarding the use of RNA information for incarcerated offenders are beyond the scope of this *Guide*. The National Working Group, however, acknowledges the importance of using RNA information throughout the criminal justice system and encourages jurisdictions to coordinate their various efforts regarding the effective use of assessment instruments and associated resources.

Figure 2. RNA Target Population



The terms "community supervision" and "probation supervision" are used interchangeably in the *Guide* and refer to all community-based risk management options (e.g., probation supervision, community corrections, and jail-based programs) that do not include prison incarceration. Jurisdictions use various terms to refer to these options.

Nine Guiding Principles to help courts effectively use RNA information in their sentencing decisions follow. The first three Principles offer guidance regarding how to use RNA information, and the remaining Principles provide advice on effectively incorporating RNA information into the sentencing process.

Guiding Principle 1:

Public Safety/Risk Management Purpose

Risk and need assessment information should be used in the sentencing decision to inform public safety considerations related to offender risk reduction and management. It should not be used as an aggravating or mitigating factor in determining the severity of an offender's sanction.

State statutes and sentencing commissions express several purposes for sentencing an offender (see text box for example). Figure 3, text box #2 summarizes the typically described purposes of sentencing as:

1. Punishment proportional to the seriousness of the offense and the degree of offender culpability (i.e., "just deserts");
2. Enhancing public safety through offender risk reduction and management involving considerations of specific deterrence, rehabilitation, incapacitation, and control;
3. Restitution to the victim and/or restoration to the community; and
4. Enhancing public safety through general deterrence.

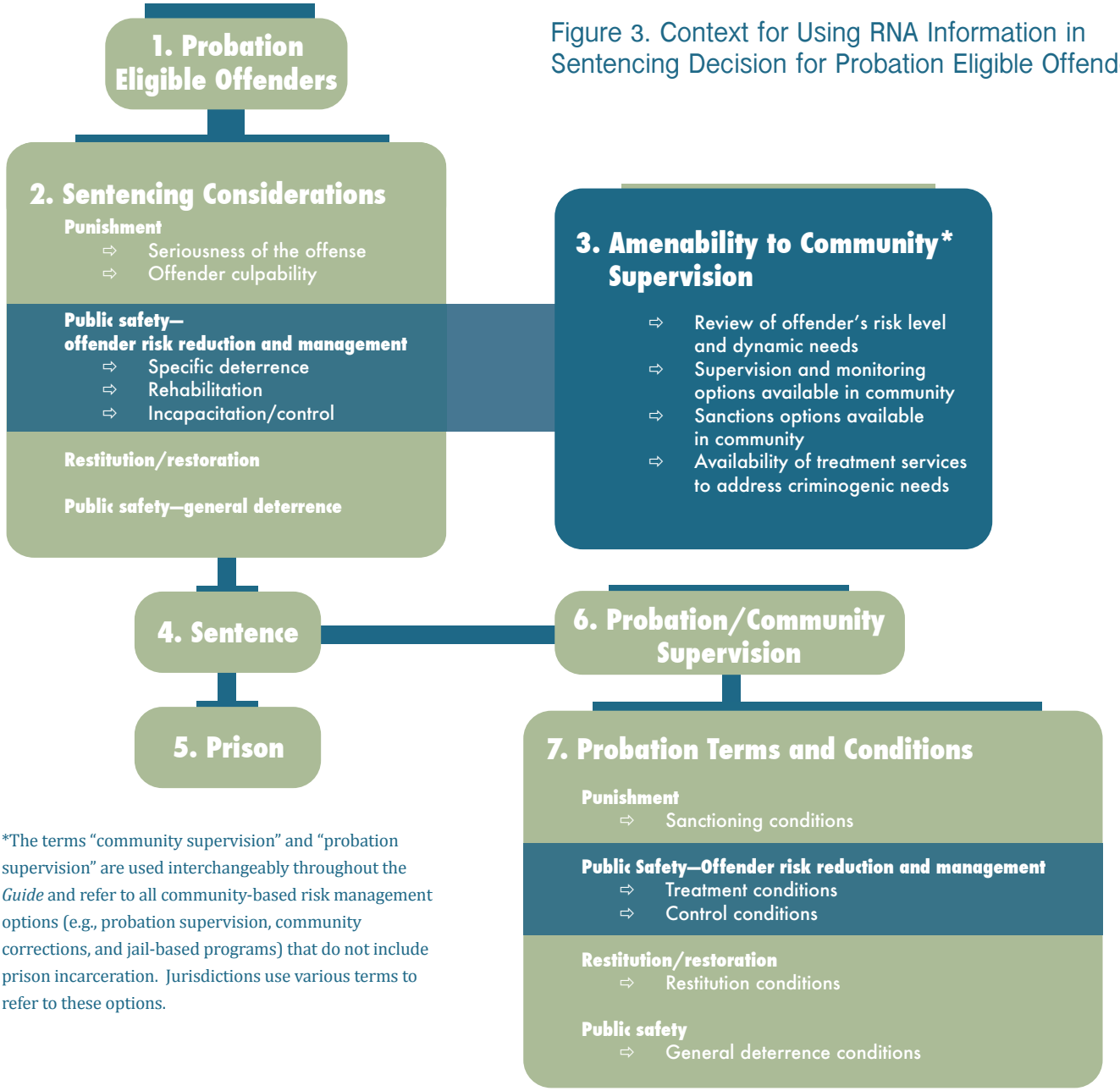
Example of State Sentencing Purposes

The primary purposes of sentencing a person convicted of a crime are: (1) To punish an offender commensurate with the nature and extent of the harm caused by the offense, taking into account factors that may diminish or increase an offender's culpability; (2) To protect the public by restraining offenders; (3) To provide restitution or restoration to victims of crime to the extent possible and appropriate; (4) To assist the offender toward rehabilitation and restoration to the community as a lawful citizen; and (5) To deter criminal behavior and foster respect for the law.

Ark. Code Ann. § 16-90-801 (2009).

Whereas punishment, or "just deserts," seeks to hold the offender accountable for *past* criminal conduct, general deterrence and risk reduction and management seek to promote public safety by deterring and preventing *future* criminal conduct. By definition, RNA information identifying an individual offender's static and dynamic risk factors is relevant to the sentencing objective of effectively reducing and managing the offender's future risk to the community (see shaded area of Figure 3, text box #2), not to determining the severity of the sanction that will

Figure 3. Context for Using RNA Information in Sentencing Decision for Probation Eligible Offenders



*The terms "community supervision" and "probation supervision" are used interchangeably throughout the *Guide* and refer to all community-based risk management options (e.g., probation supervision, community corrections, and jail-based programs) that do not include prison incarceration. Jurisdictions use various terms to refer to these options.

appropriately punish the offender for his or her prior criminal conduct or serve as an appropriate general deterrent to other potential offenders.

Although in practice judges do not typically consider each of the purposes of sentencing separately, or sequentially, or give the same or equal weight to each purpose in every case, it is important to be clear about the

> These evaluations and their scores are not intended to serve as aggravating or mitigating circumstances nor to determine the gross length of sentence, but a trial court may employ such results in formulating the manner in which a sentence is to be served.
>
> Malenchik v. Indiana (2010, p. 14)

purposes for which RNA information may be properly used in making sentencing decisions. This is the approach taken in *Malenchik v. Indiana* (2010), the first state court appellate decision to discuss the use of RNA information at sentencing. In *Malenchik*, the Indiana Supreme Court distinguishes the use of RNA information for the purpose of punishing the offender's criminal behavior from the use of RNA information for the purpose of deciding whether to suspend all or part of an offender's sentence and grant probation. The nature and extent of the penalty or sanction to be imposed for the purpose of punishing the offender depends upon factors such as the culpability of the offender, the gravity of the offense committed, the offender's prior criminal record, and the nature and extent of resulting harm to victims and community. The *Malenchik* decision specifically states that RNA information should not be used as a mitigating or aggravating factor in determining the offender's appropriate punishment for the offense (see text box).

In deciding whether to suspend all or a portion of a term of imprisonment and grant probation, however, the court considers not only the purpose of punishment but also all of the other purposes of sentencing including whether the risk of re-offense presented by the offender can be safely managed and effectively reduced through community supervision and services, i.e., whether the offender is amenable to community supervision. In light of the relevance of actuarial RNA information to the court's consideration of the issue of reduction and management of offender risk, *Malenchik* recognizes that "evidence-based assessment instruments can be significant sources of valuable information for judicial consideration in deciding whether to suspend all or part of a sentence" (p. 10).

Guiding Principle 2:

Amenability to Probation

Risk and needs assessment information is one factor to consider in determining whether an offender can be supervised safely and effectively in the community.

As noted earlier, the risk of re-offense is dynamic, changing and changeable. It is not the risk of re-offense at the specific time of sentencing, but choices made by the offender after sentencing, that will ultimately determine whether the offender reoffends. The offender's risk "score," at the time of sentencing may therefore be a relevant factor but should never be determinative in deciding whether the offender can be safely and effectively supervised in the community. Rather, as shown in Figure 3, text box #3, there are four risk-related factors the court should consider when determining whether an offender can be supervised effectively in the community:

1. The results of the offender's RNA, including the identification of the offender's specific dynamic risk factors;
2. The local jurisdiction's capacity to supervise the offender in the community given probation caseloads and existing supervision and monitoring options such as intensive supervision and electronic monitoring;
3. Intermediate sanctions options available in the community including community service, work release, day reporting, and jail; and
4. The availability of services and treatment programs that can effectively address the offender's dynamic risk factors and thus reduce the risk of recidivism.

Whether an offender is a good candidate for community supervision is a decision each court makes, based in part, on the availability of effective local supervision and treatment resources available to address the offender's specific risk factors.

Although critically important, these risk-related factors are not necessarily determinative of whether an offender should be granted probation. They are considered within the context of the other sentencing factors identified in text box 2 of Figure 3. A low risk offender may not be a good candidate for probation, for example, if the gravity of the offense committed and the offender's

culpability are so great that any disposition other than prison would constitute a disproportionately lenient sentence. Likewise, a higher risk offender who has committed a less serious offense involving a relatively low level of culpability may be a particularly good candidate for probation supervision. Even an offender deemed high risk based on the RNA who has committed a more serious offense reflecting a higher degree of culpability may be a good candidate for community supervision, if the defendant's culpability is not so great as to mandate imprisonment and the court's consideration of the risk-related factors described in Figure 3, text box #3 (see below) support a finding of amenability to probation

Sentencing Considerations (extracted from Figure 3)

3. Amenability to Community* Supervision

- ⇨ Review of offender's risk level and dynamic needs
- ⇨ Supervision and monitoring options available in community
- ⇨ Sanctions options available in community
- ⇨ Availability of treatment services to address criminogenic needs

supervision. Indeed, meta-analyses of different intervention strategies show that community supervision and treatment strategies based on evidence-based practices (e.g., those associated with the Risk-Needs-Responsivity model described earlier) are as effective or more effective in reducing recidivism than incarceration, particularly for medium- and high-risk offenders (Gendreau, Goggin, Cullen, & Andrews, 2000; Lipsey & Cullen, 2007) and do so at a fraction of the cost (Pew Center on the States, 2009).

In contrast, an extremely high risk offender who has committed a more serious offense may not be a good candidate for probation, even though the offender's culpability does not by itself necessarily warrant imprisonment, if the court determines that the risk to public safety requires incarceration because the offender's dynamic risk factors cannot be realistically addressed and the offender cannot be safely and effectively managed in the community. Absent an explicit legal mandate, however, the purpose of protecting public safety can never justify imprisonment of a high risk offender where imprisonment constitutes a disproportionately severe penalty in light of the seriousness of the offense and extent of the offender's culpability as described in Principle 1.

Guiding Principle 3:

Effective Conditions of Probation and Responses to Violations

Risk and needs assessment information aids the judge in crafting terms and conditions of probation supervision that enhance risk reduction and management. It also provides assistance in determining appropriate responses if the offender does not comply with the required conditions.

The intermediate goal of community supervision is to assist the offender in successfully completing the term of supervision while maintaining victim and public safety. The end goal of community supervision is to reduce the long-term risk of offender recidivism—even after the offender's successful completion of community supervision.

RNA information is critical to achieving both goals. It provides guidance on the level of supervision and control needed (e.g., administrative versus intensive supervision, reporting requirements, drug testing, electronic monitoring, curfews, limitations on associates) as well as the most appropriate treatment strategies given the offender's dynamic risk factors. As noted earlier, failing to match an offender's risk level and dynamic risk factors with appropriate supervision and treatment strategies is likely to be a waste of resources and lead to violations of probation conditions and re-offending.

The availability of RNA information at the time of sentencing allows the presentence investigator to review the offender's dynamic risk factors and responsivity factors (e.g., learning style, motivation to change, stage of change, gender) and offer the court information and recommendations on supervision and treatment options that address the offender's most pressing dynamic risk factors. RNA information and the pre-sentence investigator's report and recommendations inform the judge's exercise of discretion in crafting appropriate

> But such evidence-based assessment instruments can be significant sources of valuable information for judicial consideration in deciding... how to design a probation program for the offender, whether to assign an offender to alternative treatment facilities or programs, and other such corollary sentencing matters.
>
> Malenchik v. Indiana (2010, p. 10)

conditions of probation.
By focusing on behavioral treatments and controls that are critical to reducing and managing offender risk (see shaded area in Figure 3, text box #7), the terms and conditions of probation provide the basic structure and framework for the offender's community supervision plan. Treatment-related conditions of probation prescribe the treatment and services required to reduce risk, whereas control-related conditions prescribe the reporting, monitoring, testing and other behavioral controls required to manage current risk factors. Both are based on the dynamic risk factors identified through the RNA.

Conditions of probation not properly targeted at the offender's most critical dynamic risk factors are counter-productive (Warren, 2007, p. 36). They require both the offender and probation officer to engage in activities that are unlikely to reduce risk and distract both from focusing on the critical risk factors that do affect the likelihood of recidivism. They also place the supervising agency in the position of choosing between two undesirable courses: expending resources to enforce meaningless conditions or failing to strictly enforce court orders. Both courses are likely to increase risk.

For purposes of risk reduction, probation conditions should not require low-risk offenders to be placed in structured or intensive supervision and treatment programs (Lowenkamp, Latessa, & Holsinger, 2006.) Nor should offenders be "loaded down" with numerous conditions of probation that can set them up for failure and waste resources. Carl Wicklund, Executive Director of the American Probation and Parole Association, recommends that supervision conditions be realistic, relevant, and research-based:

> Realistic conditions are few in number and attainable, and include only those rules for which the agency is prepared to consistently hold supervisees accountable. Relevant conditions are tailored to the individual risks and needs most likely to result in new criminal behavior. Research-based conditions are supported by evidence that compliance with them will change behavior and result in improved public safety or reintegration outcomes. (Solomon, et al., 2008, p. 2)

Because offender risk is dynamic, it is also important that probation conditions provide flexibility to the supervising agency. Risk levels fluctuate based on compliance with conditions of probation and as changes occur in the circumstances of the offender's

life and the offender's level of motivation. The probation officer is in a much better position to monitor these developments and determine appropriate modifications to the offender's treatment, reporting requirements, and behavioral controls. As such, court orders that require an offender to comply with treatment and control conditions "as directed by the probation officer" provide the supervising officer flexibility to respond swiftly and appropriately to enhance effective outcomes. Allowing the probation officer to suspend certain sanctions and behavioral controls that may have been imposed by the court, such as electronic or GPS monitoring, community service, and day reporting, as positive reinforcement of offender compliance, and to recommend or determine when early termination of supervision is appropriate in light of an offender's compliant behavior also contribute to the effectiveness of probation under an evidence-based system, and courts should consider permitting such practices.[3]

As depicted in Figure 3, text box #7, however, the judge does not craft conditions of probation solely to achieve the purpose of effective risk reduction and management. Rather, the judge must consider all of the purposes of sentencing in setting the terms and conditions of probation. The judge might require, for example, a fine, community service, or period of local incarceration for the purpose of punishment, or payment of restitution to the victim based on victim input provided in the presentence report and/or victim impact statement. In considering these other purposes of sentencing, the judge should strive to set conditions that meet these other sentencing purposes with as little disruption as possible to the court's recidivism reduction objectives.

> Allowing corrections agencies to hold offenders accountable for breaking the rules of supervision, rather than having to take them back to court, can substantially boost the immediacy and certainty of responses. Supervising officers often are in the best position to impose meaningful and proportionate consequences to offender noncompliance, while the court violation process is often too cumbersome to accommodate the need for swift and certain consequences.
>
> Pew Center on the States Public Safety Performance Project (2008, p. 7)

3 To provide supervising agencies with the flexibility and authority to impose swift, certain, and limited sanctions as efficiently as possible while protecting offenders' reasonable expectations of fairness and due process, some jurisdictions have adopted "administrative sanctions" procedures. The specific procedures vary but authorize, either with the offender's consent or after an administrative hearing, supervising agencies to impose sanctions and controls such as community service, day reporting, electronic monitoring, and short periods of incarceration without returning the offender to court for a judicial hearing. See Pew Center on the States Public Safety Performance Project (2008, pp. 7-9) for more information.

> Every sentence should pursue best efforts to minimize recidivism because, in most cases, such a sentence best serves all sentencing purposes. When other sentencing purposes demonstratively require that we deviate from efforts to minimize recidivism, we should deviate only to the extent demonstrably necessary to serve those other sentencing purposes.
>
> Michael A. Wolff, Former Chief Justice of Missouri & Paul DeMuniz, Chief Justice of Oregon (2009, p. 3)

Because the process of probation involves behavior change, it also inevitably involves some failure. "Stages of change" research demonstrates the challenges of personal behavioral change, even for persons with strong pro-social support networks.[4] Medium and high risk felony probationers often have a history of chronic, anti-social behaviors, poor self-control, and undeveloped problem-solving and life skills. It is unrealistic to expect medium and high risk felony probationers to successfully complete a term of community supervision without continuing to engage to some extent for at least some period of time in behaviors constituting technical violations of applicable conditions of probation. To promote compliance, the offender's compliant behaviors should consistently receive positive reinforcement while the offender's non-compliant behaviors (violations of probation) should consistently result in imposition of some form of swift, certain, and appropriate sanction.

> And what is important to us is that judges have that [RNA] information so that they understand this person has some complex needs; and, therefore, it is not appropriate to revoke the person on the first technical violation. Instead, we can expect to be working with the person over time on these complex needs. So it is an individualized case-by-case approach.
>
> National Working Group Participant, September 2010.

[4] For an example of research on stages of change, see Prochaska and DiClemente (1986).

RNA information also is helpful in determining appropriate responses to violations of probation conditions. The same violation committed by different offenders may properly result in quite different responses. The nature and severity of the sanction to be imposed, up to and including revocation of probation and imprisonment, depends in large part upon a re-assessment of offender risk in the individual case, i.e., a determination of the extent to which the offending behavior increases risk to the community. The offender's assessed level of risk prior to the violation is less determinative of the most appropriate response than the offender's re-assessed level of risk in light of the violation. Ultimately, the most appropriate response to any particular violation depends upon the nature and severity of the violation, the seriousness of the underlying offense, the extent of prior compliance and non-compliance, and the current level of risk—re-assessed in light of the most current violation. The re-assessment should result in appropriate revisions to the supervision plan to avoid future violations as well as imposition of some form of swift and certain sanction in response to the current violation.[5]

In most instances, technical violations and commission of new misdemeanor or low-level offenses will not warrant revocation of probation or removal from the community. In considering revocation: "What is required is a thoughtful assessment of the likelihood of success in continuing to manage offender risk within the community without incurring further criminal behavior in light of the seriousness of the violation" (Warren, 2009, p. 5). Revocation is an appropriate response when a re-assessment of the offender's dynamic risk factors in light of the offender's overall record of compliance and non-compliance including the most recent offending behavior concludes that the offender can no longer be safely and effectively supervised in the community. Reaching a basic level of agreement between the probation agency and court in the course of this re-assessment process is critical: "The court and probation agency must achieve a clear, consistent, and shared understanding about how these factors and objectives will be weighed by the court and the department …." (Warren, 2009, p. 5)

[5] See Marlowe (2009, pp. 186-188) for a discussion of appropriate sanctions for noncompliance with *proximal* or short term case plan objectives (e.g., failure to attend counseling session or to meet reporting requirements) versus noncompliance with *distal* or long term case plan objectives (e.g., failure to abstain from drugs completely). *Proximal* objectives focus on behaviors an offender is already capable of performing and thus noncompliance should be sanctioned more severely than noncompliance with *distal* objectives that focus on behaviors the offender may not yet be able to achieve.

Guiding Principle 4:

Stakeholder Training

Education regarding the nature and use of risk and needs assessment information is critical for all stakeholders (e.g., judge, defense attorney, prosecutor, probation officer, victim advocate).

Much has been written about the importance of training for community corrections, probation, and parole officers using various RNA instruments (Kreamer, 2004; Lowenkamp, Latessa, & Holsinger, 2004). Probation officers must be trained to administer RNA instruments in a reliable and valid manner, and they should be regularly monitored to ensure they are scoring and interpreting the instruments as intended.[6] Judges and other stakeholders need to have confidence in the RNA information they receive from their probation departments or other community supervision agencies.

Judges and other stakeholders also need to know how to interpret the RNA information provided. They need to understand, for example, that "high risk" does not necessarily translate to "need to incarcerate." They also need to understand what dynamic risk factors are and what various RNA "domain" scores mean in the context of managing and reducing risk. They need to recognize that RNA tools are intended to enhance, not replace, judicial decision making. Most importantly, they need to understand the context for using RNA information as discussed in Guiding Principles 1, 2, and 3. This type of training for judges as well as other stakeholders will help alleviate concerns, for example, that RNA results will be used to enhance or reduce a penalty.

> We [the Probation Department] worked with the District Attorney's Office. We worked with the defense bar. We worked with all the judges pretty intensively over a year-and-a-half to make sure that everybody's on the same page.... I do not believe we would have been successful if we hadn't been very clear about what the reason was for doing this.
>
> **National Working Group Participant, February 2010**

Jurisdictions have provided training on RNA information in different settings such as presentations at annual state conferences, local workshops, webinars, and brown bag sessions in which probation officers discuss their reports and answer questions from stakeholders. In some cases, the training has been offered to different stakeholder groups at different times, and, in other

[6] The specific requirements for ensuring an individual is qualified to conduct an assessment vary by instrument. Those overseeing and conducting assessments should ensure that agency officers understand and have met the manufacturer's qualifications for administering and interpreting a specific instrument. See Guiding Principle 7 for more information on the proper use of assessment instruments.

cases, the training has been offered to groups of stakeholders simultaneously.[7] Whatever method is used, training should be offered periodically to reinforce the correct use of the information and to ensure that new stakeholders understand how RNA can inform their decision making.

In addition to in-depth information on specific jurisdictional instruments and reports, several national organizations such as the American Probation and Parole Association, the National District Attorneys Association, and the American Judges Association have offered presentations at their annual conferences on the use of evidence-based practices. These presentations provide a more general context for the use of RNA information for stakeholders who want to learn more. The National Center for State Courts, the National Judicial College, and the Crime and Justice Institute (2009) have developed a model judicial curriculum on evidence-based sentencing that provides an overview of the Risk-Need-Responsivity model and the benefits of using RNA information at sentencing.[8] The Justice Management Institute and The Carey Group (n.d.) have produced a training program for local teams of justice professionals (prosecutors, judges, defenders, and corrections officials) to incorporate the principles of evidence-based practices into their sentencing plans. In addition, the Crime and Justice Institute (2010) has conducted a series of webinars about incorporating evidence-based practices into the work of judging, prosecution, defense, and others.

Training is crucial to ensure the appropriate use of RNA information at sentencing and to address concerns that various stakeholders may have about the proper use of the information. Jurisdictions should plan to provide regular opportunities for probation to discuss their RNA report information with those who routinely receive it.

Crime and Justice Institute Webinars

[7] If stakeholder groups in a jurisdiction are mistrustful of one another, training may be needed to build confidence in the assessment process itself and the qualifications of those conducting the assessments in addition to information on interpreting the scores.

[8] The judicial curriculum also is available in a free on-line program taught by Dr. Geraldine Nagy and the Hon. Roger K. Warren. The on-line program consists of 24 content modules that include nearly 4.5 hours of video presentations. It is available at http://www.ncsconline.org/csi/education.html.

Guiding Principle 5:

Availability and Routine Use of Offender Assessments

Jurisdictions should strive to provide risk and needs assessment information on all probation-eligible offenders at all stages of the sentencing process, including plea-bargaining.

This principle calls for the availability of a full RNA assessment on all probation-eligible felony offenders throughout the plea bargaining and sentencing process.[9] To achieve this goal, the principle also recognizes that system constraints such as agency capabilities and resources (see Guiding Principle 6) may require jurisdictions to phase-in a process of providing the information by selecting pilot jurisdictions to develop and test the assessment process and/or targeting a subset of offenders (e.g., males between the ages of 18 and 25 or offenders who have been convicted of drug-related offenses) as some states (e.g., Alabama, California, Wisconsin) have opted to do.

In many jurisdictions, one of the major impediments to providing RNA information at sentencing is the unavailability of presentence reports (PSRs) that address offender as well as offense information.[10] As discussed in Guiding Principle 8, the most common vehicle by which RNA or other offender information is made available to the court is through the presentence report (PSR). Current plea bargaining practices, along with changes in sentencing policy, increases in felony filings, and serious criminal justice funding challenges have limited the use of PSRs in many jurisdictions (Macallair, 2001). Thus while information regarding the underlying *offense* and the defendant's prior *criminal history*

> Yet, few jurisdictions have available to them information about an offender's risk to reoffend or criminogenic needs at the point of plea negotiation, meaning that key decision makers—prosecutors and defenders—negotiate these agreements absent information about how best to influence future criminal behavior based on the unique characteristics of the offender being sentenced. As a result, in most jurisdictions, cases are passed along to corrections and/or probation, which then assess risk/needs and, in many cases, work to retrofit research-based interventions to court-imposed sentencing parameters.
>
> National Institute of Corrections (2010, p. 34).

[9] The *Guide*'s focus is on felony offenders and does not explicitly address issues related specifically to misdemeanants.

[10] The *Guide* distinguishes offender and offense information. It is assumed that victim input in the PSR is included in the description of the nature and severity of the offense.

is typically available to the court at the time of sentencing, information on the *offender* often is lacking. Each jurisdiction's relevant stakeholders should identify obstacles to preparing PSRs with RNA information for all probation-eligible felony offenders and collaborate on strategies to overcome the obstacles.

In addition to ensuring the availability of PSRs with RNA information, courts should encourage all parties (e.g., judge, prosecution, and defense) involved in the sentencing process to use the information in their deliberations. Given that approximately 95 percent of felony convictions are obtained by plea (Cohen & Kyckelhahn, 2010), RNA information will have a greater impact on recidivism reduction to the extent that it can be incorporated into the plea bargaining process (see text box previous page). States are just beginning to explore how best to accomplish this.

The inclusion of RNA information in the PSR enhances the ability of the court to make an informed decision whether to accept a negotiated sentence.[11] However, a process that allows litigants to negotiate dispositions in the absence of RNA information only to have those negotiations later reviewed and potentially rejected by a judge with access to critical offender information is, at best, highly inefficient. A more efficient process in jurisdictions in which PSRs are regularly available is the use of pre-plea reports where the RNA information is submitted to the court and counsel during plea negotiations and before the plea is entered.

> And the same judge... basically sent the defense and the prosecution back and said, "I would like some more information in this area," because she didn't agree with the plea agreement; and she asked for some other reports and some other evaluations. And when she got that information, she totally rejected the plea and ended up sentencing quite differently than she would have initially.
>
> **National Working Group Participant, February 2009**

When RNA information is provided during plea negotiations, the defendant should be assured that statements to probation regarding the charged offense will not be used against the defendant at trial if the case does not resolve. Some jurisdictions incorporating RNA into pre-plea reports accomplish this by instructing probation not to inquire about the offense

[11] If a PSR is not yet routinely available at the time of sentencing, the court could phase-in requests for RNA information in cases where such information is deemed critical to the court's disposition. Identification of those cases could be left to the discretion of individual judges, or be specified by the court by rule or policy established in consultation with the agency conducting the pre-sentence investigation or RNA.

or to record or report any statement by the defendant about the offense. Other jurisdictions using pre-plea reports extend a privilege of inadmissibility to any such statements by the defendant. This latter approach is similar to the privilege of inadmissibility often extended to defendant statements to the probation officer in connection with preparation of the PSR after a negotiated plea of guilty where the plea bargain is ultimately not accepted or set aside.[12]

To maximize RNA consideration in the sentencing process in the absence of a PSR, especially in instances of negotiated dispositions, the court should ensure that prosecutors and defense counsel are trained in the basic principles of evidence-based practices (EBPs). (See Guiding Principle 4.) Counsel trained in the basic principles of EBPs likely will seek actuarial or other information regarding offenders' dynamic risk factors to strengthen and better inform their own positions as advocates. The court can promote, by rule or policy, the education and training of counsel by informing counsel that recidivism reduction is a primary purpose of sentencing and that the court expects counsel to present arguments at the sentencing hearing on the likely impact of alternative sentencing options on the risk of offender recidivism. [13]

Finally, especially in the absence of actuarial RNA information, the court, by rule or policy, should consider precluding counsel from negotiating conditions of probation regarding such matters as the term or level of supervision, appropriate treatment, or appropriate behavioral controls as part of any negotiated disposition. As described above, principles of EBP require that such terms and conditions of probation conform to the offender's actuarial level of risk, properly target the offender's primary dynamic risk factors, and provide maximum flexibility to the supervising agency. The terms and conditions of probation should not be negotiated by counsel but determined by the court which has ultimate responsibility for their propriety and effectiveness. Counsel's views on such conditions of probation should be presented to the court as sentencing recommendations, not as inflexible requirements of the plea bargain. If the court accepts negotiated conditions of probation, it should by rule, policy, or practice nonetheless inform the parties that such conditions of probation are subject to modification by the court upon request of the supervising agency in light of subsequently obtained RNA information or changed circumstances.

[12] See Federal Rule of Evidence 410 (3), and similar state rules of evidence, rendering inadmissible any statements made by the defendant in the course of plea bargaining proceedings where the negotiated plea of guilty is later withdrawn. Commentary to the Arizona and North Carolina Rules 410, for example, confirm the applicability of their rules to defendants' statements to probation in connection with preparation of PSR's. See, e.g., Ahler, Eckstein, and Miller (n.d.) on Arizona rules and Smith (2009) on North Carolina rules. See also, Mueller and Kirkpatrick (2007, §4.69).

[13] See resolution adopted by Oregon's Judicial Conference resolving that "judges should consider and invite advocates to address the likely impact of the choices available to the judge in reducing future criminal conduct" (Oregon Judicial Conference, 1997).

Guiding Principle 6:

Evidence-Based Infrastructure

In order for the use of risk and needs assessment information at sentencing to be most effective, the jurisdiction's probation department or other assessment and supervision agency should have an infrastructure grounded in evidence-based practices.

The use of RNA information is but one of several EBPs supervision agencies should follow to enhance reductions in offender recidivism. It is the crucial first step in targeting an offender's dynamic risk factors, but additional steps must be taken to ensure those risk factors are adequately monitored and addressed. Without appropriate agency follow-up, judges will lose confidence that offenders can be properly supervised and treated in the community. Judges and other stakeholders do not need to be integrally involved in the agency's work, but they do need to know that the agency incorporates EBPs into their operations. Based on an extensive review of the literature, for example, the Crime and Justice Institute (2009, pp. 11-20) identified the following EBPs for effective intervention with offenders:

1. Assess actuarial risk/needs as part of an ongoing assessment system;
2. Enhance intrinsic motivation in offenders to change;
3. Target interventions to the criminogenic needs of higher-risk offenders and integrate an appropriate dosage of those services into the sentencing/sanctioning process; be responsive to individual differences in learning speed and style, gender, culture, and other characteristics;
4. Train offenders to use cognitive-behavioral strategies, with directed practice, to develop pro-social skills;
5. Increase positive reinforcement – carrots work better than sticks;
6. Engage ongoing support in offenders' natural communities by recruiting family members and supportive others to positively reinforce new pro-social behaviors;
7. Measure relevant processes/practices (offender and overall program outcomes, employee performance) for quality assurance; and
8. Use measured information to provide offenders with feedback about their progress and to provide employees with feedback about their service delivery performance.

Judges can meet with officials of the supervising agency, ask questions during training sessions (see Guiding Principle 4), and talk informally with agency staff who come to court to learn what the agency's philosophy is and how it operates with regard to the EBPs identified above. Jurisdictions will be in various stages of readiness with regard to an evidence-based infrastructure. Some departments of probation/community corrections may already implement EBPs and will have little difficulty providing the court with RNA information. There may even be an ongoing stakeholder committee to serve as a foundation for discussing issues of mutual interest.[14] Other agencies, however, may require some "start up" time to implement an organizational culture based on EBPs. In the latter case, the judge and other stakeholders can serve as allies in championing the importance of adequate agency resources and community programs to address offender dynamic risk factors and recidivism reduction.

> As a judge, you can craft a sentence that makes complete logical sense, based on the evidence, based on the research, but if your supervision practices in your jurisdiction are poor, if the treatment that you have available to you is poor, it's all for naught. You know, the research is pretty clear, sending people to bad treatment means the failure rates go up....
>
> National Working Group Participant, September 2010.

With regard to services available in the community, they, too, must follow EBPs. Without quality supervision and treatment services that adhere to the principles of effective interventions (Gendreau, 1996), evidence-based sentencing practices will fail to reduce recidivism. In some cases, placing offenders in poorly executed intervention programs may even increase recidivism (Lowenkamp, Latessa, & Smith, 2006). For this reason, jurisdictions should know the quality of available community programming before incorporating them into sentencing decisions. The Correctional Program Assessment

[14] Jurisdictions interested in adopting RNA for use at sentencing should ensure that representatives from the courts, prosecution, defense, probation/community corrections, intervention programs, and other relevant stakeholder groups develop and maintain effective working relationships. These relationships can facilitate the establishment of a more unified, coordinated, integrated approach to community corrections characterized by a more comprehensive menu of community-based services and greater consistency in care across agencies and between individuals (Crime and Justice Institute, 2004a; Ball & Dansky, 2008)

Inventory (CPAI) is widely used to assess program effectiveness, evaluating programs on organizational culture, program implementation and maintenance, management and staff characteristics, client risk and needs practices, program characteristics, core correctional practices (e.g., building skills in problem-solving and using modeling and reinforcement practices), inter-agency communication, and evaluation (Andrews & Bonta, 2006, pp. 458-460; Lowenkamp, 2004; Lowenkamp, Flores, Holsinger, Makarios, & Latessa, 2010; Matthews, Hubbard, & Latessa, 2001).[15] Jurisdictions may periodically conduct evaluations like the CPAI to establish a program as evidence-based, assess program strengths and weaknesses to determine what areas may need improvement, permit comparisons between different programs, examine the quality of a single program over time, and/or secure additional funding for local evidence-based programming (e.g., Yates, 2003).

[15] The University of Cincinnati has developed a variation of the CPAI called the Correctional Program Checklist (CPC). Latessa, Smith, Schweitzer, and Lovins (2009, pp. 15-19) explain that the CPC is the result of eliminating some items from the CPAI that did not correlate positively with recidivism reduction in various studies as well as adding others.

Guiding Principle 7:

Assessment Instruments

Jurisdictions should select instruments that fit their assessment needs and that have been properly validated for use with their offender populations.

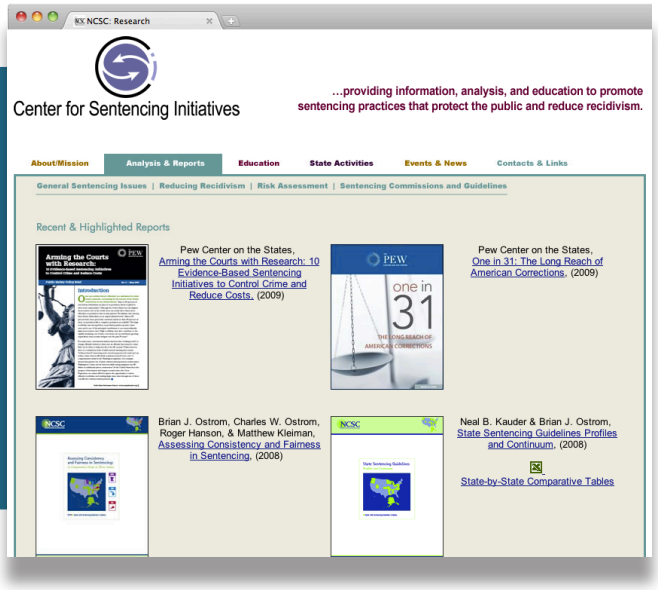
An initial decision for jurisdictions adopting a RNA instrument for use in sentencing is whether to develop a new assessment or adopt an existing tool (see Dal Pra, 2004). Given the time and expense involved in the development and subsequent validation of a new instrument (for an explanation regarding the necessity for separate validation of homegrown tools, see LeCroy, Krysik, & Palumbo, 1998, p. 26), many jurisdictions opt for one of the many off-the-shelf tools already available (e.g., White, 2004).

Existing risk and needs assessment instruments differ on a number of factors such as the purpose of the tool and its fit with the jurisdiction's needs. One obvious consideration is the cost of purchase. Some tools incur regular subscription costs or fees, whereas others are non-proprietary. In some jurisdictions, the additional ongoing costs associated with proprietary tools may be difficult to sustain. A second consideration is whether there are RNA tools already in use by the probation, parole, or other supervision agencies in the jurisdiction. Using the same tool, provided it is empirically validated, has the added advantage of facilitating continuity, collaboration, and communication across the criminal justice system (see Latessa & Lovins, 2010).

An effective risk and needs assessment embodies several key theoretical and psychometric qualities (e.g., Bonta, 2002; Gottfredson & Moriarty, 2006). For example, a good RNA instrument samples a number of factors that research shows are predictive of criminal behavior, assesses dynamic factors that can be used to guide treatment decisions and facilitate behavioral change, and demonstrates satisfactory reliability and validity across a number of independent empirical tests. The Technical Appendix to this report, available on the NCSC's Center for Sentencing Initiatives Web site, includes descriptions of several RNA instruments currently in use. [16]

After identifying the most promising tool for use in a jurisdiction, the supervising agency should validate the instrument on a sample that is representative of the local population before undertaking full-scale implementation. Importantly, this should include empirical

NCSC Center for Sentencing Initiatives



efforts to norm the tool on different groups of offenders in the target population to ensure that the tool produces accurate risk classifications across subgroups (e.g., females, members of various racial and ethnic populations). Factors predictive of recidivism for males, for example, may not be the same or carry the same weight as those predictive of females (e.g., Holtfreter, Reisig, &Morash, 2004; Hollin & Palmer, 2006). Given the purpose for and potential judicial consequences of using assessment information at sentencing, research must provide evidentiary support that the tool can effectively categorize all types of offenders in the local population on which the instrument will be used into groups with different probabilities of recidivating (Johnson & Hardyman, 2004). Reportedly, only 30 percent of jurisdictions using such assessment instruments conduct local validation research (Hubbard, Travis, & Latessa, 2001). This failure leads to what Byrne & Pattavina (2006) refer to as the "validation problem," in which jurisdictions are unable to speak on the accuracy of the classification schemes they use with their local populations. If information from the selected risk assessment tool leads to inaccurate classification of all or part of their local population, subsequent "best practice" treatment decisions based on those classifications could actually do harm (see Lowenkamp & Latessa, 2004).

Given the need to demonstrate predictive accuracy, local validation of a risk assessment tool is a sound practice that addresses a number of related concerns (e.g., Whiteacre, 2006; Flores, Lowenkamp, Smith, & Latessa, 2006). Validation studies conducted in one jurisdiction may not be generalizable to another jurisdiction because of subtle and not-so-subtle differences between the jurisdictions (Clear, 1995). For instance, one jurisdiction's *laws, policies, or sentencing guidelines* (e.g., management of felony offenses, eligibility for probation, risk of recidivism defined locally as rearrest vs. reconviction) may create a unique set of circumstances and constraints that can reduce the effectiveness of a tool created elsewhere (Johnson & Hardyman, 2004). In

[16] With funding from the Office of Justice Programs, Bureau of Justice Assistance, the NCSC is working with an expert panel to review the psychometric and practical criteria for commonly used RNA instruments. Results of this project also will be available on the Web site.

addition, the *target population(s)* on which the tool was constructed and previously validated may not be representative of the local population; as a result, the tool may not retain its predictive validity in the new context (VanBenschoten, 2008; Flores, Lowenkamp, Smith, & Latessa, 2006). For example, the tool may not have been tested on a population with a representative gender or racial composition (e.g., homogeneous samples of convenience vs. fully random or representative samples, rural vs. urban, juveniles vs. adults), or it may not have been tested on the same types or severity of offenses (e.g., felony cases only vs. all case types). Finally, applying a tool designed and tested for use at a different *decision point* (e.g., pre-trial, prison intake, or prison release) to presentencing may also reduce the relevance of previous research findings when trying to understand the predictive validity of the tool (Vincent, Terry, & Maney, 2009, pp. 379-380). The tool might measure different outcome variables (e.g., failure to appear or other technical violations vs. risk of reoffending), and thus include questions more relevant to those outcomes. Local validation eliminates these and other concerns about the generalizability of previous research when determining the predictive accuracy of a given tool in a particular jurisdiction.

> But the first step [to building trust in the assessments] is for people to really have confidence in the assessment and how it's done, and it's research that backs that up.
>
> National Working Group Participant, September, 2010

Local validation also can have added benefits. First, evidence of a tool's predictive validity can help leverage funding to bolster and expand current evidence-based practices (e.g., to develop local community-based treatment resources in areas of need, to evaluate the effectiveness of existing intervention programs). Through validation, jurisdictions can enhance the functional utility of the RNA information and continually improve on the effectiveness of the criminal justice system in reducing recidivism. In addition, validation studies that demonstrate the local value of assessment information facilitate stakeholder buy-in. When stakeholders place their trust in a tool, they are more likely to use the tool and use it appropriately than when the instrument has no face validity (Latessa & Lovins, 2010). Validation research can also engender public trust and confidence in the assessment process, and can be used to support judicial decisions based on the tool (Johnson & Hardyman, 2004, p. 21).

To conduct the necessary validation research, a number of resources are available. In addition

to the vast array of independent research entities that offer validation research services, the National Institute of Corrections (NIC) can also provide technical assistance in this area. Several distributors of proprietary (e.g., COMPAS) and non-proprietary (e.g., ORAS) RNA assessment tools lend their research expertise to courts interested in adopting, validating, and norming these instrument(s). Alternatively, jurisdictions may choose to conduct all validation and evaluation research in-house (for more information, see Johnson & Hardyman, 2004).

Regardless of whether validation is conducted by the jurisdiction or by a contracted entity, one of the many important decisions in the instrument validation process warrants special attention. Note that some states elect to develop statewide assessment systems (e.g., Assessments.com, 2009; Ohio Department of Rehabilitation and Correction, 2010), whereas other states opt for local variation. The decision between a statewide and local approach involves several trade-offs. One principal advantage of a statewide strategy is that it standardizes the process of RNA so that all criminal justice agencies and jurisdictions "speak the same language." Ultimately, this should facilitate communication and promote greater consistency throughout the criminal justice system (Latessa, Lemke, Makarios, Smith, & Lowenkamp, 2010). However, a disadvantage of this strategy is that by implementing a single tool for the entire state, predictive validity can suffer. The contextual differences between jurisdictions, discussed above, also occur within a state. For example, what works in downtown Los Angeles may not work in Napa Valley. A number of researchers and practitioners argue that it is highly unlikely for any single tool, applied unilaterally, to demonstrate universally high predictive validity (see Gottfredson & Moriarty, 2006). An analysis of the specific policies, priorities, and needs of a particular jurisdiction should guide this decision between a regional and statewide assessment approach.

Finally, jurisdictions should conduct periodic revalidation studies on their assessment instrument to ensure that the tool and corresponding cutoff scores for classification remain appropriate and accurate for the local population (Clear, 1995). Agencies should also institute regular maintenance training of staff and stakeholders (see Guiding Principle 4) and conduct routine audits for quality assurance (Kreamer, 2004). Changes in the likelihood of recidivism due to new policies, changes in the makeup or behavior of the local population, drift in how the assessment tool is executed or applied, or other factors can diminish the accuracy and effectiveness of an assessment instrument over time. Improvements may be necessary to support continued confidence in the tool (e.g., Eisenberg, Bryl, & Fabelo, 2009).

Guiding Principle 8:

Assessment Reports

Judges, in consultation with the probation department or other assessment agency, should determine the format and content of the risk and needs assessment report to the court.

Most jurisdictions incorporate RNA information into the offender's presentence report (PSR). This practice varies, however, depending on the extent to which jurisdictions prepare PSRs (see Guiding Principle 5). Jurisdictions that do not routinely prepare PSRs may opt for a separate, briefer RNA report, particularly if the assessment agency does not typically prepare the standard PSR. In either scenario, the report should include a summary of the offender's overall risk level and dynamic risk factors as well as supervision, control, and treatment options available to address those risk factors in the community.

The specific content and format of the report will vary across jurisdictions based on local judicial and probation department cultures and preferences. Key factors that vary across reports are:

- Length of report. Some judges prefer a brief report summarizing the RNA risk level and dynamic factors, while others prefer the standard PSR narrative report as well as the RNA information.
- Presentation of assessment results. Some reports present summary levels of overall risk (e.g., low, medium, high) and dynamic risk factors, while others provide the specific scores obtained on the assessment instrument.
- Nature of recommendations. Some agencies provide specific recommendations regarding the offender's amenability for probation and probation conditions; others only indicate what supervision and treatment strategies are available to address the offender's dynamic risk factors if the judge decides to place the offender on probation.

The Committee on Probation (COP), working with the AOC, shall develop a plan to use evidence-based criminogenic factors in all felony pre-sentence reports. The COP shall consider ways in which using evidence-based criminogenic factors can appropriately shorten reports and reduce the time required to prepare these reports. The plan shall be submitted to the Arizona Judicial Council for its review no later than June 1, 2009.

Arizona Supreme Court Administrative Order No. 2009-01, p. 3.

Currently, there are no evidence-based practices to guide decisions regarding these report factors. Judges, in consultation with their probation department or other assessment agency, should determine the content and format of the report within the context of the agency's resources and capacity. In Arizona, where the probation department is part of the Judicial Branch, the former Chief Justice required the Administrative Office of the Courts to develop a statewide PSR with RNA information (see text box). A workgroup of judges, chief probation officers, division directors, supervisors and those who prepare presentence reports reviewed PSRs from across the state as well as from other states. The workgroup developed a standardized report but provided three variations to accommodate local preferences: Report 1 provides a risk level (e.g., high) and a summary of offender risk factors related to each domain; Report 2 provides a risk level and score (e.g., high risk: 21/42) and a summary of offender risk factors related to each domain; and Report 3 provides the risk level and score, the offender's actual score for each domain, and a summary of risk factors related to each domain. The court in each county decides which report it wants the Probation Department to provide at sentencing. The Technical Appendix to this report, available on the NCSC's Center for Sentencing Initiatives Web site, includes examples of PSR reports incorporating risk and needs assessment information.

Some assessment tools include a provision for the officer conducting the assessment to override the results of the assessment based on information the officer has that the assessment does not take into consideration. For example, an offender who is single might be scored a higher risk than a married offender on one of the domains. An override would allow the officer to take into consideration the effect of the offender's long-term relationship, even though the offender is not married, on the likelihood of successful completion of community supervision. When the assessment is reported to the court, however, the officer should report the results of the assessment as initially scored and then offer the court any additional information the officer thinks should be considered in determining the offender's supervision and service needs.

Guiding Principle 9:

Monitoring and Evaluation

Jurisdictions should routinely review data related to the process and outcomes of using risk and needs assessment information and revise the system as appropriate to enhance effectiveness.

It is critically important to collect and review data to monitor the effectiveness of providing and using RNA information. Regular review of data allows the court and probation department or other assessment and supervision agency to identify what is working and what needs adjustment. In addition, adherence to an evidence-based approach requires periodic evaluation of the long-term effects of using RNA information at sentencing.

> And I have found that actually following evidence-based practices and doing an evidence-based presentence investigation have saved resources. We did time studies and found that we spend significantly less time on the PSIs once we had a validated assessment.
>
> National Working Group Participant, September, 2010

There are many kinds of information the court and probation department can collect to track how well the process for providing RNA information is working. The key is to select only the data elements that will be most helpful in assessing the process and that the court and probation department will review on a regular basis. This will help ensure the best use of limited resources for collecting data. Examples of the kinds of information court and probation staff may want to monitor are:

- number of offenders in the target population who are assessed;
- length of time it takes to prepare a report;
- length of time it takes to provide a report to the court;
- frequency of officer recommendations to override the RNA results;
- frequency with which sentences agree with RNA report;
- percentage of probation-eligible offenders who are sentenced to prison;

- consistency of the conditions of probation with the RNA results (e.g., high prognostic risks and criminogenic needs should reflect high levels of supervision and service, high prognostic risks and low criminogenic needs should reflect high levels of supervision and relatively low levels of service, low prognostic risks and high criminogenic needs should reflect relatively low levels of supervision and high levels of service, and low prognostic risks and low criminogenic needs should reflect relatively low levels of supervision and service);
- percentage of probationers receiving sanctions for technical violations; and
- percentage of probationers revoked to prison for technical violations.

The court should also be confident that the probation or other agency is monitoring its own internal operations for quality assurance. For example, the agency should conduct periodic reviews of officers' assessments, reports to the court, interrater reliability, and adherence to evidence-based practices (e.g., Crime and Justice Institute, 2009).

In addition to collecting data on a regular basis, the court and probation or other agency should conduct a more formal process evaluation periodically to understand what is working well and what needs improvement. This can be done with surveys of key stakeholders regarding their satisfaction with the way RNA information is reported and used, a systematic review of a sample of files to determine if reports are provided in a timely manner, focus groups with stakeholders to determine if they understand what the RNA information means and whether "booster" training may be needed, and observations of court practices involving RNA information.

In terms of long-range outcomes, the jurisdiction will eventually want to conduct an outcome evaluation that compares a sample of offenders whose RNA information is reported to the court with a sample whose RNA information is not reported to see if there are differences in the number of probation violations, revocations to prison, or new offenses occurring while the offender is on probation, the extent to which fines and fees are paid, the length-of-stay on probation, and recidivism rates once probation is completed. This evaluation may also want to consider other outcomes such as changes in employment, education, and family stability.

The Way Forward: Judicial Leadership

The Guiding Principles provide the framework for jurisdictions to incorporate RNA information into sentencing decisions. Jurisdictions vary in terms of their local legal and service cultures, availability of resources, and as noted in Guiding Principle 6, infrastructure readiness to implement a sentencing process in which the availability of RNA information is routine. Thus there is no one model for moving forward with adoption and implementation of these principles. Each state and local jurisdiction will determine its own best path. What is universal is the undeniable importance of judicial leadership in promoting and supporting adoption and implementation. Successful adoption and implementation require a collaborative process, and the judge serves as the linchpin in that process (e.g., Stroker, 2006).

In jurisdictions where RNA information already is provided at the time of sentencing, the judge's role may be to work with the other stakeholders to review the process, surface potential issues, and make modifications, as necessary. In such instances, the judge need not usurp the role of other stakeholders who may be leading the effort but can offer additional support to efforts already underway, encourage more reticent stakeholders to participate, and serve as a champion, for example, to expand the use of RNA information at sentencing to a broader range of offenders or build greater system capacity for evidence-based supervision and treatment services. In multi-judge courts, judicial leadership also may be necessary to convince colleagues of the benefits of using RNA information at sentencing and of adopting court policies and/or procedures supporting the practice.

> [W]e pretty much did it from the probation department out trying to get the stakeholders involved in that leadership role. And I think there's only so far you can go with that. And there comes a point when it becomes obvious to you that it would be a real blessing for your judges to lead this simply because your judges can get your stakeholders together in discussing some of the more controversial aspects of this and arriving at a consensus and decision. And so, I believe I would love one of our judges to say let's move this even further than we've already done it.
>
> National Working Group Participant, September 2010

In jurisdictions where there is interest in using RNA information at sentencing but no process yet for doing so, the judge can initiate discussions with probation regarding the potential for providing such information. The judge can explore probation's organizational readiness (see Guiding Principle 6) and identify potential strategies to support or enhance an evidence-based system of community corrections.[17] The judge can also build support among other members of the bench by promoting opportunities for learning about the benefits and use of RNA information at sentencing (see Guiding Principle 4). Once these steps have been taken and the judiciary and probation are ready to move forward, the judge can convene a larger group of stakeholders to discuss broader implementation issues and concerns. Critical stakeholders will vary across jurisdictions but should include representatives of the court, prosecution, defense, and probation and/or community corrections. In addition, stakeholders should consult representatives of other constituencies such as victims and service providers, and other components of the criminal justice system such as jail administrators and pretrial and parole agencies that may also be using some form of RNA assessments, at relevant points in this process to ensure their perspectives and potential assistance are understood. To enhance the productivity of the meetings, discussions should be built around available data (e.g., number of offenders receiving various sentences, number of probation violations/revocations, and recidivism rates among probationers) and current stakeholder policies and practices affecting the progression of cases through the system, as well as the benefits of and concerns about using RNA information (see, for example, Carter, 2006). Focusing on data and an analysis of existing practices provides an opportunity to identify mutually acceptable strategies for moving forward (e.g., collecting additional data, learning more about specific assessment instruments, contacting other jurisdictions using RNA information at sentencing, identifying a target population of offenders for a pilot effort), while taking into consideration current stakeholder concerns and constraints.[18]

> [W]hile leadership can come from different facets of the justice system or community, judges are well positioned to lead reform efforts because of their unique ability to convene stakeholders...
>
> Conference of Chief Justices and Conference of State Court Administrators (2006)

[17] The strategies resulting from these discussions likely will differ for probation departments that are the responsibility of the judicial branch versus those that are the responsibility of the executive branch. However, judicial leadership in beginning the discussions and identifying strategies to support the implementation of the Guiding Principles is important and necessary in either system.

[18] The National Institute of Corrections (NIC) has an initiative underway to incorporate evidence-based decision making into key criminal justice decision points to reduce risk and harm. Seven local jurisdictions are piloting the approach, which involves stakeholder collaboration and the use of RNA information at various points in the process. To learn more about this effort, see NIC's Evidence-Based Decision Making Web page.

In jurisdictions that have not expressed any interest in using RNA information, the judge can begin, as described above, by initiating conversations with the bench and probation. However, the judge also may need to build receptivity to the general idea of a more evidence-based approach to sentencing and corrections through conversations with colleagues, other criminal justice stakeholders, local executive and legislative officials, and community members. Change is hard, and many individuals are risk averse. Providing information regarding how the use of RNA information at sentencing can improve public safety, reduce recidivism, and, in many cases, reduce the significant costs associated with incarceration, will help overcome resistance to the idea. Recent public opinion polls (e.g., Hartney & Marchionna, 2010; Public Opinion Strategies & Benenson Strategy Group, 2010) demonstrating that the public is willing to consider options other than prison if public safety is still maintained also may encourage some stakeholders to consider alternative approaches to "business as usual."

These local jurisdiction efforts should be coordinated with and supported by efforts at the state level as well. State court leaders should reinforce recidivism reduction as an explicit goal of sentencing and promote the use of RNA information in the sentencing process. Advocating for and supporting the use of RNA information can be done through various methods such as statewide conferences, establishment of specific committees, creation of organizational centers and initiatives, overseeing pilot programs, and working to incorporate evidence-based practices into legislation. Examples of such state court efforts are:

- Alabama's chief justice established the Alabama Public Safety and Sentencing Coalition of state leaders to develop evidence-based solutions to improve public safety and reduce recidivism. She

> This workshop was an historic moment for Alabama. It was the first time judges, probation officers and district attorneys sat down together and took an honest look at the state of our corrections system. It was also the first time many of our sitting judges stepped behind prison walls. We are all frustrated with the system. But by working together, we can create a safer Alabama. We can make the public safer and save tax dollars.
>
> Chief Justice Sue Bell Cobb (2010)

also convened a statewide sentencing and corrections policy workshop to discuss alternative sentences and reentry and treatment services available to reduce recidivism (Chief Justice Sue Bell Cobb, 2010). The workshop included a tour of correctional facilities.

- The former chief justice of Arizona established the Center on Evidence-Based Sentencing (Arizona Supreme Court, 2007) and, as noted in Guiding Principle 8, required the development of a standardized, evidence-based presentence report (Arizona Supreme Court, 2009).

- In 2007 and 2008, the California court system sponsored two statewide meetings on evidence-based practices, recidivism reduction, and related sentencing and corrections topics. The court system is implementing recommendations resulting from the last meeting that, in part, call for an emphasis on recidivism reduction as a primary purpose of sentencing and probation (see Warren, 2010, p. 188 and note 43). In addition, the California Risk Assessment Pilot Project is promoting and evaluating the use of RNA information in sentencing and probation revocation proceedings in selected counties in the state (California Courts, 2011).

- Idaho's chief justice ordered the creation of a Felony Sentencing Committee to identify and implement evidence-based sentencing practices (Supreme Court of the State of Idaho, 2009).

- Oregon's Judicial Conference adopted a resolution in 1997 encouraging judges and advocates to address recidivism reduction in sentencing decisions and seek training on the effectiveness of sentencing options in reducing recidivism (Oregon Judicial Conference, 1997). In addition, Oregon's chief justice recently joined with the other branches of government to support a comprehensive review of sentencing through the Commission on Public Safety (Office of the Governor, State of Oregon, 2010).

- The South Carolina judiciary was an active member of the Sentencing Reform Commission which developed sweeping criminal justice reforms embracing evidence-based practices. The reforms subsequently were adopted by the state's legislature (Pew Center on the States, 2010).

- Utah's Sentencing Alternatives Committee is collaborating with other stakeholders to promote evidence-based policies and practices in the criminal justice system (Utah Judicial Council, 2009, pp. 4-5).

- Washington's Superior Court Judges' Association and Sentencing Guidelines Commission created an Evidence Based Community Custody Workgroup to develop sentencing and community custody practices based on risk and protective factors and aimed at reducing recidivism (Washington Board for Judicial Administration, 2009).

- The Wisconsin Court System's Effective Justice Strategies Subcommittee (2011), charged with identifying policies and programs that increase public safety and reduce incarceration, is supporting the efforts of several jurisdictions across the state in piloting the use of RNA information at sentencing.

These are just some of the judicial efforts already underway to promote greater use of evidence-based sentencing practices, and that demonstrate the variety of activities that state courts can undertake both on their own and in concert with other branches of government and criminal justice stakeholders. These types of efforts at the state level to address needed changes in statutes, policies, and practices will facilitate and enhance the effectiveness of efforts on the local level.

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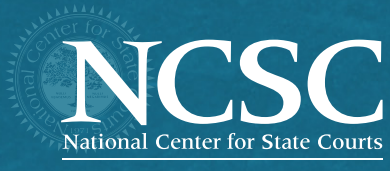
Sentencing judges shall consider…. the results of a defendant's RISK AND NEEDS assessment included in the presentence investigation…."

KY. REV. STAT. ANN. § 532.007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