

Use of Risk and Needs Assessment Information at Sentencing: Napa County, California

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This report was produced by the National Center for State Courts' Center for Sentencing Initiatives (CSI). CSI conducts research, provides information and tools, offers education and technical assistance, facilitates cross-state learning and collaboration, and works closely with the Conference of Chief Justices and the Conference of State Court Administrators to implement their resolution In Support of Sentencing Practices that Promote Public Safety and Reduce Recidivism. To learn more about CSI, visit www.ncsc.org/csi

I. About this Report

In August 2011, the Conference of Chief Justices and the Conference of State Court Administrators adopted a resolution recommending that “offender risk and needs assessment information be available to inform judicial decisions regarding effective management and reduction of the risk of offender recidivism.”¹ The resolution noted that supervision and treatment decisions informed by valid and reliable offender risk and needs assessment (RNA) information is a critical component of effective strategies to reduce recidivism.

This report is one in a series describing the experiences of individual jurisdictions using RNA information to inform sentencing decisions. These profile reports are not intended to be a comprehensive study of all stakeholder views in a jurisdiction regarding the use of the assessment information. Rather, they offer a current picture of how some stakeholders are incorporating the

¹ Conference of Chief Justices and Conference of State Court Administrators. (2011). *Resolution 7 In Support of the Guiding Principles on Using Risk and Needs Assessment Information in the Sentencing Process*. Williamsburg, VA: National Center for State Courts (available <http://ccj.ncsc.org/~media/Microsites/Files/CCJ/Resolutions/08032011-Support-Guiding-Principles-Using-Risk-Needs-Assessment-Information-Sentencing-Process.ashx>). CCJ and COSCA include the highest ranking judicial officer and court administrator from every state and U. S. Territory. The resolution endorsed a set of guiding principles developed by a National Working Group. For a description of the guiding principles, see Casey, P., Warren, R. K., & Elek, J. (2011). *Using Offender Risk Assessment Information at Sentencing: Guidance for Courts from a National Working Group*. Williamsburg, VA: National Center for State Courts (available <http://www.ncsc.org/sitecore/content/microsites/csi/home/Topics/~media/Microsites/Files/CSI/RNA%20Guide%20Final.ashx>).

information into their sentencing practices. The reports identify the population of offenders for which RNA information is obtained and the assessment instruments used in the jurisdiction, describe the assessment report provided to the court, discuss how the assessment information is used, and report on any outcomes typically tracked by the jurisdiction. When available, the report also provides an example of the assessment information provided to the court. In addition to these individual jurisdictional profiles, a forthcoming report will identify common practices and lessons learned across jurisdictions using RNA information at sentencing.

ACKNOWLEDGMENTS

The staff of the Center for Sentencing Initiatives at the National Center for State Courts gratefully acknowledges the Napa County criminal justice stakeholders who took time to participate in our interviews and share their experiences for this report.²

We also extend our appreciation to The Pew Charitable Trusts for its support of this effort. For information about Pew's public safety performance project, please visit www.pewtrusts.org/publicsafety.

II. Offenders Assessed

Napa County was the first of four California Risk Assessment Pilot Project (CalRAPP) counties to pilot the use of offender risk and needs assessment information at sentencing.³ In Napa County, the probation

² NCSC interviewed a Napa County judge, probation officer, and prosecutor. A defense attorney did not respond to interview requests.

³ CalRAPP counties (Napa, San Francisco, Santa Cruz, Yolo) engaged in a collaborative effort to explore the implementation of evidence-based practices in criminal courts. As part of the

department provides offender risk and needs assessment information in all felony and misdemeanor cases for which a presentence investigation report (PSR) is requested. The risk and needs assessments are completed as part of PSRs, which are most often requested for felony cases eligible for community supervision.⁴ Probation may also provide a PSR for misdemeanor cases upon special request from the court.

Currently, risk and needs assessment information is not provided pre-plea. However, probation can request that the terms and conditions of a plea be modified after the plea is accepted. This can be done quickly if the attorneys agree to the modification; otherwise, it requires another court hearing.

III. Assessment Process

Napa County Adult Probation Services

assesses offenders using the Level of Service/Case Management Inventory (LS/CMI).⁵ The LS/CMI was developed in 2004 by Don Andrews, James Bonta, and Stephen Wormith to function both as a case management tool and as an assessment of offender risk, needs, and responsivity

project, county teams from probation departments, public defenders offices, superior courts, district attorney offices, and other justice partners explored the transition to evidence-based practices and the impact individual offender characteristics may have on evidence-based practices in local courts. The CalRAPP website, <http://www.courts.ca.gov/5274.htm>, provides additional information on the project.

⁴ PSRs are not provided for felony cases if prison commitment is a certainty.

⁵ The Napa County Adult Probation Services website is:

<http://countyofnapa.org/probation/Adult/>

factors.⁶ The LS/CMI consists of 43 items across 8 categories. Researchers from the University of Colorado validated the LS/CMI on the local Napa County felony population in 2005. Probation officers began using the tool that year, and offender risk and needs assessment information was formally incorporated into Napa County PSRs in 2007-2008.

The probation department's Court Investigations Unit is responsible for writing offender PSRs and administers the LS/CMI as part of the presentence investigation process. Assessment results may be overridden with supervisor approval and a written explanation. Overrides are rare, but may occur when a secondary, specialized assessment tool (e.g., domestic violence or substance abuse assessment) shows a higher score than the LS/CMI. For any override, the court is notified of both the original and overridden score. Offender LS/CMI results are routinely updated and provided to the court for any probation violation hearings.

Napa County uses several specialized assessment instruments in addition to the LS/CMI. Domestic violence offenders will complete a Spousal Assault and Risk Assessment (SARA), and sex offenders will complete the Static-99 assessment. Substance-abusing offenders will complete an Addiction Severity Index (ASI) assessment. The ASI is not completed in all

⁶ As of this report, the LS/CMI is the latest version of the commercially available Level of Service Inventory (LSI) system. The prior version, the Level of Service Inventory-Revised (LSI-R), was made available to the public in 1995 and is still widely used as a stand-alone RNA tool. For more information about the LS/CMI, refer to the Multi-Health Systems, Inc. website at:

<http://www.mhs.com/product.aspx?gr=saf&prod=ls-cmi&id=overview>,

cases due to funding cuts; it is used only when the probation officer considers it necessary. A specialized mental health assessment is not currently used.

IV. Assessment Report

The California Rules of Court mandates that all PSRs submitted to the court include, at minimum, the following information: facts about the defendant and the circumstances of the crime, the defendant's prior criminal record, any defendant statements made to the probation officer, victim information, information on defendant's social history, collateral information, evaluation of factors related to disposition, and the probation officer's recommendations regarding sentence type and severity.⁷ The specific format of the PSR, however, varies from county to county.

In Napa County, the PSR is a narrative report that contains a special section dedicated to LS/CMI assessment results (see Appendix).⁸ This LS/CMI evaluation section includes information on the offender's risk level, risk score, and top four criminogenic needs. Raw criminogenic needs scores and other detailed information from the LS/CMI are not reported. Based on the risk and needs assessment information, the Court Investigation Unit also provides treatment service recommendations if the offender is eligible for probation. In addition, the PSR concludes with the

⁷ California Rule of Court 4.411.5

⁸ In December 2013, Napa County began using an updated PSR format, which now includes subscores for all eight LS/CMI domains as well as the total score and risk level. This change was instituted at the request of the District Attorney's and Public Defender's offices. An example of the new version is appended to this report.

probation officer's recommendation regarding whether to sentence the offender to prison or to community supervision.

In 2012, approximately 1200 PSRs were completed and submitted to the court in Napa County.

V. Use of Assessment Information

General reception. In 2004, [The Carey Group](#) delivered a three-day training to Napa County probation officers on the principles of evidence-based practice.⁹ The County Administrator's Office subsequently paid for all criminal justice stakeholders, including judges, the public defender's office, the district attorney's office, and the police department, to receive this training. Stakeholders expressed some initial skepticism about the accuracy of the LS/CMI scores based on their intuition about defendants who should be high or low risk and were slow to embrace the use of risk-based information in PSRs. Strong probation and court leadership, continued communication and training, and local validation of the LS/CMI tool have helped address these concerns, with stakeholders now generally in agreement that offender risk and needs assessment information is a valuable new component of the sentencing process.

Because a full risk and needs assessment report is not included with the PSR, other concerns (e.g., about potential use of incriminating statements by defendants) are diminished. However, some stakeholders have expressed a desire to see more detailed

information from the LS/CMI assessment provided to the court in the PSR.

Practical use of RNA information among stakeholders. As of this report, two Napa County judges routinely receive PSRs. These judges have reportedly found the offender risk and needs assessment information helpful when sentencing defendants and typically agree with the recommendations included in the PSR. Attorneys also generally agree with the probation department's recommendations regarding the conditions of probation. When there is disagreement regarding the provisions, it is addressed with the judge at the sentencing hearing. The judge may elect to involve the PSR writer in the sentencing hearing when a contested discussion about the treatment provisions of probation takes place, but this is not a standard practice.

Disagreement with the recommended conditions of probation may occur, for example, if one party seeks to fulfill an alternate purpose of sentencing (e.g., punishment) than the public safety and offender risk reduction purpose served by the evidence-based sentencing approach. Disagreement may also sometimes arise if a treatment program prescribed to address the defendant's identified criminogenic needs is intensive and, therefore, perceived to be more strenuous than conditions traditionally associated with community supervision of defendants found guilty of a comparable offense. Many of the strongest, most effective local treatment options require additional time and effort that the defendant may be unwilling to invest. In their clients' interests, some defense attorneys argue against such treatment conditions.

⁹ The Carey Group website is <http://www.thecareygroupinc.com/>

VI. Outcomes Tracked

At this time, little data are tracked to evaluate the use of risk and needs assessment information at sentencing in Napa County. Stakeholders have expressed an interest in this capability moving forward and new computer systems are currently being installed to compile the necessary data within the probation department. Modest data collection efforts are underway as part of the CalRAPP initiative: The probation

department reported a decrease in recidivism rates since the introduction of evidence-based sentencing practices. However, it is unclear whether the observed changes may be directly or wholly attributed to the use of RNA information at sentencing and in offender case planning or to other factors (e.g., deferred incarceration, efforts of the probation revocation court).

Appendix

SUPERIOR COURT OF CALIFORNIA
COUNTY OF NAPA

THE HONORABLE

NAME:)
AKA:)
Address:)
Phone:)
DOB: Age:) PID Number:
DL:) CR Number:
CII:)
FBI:) Sentencing Date:
Height:) Department: at in Dept
Weight:)
Hair:) Defense Counsel:
Eyes:) Report Prepared By:
Race:)
) **PROBATION OFFICER'S REPORT**
) **PRESENTENCE**
)
In Custody: Yes No)

SUMMARY OF CHARGES:

CR Number	Count	Crime or Enhancement	LOC (F/M)	Crime Date	Conviction Date	Plea	Trial	Dism	Harvey Waiver

CONDITIONS OF PLEA: **Plea Bargain** **Indicated Sentence** **Open Plea**

The parties agreed there would be no immediate state prison and the defendant would
(*example of a plea bargain*)

or

The court indicated there would be no immediate state prison. (*example of an indicated sentence*)

or

There are no conditions attached to the plea. (*use this if it's an open plea*)

STATEMENT OF FACTS:

The following is a summary of facts derived from _____ report # _____, dated _____:

PRIOR RECORD: A record check with CII, DMV, FBI, Juvenile Probation, and other state and county agencies reveal the following prior convictions for the defendant:

<u>Date</u>	<u>Agency</u>	<u>Offense</u>	<u>Disposition</u>
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DMV:

DEFENDANT'S STATEMENT:

VICTIM'S STATEMENT:

On _____, a letter was sent to _____, advising him/her of his/her rights, pursuant to Penal Code Section 1191.1 and 1191.2.

FINE(s)/RESTITUTION/RESTITUTION FINE(s):

SOCIAL HISTORY: (The following information was provided by the defendant without verification)

Additional Social History information mandated in felony presentence reports per Rule of Court 4.411.5, may be found on the face sheet of this felony report. Any pertinent information specific to the defendant, who is the subject of this report, will be included below:

Birthplace:

Came to State:

Came to County:

US Citizen/Legal Status:

Employer:

Income:

Full time

hours/week

Part time

hours/week

CRITERIA NOT EXCLUSIVE; SEQUENCE NOT SIGNIFICANT – RULE 4.408:

- (a) The enumeration in these rules of some criteria for the making of discretionary sentencing decisions does not prohibit the application of additional criteria reasonably related to the decision being made. Any such additional criteria must be stated on the record by the sentencing judge.
- (b) The order in which criteria are listed does not indicate their relative weight or importance.

PROBATION ELIGIBILITY WHEN PROBATION IS LIMITED - RULE 4.413:

MANDATORY STATE PRISON

list statutory authority here

PRESUMPTIVE STATE PRISON

Pursuant to Section 1203(e)(4) of the Penal Code, “Except in unusual cases where the interests of justice would best be served if the person is granted probation, probation shall not be granted to any person who has been previously convicted twice in this state of a felony or in any other place of a public offense which, if committed in this state, would have been punishable as a felony.”

EXCEPTIONS TO PRESUMPTIVE STATE PRISON

Rule 4.413 of the Rules of Court delineates unusual cases and probation eligibility when probation is limited.

CRITERIA AFFECTING PROBATION - RULE 4.414:

- (a)(1) The nature, seriousness, and circumstances of the crime as compared to other instances of the same crime.
- (a)(2) Whether the defendant was armed with or used a weapon.
- (a)(3) The vulnerability of the victim.
- (a)(4) Whether the defendant inflicted physical or emotional injury.
- (a)(5) The degree of monetary loss to the victim.
- (a)(6) Whether the defendant was an active or passive participant.
- (a)(7) Whether the crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur.

- (a)(8) Whether the manner in which the crime was carried out demonstrated criminal sophistication or professionalism on the part of the defendant.
 - (a)(9) Whether the defendant took advantage of a position of trust or confidence to commit the crime.
 - (b)(1) Prior record of criminal conduct, whether as an adult or a juvenile, including the recency and frequency of prior crimes; and whether the prior record indicates a pattern of regular or increasingly serious criminal conduct.
 - (b)(2) Prior performance on probation or parole and present probation or parole status.
 - (b)(3) Willingness to comply with the terms of probation.
 - (b)(4) Ability to comply with reasonable terms of probation as indicated by the defendant's age, education, health, mental faculties, history of alcohol or other substance abuse, family background and ties, employment and military service history, and other relevant factors.
 - (b)(5) Likely effect of imprisonment on the defendant and his or her dependents.
 - (b)(6) The adverse collateral consequences on the defendant's life resulting from the felony conviction would affect the defendant's ability to possess firearms and to secure employment requiring state and federal licensing. Further, it could result in deportation and exclusion from this country or denial of naturalization.
 - (b)(7) Whether the defendant is remorseful.
 - (b)(8) The likelihood that if not imprisoned the defendant will be a danger to others.
- Does not apply in this case.

CIRCUMSTANCES IN AGGRAVATION - RULE 4.421:

- (a)(1) The crime involved great violence, great bodily harm, threat of great bodily harm, or other acts disclosing a high degree of cruelty, viciousness, or callousness.
- (a)(2) The defendant was armed with or used a weapon at the time of the commission of the crime.
- (a)(3) The victim was particularly vulnerable.
- (a)(4) The defendant induced others to participate in the commission of the crime or occupied a position of leadership or dominance of other participants in its commission.

- (a)(5) The defendant induced a minor to commit or assist in the commission of the crime.
- (a)(6) The defendant threatened witnesses, unlawfully prevented or dissuaded witnesses from testifying, suborned perjury, or in any other way illegally interfered with the judicial process.
- (a)(7) The defendant was convicted of other crimes for which consecutive sentences could have been imposed but for which concurrent sentences are being imposed.
- (a)(8) The manner in which the crime was carried out indicates planning, sophistication, or professionalism.
- (a)(9) The crime involved an attempted or actual taking or damage of great monetary value.
- (a)(10) The crime involved a large quantity of contraband.
- (a)(11) The defendant took advantage of a position of trust or confidence to commit the offense.
- (b)(1) The defendant has engaged in violent conduct which indicates a serious danger to society.
- (b)(2) The defendant's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous or of increasing seriousness.
- (b)(3) The defendant has served a prior prison term.
- (b)(4) The defendant was on probation or parole when the crime was committed.
- (b)(5) The defendant's prior performance on probation or parole was unsatisfactory.
- (c) Any other facts statutorily declared to be circumstances in aggravation.

Does not apply in this case.

CIRCUMSTANCES IN MITIGATION - RULE 4.423:

- (a)(1) The defendant was a passive participant or played a minor role in the crime.
- (a)(2) The victim was an initiator of, willing participant in, or aggressor or provoker of the incident.
- (a)(3) The crime was committed because of an unusual circumstance, such as great provocation, which is unlikely to recur.

- (a)(4) The defendant participated in the crime under circumstances of coercion or duress, or the criminal conduct was partially excusable for some other reason not amounting to a defense.
- (a)(5) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.
- (a)(6) The defendant exercised caution to avoid harm to persons or damage to property, or the amounts of money or property taken were deliberately small, or no harm was done or threatened against the victim.
- (a)(7) The defendant believed that he or she had a claim or right to the property taken, or for other reasons mistakenly believed that the conduct was legal.
- (a)(8) The defendant was motivated by a desire to provide necessities for his or her family or self.
- (a)(9) The defendant suffered from repeated or continuous physical, sexual, or psychological abuse inflicted by the victim of the crime; and the victim of the crime, who inflicted the abuse, was the defendant's spouse, intimate cohabitant, or parent of the defendant's child; and the facts concerning the abuse do not amount to a defense.
- (b)(1) The defendant has no prior record, or an insignificant record of criminal conduct, considering the recency and frequency of prior crimes.
- (b)(2) The defendant was suffering from a mental or physical condition that significantly reduced culpability for the crime.
- (b)(3) The defendant voluntarily acknowledged wrongdoing prior to arrest or at an early stage of the criminal process.
- (b)(4) The defendant is ineligible for probation and but for that ineligibility would have been granted probation.
- (b)(5) The defendant made restitution to the victim.
- (b)(6) The defendant's prior performance on probation or parole was satisfactory.

Does not apply in this case.

CRITERIA AFFECTING CONCURRENT OR CONSECUTIVE SENTENCES
RULE 4.425:

- (a)(1) The crimes and their objectives were predominantly independent of each other.
- (a)(2) The crimes involved separate acts of violence or threats of violence.

- (a)(3) The crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior.

Does not apply in this case.

STATE AUTHORIZED RISK ASSESSMENT TOOL FOR SEX OFFENDERS (SARATSO) – STATIC 99R RESULTS:

On _____, Mr. _____ was scored on the Static-99R, which is an actuarial measure of risk for sexual offense recidivism. This instrument has been shown to be a moderate predictor of sexual reoffense potential. Mr. _____ received a total score of _____, which places him in the (choose one: Low, Moderate-Low, Moderate-High, or High) Risk Category for being convicted of another sexual offense, if he is released on probation. His risk on release from a prison sentence cannot be calculated until his age on release on parole is known, so the risk score stated herein is predictive of risk based on his age on the date of this presentencing report. If Mr. _____ has a prior conviction for a registrable sex offense, his risk score was calculated based on his age at release on the most recent registrable sex offense, or his age today if he had no prior registrable sex offense. There was a 2009 update of the recidivism rates that now applies to scores from 0 to 10+. Mr. _____ scored a _____ on the Static-99R. The estimated risk for this score on the Static-99R is _____ over five years.

Risk factors which are not measured by the Static-99R can raise or lower risk. These include things like substance abuse, personality disorder, deviant sexual interests, emotional identification with children, and self-regulation problems. A sex offender in a mandated treatment program will be assessed by a certified treatment provider using dynamic and violence risk assessment instruments designated by the SARATSO Committee. The combined risk will be used to determine appropriate levels of supervision and treatment.

SPOUSAL ASSAULT RISK ASSESSMENT (SARA) RESULTS:

On _____, a SARA assessment was completed by the undersigned officer, based on information gathered during the presentence investigation in this matter. The defendant's raw score was _____, which places him in the _____ percentile and indicates he is of _____ risk to commit a future domestic violence offense. The SARA is an assessment tool that measures a subject's risk to commit a future domestic violence offense, based upon his or her criminal history, psychosocial adjustment, spousal assault history, and the current/most recent offense. A raw score higher than 20 indicates the subject has a relatively high number of risk factors present.

LS/CMI EVALUATION RESULTS:

Based upon the Level of Service/Case Management Inventory (LS/CMI) evaluation conducted on _____, the defendant scored _____ indicating a (very low, low, medium, high, very high) risk to reoffend. The target areas of concern the defendant needs to address to be successful on probation and to reduce possible recidivism include, _____. Recommended treatment services will include _____.

Scores	CH	EE	FM	LR	CO	ADP	PA	AP
Very High								
High								
Medium								
Low								
Very Low								

CH- Criminal History, EE- Education/Employment, FM-Family/Marital, LR-Leisure/Recreation, CO-Companions, ADP-Alcohol/Drug Problem, PA-Procriminal Attitude/Orientation, AP- Antisocial Pattern.

EVALUATION:

RECOMMENDATION:

It is recommended the defendant be ordered to pay a Presentence Report Fee of \$560.00/\$240.00, pursuant to Penal Code Section 1203.1b along with an annual Supervision Fee in an amount not to exceed \$240.00, pursuant to Penal Code 1203.1b.

Therefore, in the matter of _____, it is respectfully recommended that imposition of sentence be suspended and the defendant be **GRANTED FORMAL PROBATION** for a period of _____ years, under the following terms and conditions:

Dated:

MARY BUTLER
Chief Probation Officer

By: _____

Probation Officer

Approved: _____

Supervising Probation Officer

I have read and considered the foregoing report.

Judge of the Superior Court