

# Use of Risk and Needs Assessment Information at Sentencing: Yamhill County, Oregon

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**Center for Sentencing Initiatives**

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## 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.”<sup>1</sup> 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

<sup>1</sup> 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>).

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## ACKNOWLEDGMENTS

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

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](http://www.pewtrusts.org/publicsafety).

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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.

## II. Offenders Assessed

In the fall of 2013, as a result of the passage of HB 3194, Yamhill County changed its focus on the offenders for which RNA information is sought prior to sentencing.<sup>3</sup> Before enactment of HB 3194, a “case

<sup>2</sup>A Yamhill County judge, defense attorney, and two representatives from community corrections agreed to NCSC requests for an interview.

<sup>3</sup> See text of legislation at <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/HB3194/Enrolled>.

analysis” including RNA information was prepared for presumptive probation cases to help judges tailor probation conditions to address an offender’s criminogenic risk factors.<sup>4</sup> All felony offenders were screened for risk; and those whose scores were medium and above were given a full RNA.

With passage of HB 3194, RNA information is prepared prior to sentencing only for presumptive prison cases – those involving non-person, felony offenses – to help identify offenders who could be safely managed in the community.<sup>5</sup> The “early defendant analysis,” including the RNA information, is prepared after arraignment on indictment and thus is available in the plea negotiation process. Presumptive probation offenders are assessed post-sentence, and community corrections determines probation conditions to address risk and needs factors based on the assessment.

## III. Assessment Process

The flowchart in Appendix A depicts the early defendant analysis (EDA) pilot process

<sup>4</sup> Presumptive-probation is determined according to Oregon’s sentencing guidelines. For more information, see the Oregon Sentencing Guidelines Grid at <http://www.oregon.gov/CJC/docs/guidelinesgrid.pdf>. Also see Kauder, N., & Ostrom, B. (2008). *State sentencing guidelines profiles and continuum*. Williamsburg, VA: National Center for State Courts (available [http://www.ncsc.org/~media/Microsites/Files/CSI/State\\_Sentencing\\_Guidelines.ashx](http://www.ncsc.org/~media/Microsites/Files/CSI/State_Sentencing_Guidelines.ashx)).

<sup>5</sup> The district attorney designates cases as either presumptive prison or probation. Violent and sex offenders are excluded from consideration of the diversion program.

underway in Yamhill.<sup>6</sup> A dedicated Yamhill County Community Corrections officer prepares the EDA. The EDA includes the results of the Oregon Public Safety Checklist, an automated actuarial risk assessment screening tool used with all offenders to distinguish those who pose a low risk to recidivate from those who pose a higher risk.<sup>7</sup> Regardless of their risk level on the Public Safety Checklist, however, offenders who undergo EDA all complete the full Level of Service/Case Management Inventory (LS/CMI) assessment. 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 responsiveness

<sup>6</sup> The pilot process will be reviewed in February 2014.

<sup>7</sup> The Oregon Public Safety Checklist was developed by the Oregon Criminal Justice Commission in collaboration with the Oregon Department of Corrections and validated by researchers at Western Oregon University in 2012. The tool uses static demographic and criminal history information available from four state law enforcement and court information systems to calculate the risk for felony reconviction or for rearrest on a person or property offense. In the traditional sentencing process, offenders identified as low risk on this screening tool do not subsequently receive a full RNA assessment, which is conducted post-sentence only with higher risk offenders to inform decisions about the conditions of supervision and case planning. Additional information on the checklist can be found at <https://risktool.ocjc.state.or.us/psc/>. For additional information on the implementation of the PSC, see [http://www.oregon.gov/DOC/CC/popularity\\_box/es/psc\\_service\\_request.pdf](http://www.oregon.gov/DOC/CC/popularity_box/es/psc_service_request.pdf). The validation study report is available at [http://www.oregon.gov/CJC/Documents/Publications/Public\\_Safety%20Checklist\\_Rpt.pdf](http://www.oregon.gov/CJC/Documents/Publications/Public_Safety%20Checklist_Rpt.pdf).

factors.<sup>8</sup> The assessment consists of 43 items across 8 categories.

Oregon Community Corrections began using the LS/CMI statewide several years ago as part of its effort to incorporate evidence-based practices into its operations. However, LS/CMI results were not shared with the court in a formal manner until 2011 when Yamhill developed the case analysis form for presumptive probation cases as part of its work with the National Institute of Corrections' Evidence Based Decision Making Initiative (EBDMI).<sup>9</sup>

When administering the LS/CMI, the officer may override the results of the instrument for policy reasons, i.e., based on community norms and tolerance for certain types of offenders or offenses. Overrides result in changes to the level of supervision recommended but not to the offender's actual LS/CMI score. However, because person offenses (e.g., sex offenses, domestic violence offenses) are not eligible for prison

<sup>8</sup> As of this report, the LS/CMI is the latest version of the commercially available Level of Service Inventory (LSI) system. The last 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>.

<sup>9</sup> EBDMI seeks to expand the use of evidence-based information and practices throughout the criminal justice system. For more information on the EBDMI, see Yamhill County, OR, Evidence Based Decision Making Initiative (EBDMI) web page at <http://www.co.yamhill.or.us/content/evidence-based-decision-making-initiative-ebdmi> and National Institute of Corrections, Evidence-Based Decision Making web page at <http://nicic.gov/EBDM>.

diversion, overrides in EDA cases are less likely.

The EDA also includes the results of four assessments examining issues related to the offender's motivation: the University of Rhode Island Change Assessment Scale (URICA), a motivational assessment that captures a defendant's readiness to change; the TCU Substance Abuse Screening tool to assess substance abuse severity; and the Jail Brief Mental Health Screening instrument to determine if additional mental health assessment is appropriate.<sup>10</sup>

## IV. Assessment Report

Traditional narrative presentence investigation reports are rarely used in Yamhill because of Oregon's determinate sentencing guidelines which focus on criminal history and severity of offense.<sup>11</sup> However, to provide the court guidance regarding conditions of probation for individual offenders, Community Corrections, in consultation with local stakeholders, developed a short, case

<sup>10</sup> The URICA contains 32 self-report measures and is often used to assess clinical processes. Additional information on the URICA may be found at [http://pubs.niaaa.nih.gov/publications/AssessingAlcohol/InstrumentPDFs/75\\_URICA.pdf](http://pubs.niaaa.nih.gov/publications/AssessingAlcohol/InstrumentPDFs/75_URICA.pdf). Additional instrument and validation information on the TCU Drug Screen may be found at <https://www.ncjrs.gov/pdffiles1/nij/grants/196682.pdf>. Comprehensive information on the Jail Brief Mental Health Screening may be found at [http://gainscenter.samhsa.gov/topical\\_resources/bjmhs.asp](http://gainscenter.samhsa.gov/topical_resources/bjmhs.asp). Community Corrections also conducts additional assessments for cases involving sex offenses or domestic violence, but these cases are not eligible for prison diversion; assessments are completed post-sentence to aid in case plan development.

<sup>11</sup> See note 4.

analysis form. The case analysis provided probation recommendations to address an offender's likelihood to recidivate based on the results of the LS/CMI and other assessments that were conducted as well as information obtained from other sources such as treatment providers or a mental health specialist.

In response to HB 3194, Yamhill County stakeholders modified the case analysis form and created the EDA form for use pre-plea to identify defendants who could be supervised in the community rather than incarcerated. The EDA form (see Appendix B) is usually two or three pages in length and provides more detailed RNA information than the previous case analysis form. In addition to the overall LS/CMI risk score, the EDA presents a color-coded bar graph which displays the individual risk levels for each of the eight LS/CMI domains. The EDA also includes results from supplemental assessment tools used.

The Community Corrections officer recommends whether or not the defendant can be effectively supervised in the community and suggests programming and other conditions of probation if the individual remains in the community. In addition, at the district attorney's request, the form includes a summary of the offender's prior performance on community supervision, if applicable.

Yamhill County Community Corrections began using EDA in November 2013. In November and December 2013, 10 EDAs were conducted.

## V. Use of Assessment Information

*General reception.* Although the EDA process is early in its implementation, Yamhill County Community Corrections has been providing RNA information to the court since 2011. Local stakeholders generally find RNA information helpful and seem open-minded about the new EDA process and reporting format.

When Yamhill County initially adopted the LS/CMI, stakeholders expressed some concerns regarding the proper and reliable administration of the LS/CMI assessment. Periodic training sessions, conducted by the National Institute of Corrections and other national leaders in the field and open to all local stakeholders (e.g., law enforcement agencies, the district attorney's office, defense attorneys, judges, Community Corrections staff), played a critical role in addressing these concerns and generating local buy-in for the continued use of RNA results to inform court decision making. In addition, a sentencing working group comprised of the county's presiding judge, district attorney, community corrections staff, and a local defense attorney meets regularly to discuss EDA issues, such as the effectiveness of the current referral process.

*Practical use of RNA information among stakeholders.* All stakeholders interviewed for the report indicated that RNA information can be useful in the sentencing process. Judges generally follow EDA recommendations.<sup>12</sup>

The EDA process was developed by stakeholders as a pilot effort and likely will be modified as stakeholders gain more

experience with the process. Stakeholders expressed no due process concerns to date with the EDA process. Defense attorneys direct clients not to discuss the current offense with the Community Corrections officer during assessment, and pending charge information is not included on the EDA form.

For presumptive probation cases, the court no longer receives RNA information prior to sentencing. For these cases, the plan is for the court to order any "control" conditions that are necessary for public safety purposes (e.g., no possession of alcohol or entry into taverns for an alcohol-related offense) at the time of sentencing. After sentencing, Community Corrections conducts the RNA and develops conditions to target the offender's criminogenic risk factors and needs. These conditions become effective within five days of filing a report of the assessment and recommendations to the court. The new Oregon law does not specify any process for defense review before or after the conditions are imposed, but clients have the right to consult with counsel and to object to imposed conditions.

## VI. Outcomes Tracked

The Oregon Department of Corrections tracks statewide recidivism rates, offender risk levels, and probation terminations among other data measured as part of an ongoing evaluation of Oregon's Community Corrections Act.<sup>13</sup>

As part of its EBDMI work, Yamhill criminal justice stakeholders prepared a

<sup>12</sup> Four Yamhill County judges use EDA forms.

<sup>13</sup> An example of the report may be found at [http://www.oregon.gov/DOC/CC/docs/pdf/evaluating\\_oregons\\_cc\\_act.pdf](http://www.oregon.gov/DOC/CC/docs/pdf/evaluating_oregons_cc_act.pdf).

scorecard to measure progress in reducing community harm.<sup>14</sup> Yamhill County is working with George Fox University to evaluate its progress based on the previously-used case analysis approach. The data measures tracked for this effort include recidivism rates, absconsion rates, and positive case closure.<sup>15</sup>

Measures for the new EDA process are not yet finalized but likely will include risk level information, referral rates, and type of sentence. In addition, Yamhill is seeking to reduce the number of months of prison imposed on offenders by 6% or 285 months in 2014. If it reaches this goal, the state will save approximately \$786,600, and Yamhill

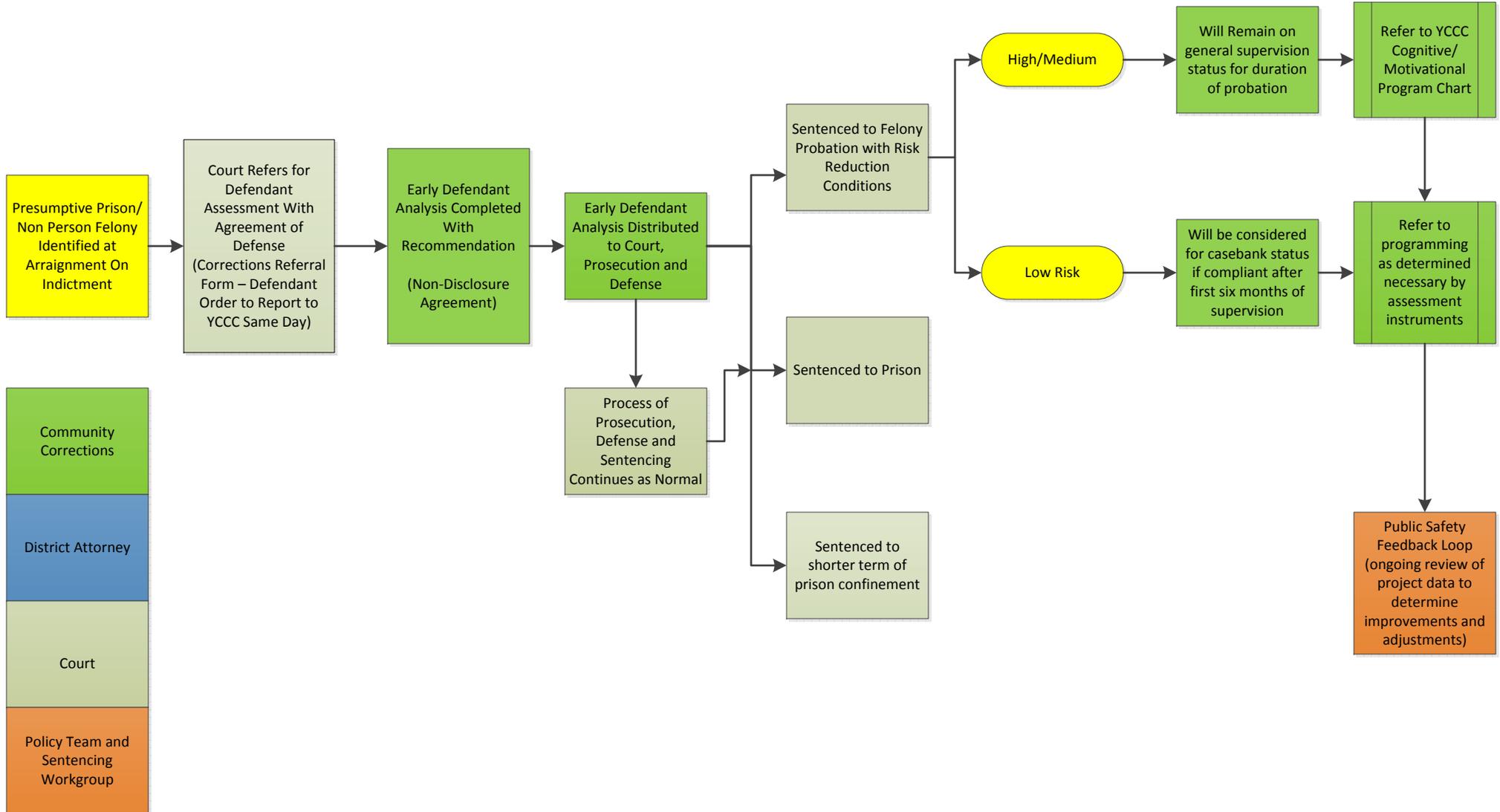
will receive \$172,000 to bolster its community-based sanctions, services and programs.<sup>16</sup>

<sup>14</sup> The Yamhill County Criminal Justice System Scorecard is available at [http://www.co.yamhill.or.us/sites/default/files/scorecard\\_final.pdf](http://www.co.yamhill.or.us/sites/default/files/scorecard_final.pdf).

<sup>15</sup> Additional data measures are described in the plan, available at <http://www.co.yamhill.or.us/sites/default/files/2011-2012%20annual%20pdf.pdf>.

<sup>16</sup> The Justice Reinvestment Program is part of HB 3194. See note 3.

**Appendix A**  
**Yamhill County Oregon Smart Sentencing Initiative**  
**Early Defendant Analysis**  
**State Justice Reinvestment Program**  
**Arrestment on Indictment**





**EARLY DEFENDANT ANALYSIS**  
*Detail Page*

**Recommendations:**

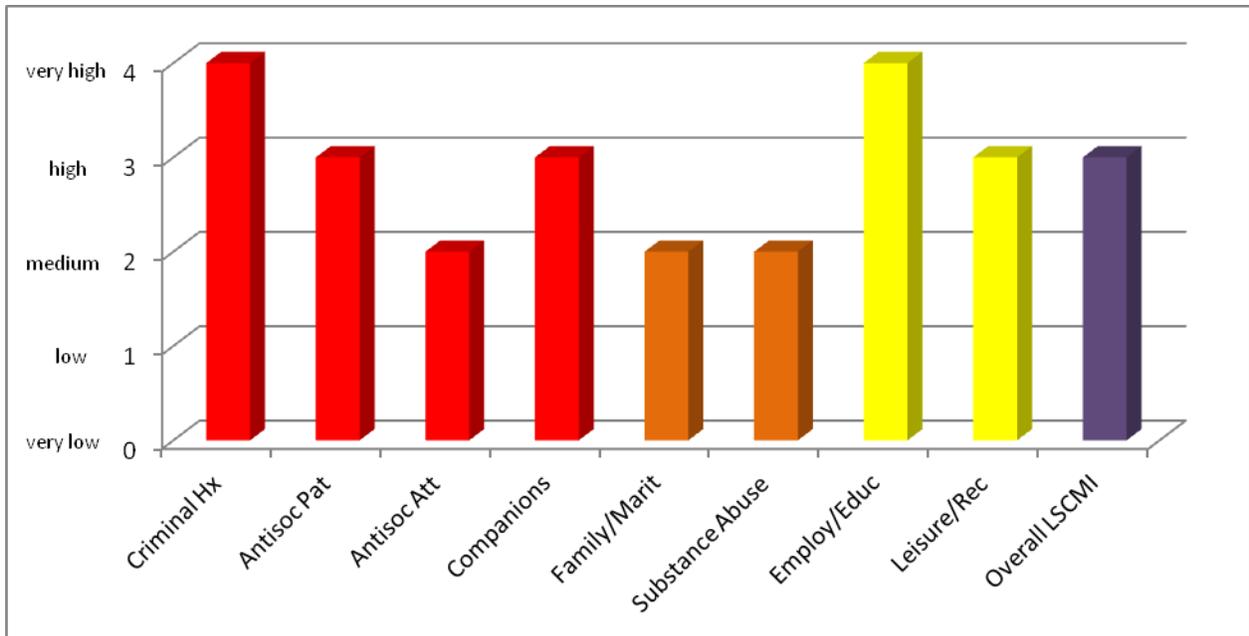
**Prior conformance on community supervision:**

**Comments:**

Risk Assessment Results		
Instrument	Score	Level
LSCMI		
PSC/PROXY		
TCU (A&D)		
Mental Health Screen	N/A	

Motivation Level Assessments	
URICA Score	
Stage of Change	

**LSCMI Domain Scores**



**EARLY DEFENDANT ANALYSIS**  
*Detail Page Continued*

<b>Responsivity Factors</b>			
<i>Check all that apply that are relevant to service needs</i>			
Functional ability: attention span		Mental health (MH screening)	
Functional ability: cognitive deficits		Cultural background	
Functional ability: emotional age		Minimization	
Language		Physical health	
Learning style		Transportation	
Level of motivation (URICA score)		Other ( <i>specify</i> ):	

<b>STRENGTHS (Top 3)</b>	
1.	
2.	
3.	

Prepared by:

\_\_\_\_\_  
 Community Corrections Manager                      Date

C: Honorable Judge [Name]; Sentencing Judge; District Attorney; Defense Attorney; PO of record (if applicable)