

SJ 3: Study the Board of Pardons and Parole

Background Paper: Risk and Needs Assessments

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Background

As part of its study of the Montana Board of Pardons and Parole (Board), the Law and Justice Interim Committee (LJIC) expressed interest in the use of risk and needs assessments. These statistical tools are used for a wide variety of criminal justice purposes, from sentencing in the courts to determining placement and programming needs in a correctional setting to making release and post-prison supervision decisions. This paper provides a general background on risk and needs assessments, including an overview of laws related to these assessments that other states have recently enacted. It also highlights assessment tools used by the Board and the Department of Corrections (DOC).

What Are Risk and Needs Assessments and How Are They Used?

Section 46-23-201, MCA, requires the Board to consider a prisoner's likelihood of reoffending when it makes parole decisions. The Board may release a person on parole when, in its opinion, "there is a reasonable probability that prisoner can be released without detriment to the prisoner or the community". Reinforcing this idea, the law also provides that parole can be granted "only for the best interests of society" and "only when the [Board] believes the prisoner is able and willing to fulfill the obligations of a law-abiding citizen". Many states have similar language in statute, making the determination of who is likely to remain trouble-free in the community a common challenge faced by parole decisionmakers.

The tools used by those responsible for parole decisions to understand which offenders might be more likely to reoffend than others can range in complexity from developing a "sense" of who might be likely to reoffend to the use of sophisticated, statistical tools (often but not always computer-based) that can measure and weigh dozens of risk factors.¹ These statistical tools are called risk and needs assessments.

A recent issue brief by the Pew Center on the States describes a risk and needs assessment as "a uniform report card that measures offenders' criminal risk factors and

¹Scott VanBenschoten, "Risk/Needs Assessment: Is This the Best We Can Do?", *Federal Probation Journal*, vol. 72, no. 2, available from: http://www.uscourts.gov/uscourts/FederalCourts/PPS/Fedprob/2008-09/06_risk_assessment.html, last accessed Dec. 19, 2014, and Joseph Walker, "State Parole Boards Use Software to Decide Which Inmates to Release," *The Wall Street Journal*, Oct. 11, 2013 [will be cited as Walker].

specific needs that, if addressed, will reduce the likelihood of future criminal activity".² A risk assessment measures a person's likelihood of reoffending, while a needs assessment identifies the type and amount of programming or services (mental health, substance abuse, skills training, thinking/behavior modification, etc.) that an offender might need in order to address issues or behaviors that may have contributed to the offender's criminal conviction.³ Though technically different assessments, they are based on similar statistical tools and often used together, so this paper refers to them generally as "risk and needs assessments".

The factors measured in risk and needs assessments can be static or dynamic. Many assessment tools measure both types of factors in order to identify treatment needs that, if addressed, might reduce criminal behavior.⁴ Static factors are generally historical and do not change, such as the offender's birthday, gender, and age at first offense, or, for repeat offenders, prior criminal history. Dynamic factors can change as a result of treatment or other intervention. These factors include substance abuse, who the person associates with, criminal thinking patterns, struggles with mental health, behavior while incarcerated, and employment. For example, the Pew issue brief lists seven dynamic factors that are linked to criminal behavior:

- **behavior:** impulsive, adventurous pleasure seeking, restlessly aggressive and irritable behavior (antisocial personality pattern);
- **attitude:** offering rationalizations for crime and expressing negative attitudes toward the law (procriminal attitudes);
- **social:** having criminal friends and being isolated from prosocial peers (social supports for crime);
- **substance abuse:** use of drugs and/or alcohol;
- **relationships:** poor family relationships and inappropriate parental monitoring and disciplining;
- **school/work:** poor performance and low levels of satisfaction with school or work; and
- **recreational activities:** a lack of involvement in prosocial recreational and leisure activities.⁵

²"Risk/Needs Assessment 101: Science Reveals New Tools to Manage Offenders," *Public Safety Performance Project of The Pew Center on the States*, Sept. 2011, p. 2, available from: http://www.pewstates.org/uploadedFiles/PCS_Assets/2011/Pew_Risk_Assessment_brief.pdf, last accessed Dec. 19, 2014 [will be cited as Risk/Needs Assessment 101].

³"Principles of Effective State Sentencing and Corrections Policy," *National Conference of State Legislatures*, Aug. 2011, p. 20, available from: <http://www.ncsl.org/documents/cj/pew/WGprinciplesreport.pdf>, last accessed Dec. 19, 2011. [will be cited as Principles]

⁴Principles, p. 20.

⁵Risk/Needs Assessment 101, p. 3.

Research on what factors are correlated most closely to recidivism is then used to weight the factors and produce a score that provides insight into an offender's risk of reoffending,⁶ as well as a sort of roadmap to what types of treatment or programming might be useful to reduce the offender's risk, to best place the offender in a correctional facility or program, or to supervised the offender in the community. The assessment also can help corrections officials place offenders with similar risk levels into the same programs to increase the effectiveness of the treatment.⁷

Cautions and Considerations When Using Risk and Needs Assessments

The assessment tools are not meant to be used in a vacuum. They are designed to augment other information used by criminal justice officials but not to automate decisionmaking processes. The Pew issue brief stresses that the tools cannot predict behavior "with absolute precision".⁸ In Texas, the parole board uses parole guidelines that combine a risk assessment with an index of the severity of the crime committed by the person seeking parole. The combination of the two produces a "Parole Guidelines Score" that is used by the parole board members and commissioners when they make parole decisions. The board notes that "[while] the score provides a measurement for parole panel consideration, the guidelines do not produce a precise recommendation to either deny or grant parole."⁹ In addition, the consulting firm that helped the Texas parole board develop its risk assessment tool states that "to have a so called 'presumptive' [parole] grant rate for each case would neither be practical nor desirable for a system that is designed to provide guidance and not certainty to each reviewed case".¹⁰ Another designer of a popular risk and needs assessment tool says that the assessments are meant to "improve, not replace, human intelligence".¹¹

Decisionmakers and their staffs must be trained in the use of risk and needs assessments to ensure they understand the structure of the tools and what results mean or do not mean. It is also important that all people using and administering the assessment are doing so consistently.¹² For example, in a parole situation, the tool

⁶Risk/Needs Assessment 101, p. 2.

⁷E-mailed correspondence with DOC staff.

⁸Risk/Needs Assessment 101, p. 5.

⁹"Parole Guidelines Annual Report Fiscal Year 2012," *Texas Board of Pardons and Paroles*, April 2013, p. 3, available from: http://www.tdcj.state.tx.us/bpp/publications/FY%202012_ParoleGuidelinesAR.pdf, last accessed Dec 20, 2013 [will be cited as TX Annual Report 2012].

¹⁰TX Annual Report 2012, p. 3.

¹¹Walker.

¹²Risk/Needs Assessment 101, p. 5

would need to be used and understood not just by the parole board members, but by the board staff and also the case manager or probation/parole officers who will work with the offender before parole and/or supervise the offender once released.

Particularly with instruments that measure needs or incorporate dynamic risk factors, the risk and needs assessment might need to be administered more often than just before a parole decision is to be made. Several states are beginning to require that assessments be made at several points during an offender's journey through the corrections system, including before sentencing, upon entry in prison, before parole and perhaps after parole. Just because one assessment tool works at a certain point in the system doesn't mean it is always the best tool to use at all points.¹³ For example, an assessment designed for a corrections department to identify programming needs for offenders may or may not be the best tool for a parole board to use in parole decisions or to help determine what conditions it should set for a parolee.

Risk and Needs Assessments in Montana Corrections¹⁴

In Montana, risk and needs assessments are also being used by corrections officials and the Board. Since 2002, the Board has used a risk assessment scale to assist Board members in making parole decisions. The scale was developed in the late 1990s with the assistance of grant funding and a consultant from the University of Ohio. The tool is not used for sex offenders, DUI offenders, or female offenders. Sex offenders are already designated in tier levels that describe the likelihood of reoffending. Female offenders are excluded because at the time the scale was developed there were not enough female offenders in the Montana correctional system to track and develop an accurate assessment tool. For DUI offenders, the Board found it was difficult to create an accurate assessment scale because those offenders tended to have different backgrounds than other offenders.

The DOC has two risk and needs assessments. The risk and needs assessment used for men is the Montana Offender Reentry and Risk Assessment, or MORRA. For females, the assessment is known as the Women's Risk and Needs Assessment, or WRNA. Both assessments are based on an Ohio risk and needs assessment model and made Montana-specific. MORRA and WRNA identify eight dynamic risk factors, including four "big" risk factors that affect an offender's behavior more than the other four. The "big" factors measured are:

- history of criminal activity;
- antisocial personality (risk taking, weak self control, pleasure seeking);
- antisocial cognition (disregard/lack of value placed on society's rules, regulations, laws, and values); and

¹³Risk/Needs Assessment 101, p. 5.

¹⁴Information in this section relies heavily upon e-mailed correspondence with the Board and DOC staff.

- antisocial associates (friends, family have criminal involvement).

The "moderate" four measured in MORRA/WRNA are:

- substance abuse;
- employment instability;
- low levels of prosocial leisure activities; and
- family relationships that do not support crime/drug-free lifestyle.

Because an offender's needs and risk can change from sentencing to release from incarceration, the MORRA/WRNA assessments are "systems of assessment", meaning different tools make up MORRA and WRNA and are used at different points during an offender's journey through the correctional system. For example, one tool is used at the presentencing investigation stage, while another is used to assess an inmate's needs and risk upon entrance into a facility. A different tool is used prior to parole decisions or before an offender discharges a sentence. Each tool has a different timeline for when it should be used initially and when follow-up assessments are necessary, including when a significant change has occurred in an offender's life.

The Board has been involved with the development of these tools and anticipates replacing its current risk assessment with MORRA and WRNA in the future.

Other States and Recent Legislation¹⁵

Since 2010, at least eight states have enacted legislation requiring use of risk and needs assessments during some or all of the criminal justice process. While not providing a comprehensive review of every state currently using some type of risk and needs assessment, this section does highlight the recent efforts of a few states, especially those using the tools for parole release decisions or to set conditions of parole.

As noted above, one state currently using a risk assessment as part of its parole decisionmaking process is Texas. The Texas assessment combines 10 risk factors with a offense severity ranking to create a guideline matrix that board members and parole commissioners use when making parole decisions. The risk factors are a mix of static and dynamic factors. The parole votes of each parole board member and commissioner are compiled and reported annually, as is how often that member or commissioner votes to grant parole for offenders in each parole guideline level of the matrix. That annual report also discusses the guidelines and components and the history of the

¹⁵ Except for Texas, the state-specific information in this section is based on a recent NCSL publication: "Risk and Needs Assessments," E-Bulletin: Sentencing and Corrections Policy Updates, *National Conference of State Legislatures*, Issue 6, Jan. 2012, available from: <http://www.ncsl.org/portals/1/Documents/cj/BulletinJan-2012.pdf>, last accessed Dec. 20, 2013.

parole guidelines and provides the most recent voting history of the board members and commissioners.

In Arkansas, a 2011 law requires the parole board to conduct a risk and needs assessment for all parole applicants. The same law also requires supervision of probationers and parolees to incorporate evidence-based practices, including a risk and needs assessment for treatment and program decisions.

In Kentucky, a 2011 law requires courts, the corrections department, and the parole board to use risk and needs assessment results in sentencing, offender management and supervision, and parole decisions.

In Ohio, a 2011 bill requires the corrections department to develop a risk and needs assessment that can be used by multiple criminal justice entities, from courts to corrections personnel and facilities to the parole board. The law requires employees using the system to be trained and certified in the system's use. The parole board must also use the tool to set conditions of release and to evaluate parole plans.

Louisiana legislation requires the parole board to use a risk and needs assessment in parole decisions. The tool will be developed by the corrections department.

New York's law requires the parole board to include in its parole guidelines risk and needs principles that can help provide insight into an offender's rehabilitation and the likelihood of success upon release from custody.

Other Resources

The Public Safety Performance Project of the Pew Center for the States issue brief cited in this paper is a readable, comprehensive overview of risk and needs assessments. That summary is included in the February 2014 meeting packet and is available online at the LJIC website. Also included in the February 2014 meeting packet is a copy of the most recent Parole Guidelines Annual Report of the Texas Board of Pardons and Paroles and a summary of the current Montana Board risk assessment tool.