Presentation to the Iowa Board of Corrections: Risk Assessments in Presentence Investigations

The Iowa Public Safety Advisory Board recently voted to recommend a change in Iowa law to require a validated risk assessment score and risk category in presentence investigations. The measure had been promoted by two district court judges who were part of the Iowa team to a multi-state summit on corrections and sentencing policy.

Already the presentence investigation includes narrative discussion of the factors included in the Level of Service Inventory-Revised or LSI-R, which is a likely candidate for the risk assessment to be placed in PSIs, and in fact is already included in many PSIs in the state. Iowa law already requires a discussion of the defendant’s criminal record, social history and the defendant’s potential as a candidate for community supervision. When the judge reads the PSI he or she is already considering the factors that go into an LSI-R, in narrative form. Having a score and risk category in the PSI then would provide a standardized, objective risk measure.

The Iowa Board of Parole has been required in Iowa law for decades to implement a risk assessment program. Doing so enabled them to increase parole releases in the 1980s to comply with a legislatively imposed cap on the Iowa prison population with no significant increase in the threat to public safety, and new violent crime among releases actually dropped.

While the LSI-R was developed in Canada on a population that was mainly White, it has since been validated on diverse populations, including Blacks, and found to be a valid predictor of recidivism. The LSI-R was validated on Iowa offender populations by Christopher Lowenkamp of the University of Cincinnati in 2006 and found to be a valid predictor of recidivism. Further research showed the correlation between LSI-R score and recidivism for black offenders as well as white offenders in Iowa supported the predictive validity of the LSI-R.

The Iowa Division of Criminal and Juvenile Justice Planning (CJJP) reports Iowa prison admissions of African-Americans increased by 120 this past fiscal year, while White admissions went up by only 64. Since 2001 admissions of African-American offenders have risen 37.3% while admissions of White offenders decreased 4.9%. CJJP reports a larger percentage of prison admissions are aggravated misdemeanors.

As part of the Iowa Equality in the Courts Task Force in 1993, UNI researchers studied racial bias in sentencing in the Iowa district court. They found a small but statistically significant difference in sentencing decisions that were not associated with any other factor than race. “Race played the most significant role in aggravated misdemeanor cases (as opposed to felonies). To test the importance of judicial discretion in sentencing, a sample of cases in the Iowa study were compared to the results that would be obtained using sentencing guidelines from Minnesota,” which are based on offender risk as reflected in prior criminal history, and offense severity. “It was found that the Minnesota guidelines would eliminate the effects of race, suggesting that misuse of judicial discretion may produce some degree of racial disparity.” The use of objective risk assessment at sentencing may therefore promote fairer sentences for all.
The Indiana Supreme Court upheld the use of the LSI-R assessments in PSIs in that state in June 2010. They write: [T]he concept of evidence-based sentencing practices has considerable promise. The amicus brief of the Indiana Judicial Center informs the Court of the growing acceptance and use of evidence-based practices in seeking to reduce offender recidivism and to improve sentencing outcomes....It is clear that neither the LSI-R nor the SASSI are intended nor recommended to substitute for the judicial function of determining the length of sentence appropriate for each offender. But such 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, 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.  

According to the Center for Criminal Justice Research at the University of Cincinnati, the LSI-R is currently being utilized within the United States to "guide sentencing decisions, placement in correctional programs, institutional assignments, and release from institutional custody." Once completed, the LSI-R produces a summary risk score that is intended to predict an offender’s likelihood of recidivism and to provide information useful in determining his rehabilitative needs.

Roger Warren, President Emeritus of the National Center for State Courts writes risk assessment information is "critical in making a number of important sentencing determinations," including the following: "[1] [the] offender’s suitability for diversion from prosecution; [2] [the] most appropriate conditions of probation to be imposed; [3] [the] offender’s amenability to treatment; [4] [the] most appropriate treatment or level of supervision to be imposed; [5] [the] most appropriate sanction or behavioral control mechanism to be imposed; [6] [the] decision whether to revoke probation; and [7] [the] kind of sanction or additional treatment to be ordered upon a violation.

The Commonwealth of Virginia first made use of risk assessments at sentencing to assist courts in identifying the best candidates for diversion among nonviolent felony offenders. Their goal was to divert 25% of the eligible offenders from prison. They set up a pilot in 1997 which later went statewide. In 1999 the Virginia Assembly expanded use of risk assessments by the court, this time with a sex offender risk assessment for judges to consider at sentencing, so they could identify high risk cases and order appropriate sentences with that information in mind.

Richard Kern, Director of the Virginia Criminal Sentencing Commission, states that use of risk assessment has led to better use of prisons for violent offenders, as measured by current offense or prior criminal history. Before the initiative, 52% of Virginia’s prison population contained violent offenders using this definition; currently, 79% of Virginia’s prison population contains violent offenders. “The majority of people who will benefit from these initiatives are African-American,” he says. The proportion of new court-ordered commitments to prison of Blacks in Virginia declined 4.4 percentage points and 236 offenders between FY2004 and FY2010, in spite of a 4.2% increase in total new commitments.

Looking at FY2011 new court commitments to prison in Iowa, the percent of property offenders who were assessed as Low, Low/Moderate or Moderate risk on the LSI-R were as follows: Blacks – 32.2%;
White non-Hispanics – 30.3%; other races and Hispanics – 33.3%. Providing risk assessment information to judges at sentencing may possibly reduce new commitments to prison for lower risk property offenders regardless of race, and may even benefit lower risk African-American offenders, Hispanics and offenders of other races more.

Blacks and American Indians/Alaska Natives in prison and in community-based corrections do have slightly higher average LSI-R scores than Whites and Asians/Pacific Islanders. Also the higher proportion of Black offenders assessed as High risk compared to White offenders is statistically significant. These slightly higher risk levels are reflective of the higher recidivism rates of this group. Proper identification of risk regardless of race/ethnicity enables the development of an appropriate case plan to target each offender’s risk factors that lead to reoffending and reduce risk. Independent studies by the Iowa Division of Criminal & Juvenile Justice Planning and Brenda Vose of the University of Central Florida have documented that Iowa corrections practices in general and various programs in particular are effective at reducing recidivism rates for African-American offenders.

### Offender Populations on October 12, 2011: Risk Category by Race

#### Community Corrections: Field Supervision & Residential

<table>
<thead>
<tr>
<th>LSI-R Risk Category</th>
<th>Total</th>
<th>American Indian or Alaska Native</th>
<th>Asian or Pacific Islander</th>
<th>Black</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low (0-13)</td>
<td>9.0%</td>
<td>4.2%</td>
<td>16.8%</td>
<td>4.4%</td>
<td>10.0%</td>
</tr>
<tr>
<td>Low/Moderate (14-23)</td>
<td>30.8%</td>
<td>18.5%</td>
<td>40.0%</td>
<td>24.2%</td>
<td>32.4%</td>
</tr>
<tr>
<td>Moderate (24-33)</td>
<td>40.2%</td>
<td>43.1%</td>
<td>28.0%</td>
<td>45.1%</td>
<td>39.2%</td>
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<tr>
<td>Moderate/High (34-40)</td>
<td>15.9%</td>
<td>28.2%</td>
<td>13.6%</td>
<td>20.5%</td>
<td>14.8%</td>
</tr>
<tr>
<td>High (41+)</td>
<td>4.1%</td>
<td>6.0%</td>
<td>1.6%</td>
<td>5.8%</td>
<td>3.7%</td>
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<tr>
<td><strong>Total</strong></td>
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<td>100.0%</td>
<td>100.0%</td>
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<tr>
<td><strong>Average LSI-R Score</strong></td>
<td>25.8</td>
<td>29.4</td>
<td>22.6</td>
<td>28.0</td>
<td>25.3</td>
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#### Prison Population

<table>
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<tr>
<th>LSI-R Risk Category</th>
<th>Total</th>
<th>American Indian or Alaska Native</th>
<th>Asian or Pacific Islander</th>
<th>Black</th>
<th>White</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low (0-13)</td>
<td>1.9%</td>
<td>1.2%</td>
<td>7.4%</td>
<td>0.6%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Low/Moderate (14-23)</td>
<td>12.2%</td>
<td>6.1%</td>
<td>23.5%</td>
<td>6.8%</td>
<td>14.3%</td>
</tr>
<tr>
<td>Moderate (24-33)</td>
<td>32.2%</td>
<td>28.2%</td>
<td>39.7%</td>
<td>33.0%</td>
<td>32.0%</td>
</tr>
<tr>
<td>Moderate/High (34-40)</td>
<td>35.2%</td>
<td>36.8%</td>
<td>25.0%</td>
<td>38.6%</td>
<td>34.1%</td>
</tr>
<tr>
<td>High (41+)</td>
<td>18.4%</td>
<td>27.6%</td>
<td>4.4%</td>
<td>21.1%</td>
<td>17.3%</td>
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<tr>
<td><strong>Total</strong></td>
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<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td><strong>Average LSI-R Score</strong></td>
<td>33.0</td>
<td>35.4</td>
<td>27.2</td>
<td>34.5</td>
<td>32.4</td>
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</table>
Numbers of Asian offenders are too small to draw conclusions regarding their recidivism trends.

1 Iowa Code §901.3.
2 Iowa Code §904A.4(8).
11 Ibid., p. 7.
12 The Pew Charitable Trusts. 2009. *Arming the Courts with Research: 10 Evidence-Based Sentencing Initiatives to Control Crime and Reduce Costs Public Safety Policy Brief No. 8*. The 10 strategies outlined in this brief are adapted...
from a longer paper by Roger Warren that was originally published in a special 2007 issue of the Indiana Law
Journal, entitled “Evidence-Based Practices and State Sentencing Policy: Ten Policy Initiatives to Reduce
Recidivism.

Incarceration: Virginia’s Experiment in Sentencing Reform.


http://www.vadoc.state.va.us/about/facts/default.shtm.


http://www.vadoc.state.va.us/about/facts/default.shtm.

17 Iowa Department of Corrections. 2011. ICON data, Iowa Justice Data Warehouse.

18 Iowa Department of Corrections. 2011. ICON data. See accompanying table, Offender Populations on October
12, 2011: Risk Category by Race.

Releases Tracked for 3 Years, p. 4. Total recidivism rate chart accompanies this document.

19 In addition to the Brenda Vose study cited above, see Division of Criminal and Juvenile Justice Planning, Iowa
of Correctional Services Dual Diagnosis Offender Program. Also same agency, 2007. Iowa Serious & Violent