



The Resource Page



PUBLICATIONS OF INTEREST

JENNIFER K. ELEK, ROGER K. WARREN & PAMELA M. CASEY, *USING RISK AND NEEDS ASSESSMENT INFORMATION AT SENTENCING: OBSERVATIONS FROM TEN JURISDICTIONS*. National Center for State Courts, 2015. 67 pp. (plus appendix). <http://goo.gl/j0WHNt>

PAMELA M. CASEY, ROGER K. WARREN & JENNIFER K. ELEK, *USING OFFENDER RISK AND NEEDS ASSESSMENT INFORMATION AT SENTENCING: GUIDANCE FOR COURTS FROM A NATIONAL WORKING GROUP*. National Center for State Courts, 2011. 55 pp. (plus online appendix). <http://goo.gl/i9XZpr>

A new report from the National Center for State Courts shows how 10 different jurisdictions are using risk-and-needs-assessment information when sentencing defendants in criminal cases. This 2015 report specifically follows up on one published in 2011 that provided “guiding principles” for the use of risk-and-needs assessments in sentencing decisions.

The new report looks to see how these 10 jurisdictions are applying the guiding principles. For example, the first guiding principle suggests a limited purpose for the use of the assessment information: “Risk and needs 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.”

The researchers report that several jurisdictions have formally adopted limitations on the use of this information, including some that only allow it for recommending the conditions of supervision if a defendant is granted probation and the programming that would be most appropriate to reduce the defendant’s chance of recidivism. They also note an Indiana Supreme Court decision,

Malenchik v. Indiana, 928 N.E.2d 564 (Ind. 2010), in which the court said the information could not be used as an aggravating or mitigating factor or to establish the length of a sentence but could be used as a consideration in crafting sentences modified for each individual defendant.

The full report provides a wealth of information about how risk-and-needs-assessment information is presently being used in courts in 10 different states. An appendix details the practices of each of the individual jurisdictions.



RECENT ARTICLES WORTH NOTING

Anna Maria Barry-Jester, Ben Casselman & Dana Goldstein, *Should Prison Sentences Be Based on Crimes That Haven’t Been Committed Yet?* FIVETHIRTYEIGHT.COM (Aug. 4, 2015). <http://goo.gl/PpfQqS>

For another view of the use of risk-based needs assessments in sentencing, take a look at this article prepared by journalists with the website FiveThirtyEight.com and The Marshall Project. The authors provide arguments for and against the use of risk-based needs assessments—all with a backdrop of recent developments in Pennsylvania. They include comments from Mark Bergstrom, who has run the Sentencing Commission in Pennsylvania for two decades, Sonja Starr, a law professor who argues that the use of risk assessments in sentencing is unconstitutional, as well as a public defender, a probation officer, a psychologist, and a statistician.

Early in the article, the authors provide an overview of the questions critics have raised about the use of risk-assessment scores in sentencing:

The risk assessment trend is controversial. Critics have raised numerous questions: Is it fair to make decisions in an individual case based on what similar offend-

ers have done in the past? Is it acceptable to use characteristics that might be associated with race or socioeconomic status, such as the criminal record of a person’s parents? And even if states can resolve such philosophical questions, there are also practical ones: What to do about unreliable data? Which of the many available tools—some of them licensed by for-profit companies—should policymakers choose?

Thomas Baker et al., *Shared Race/Ethnicity, Court Procedural Justice, and Self-Regulating Beliefs: A Study of Female Offenders*, 49 LAW & SOC. REV. 433 (2015). <http://goo.gl/YEuzvS>

A group of researchers reviewed data from surveys of 554 incarcerated women to determine the factors that might lead to a greater feeling of obligation to obey the law. Specifically, they sought to determine whether the relationship demonstrated in other studies between adherence to procedural-justice principles and willingness to obey the law would hold true for this group.

And it did. They found that female offenders who saw the courts as more procedurally just reported a significantly greater obligation to obey the law.

But this study also found some new factors that might be important—the racial similarity or disparity between the offender and prosecuting attorneys. For white female inmates, those who had a white prosecutor were significantly more likely to perceive the courts as procedurally just. Non-white female inmates perceived the courts as more fair if they encountered a minority prosecutor, regardless of whether the prosecutor was black or Hispanic.

Although only an abstract of the study is available for free at the link shown here, the ProceduralFairness.org website’s blog has posted an interview with one of the researchers, providing a detailed review of their study and its conclusions.