

SEX OFFENDER RISK ASSESSMENT IN CALIFORNIA

Individual sex offender risk assessment in California was enacted in 2006 as part of the Sex Offender Punishment, Control and Containment Act. (Pen. Code, § 290.03; Stats. 2006, c. 337 (S.B. 1128), § 12, eff. Sept. 20, 2006.) The goal was to create a standardized statewide system to identify, assess, monitor and contain known sex offenders for the purpose of reducing the risk of recidivism posed by these offenders. (Pen. Code, § 290.03, subd. (b).) Individual risk assessment identifies offenders who are in a group at statistically higher risk of committing another sex crime. Risk assessment is meant to inform appropriate sentencing and supervision decisions, as well as assist treatment providers. Its ability to evaluate the risk of sexual recidivism (i.e., low risk, below average, average, above average and well above average risk) allows community resources to be more effectively utilized in monitoring higher risk offenders. Additionally, level of risk helps inform decisions by local law enforcement on whether to notify a community about a particular registered offender.

RISK ASSESSMENT INSTRUMENTS IN CALIFORNIA

California uses three different evidence-based risk instruments that assess risk of re-offense by adult males, using (1) static (unchanging factors) such as criminal history; (2) dynamic factors in the offender's life affecting reoffending, such as current alcohol abuse; and (3) risk factors which predict future violence. A risk instrument for male juveniles is also being used. There is no validated or cross-validated risk instrument for adult female sex offenders, but an instrument to predict violent re-offense is valid for use with female offenders.

A state committee on risk assessment chooses the official risk assessment instruments authorized for use in California. (Pen. Code, § 290.04.) Known as the SARATSO Review Committee (SARATSO stands for "state authorized risk assessment tool for sex offenders"), SARATSO's official actions are posted on the SARATSO web site at www.saratso.org.

In 2007 SARATSO confirmed and adopted the initial legislative choice of the Static-99 (today, the Static-99R) as the risk assessment tool to be used for assessing adult male sex offenders. SARATSO determined in 2007 that there was no risk assessment instrument for female sex offenders that meets the statutory criteria of a cross-validated risk instrument predictive of future sexual offending. As of early 2017, no risk instrument for sexual recidivism risk by female offenders had yet been developed. In 2008, SARATSO chose the JSORRAT-II as the static risk assessment instrument for juvenile male sex offenders.

In 2013, SARATSO selected the STABLE-2007/ACUTE-2007 as the dynamic risk instrument for California, replacing the SRA-FVL. Scores from these dynamic instruments can be considered in conjunction with the static risk assessment score to determine level of risk of sexual re-offense even more accurately than when using the static score by itself. The primary use of dynamic risk assessment is to evaluate offenders on probation or parole for treatment and supervision purposes.

SARATSO selected the Level of Service/Case Management Inventory (LS/CMI) as the risk assessment instrument to predict risk of future violence. The LS/CMI can be used for female as well as male offenders.

The law requires that a risk assessment instrument chosen by SARATSO must “reflect(s) the most reliable, objective and well-established protocols for predicting sex offender risk of recidivism, has been scientifically validated and cross-validated, and is, or is reasonably likely to be, widely accepted by the courts.” (Pen. Code, § 290.04.) SARATSO must consult with experts in the field of risk assessment in choosing the instruments mandated for use in California. (Pen. Code, § 290.04.) SARATSO is required to periodically evaluate the chosen risk assessment instruments, and if it determines that an instrument should be replaced, it must advise the Governor and Legislature and post the decision on the SARATSO web site.

The risk levels on the currently mandated static risk assessment instruments are as follows. As set by the authors’ revised Coding Rules for the Static-99R, the levels are very low risk, scores -3 to -2; below average risk, scores -1 to 0; average risk, scores 1 to 3; above average risk, scores 4 to 5, and well above average risk, scores 6 and above. The risk levels on the JSORRAT-II, set by SARATSO after consultation with the author, are low risk, 0 to 3; moderate risk, 4 to 7; and moderate-high risk, 8 and above. SARATSO defines risk levels for a risk assessment tool. (Pen. Code, § 290.04(f).) Treatment providers who administer the dynamic and violence assessment tools consult the coding or scoring rules of each tool for established risk levels.

SARATSO was required to develop a plan for the static risk assessment of registered sex offenders who are not on probation or parole supervision. (Pen. Code, § 290.06(c).) Those eligible under the Static-99R Coding Rules in this group to be assessed can be assessed in the following ways. The local law enforcement agency with jurisdiction over registering a sex offender can elect to have some or all of its registrants assessed, and if it chooses to do so, has two options for assessing its registrants. (Pen. Code, § 290.06.) The first option is to enter into an MOU with the county probation department to assess the selected registrants. The second option is to send qualified personnel to the official SARATSO trainings, held every two years, and the personnel certified as scorers on the risk assessment instrument at the SARATSO training are then authorized to score eligible offenders, as specified by SARATSO policies and procedures. Finally, registrants can also fill out a form at the local registering agency requesting risk assessment, and are entitled to be assessed if eligible under the Coding Rules for the Static-99R. (Pen. Code, § 290.06.) Law enforcement agencies can find a request form for assessments and guidelines on CLEW (<http://clew.doj.ca.gov/>)

PRE-SENTENCING RISK ASSESSMENT

Prior to sentencing, every eligible person who will be required to register as a sex offender for a conviction occurring on or after July 1, 2008 requiring registration pursuant to Penal Code section 290, et seq., must be assessed with the appropriate risk assessment instrument. (Pen. Code, § 290.06; 1203.) For adult males, this is the Static-99R; for males under

age 18, this is the JSORRAT-II.¹ A report of the pre-sentencing static risk assessment score must be submitted to the judge on the SARATSO template score report form prior to sentencing. (Pen. Code, § 1203(b)(2)(C), (d).)

Even if probation does not prepare a pre-sentencing report, the score should be submitted to the court prior to sentencing on the SARATSO template score report. If the offender is sentenced to prison, the report sent by probation to the California Department of Corrections and Rehabilitation must include the risk assessment score. (Pen. Code, §1203c.) Probation must also prepare a Facts of Offense Sheet and Modus Operandi Sheet, which include both the risk assessment score and information about the offender and circumstances of the offense. (Pen. Code, § 1203e.) The score must be sent to the judge pre-sentencing, and the Facts of Offense Sheet/MO Sheet must be sent to the California Department of Justice (DOJ), for inclusion in the offender's file. DOJ will make this information accessible to law enforcement only, except as otherwise required by law. The static risk score must be posted on the public Megan's Law web site, and the web site must also indicate whether an offender has been scored as having an elevated risk level for future violence. (Pen. Code, § 290.46.)

RISK ASSESSMENT ON RELEASE FROM INCARCERATION OR COMMITMENT TO A MENTAL INSTITUTION

Registrable sex offenders sentenced to prison or a mental institution must be assessed prior to leaving the institution. (Pen. Code, § 290.06(a)(1), (3).) Even though offenders are also assessed pre-sentencing, risk assessment scores can change during incarceration. For example, scores can go up if the person commits another sex offense or violent offense while incarcerated. A person does not have to be reassessed upon re-release (for example, on a parole revocation) that occurs within five years of the initial release, although reassessment is permissible. (Pen. Code, § 290.06(b).) Conviction for a new registrable sex offense will trigger another risk assessment at the pre-sentencing stage, and on release from custody if the person is sentenced to prison or a mental facility.

For those who were convicted of a registrable sex offense prior to July 1, 2008, and who were not assessed upon release from CDCR, the law requires that they be assessed while they are

¹ Under California law it is unknown whether a juvenile will be required to register as a sex offender prior to sentencing, because only those offenders placed at the California Department of Corrections and Rehabilitation, Division of Juvenile Justice (formerly the California Youth Authority) are required to register as sex offenders. (Pen. Code, § 290.008.) Thus, starting January 1, 2010, the law requires Probation to assess, pre-sentencing, only those juvenile sex offenders as to whom they recommend placement at DJJ. (S.B. 325, eff. 1-1-10, amending Welf. & Inst. Code § 706.) Similarly, some adult registrants will be ordered at sentencing to register as a sex offender under the discretionary registration section, Penal Code section 290.006. Since these registrants are not mandated to register under the sentencing order, Probation will be required to score the risk assessment instrument pre-sentencing only if Probation is recommending the person be ordered to register at sentencing. (*Ibid.*, amending Pen. Code, § 1200.)

on parole. (Pen. Code, § 290.06(a)(2).) For a person convicted of a registrable offense and released on probation prior to July 1, 2008, the law requires that they have been assessed if they were still on a probation caseload as of January 1, 2010.

TRAINING AND OVERSIGHT OF RISK ASSESSMENT

The SARATSO Training Committee is responsible for overseeing the training of persons designated by Probation, Parole and the Department of State Hospitals to score the state's risk assessment instruments. SARATSO also oversees the training of sex offender treatment providers designated by the certified treatment programs to score risk assessments for offenders on probation and parole. The SARATSO Training Committee consists of the three members on SARATSO (representing DSH, CDCR, and the Attorney General), plus a member representing the Chief Probation Officers of California. (Pen. Code, § 290.05.) Each agency required to score the risk assessment instruments must designate key persons within their organizations ("certified trainers") to attend the trainings sponsored every two years by the SARATSO Training Committee. Experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk must conduct these trainings. (Pen. Code, § 290.05.) The persons trained by the experts in turn train persons within their own organizations to score each SARATSO (official state risk assessment instrument). Any person administering the risk assessment instrument (the "scorers") must be trained at least every two years. (Pen. Code, § 290.05(c).)

Dr. Amy Phenix, co-author of the Coding Rules for the Static-99R, has conducted the official SARATSO trainings on the Static-99R. The trainings are attended by the certified trainers from Probation, Parole and DSH. Dr. Douglas Epperson, author of the JSORRAT-II (the state juvenile risk assessment instrument) conducts trainings for Probation and CDCR/DJJ personnel, who then train those scoring the juvenile risk assessment instrument. Dr. R. Karl Hanson, the author of the Static-99R and STABLE-2007/ACUTE-2007, conducted the training for the certified trainers on the STABLE-2007/ACUTE-2007, and other scorers were trained by master trainers on that instrument. Master trainers trained and designated by James Bonta, the author of the violence prediction instrument, the LS/CMI, conducted the training of certified trainers in California.

Questions about scoring are first submitted to the certified trainers. If they cannot answer the question, they submit it to the expert retained by SARATSO. The SARATSO expert has the ability to adjust the risk level if empirical research supports that decision. (Pen. Code, § 290.005.) The decision of the expert is final.

SARATSO monitors the consistency and quality of risk assessments. To that end, the Training Committee, when funding is made available, will arrange for experts in the field of risk assessment to monitor the scoring of the instruments, to ensure inter-rater reliability. SARATSO also retains experts to use data collected from California sex offender risk assessments to conduct validation studies of the state's risk instruments on a California offender population.

Notwithstanding any other law, persons authorized by statute to score the risk instruments, or experts retained by SARATSO to train, monitor or review scoring, must be granted access to all relevant records pertaining to registered sex offenders being scored. These

include, but are not limited to, criminal histories, sex offender registration records, police reports, probation and pre-sentencing reports, judicial records and case files, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and records that have been sealed by the courts or the Department of Justice. (Pen. Code, § 290.07.) Accuracy in scoring depends on confidential information sharing with the scorers of the risk assessment instruments.

USE OF RISK ASSESSMENT SCORES

There are four main uses for the risk assessment scores. First, at sentencing the score must be considered by the judge who is imposing sentence on an offender whose offense will require him or her to register as a sex offender. (Pen. Code, 1203(b), (d).) Probation should submit the score to the court whether or not a pre-sentencing report is prepared for the offender.

Second, the score may be considered by local law enforcement in making a decision on whether a registered sex offender poses a current risk to the public, and if a community notification is made about an offender who is found to be posing a current risk to community safety, the score can be disclosed. (Pen. Code, § 290.45(a).)

Third, the risk assessment score determines whether a registered sex offender must be supervised on a high risk case load while on probation or parole. (Pen. Code, § 1202.8, 3008.) All sex offenders on parole supervision who are designated high risk by CDCR (currently, scores of 4 and above) must report frequently to designated parole officers, shall participate in an appropriate sex offender treatment and monitoring program, and are required, by state law enacted in the Jessica's Law initiative, to wear a GPS monitoring device. (Pen. Code, § 3004, 3010.) Beginning January 1, 2009, all such offenders on probation must wear a GPS monitoring device unless a court determines that such monitoring is unnecessary for a particular person. (Pen. Code, § 1202.8(b).) Offenders who are well above average risk level (scores of 6 and above) on probation must also be placed on intensive and specialized probation supervision and required to report frequently to supervising probation officers. (Pen. Code, § 1203f.) In other words, high risk restrictions such as GPS are appropriately targeted to high risk offenders by law enacted by the Legislature, but blanket restrictions regarding GPS placement have been applied to all sex offender parolees as a result of law enacted by initiative.

Fourth, the assessed risk level is one factor which may be considered in the placement of a sex offender in a treatment program, which may help inform the level of treatment.

Static risk levels are displayed online for offenders who are posted on the public Megan's Law Internet web site in the full address category, as required by law. (Pen. Code, § 290.46.) No one may be granted exclusion from the web site unless the person has a low or moderate-low (now denominated as very low risk below average risk, or average risk) SARATSO static score. (Pen. Code, § 290.46, subd. (e)(4).)

Even though California uses individual risk assessment, at the beginning of 2017 California still utilized an offense-based classification system for sex offenders. Display on the public sex offender web site, and extent of information disclosed on the web site, is governed by

the type of sex offense conviction, and does not take into account the individual's risk level. Obtaining relief from the duty to register is not yet tied to individual risk assessment. (Pen. Code, § 290.5.) The frequency of the duty to register as a sex offender is not related to the offender's risk assessment scores. (See Pen. Code, § 290.012.) The California Sex Offender Management Board has recommended that duration of registration, as well as public notification, should be related to the offender's risk level. SARATSO strives to ensure that sex offender risk level is determined by the best, most accurate, and cross-validated risk assessment instruments, and that scorers are appropriately trained and supervised to ensure reliability and consistency.

1-3-17