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Risk and Needs Assessment in the Criminal Justice System

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Summary

The number of people incarcerated in the United States has increased significantly over the past three decades from approximately 419,000 inmates in 1983 to approximately 1.5 million inmates in 2013. Concerns about both the economic and social consequences of the country's growing reliance on incarceration have led to calls for reforms to the nation's criminal justice system.

There have been legislative proposals to implement a risk and needs assessment system in federal prisons. The system would be used to place inmates in rehabilitative programs. Under the proposed system some inmates would be eligible to earn additional time credits for participating in rehabilitative programs that reduce their risk of recidivism. Such credits would allow inmates to be placed on prerelease custody earlier. The proposed system would exclude inmates convicted of certain offenses from being eligible to earn additional time credits.

Risk and needs assessment instruments typically consist of a series of items used to collect data on behaviors and attitudes that research indicates are related to the risk of recidivism. Generally, inmates are classified as being high, moderate, or low risk. Assessment instruments are comprised of static and dynamic risk factors. Static risk factors do not change, while dynamic risk factors can either change on their own or be changed through an intervention. In general, research shows that risk and needs assessment instruments are effective in reducing recidivism. However, the effectiveness of these instruments is often limited by the quality of the data used to develop them and the quality of the programs that use them. In general, research shows that risk and needs assessment instruments are effective in reducing recidivism. However, the effectiveness of these instruments is often limited by the quality of the data used to develop them and the quality of the programs that use them.

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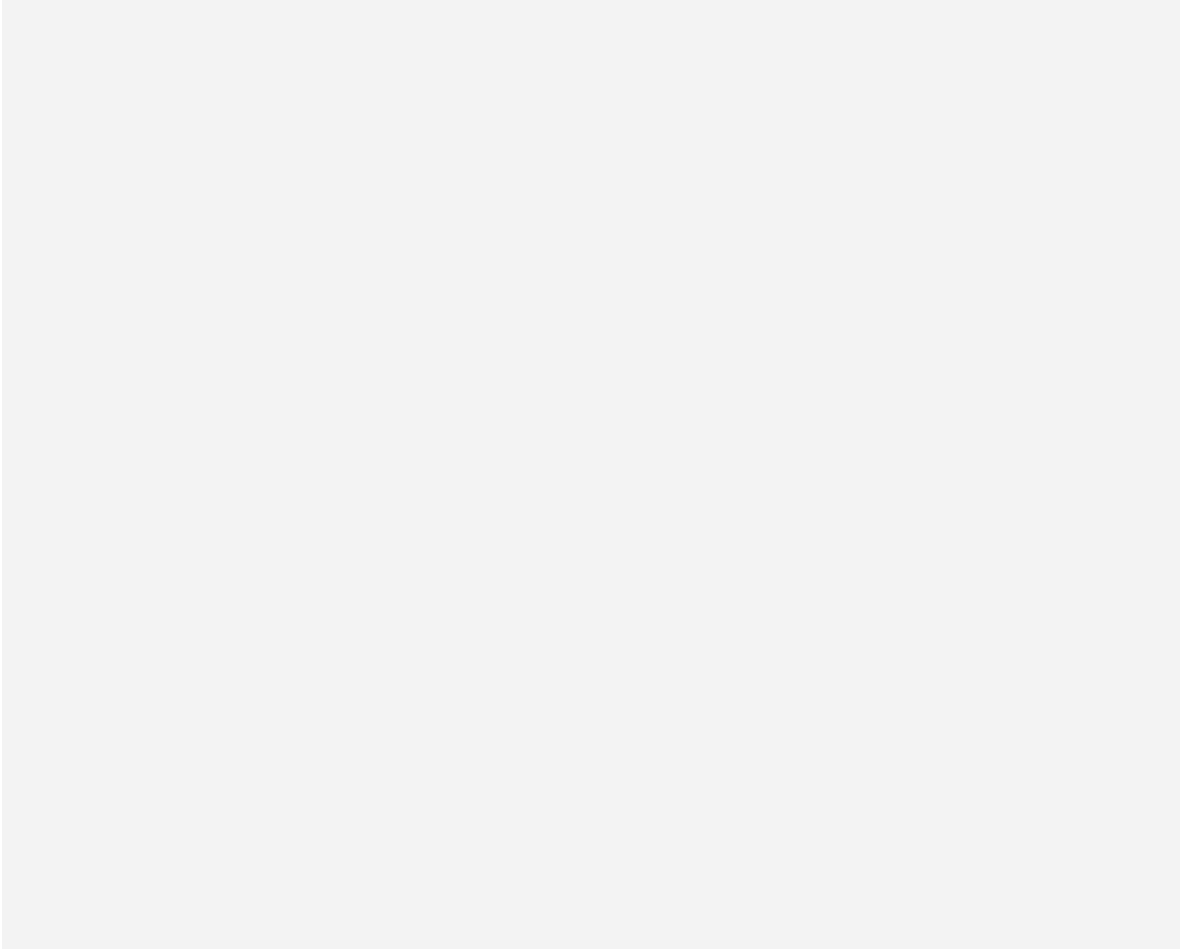
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The use of risk and needs assessment in the criminal justice system is not without controversy, however. Proponents of assessment assert that the tools used to assess the risk and needs of inmates are better than the independent judgment of clinicians and that the tools have demonstrated the ability to make distinctions between high- and low-risk offenders.⁸ Nonetheless,

implemented and employed.²⁴ Some states have adopted and implemented standardized assessment instruments that are used throughout the state and across a wide variety of settings.²⁵ Other states use risk and needs assessment in a less systematic manner. Ohio is highlighted as a noteworthy example because the state developed a statewide risk and needs assessment system that is used across all levels of its correctional system.



noncriminogenic needs, because changes in noncriminogenic needs are not associated with reduced recidivism.³⁵

Responsivity Principle

The responsivity principle states that rehabilitative programming should be delivered in a style and mode that is consistent with the ability and learning style of the offender.³⁶ The responsivity principle is further divided into two elements. The general responsivity principle states that

| Risk/Need Factor | Indicator | Target for Intervention |
|-----------------------|--|---|
| Antisocial Cognition | People with this factor hold attitudes, beliefs, values, rationalizations, and personal identity that is favorable to crime. Specific indicators include identifying with criminals, negative attitudes towards the law and justice system, beliefs that crime will yield rewards, and rationalizations that justify criminal behavior (e.g., the “victim deserved it”). | Reducing antisocial thinking and feelings through building and practicing less risky thoughts and feelings. |
| Antisocial Associates | | |

relatively brief risk indices outperform longer, more complex models.”⁵⁷ For example, one study in Pennsylvania found that risk assessment accuracy was improved by using only 8 of the 54 factors in one commonly used instrument.

Two scholars have argued that risk assessment should be conducted separately from needs assessment.⁵⁸ Combining risk and needs assessment has the potential to introduce variables that might be useful when trying to assess what interventions would be effective to reduce an offender’s risk, but it might reduce the ability of the instrument to predict risk accurately in situations where only predicting risk is all that is warranted (e.g., should someone be granted pretrial release or should an inmate be released on parole).

Potential for Discriminatory Effects

There is a concern that the wide-scale use of risk and needs assessment might exacerbate racial disparities in the nation’s pris.

instruments can better predict risk for white offenders. The other five studies found no evidence that predictive validity varied based on the race/ethnicity of the participants.

Select Issues for Congress

There are three pieces of legislation before Congress that would establish a risk and needs assessment system in the BOP. The above discussion about the strengths and weaknesses of assessment might raise a question among some policymakers about whether the BOP should use a risk and needs assessment system. Even if policymakers decide that the BOP should use assessment, there might be additional questions about how to implement an effective assessment system. The two legislative proposals might also raise questions about whether other measures should be taken in order to reduce the number of inmates in federal prisons. This section of the report discusses some of the issues that might arise if Congress considers either piece of legislation.

Should Risk and Needs Assessment Be Used in Federal Prisons?

An overarching issue policymakers might consider is whether the BOP should use risk and needs assessment. Research suggests that assessment instruments can make distinctions between high- and low-risk offenders with some degree of accuracy. Furthermore, assessment systems that adhere to the RNR principle appear to be effective at reducing recidivism. Implementing an assessment system in federal prisons would appear, based on the current research, to be an evidence-based way to improve the effectiveness of rehabilitative programming, and when combined with additional time credits for some inmates who participate in rehabilitative programs and productive activities, it might provide a means for reducing the federal prison population without increasing the risk to public safety.

However, risk and needs assessment systems are not flawless. There will always be false positives (e.g., inmates who are determined to be high risk but are actually a low risk for recidivism) even

activities over moderate- and high-risk prisoners. In addition, higher-risk inmates would be required to participate in more rehabilitative programming, but inmates with low or no risk of recidivating would also be required to participate in rehabilitative programming. Other legislative proposals would require inmates who are deemed to be low risk and without need of recidivism reduction programming to continue to participate in productive activities.⁷⁰ Policymakers might consider whether inmates who are deemed to be low risk should immediately be placed in prerelease custody in order to open spots for moderate- and high-risk inmates who are in need of rehabilitative programming.

Should Risk and Needs Assessment Be Used in Sentencing?

Another issue policymakers might consider is whether risk and needs assessment should be used in sentencing to help identify low-risk offenders who could be diverted to community supervision rather than incarcerated. As discussed previously, research suggests that low-risk offenders should not be subjected to intensive treatment (and some research indicates that it might be criminogenic) and they might be able to be effectively supervised in the community. Some legislation would require the BOP, to the extent practicable, to house low-risk inmates together, which might help reduce the criminogenic effects of placing low-risk offenders in prison.⁷¹

The researchers concluded that the results of their analysis “suggest that these tools can effectively screen out individuals at low risk of future offending.”⁷⁶

However, the idea of using risk and needs assessment in sentencing is not without controversy. DOJ, while acknowledging the important role the use of evidence-based practices plays in effective rehabilitation programs and reentry practices, has raised concerns about making risk assessment a part of determining sentences for federal offenders.⁷⁷ DOJ echoes previously mentioned concerns that risk assessment bases decisions on group dynamics and that determining someone’s risk of reoffending on static risk factors might place certain groups of offenders at a disadvantage. DOJ also argues that using risk assessment in determining sentences would erode the certainty in sentencing, something Congress attempted to address when it passed the Sentencing Reform Act (P.L. 98-473), which eliminated parole for federal inmates and established a determinate sentencing structure under the federal sentencing guidelines. Certainty in sentencing, argues DOJ, is a key factor in deterring crime. DOJ also argues that sentencing should primarily be about holding offenders accountable for past criminal behavior.

market” for a new offender to take that person’s place).⁸¹ For example, if a drug dealer is incarcerated and there is no decrease in demand for drugs in the drug market, it is possible that someone will step in to take that person’s role; therefore, no further crimes may be averted by

Appendix A. Comparison of Risk and Needs Assessment Legislation

This appendix provides a comparison of the risk and needs assessment-related provisions in three bills introduced in the 114th Congress: S. 467, the CORRECTIONS Act; H.R. 759, the Recidivism Risk Reduction Act; and H.R. 2944, the Sensenbrenner-Scott SAFE Justice Reinvestment Act of 2015.

Establishment of an Assessment System

S. 467 would require the Department of Justice (DOJ) to establish, within 30 months of the enactment of the bill, a Post-Sentencing Risk and Needs Assessment System (Assessment System) for use in the BOP that would

- assess and determine the recidivism risk level of all inmates and classify each inmate as being at low, moderate, or high risk for recidivism;
- to the extent practicable, determine the risk of violence for all inmates;
- ensure that, to the extent practicable, low-risk inmates are housed and assigned to programs together;
- assign inmates to rehabilitative programs and productive activities based on their risk level and criminogenic needs;
- periodically reassess and update an inmate’s risk level and programmatic needs; and
- provide information on best practices concerning the tailoring of rehabilitative programs to the criminogenic needs of each inmate.

H.R. 759 would also require DOJ to develop and release an Assessment System for use by the BOP, but it would require DOJ to establish the system within 180 days of the bill becoming law. The requirements for the Assessment System under H.R. 759 are similar to those of S. 467, but H.R. 759 would **not** require the Assessment System to determine the risk of violence for all inmates, nor require that low-risk inmates be housed together and assigned to the same programs.

H.R. 2944 would require DOJ to develop an Assessment System within one year of the bill becoming law. The requirements for the system that would be established under H.R. 2944 are similar to those of the other two bills in that H.R. 2944 would require the system to be used to assess and determine the risk and needs factors for federal inmates and to assign inmates to recidivism reduction programs based on their risk and needs. The Assessment System that would be established by the bill would not be required to assess each inmate’s risk of violence nor require low-risk inmates to be segregated. However, the bill notes that “some activities or excessive programming in

instrument. H.R. 2944 would require DOJ to prescribe a “suitable intake assessment tool” but it is silent as to whether the instrument would need to be developed in-house or if an existing instrument could be used. In addition, all three bills would require DOJ either to validate the instrument on the federal prison population or to ensure that the instrument has been validated using federal inmates.

Expanding Rehabilitative Programs

S. 467 would require the BOP, subject to the availability of appropriations, to make recidivism reduction programs and productive activities available to all eligible inmates within six years of enactment of the legislation. The bill would also require the National Institute of Corrections to evaluate all programs and activities to ensure that they are evidence based and effective at reducing recidivism.

- include programming and treatment requirements based on the inmate's assessed risk and needs;
- ensure that inmates whose risk and needs do not warrant recidivism reduction programming participate in and successfully complete productive activities, including prison jobs; and
- ensure that eligible inmates participate in and successfully complete recidivism reduction programming or productive activities throughout their entire term of incarceration.

H.R. 2944 would require the BOP to provide each inmate with a copy of the case plan and discuss the case plan with the inmate. The BOP would be required to review the case plan with the inmate every six months to assess the inmate's progress towards completing it and whether the inmate needs to participate in additional or different rehabilitative programs.

Training for Staff on Using the Assessment System

All three bills would require BOP staff who are responsible for administering the Assessment System to be trained on how to properly use the system, which includes a requirement that staff demonstrate competence in administering the instrument. S. 467 and H.R. 759 would require DOJ to monitor and assess the use of the Assessment System and to periodically audit the use of the system in BOP facilities. H.R. 2944 would require DOJ, the Government Accountability Office, and DOJ's Inspector General's Office to monitor and assess the use of the Assessment System and to conduct separate and independent periodic audits of the use of the system.

Additional Time Credits and Other Incentives

S. 467 would grant additional time credit for inmates who successfully complete 30 days of rehabilitative programming and productive activities. Every inmate would be eligible to earn five additional days of credit upon completion. Inmates who are deemed low risk would be eligible to receive an additional five days. However, the following inmates would be exempted from earning additional time credits:

- inmates serving a sentence for a second federal offense;
- inmates who were in the highest criminal history category under the U.S. Sentencing Guidelines at the time of sentencing; and
- any inmate sentenced for a terrorism offense,⁸⁵ a crime of violence,⁸⁶ a sex offense,⁸⁷ racketeering,⁸⁸ engaging in a continuing corrupt criminal enterprise,⁸⁹ a federal fraud offense for which the inmate was sentenced to more than 15 years imprisonment, or a crime involving child exploitation.⁹⁰

⁸⁵ As defined at 18 U.S.C. §2332b(g)(5).

⁸⁶ As defined at 18 U.S.C. §16.

⁸⁷ As described in 42 U.S.C. §16911.

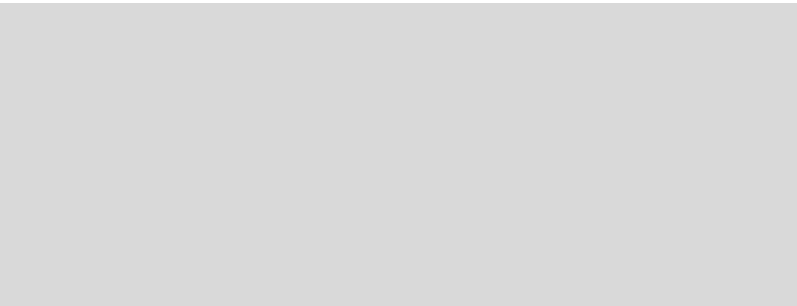
⁸⁸ As defined at 18 U.S.C. §1962.

⁸⁹ As defined at 21 U.S.C. §848.

⁹⁰ As defined at 42 U.S.C. §17601.

H.R. 759 would also allow inmates to earn additional time credits for successfully participating in rehabilitative programs or productive activities, but the credit structure would be different. Under H.R. 759, low-risk inmates would be eligible to receive 30 days of time credits for each month they successfully participate in a rehabilitative program or productive activity; moderate-risk inmates would be eligible to receive 15 days, and high-risk inmates would be eligible to receive 8 days. H.R. 759 lists 47 offenses that would make federal inmates ineligible to receive additional time credits for participating in rehabilitative programs or productive activities. The enumerated offenses could generally be classified as violent offenses, terrorism offenses, espionage offenses, human trafficking offenses, sex and sexual exploitation offenses, and high-level drug offenses.⁹¹ The bill would also exclude inmates with three or more convictions for crimes of violence or drug trafficking offenses.

H.R. 2944 would allow inmates to earn 10 days of time credits for each month they successfully comply with their case plans. Unlike the other two pieces of legislation, under H.R. 2944 all

| Instrument | Background Information | Administration Requirements | Instrument Contents |
|---|------------------------|---|--------------------------------------|
|  | | professional who is also responsible for interpreting the instrument. | contains 79 items in the form of six |

Instrument

Background Information

Administration Requirements

Instrument Contents

considerations; perpetration history; mental health; procriminal attitude/orientation; incarceration history, and concerns). Sections 6-7 provide a summary of risks and needs, allowing for clinical overrides of assessment recommendations based on atypical offender situations. Section 8

| Instrument | Background Information | Administration Requirements | Instrument Contents |
|-------------------------------|--|--|---|
| Offender Screening Tool (OST) | <p>In 1998, the Maricopa County (Arizona) Adult Probation Department (MCAPD), working with consultant Dr. David Simourd, developed and implemented its own assessment instrument, the Offender Screening Tool (OST). MCAPD originally sought to create a risk/needs tool that would (1) provide a broad, overall assessment of offender risk/needs, (2) incorporate static and dynamic risk factors most predictive of criminal behavior, (3) provide information that could be used to determine risk of recidivism and guide case planning/management decisions, and (4) be meaningful and valuable to staff. As a greater variety of cognitive-behavioral treatment programs became available in the county, Dr. Simourd and MCAPD expanded OST to include additional needs domains. OST was implemented statewide in 2005.</p> | <p>OST is administered at the presentencing stage by interviewers who enter information into a computerized system for automated scoring. No specialized certifications are required, but all staff members receive training. In Maricopa County, the presentence division receives training on how to administer and interpret results from OST; all other probation department staff receive training on interpretation and how to use results to inform case planning and management.</p> | <p>The OST contains 44 items (14 static, 30 dynamic) in 10 domains:</p> <ul style="list-style-type: none"> • Vocational/Financial, • Education, • Family and Social Relationships, • Residence and Neighborhood, • Alcohol, • Drug Abuse, • Mental Health, • Attitude, and • Criminal Behavior. <p>The final domain, Physical Health/Medical, is used exclusively as a</p> |

| Instrument | Background Information | Administration Requirements | Instrument Contents |
|---|--|-----------------------------|--|
| | <p>information, which was completed in 2006. In 2008, DOC implemented their automated offender assessment and case planning system. This automated system included the Static Risk Assessment and an Offender Needs Assessment, which is used to identify offender needs and protective factors for use in case planning. STRONG is considered a "fourth generation" risk and needs assessment instrument.</p> | | <p>aggression, attitudes/behaviors, and coping skills.</p> |
| <p>Wisconsin Risk/Needs Scales (WRN) and Correctional Assessment and Intervention System (CAIS)</p> | <p>The Wisconsin Classification System was created in 1977. This system is comprised of the Wisconsin Risk/Needs</p> | | |

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