

2008 official publication of the California SARATSO Review and Training Committees
SEX OFFENDER RISK ASSESSMENT IN CALIFORNIA

Individual sex offender risk assessment in California was mandated by legislation 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 pinpoints offenders at higher risk of committing another sex crime to ensure appropriate monitoring while on supervision, and also identifies those at low risk of reoffending, so that community resources can be more effectively utilized. Additionally, level of risk helps inform decisions by local law enforcement on whether to notify a community about a particular registered offender.

CHOICE OF RISK ASSESSMENT INSTRUMENTS

A state committee on risk assessment was established to choose 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"), in 2007 the Review Committee confirmed and adopted the initial legislative choice of the Static-99 as the risk assessment tool to be used for assessing adult male sex offenders. In 2008, the Review Committee chose the JSORRAT-II as the risk assessment instrument for juvenile male sex offenders. As of July 2008, the Review Committee had not yet chosen a dynamic risk assessment instrument. A dynamic instrument, when selected, will be considered in conjunction with the static-risk assessment score to determine level of risk of reoffense. The primary use of dynamic risk assessment will be to evaluate offenders on probation or parole. The Review Committee determined in 2007 that currently there is no risk assessment instrument for female sex offenders that meets the statutory criteria. (The Committee's official actions are posted on the Department of Mental Health (DMH) web site at http://www.dmh.ca.gov/Services_and_Programs/Forensic_Services/Sex_Offender_Commitment_Program/SARATSO.asp.)

The law requires that a risk assessment instrument chosen by the Review Committee 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, as amended by S.B. 1253, pending 2008 leg. sess.) The Review Committee must consult with experts in the field of risk assessment in choosing the instruments mandated for use in California. (Pen. Code, § 290.04.) The Review Committee 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 DMH web site.

The tier or risk levels on the currently mandated state risk assessment instruments are as follows. As set by the authors' Coding Rules for the Static-99, the levels are low risk, 0-1; moderate risk, 2-3; moderate-high risk, 4-5; and high risk, 6 and above. The tier or risk levels on the JSORRAT-II, set by the Committee after consultation with the author, are low risk, 0-3; moderate risk, 4-7; moderate-high risk, 8 and above. The Review Committee can define tiers of risk for a risk assessment tool. (Pen. Code, § 290.04(f).)

The Review Committee is required to develop a plan for the assessment of registered sex offenders who are not on probation or parole supervision. Those eligible in this group to be assessed must be assessed by January 1, 2012 (for female and juvenile offenders, by January 1, 2013.) (Pen. Code, § 290.06(c).)

PRE-SENTENCING RISK ASSESSMENT

Prior to sentencing, every 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-99; for males under age 18, this is the JSORRAT-II.¹ The pre-sentencing risk assessment

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, 2008, the law requires Probation to assess, pre-sentencing, only those juvenile sex offenders as to whom they recommend placement at DJJ. (S.B. 1253, pending 2008 leg. sess., 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

score must be included in the pre-sentencing report whenever such a report is prepared for the offender. (Pen. Code, § 1203(b)(2)(C), (d).)

Pre-sentencing reports are not mandatory for misdemeanor offenders, so if a pre-sentencing report is not prepared by probation, the score should be submitted to the court prior to sentencing in some other confidential fashion². 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.) Beginning June 1, 2010, Probation must also prepare a Facts of Offense Sheet, which will include both the risk assessment score and information about the offender and circumstances of the offense. (Pen. Code, § 1203e.) This will be included in the probation officer's report, if any, and also sent to the California Department of Justice (DOJ), for inclusion in the offender's file, beginning in 2010. DOJ will make it accessible to law enforcement.

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 sentenced after July 1, 2008 will have been assessed pre-sentencing, risk assessment scores can change during incarceration. For example, if the offender was age 18-25 at the time of assessment pre-sentencing, and he is age 26 or older at release, his score will go down. Scores can go up if the person commits under 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 5 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

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.)

²S.B. 1253 (pending 2008 leg. sess.) provides that, with specified exceptions, the risk assessment scores shall be confidential. One exception is inclusion in the probation officer's report.

assessed while they are 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 are 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 DMH to score the risk assessment instruments. The Training Committee consists of the three members on the Review Committee (representing DMH, 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 (known informally as the "super-trainers") to attend the training sponsored by the 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 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-99, conducted the first official SARATSO trainings on the Static-99 in 2008. The trainings were attended by the designated super-trainers from Probation, Parole and DMH. Dr. Douglas Epperson, author of the JSORRAT-II (the state juvenile risk assessment instrument) conducted trainings in 2008 for Probation and CDCR/DJJ personnel, who will be training those scoring the juvenile risk assessment instrument.

Questions about scoring are first submitted to the super-trainers. If they cannot answer the question, they submit it to the expert retained by the Review Committee. Under 2008 proposed legislation, if an agency believes that an individual's risk assessment score is either too high or too low, the score can be submitted to the expert(s) retained by the Review Committee. (S.B. 1253, pending 2008 leg. sess.) The expert would have the ability to raise or lower the score if empirical research supports that decision. (S.B. 1253, as amended 5-23-08, Pen. Code, § 290.005(f).) The decision of the expert is final.

The Training Committee monitors the consistency and quality of risk assessments, pursuant to pending legislation. (S.B. 1253, pending 2008 leg. sess.) To

that end, the Training Committee will be required to arrange for experts in the field of risk assessment to monitor the scoring of the instruments, to ensure inter-rater reliability. (S.B. 1253, as amended 5-23-08, Pen. Code § 290.005(e).) The Review Committee is authorized to retain experts to use data collected from California sex offender risk assessments to conduct validation studies on a California population. (Ibid.)

Notwithstanding any other law, persons authorized by statute to score the SARATSOs, or experts retained by the Review Committee 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, as amended by S.B. 1253, pending 2008 leg. sess.)

USE OF RISK ASSESSMENT SCORES

Under the existing statutory scheme 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).) 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 on an offender found to be posing a risk to community safety, the score can be disclosed. (Pen. Code, § 290.45(a); S.B. 1253, pending 2008 leg. sess., amending Pen. Code § 290.07.) Although scores are confidential, these are the current exceptions (inclusion in probation officer's report and disclosure to court at sentencing; disclosure to public pursuant to a community notification).

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 scoring high risk on the Static-99 must report frequently to designated parole officers, shall participate in an appropriate sex offender treatment and monitoring program, and are required to wear a GPS monitoring device. (Pen. Code, § 3004, 3010.) Beginning January 1, 2009, all high risk sex 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).) High risk sex offenders on probation must also be placed on intensive and specialized probation supervision and required to report frequently to supervising probation officers. (Pen. Code, § 1203f.)

Finally, the risk assessment score is one factor which may be considered in the placement of a sex offender in a treatment program, and which may help inform the level of treatment.

Risk assessment scores are not displayed on the public Megan's Law Internet web site. Beginning in 2012, no one may be granted exclusion from that web site unless the person has a low or moderate-low SARATSO score. (Pen. Code, § 290.46(e)(4).) Notwithstanding the enactment of individual risk assessment, in a number of ways California still utilizes an offense-based classification system for sex offenders. Display on the public web site, and extent of information disclosed on the web site, is governed by the type of sex offense conviction, rather than the individual's risk assessment score. Obtaining relief from the duty to register is not yet tied to individual risk assessment. (Pen. Code, § 290.5.) Nor is the frequency of the duty to register as a sex offender yet tied to risk assessment scores. (See Pen. Code, § 290.012.)