

CASE MATERIALS

for

**FELONY SENTENCING: AN
OVERVIEW**

J. Richard Couzens
Placer County Superior Court, Ret.

2022

STANDARDS OF ADMINISTRATION OF JUSTICE

Standard 4.35. Court use of risk/needs assessments at sentencing

(a) Application and purpose

(1) This standard applies only to the use of the results of risk/needs assessments at sentencing.

(2) The use of the results of risk/needs assessments at sentencing is intended to:

- (A) Prevent biases in sentencing;
- (B) Reduce the risk of recidivism by focusing services and resources on medium- and high-risk offenders, who are most likely to reoffend;
- (C) Reduce a defendant's risk of future recidivism by targeting that defendant's needs with appropriate intervention services through community supervision programs demonstrated to reduce recidivism;
- (D) Advance the legislative directive to improve public safety outcomes by routing offenders into community-based supervision informed by evidence-based practices.

(b) Definitions

(1) "Risk" refers to the likelihood that a person will reoffend, without regard, unless otherwise specified, to the nature of the original offense or the nature of the reoffense.

(2) "Risk factors" refers to the "static" and "dynamic" factors that contribute to the risk score.

(3) "Static risk factors" refers to those risk factors that cannot be changed through treatment or intervention, such as age or prior criminal history.

(4) "Dynamic risk factors," also known as "needs," are factors that can be changed through treatment or intervention.

(5) "Results of a risk/needs assessment" refers to both a risk score and an assessment of a person's needs.

6) A “risk score” refers to a descriptive evaluation of a person’s risk level as a result of conducting an actuarial assessment with a validated risk/needs assessment instrument and may include such terms as “high,” “medium,” or “low” risk.

(7) “Amenability” or “suitability” refers to the likelihood that the person can be safely and effectively supervised in the community and benefit from supervision services that are informed by evidence-based practices that have been demonstrated to reduce recidivism.

(8) A “validated risk/needs assessment instrument” refers to a risk/needs assessment instrument demonstrated by scientific research to be accurate and reliable in assessing the risks and needs of the specific population on which it was validated.

(9) “Supervision” includes all forms of supervision referenced in Penal Code section 1203.2(a).

(c) Validation

The risk/needs assessment instrument should be validated.

(d) Proper uses of the results of a risk/needs assessment at sentencing

(1) The results of a risk/needs assessment should be considered only in context with all other information considered by the court at the time of sentencing, including the probation report, statements in mitigation and aggravation, evidence presented at a sentencing proceeding conducted under section 1204, and comments by counsel and any victim.

(2) The results of a risk/needs assessment should be one of many factors that may be considered and weighed at a sentencing hearing. Information generated by the risk/needs assessment should be used along with all other information presented in connection with the sentencing hearing to inform and facilitate the decision of the court. Risk/needs assessment information should not be used as a substitute for the sound independent judgment of the court.

(3) Although they may not be determinative, the results of a risk/needs assessment may be considered by the court as a relevant factor in assessing:

(A) Whether a defendant who is presumptively ineligible for probation has overcome the statutory limitation on probation;

(B) Whether an offender can be supervised safely and effectively in the community; and

(C) The appropriate terms and conditions of supervision and responses to violations of supervision.

(4) If a court uses the results of a risk/needs assessment, it should consider any limitations of the instrument that have been raised in the probation report or by counsel, including:

(A) That the instrument's risk scores are based on group data, such that the instrument is able to identify only groups of high-risk offenders, for example, not a particular high-risk individual;

(B) Whether the instrument's proprietary nature has been invoked to prevent the disclosure of information relating to how it weighs static and dynamic risk factors and how it determines risk scores;

(C) Whether any scientific research has raised questions that the instrument unfairly classifies offenders by gender, race, or ethnicity; and

(D) Whether the instrument has been validated on a relevant population.

(e) Improper uses of the results of a risk/needs assessment at sentencing

(1) The results of a risk/needs assessment should not be used to determine:

(A) Whether to incarcerate a defendant; or

(B) The severity of the sentence.

(2) The results of a risk/needs assessment should not be considered by the court for defendants statutorily ineligible for supervision.

(f) Amenability to or suitability for supervision

(1) A court should not interpret a "high" or "medium" risk score as necessarily indicating that a defendant is not amenable to or suitable for community-based supervision. Community-based supervision may be most effective for defendants with "high" and "medium" risk scores. A "low" risk score often, but not necessarily, indicates that a defendant is amenable to or suitable for community-based supervision. Risk scores must be interpreted in the context of all relevant sentencing information received by the court.

(2) Ordinarily a defendant's level of supervision should correspond to his or her level of risk of recidivism. In most cases, a court should order that a low-risk defendant receive less supervision and a high-risk defendant more.

(3) A court should order services that address the defendant's needs.

(g) Education regarding the nature, purpose, and limits of risk/needs assessment information is critical to the proper use of such information. Education should include all justice partners.

Advisory Committee Comment

Subdivision (d)(1)–(2). Although the results of risk/needs assessments provide important information for use by the court at sentencing, they are not designed as a substitute for the exercise of judicial discretion and judgment. The information should not be used as the sole basis of the court's decision, but should be considered in the context of all of the information received in a sentencing proceeding. If justified by the circumstances of the case, it is appropriate for the court to impose a disposition not supported by the results of a risk/needs assessment. (See *State v. Loomis* (2016) 371 Wis.2d 235, 266 ["Just as corrections staff should disregard risk scores that are inconsistent with other factors, we expect that . . . courts will exercise discretion when assessing a . . . risk score with respect to each individual defendant"].)

Subdivision (d)(4). Court and justice partners should understand any limitations of the particular instrument used to generate the results of a risk/needs assessment. (See *State v. Loomis, supra*, 371 Wis.2d at p. 264 [requiring presentence investigation reports to state the limitations of the instrument used, including the proprietary nature of that instrument, any absence of a cross-validation study for relevant populations, and any questions raised in studies about whether the instrument disproportionately classifies minority offenders as having a higher risk of recidivism].) The Wisconsin court also required that all presentence investigation reports caution that risk/needs assessment tools must be constantly monitored and renormed for accuracy because of changing populations and subpopulations. (*Ibid.*) California courts should similarly consider any such limitations in the accuracy of the particular instrument employed in the case under review. (See *ibid.* ["Providing information to sentencing courts on the limitations and cautions attendant with the use of . . . risk assessments will enable courts to better assess the accuracy of the assessment and the appropriate weight to be given to the risk score"].)

Subdivision (d)(4)(D). Validating a risk/needs assessment instrument will increase its accuracy and reliability. Validation on a relevant population or subpopulation is recommended to account for differences in local policies, implementation practices, and offender populations. Ongoing monitoring and renorming of the instrument may be

necessary to reflect changes in a population or subpopulation. Revalidation of the instrument is also necessary if any of its dynamic or static risk factors are modified.

Subdivision (e). When the court is considering whether to place a person on supervision at an original sentencing proceeding or after a violation of supervision, the results of a risk/needs assessment may assist the court in assessing the person's amenability to supervision and services in the community. But when the person is ineligible for supervision, or the court has otherwise decided not to grant or reinstate probation, the results of a risk/needs assessment should not be used in determining the period of incarceration to be imposed. (See *State v. Loomis*, *supra*, 371 Wis.2d at p. 256 [holding that risk/needs assessments should not be used to determine the severity of a sentence or whether a defendant is incarcerated]; *Malenchik v. State* (2010) 928 N.E.2d 564, 573 ["It is clear that [risk/needs assessment instruments are neither intended] nor recommended to substitute for the judicial function of determining the length of sentence appropriate for each offender"].)

Subdivision (f). Risk/needs assessment instruments generally produce a numerical or descriptive "risk score" such as "high," "moderate," or "low" risk. It is critical that courts and justice partners understand the meaning and limitations of such designations. First, because risk assessments are based on group data, they are able to identify groups of high-risk offenders, not a particular high-risk individual. Second, in some assessment instruments, "risk" refers only to a generalized risk of committing a new offense, not to the seriousness of the subsequent offense (e.g., violent, sex, drug, or theft). Nor does "high risk" necessarily mean "highly dangerous." A high-risk drug offender, for example, may present a high risk that he or she will use drugs again, but does not necessarily present a high risk to commit a violent felony. Third, scientific research indicates that medium- and high-risk offenders may most benefit from evidence-based supervision and programs that address critical risk factors. Courts and probation departments should also consider how presentence investigation reports present risk assessment information. A report that merely refers to the defendant as "high risk" may incorrectly imply that the defendant presents a great danger to public safety and must therefore be incarcerated. Conversely, "low risk" does not necessarily mean "no risk."

Subdivision (g). An instrument's accuracy and reliability depend on its proper administration. Training and continuing education should be required for anyone who administers the instrument. Judges with sentencing assignments should receive appropriate training on the purpose, use, and limits of risk/needs assessments. (See Guiding Principle , Stakeholder Training, in Pamela M. Casey et al., *Using Offender Risk and Needs Assessment Information at Sentencing: Guidance for Courts from a National Working Group* (National Center for State Courts, 2011) pp. 21–22.)

CASE NO. 1

Crime: P.C. § 459 – 2d [Burglary of a structure other than a residence]

Facts: Defendant is 20 years old. He entered a store at night to steal computer equipment. He was arrested as he left the store. He immediately confessed to the crime, indicating that he needed money to buy drugs.

Record: Juvenile:
Two petty thefts
One felony drug possession offense

Adult:
DUI
Petty theft and resisting arrest [same incident]
Felony theft offense

The current offense was committed while on a 5-year grant of probation for the felony theft offense. Defendant has been on a waiting list for a drug program. He has had three dirty drug tests since the grant of probation.

Recommended sentence for current offense:

Grant or deny probation – why?

CASE NO. 2

Crime: P.C. § 182(a)(1) [Conspiracy to commit theft][16 – 2 – 3]

Facts: Defendant has been employed at an auto dealership for 15 years and is currently head of sales. Over the past several years, with the aid of several of the salesmen under his supervision, he established a scheme where he created false invoices for auto sales showing the purchase of “extras” on sales not actually purchased by the customer, but which increased the sales commission. Defendant’s scheme allowed him to receive over \$350,000 in unearned commission. The total loss to the dealership was eventually determined to be \$1.45 million, which was paid by the company’s insurance. Defendant agreed to cooperate in the prosecution of the other salesmen involved in the scheme.

Record: None

Recommended sentence for current offense:

Grant or deny probation – why?

CASE NO. 3

Crime: P.C. § 289(h) – sexual penetration [16 – 2 – 3]

Facts: Defendant is 37 years old. Prior to committing the charged offense, he had consumed 6 – 10 beers – he was showing objective signs of intoxication. He had been staying for a week at his brother’s home. The household included his brother, his brother’s wife and their 18-year old daughter. The parents went shopping, leaving the defendant alone with their daughter.

Eventually the defendant and his niece began to “horseplay” with each other, wrestling on the living room floor. During the course of the activity defendant inserted his finger into his niece’s vagina. She immediately pulled away and reported the conduct to her parents when they returned.

Defendant was charged with a violation of section 289(h), sexual penetration. He immediately engaged in counseling. He admitted his offense before the preliminary hearing. His counselor indicates a favorable prognosis so long as defendant does not drink. The niece does not desire a prison sentence, but mainly wants treatment for her uncle.

Record: Juvenile:

Felony drug possession

A charge of sexual battery was dismissed

Adult:

4 yrs ago – unlawful sexual intercourse

10 yrs ago – misdemeanor drug possession

17 yrs ago - DUI

Recommended sentence for current offense:

Grant or deny probation – why?

CASE NO. 4

Crime: P.C. § 187 – grand theft [16 – 2 – 3]

Facts: Defendant, 22 years old, worked for McDonalds for 8 months since graduating from high school; he is a shift manager. He tried a few classes at the local junior college to get some technical skills, but never completed any of them. He married and he has a 6-month old child. Overcome with bills, he began taking money from his employer – eventually taking over \$1,000.

His employer discovered the thefts and reported the matter to the police. When the police came to the defendant's apartment to question him about the thefts, they found him in a highly intoxicated condition – defendant admitted consuming 6 beers that day. The police noticed drug "tracks" on defendant's arms.

Defendant had a history of sporadic employment but failed to hold a job for longer than 9 months.

Record: None.

Would you recommend drug conditions? Why?

CASE NO. 6

Crime: P.C. § 422 [Making criminal threats] [16 – 2 – 3]
Armed with gun [+3 – 4 – 10]

Facts: Defendant is 41 years old. His wife recently instituted proceedings for divorce. The defendant suffers from severe depression and anxiety. On the day of the offense he visited his wife to drop off a child support check. He saw the wife's new boyfriend leaving the house with defendant's two sons. They were laughing and talking about attending a Dodger-Giant baseball game. The boyfriend smiled wryly at the defendant and said that the boys said they finally had a "real" father in the home. He then said the defendant's wife was really "hot." [It has been well documented that since childhood the victim has harbored a strong death wish.] Defendant ran at the boyfriend and screamed, "If you take those boys one step farther I'm going to blow your fucking head off!!" Defendant then sped off in his car. The boyfriend called the police. Defendant returned to residence, got out of car holding gun and yelled, "You're dead meat!" Police arrived within seconds and arrested defendant without incident.

Record: Adult:
DUI
Simple assault
3 prior drug convictions – placed on probation
2 – burglary 2nd – sent to prison

Recommended sentence for current crime:

Do you recommend probation? Why?

If probation is denied, what sentence do you recommend? Why?

CASE NO. 7

Count 1: P.C. § 459 – 1st [residential burglary] [2 – 4 – 6]

Count 2: P.C. § 487 [grand theft] [16 – 2 – 3]

Calculate the maximum sentence:

Assume Count 2 is run concurrently with Count 1: what is the sentence for Count 2?

CASE NO. 8

Count 1: P.C. § 245(a)(1) [assault with deadly weapon][2 – 3 – 4]

Count 2: P.C. § 273.5 [spousal abuse][2 – 3 – 4]
with knife [+1]

Calculate the maximum sentence:

CASE NO. 9

Count 1: P.C. § 459 – 1st [res burg][2 – 4 – 6]
With gun [+1]

Count 2: P.C. § 459 – 1st [2 – 4 – 6]
With gun [+1]

Calculate the aggregate sentence by imposing the middle term on the principal term and running the second count consecutive:

ABSTRACT OF JUDGMENT – PRISON COMMITMENT - DETERMINATE

[NOT VALID WITHOUT COMPLETED PAGE TWO OF CR-290 ATTACHED]

CR-290

SUPERIOR COURT OF CALIFORNIA, COUNTY OF: Placer							
PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: OSAMA BIN LADEN		DOB: 03-15-79				62-013527	-A
AKA:						62-006935	-B
CII#: A12345678		<input type="checkbox"/> NOT PRESENT				98F001786	-C
BOOKING #: 91011		<input type="checkbox"/> AMENDED ABSTRACT					
COMMITMENT TO STATE PRISON ABSTRACT OF JUDGMENT							
DATE OF HEARING 01-21-02	DEPT. NO. 13	JUDGE J. RICHARD COUZENS					
CLERK Toms	REPORTER Sweeney	PROBATION NO. OR PROBATION OFFICER Edmundson					
COUNSEL FOR PEOPLE Beattie		COUNSEL FOR DEFENDANT Plessner		<input checked="" type="checkbox"/> APPTD.			

1. Defendant was convicted of the commission of the following felonies:

☐ Additional counts are listed on attachment

___ (number of pages attached)

CNT.	CODE	SECTION NO.	CRIME	YEAR CRIME COMMITTED	DATE OF CONVICTION (MO./DATE/YEAR)	CONVICTED BY			TERM (L, M, U)	CONCURRENT	CONSECUTIVE 1/3 VIOLENT	CONSECUTIVE 1/3 NON-VIOLENT	CONSECUTIVE FULL TERM	INCOMPLETE SENTENCE (refer to item 5)	654 STAY	PRINCIPAL OR CONSECUTIVE TIME IMPOSED	
						JURY	COURT	PLEA								YRS.	MOS.
A1	PC	459*	Burglary - First Degree	2000	10-22-01			X	U							06	00
B3	PC	487(a)	Grand Theft	1998	04-02-99			X	M			X				00	08
C2	PC	487(a)	Grand Theft	1998	10-10-98			X	M			X				00	08
C4	PC	487(a)	Grand Theft	1998	10-10-98			X	M	X						(02	00)
C5	PC	666	Petty Theft with Prior	1998	10-10-98			X	M						X	---	---
					- -												

2. ENHANCEMENTS charged and found to be true TIED TO SPECIFIC COUNTS (mainly in the PC 12022 series). List each count enhancement horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

CNT.	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
A1	12022(a)(1)	1.0							01 00

3. ENHANCEMENTS charged and found to be true FOR PRIOR CONVICTIONS OR PRISON TERMS (mainly in the PC 667 series). List all enhancements horizontally. Enter time imposed for each or "S" for stayed. DO NOT LIST ANY STRICKEN ENHANCEMENT(S).

ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	ENHANCEMENT	Y/S	TOTAL
667.5(b)	1.0							01 00

4. ☐ Defendant was sentenced pursuant to PC 667 (b)-(i) or PC 1170.12 (two-strikes).

5. INCOMPLETED SENTENCE(S) CONSECUTIVE

6. TOTAL TIME ON ATTACHED PAGES:

COUNTY	CASE NUMBER

7. ☐ Additional indeterminate term (see CR-292).

8. TOTAL TIME EXCLUDING COUNTY JAIL TERM: 09 04

This form is prescribed under PC 1213.5 to satisfy the requirements of PC 1213 for determinate sentences. Attachments may be used but must be referred to in this document.

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PEOPLE OF THE STATE OF CALIFORNIA vs. DEFENDANT: OSAMA BIN LADEN							
62-013527	-A	62-006935	-B	98F001786	-C		-D

9. FINANCIAL OBLIGATIONS (including any applicable penalty assessments):

a. Restitution Fine(s):

Case A: \$ 1200.00	per PC 1202.4(b) forthwith per PC 2085.5;	\$ 1200.00	per PC 1202.45 suspended unless parole is revoked.
Case B: \$ 200.00	per PC 1202.4(b) forthwith per PC 2085.5;	\$ 200.00	per PC 1202.45 suspended unless parole is revoked.
Case C: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.
Case D: \$	per PC 1202.4(b) forthwith per PC 2085.5;	\$	per PC 1202.45 suspended unless parole is revoked.

b. Restitution per PC 1202.4(f):

Case A: \$ 10,800.00	<input type="checkbox"/> Amount to be determined	to <input checked="" type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case B: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case C: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund
Case D: \$	<input type="checkbox"/> Amount to be determined	to <input type="checkbox"/> victim(s)*	<input type="checkbox"/> Restitution Fund

(*List victim name(s) if known and amount breakdown in item 11, below.)

c. Fine(s):

Case A: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case B: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case C: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS
Case D: \$	per PC 1202.5. \$	per VC 23550 or	days	<input type="checkbox"/> county jail	<input type="checkbox"/> prison in lieu of fine	<input type="checkbox"/> CC	<input type="checkbox"/> CS

d. Lab Fee and Drug Program Fee:

Case A: Lab Fee: \$	per HS 11372.5(a) for counts	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case B: Lab Fee: \$	per HS 11372.5(a) for counts	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case C: Lab Fee: \$	per HS 11372.5(a) for counts	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).
Case D: Lab Fee: \$	per HS 11372.5(a) for counts	<input type="checkbox"/> Drug Program Fee of \$150 per HS 11372.7(a).

10. TESTING

a. ☐ AIDS pursuant to PC 1202.1 b. ☒ DNA pursuant to PC 296 c. ☐ other (specify):

11. Other orders (specify):

VICTIM: John Victim

12. EXECUTION OF SENTENCE IMPOSED

- a. ☒ at initial sentencing hearing. **A&C**
b. ☐ at resentencing per decision on appeal.
c. ☒ after revocation of probation. **B**
d. ☐ at resentencing per recall of commitment. (PC 1170(d).)
e. ☐ other (specify):

13. CREDIT FOR TIME SERVED

CASE	TOTAL CREDITS	ACTUAL	LOCAL CONDUCT
A	363	243	<input checked="" type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
B	140	94	<input checked="" type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
C	134	90	<input checked="" type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
D			<input type="checkbox"/> 4019 <input type="checkbox"/> 2933.1
Date Sentence Pronounced:		Time Served in State Institution:	
01-21-02		DMH	CDC CRC
		[]	[] []

14. The defendant is remanded to the custody of the sheriff ☒ forthwith ☐ after 48 hours excluding Saturdays, Sundays, and holidays.
To be delivered to ☒ the reception center designated by the director of the California Department of Corrections.
☐ other (specify):

CLERK OF THE COURT

I hereby certify the foregoing to be a correct abstract of the judgment made in this action.

DEPUTY'S SIGNATURE L. TOMS	DATE 01-21-02
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CASE NO. 10

Imposed by a prior court:		[Triad]	[Sentence]
Case A:	P.C. § 245(a)(1) While armed	[2 – 3 – 4] [+1]	4 years (3 + 1)
Case B:	P.C. § 487(1)	[16 – 2 – 3]	8 mos c/s
Aggregate sentence for Cases A & B:			4yrs, 8 mos

Case pending in your county:

Case C:	P.C. § 459 – 2d While armed	[16 – 2 – 3] [+1]
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You have received the abstract of judgment for cases A and B showing the sentence imposed by the previous court. Together with the case pending in your county, you now have all three cases before you.

Calculate the maximum sentence:

CASE NO. 11

Facts:

Case A: defendant sentenced to 3 yrs: 2 yrs in custody and 1 yr on mandatory supervision

Case B: defendant sentenced to 8 mos custody, consecutive to Case A

Aggregate sentence 3 yrs, 8 mos

2 yrs, 8 mos in custody

1 yr on mandatory supervision

After defendant completes custody portion, he is placed on mandatory supervision. He violates supervision after service of 2 months. He is held in custody and sentencing on the violation is set in 30 days.

On the day of sentencing, how much time is available to the court?