

*The Stanford Executive Sessions on
Sentencing and Corrections*

Coordination at the
Front-End of Sentencing:
**The Judiciary, Probation,
and the Pre-Sentence Report**

March 7, 2008
Stanford Law School



**About The Stanford Executive
Sessions on Sentencing and Corrections**

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NOTE FROM THE EXECUTIVE DIRECTOR

On March 7, the Stanford Criminal Justice Center (SCJC) kicked off the second phase of the *Stanford Executive Sessions on Sentencing and Corrections*. This meeting represented a transition for the Executive Sessions in a few significant respects. First, our meeting topics are becoming more specific — whereas the 2007 phase of the Executive Sessions examined primarily matters of general statewide sentencing and corrections policy, the 2008 phase will center on the targeted issue of information sharing in the criminal justice arena. Second, what began as primarily theoretical and analytical discussions have become nuts and bolts working meetings. The Executive Sessions are thus becoming narrower, more focused, and more oriented toward the day-to-day realities of using information and technology to inform public policy.

I want to extend a personal thank you to all of the attendees at the March meeting who came from other states to educate us on how they use information exchanges to inform criminal justice policy. The following individuals from Pennsylvania, Virginia, and Arizona came to the meeting with an attitude of cheerful willingness to share what they have learned from their own experiences in the criminal justice information-sharing arena: Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing; Ray Bilotte, District Court Administrator for Allegheny County Pennsylvania; Steve Chanenson, Villanova University School of Law Professor and Member of the Pennsylvania Commission on Sentencing; Ralph Hunsicker, Senior Projects Director of the Administrative Office of the Pennsylvania Courts; The Honorable Joseph M. James, President Judge of the Allegheny County Court in Pennsylvania; Dr. Richard Kern, Executive Director of the Virginia Sentencing Commission; David Naisby, Executive Director of the Pennsylvania Justice Network; Paul O'Connell, Director of Administrative Services for the Superior Court in Pinal County Arizona; Kathy Waters, Director of Adult Probation Services for the Arizona Supreme Court; and Lester Wingrove, Chief of Probation and Parole for Williamsburg Virginia.

I would also like to thank David Ball, the SCJC's 2008-2009 Fellow, who conceived of the topic for the 2008 Executive Sessions and whose leadership and diligence made the March meeting possible.

Look forward to receiving additional reports on the 2008 phase of the *Stanford Executive Sessions on Sentencing and Corrections* in the months to come.



Kara Dansky
Executive Director
Stanford Criminal Justice Center

“Our mission in the 2008 Executive Sessions is to encourage collaborative criminal justice policy development. We seek to promote public/private partnerships with state, county, and municipal governments in the criminal justice arena; create opportunities for the use of social science research to aid in the development and implementation of empirically-validated, data-driven criminal justice programs and policies; and serve as a public service consultant to the State of California and its fifty-eight counties.”

EXECUTIVE SUMMARY

The **Stanford Executive Sessions on Sentencing and Corrections** is an innovative form of policy working group designed to bring together key public, academic, and organizational leaders in the field of criminal justice policy. The goal of the Executive Sessions is to move cooperatively towards reform of California's sentencing and corrections systems, as well as the criminal justice system as a whole.

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For our March 2008 meeting, the Stanford Criminal Justice Center (SCJC) brought together California Chiefs of Probation, the California Administrative Office of the Courts (AOC), and state trial judges to address the role of information sharing and operations integration in the front-end of sentencing, where crucial decisions are made about whether to incarcerate offenders or divert them into probation or treatment.

We focused on the pre-sentence report (PSR) as a means of taking the discussion in a more comprehensive and practical direction — specifically, how improvements in the PSR might improve accuracy and efficiency in sentencing and probation. The PSR contains information about offenders' criminal and social history, as well as information about the particular crime with which he or she is charged. In theory, a judge relies on the PSR to make decisions about criminal sentencing. Although the PSR is of paramount importance, it receives relatively little attention from policy makers and other stakeholders.

We began with a discussion of the current state of information sharing and PSRs in California, highlighting participants' responses to a questionnaire we distributed in the weeks before the meeting. We then followed that with presentations by officials from Virginia, Pennsylvania, and Arizona about their PSR process and information environment. After that, participants broke into occupation-based working groups: probation officers, judges, and court administrators. We finally reconvened to report back from the working groups and to strategize about next steps.

Before the meeting, participants were asked to respond to a questionnaire about their need for and use of information from other agencies. Generally, participants reported significant loss of time and resources tracking down information vital to the research and writing of PSRs, particularly victim information, criminal justice information from other jurisdictions, and information from social services, especially mental health

providers. California prescribes the content, but not the format, of PSRs. Participants generally agreed that the lack of a statewide standardized format inhibited their ability to share data with other jurisdictions and made the incorporation of evidence-based risk/assessment tools more difficult.

We invited participants from three states to provide us with additional perspectives on information sharing and pre-sentencing: Virginia, Arizona, and Pennsylvania. In Virginia, the PSR is the backbone of the state's criminal offender database. The PSR, which follows a statewide format, is electronically available to criminal justice professionals throughout the state, and Virginia uses it to track outcomes and refine policy. Arizona uses an integrated case management system, and while the format and content of individual PSRs varies by county, the state uses uniform offender assessment tools. Pennsylvania's criminal justice information is well-integrated, with agencies able to push their information through the network to individual subscribers who need it. While Pennsylvania was able to integrate its information without a uniform PSR, it is considering implementing a statewide standard.

After the out-of-state presentations, participants then broke into three smaller working groups to discuss issues they encountered in their particular roles. All three groups agreed that information sharing would enable them to produce accurate results more efficiently, and each isolated different challenges on the road to implementing information sharing: lack of political leadership, a failure to organize themselves, structural and regulatory hurdles, and a fear that focusing on the system as a whole might come at the expense of their individual agency's focus.

The group as a whole reconvened to report back from the working groups and discuss how California might move toward a more collaborative, information-rich pre-sentencing process. The group generally agreed that they could leverage existing investments in information technology (IT), particularly the AOC's California Case Management System (CCMS), a multi-billion-dollar program to upgrade the state court's information infrastructure. In the meantime, counties should start working on their intra-county information sharing policies and practices.

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THE STATE OF THE PSR IN CALIFORNIA

Before the Executive Session, participants were asked to respond to a questionnaire about their need for and use of information from other criminal justice agencies. We began the day with a presentation of the results of the survey. While the survey was not statistically valid, the issues raised by the responses provided a good starting point for the subsequent discussion.

Participants generally agreed on several points. First, participants agreed that effective PSRs require accurate information, and that insufficient resources and limited access to other agencies' information made obtaining accurate, timely information difficult. Second, participants reported that there is no standard, statewide format for PSRs, and that each county implements California's statutory and regulatory requirements in a different way. This lack of standardization makes information sharing needlessly complicated. Finally, participants in favor of evidence-based practices saw significant opportunities to incorporate validated risk/needs assessments into PSRs, particularly if California probation departments implemented a statewide PSR format.

A. THERE ARE SIGNIFICANT INFORMATION BOTTLENECKS THAT IMPEDE THE RESEARCH AND WRITING OF TIMELY, COMPREHENSIVE, AND ACCURATE PSRS.

Participants reported difficulties in obtaining information from victims, other law enforcement agencies, and non-law enforcement agencies.

The Victim Information Bottleneck

Probation officers reported that victim information was, by far, the most difficult information to obtain. Victims provide essential PSR information: statements about the crime, medical and other bills, and property damage estimates. Probation officers reported that a victim's listed contact information is often not current and that it takes much time and energy to get updated contact information from other agencies. Ironically, this information is sometimes readily available to other parts of the criminal justice system: for example, even in instances where a victim had recently testified in court, probation did not have access to current contact information. Even more accurate records of law enforcement's prior contact with victims would help in tracking down information. In cases with multiple John and/or Jane Doe victims, probation officers have difficulty determining which charges apply to which victims.

The Law Enforcement Information Bottleneck

The second major bottleneck probation officers reported was obtaining information from other law enforcement agencies. Information from other counties is particularly difficult to obtain, especially from three areas: pending cases, police reports, and current probation status. Individual probation officers can get information on a case-by-case basis, depending on his/her personal contacts, but there is no systematic county-to-county exchange. Information from federal probation, out-of-state systems, and out of country agencies is no easier to get. Juvenile history poses special problems, since it is purged after a period of time, and juvenile history from other states combines the purging problem with state-to-state bureaucratic hurdles. Even when a probation officer obtains information from other agencies and jurisdictions, he/she will have trouble verifying it, or translating it into the equivalent offense in California. Second-degree armed robbery in another state may or may not translate into second-degree armed robbery in California — while the U.S. is moving towards national data standards, these have not been widely implemented, particularly at the local and county level.

The Non-Law Enforcement Information Bottleneck: Psychiatric And Social Service Records

A third major bottleneck is getting information from agencies not involved with law enforcement. Two types of information stood out as being particularly elusive: psychiatric records and social services cases. First, psychiatric records are difficult to obtain, whether they're from the California Department of Corrections and Rehabilitation, the Department of Mental Health, or private providers. Some probation officers reported difficulty obtaining access to psychiatric information in a sealed court file, even with a signed waiver. Second, information about open social services cases involving children and families — particularly when there are juvenile victims' files held by the Department of Social Services — are very difficult to access.

While participants reported that personal lines of communication between judges and probation were good, there were some doubts about whether judges actually use the information in PSRs during sentencing. On an institutional level, participants reported that different IT systems don't talk to each other: there is no automated transfer of information, and judges reported trouble accessing probation systems.

None of these problems is insurmountable, but participants said they often lacked time and resources to track down missing information, even information relevant to the disposition of the case. Judges at the meeting expressed concern: they did not see how they could sentence accurately and effectively without this information.

B. THE LACK OF A STANDARD, STATEWIDE FORMAT FOR PSRS INHIBITS INFORMATION SHARING AND THE USE OF EVIDENCE-BASED PRACTICES.

California standardizes the information contained in a PSR, but not its format. Each county is permitted to implement the state standard in its own format. Because standard formatting is crucial to automated information sharing, standardization presents a significant opportunity to improve data collection and dissemination throughout the state.

California Penal Code §1203 and Rules of Court 4.411 and 4.411.5 govern a PSR's content. §1203 states that probation officers “shall, when so directed by the court, inquire into the antecedents, character, history, family environment and offense” of a person arrested for or found guilty of a crime. Rule of Court 4.411.5 elaborates on the information a PSR should contain (e.g., prior criminal conduct includes adult and juvenile convictions; social history includes, “wherever applicable,” family, education, employment and income, military, medical/psychological, record of substance abuse). While the state’s laws and regulations suggest extensive social history, in practice, many PSRs do not contain comprehensive social histories — as, for example, with “short form” PSRs, which eliminate social history. In some cases, probation officers said they could not conduct interviews with offenders due to budget cuts.

The state does not provide similarly detailed specifications for a PSR's format, specifying in Rules of Court 4.411.5 only that the format of the report be “on paper 8-1/2 by 11 inches in size” and that the information be presented in the order given “to the extent possible.” Formats are not necessarily standardized at the county level: some counties provide a manual on format, others provide no guidance, and judges are free to request individualized formats.

This makes little sense, since PSRs are, by law, designed to be shared with other parts of the criminal justice system, and a lack of standardization means that relevant information comes in different forms each time. Judges, of course, use PSRs to determine whether to sentence an offender to probation in probation-eligible cases, but the California Department of Cor-

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THE STATE OF THE PSR IN CALIFORNIA CONTINUED

rections and Rehabilitation (CDCR) also uses the PSR to determine prison placement and programming needs. Penal code §1203 requires that every person sentenced to prison have an accompanying PSR.

Many participants indicated a desire to incorporate evidence-based practices into the PSR. PSRs do not currently contain any kind of validated risk/needs assessment, there is currently no way of measuring the effectiveness of recommended programs, and there are no validated links between offender needs and particular treatments. Moreover, judges and probation officers have difficulty in getting follow-up information from community supervision: finding out that the offender is attending programs, evaluating which programs work and which don't, and coordinating multiple program assignments.

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KEY TAKEAWAY POINTS FROM CALIFORNIA'S PSR EXPERTS

The following takeaway points encapsulate the responses we received from the participant questionnaires. Because they reflect the views of the experts themselves, we think these points present the key points to be taken from the March 2008 meeting of the *Stanford Executive Sessions on Sentencing and Corrections*.

1

ALL IT PLANS AND PURCHASES SHOULD BE MADE WITH INFORMATION SHARING IN MIND.

The conversation about data integration might start with judges and probation, but it does not stop there. Whenever any criminal justice agency makes an IT investment, it should ensure that new systems are designed and built to be used in a networked environment.

2

THE PSR IS ONLY AS GOOD AS THE INFORMATION THAT GOES INTO IT.

Probation officers were, at times, disappointed or frustrated that PSRs weren't as complete as they could or maybe should be — not for lack of effort on their part, but because the information was unavailable. Judges, in turn, felt that they could only rely on PSRs only to the extent they provided a comprehensive, accurate account of all relevant information.

3

CONTENT AND FORMAT ARE DIFFERENT ISSUES, PARTICULARLY IN THE CONTEXT OF AUTOMATED DATA EXCHANGE.

Standardizing content without standardizing format means information does not flow as easily or as automatically as it could. Without standard formats, it is much harder to reuse information or automate its exchange. The format question goes beyond machine-readability, however. PSRs across the state rely on narration to relay information. Narratives are useful when conveying a story, but they tend to obscure individual risk factors so important to evidence-based practices. Counties (or the state) might consider moving away from narrative and towards individual data points — for ex-

ample, a narrative about a crime might become a list of constituent pieces, such as (1) battery (2) with a weapon (3) under the influence. Data in this format could be more easily reused: in the future, a probation officer in another county could get the gist of the prior offense in a few seconds rather than combing a narrative about the crime.

It is unclear, though, how California's legal and regulatory framework might govern such changes. Because the statute specifies only content, the Rules of Court might be an adequate means for changing statewide PSR formats without having to go through the time-consuming process of seeking a statutory amendment.

4

PSRS PROVIDE AN OPPORTUNITY TO INTRODUCE EVIDENCE-BASED PRACTICES

There is a real opportunity to incorporate risk/needs assessments into PSRs and, in general, to measure the success of alternative disposition programs. Introducing measures of success begs the question of how success is to be measured: both the metric of success and how much of that metric makes a program successful. Should we measure program completion rates, and, if so, how many participants have to graduate for a program to be successful? Should we measure future contact with law enforcement? Recidivism? How much reduction in recidivism does a program have to achieve to make it a good program?

5

RESOURCES AND BUDGETING SHOULD MOVE TOWARD EFFECTIVE, EVIDENCE-BASED PROGRAMS.

Probation officers generally felt that they had serious resource constraints. While most agreed that standardized, evidence-based PSRs were a good idea, they also wanted federal or state assistance to facilitate rollout and implementation. Open questions remained about how to reward good work with increased funding streams, ensuring particularly that counties which lower recidivism are not punished with budget cuts.

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THE PSR OUTSIDE CALIFORNIA

Our out-of-state participants shed some light on how other states automate, standardize, and share PSR information. Each state takes a slightly different approach.

Virginia uses a single standardized PSR which serves as the backbone of offender case management. Virginia's PSR uses a mixture of check boxes, lists, and narrative, and includes, in addition to criminal history, such social history facts as marital/residential stability, education, social/religious activities, employment history, and financial status. According to Dr. Rick Kern, Director of the Virginia Sentencing Commission, there was some initial resistance to the standard form: some judges felt the PSR was too long, others too short, and some had grown accustomed to the individual formats they required. Now, however, no one complains: quality data is available to officials statewide and enables the state to more finely tune its criminal justice policies and population. The state has used the PSR to divert non-violent offenders into treatment. The state has seen the prison population of non-violent offenders drop from fifty percent to twenty percent; prison is now where the state primarily sends its most dangerous offenders.

Although standardized PSRs facilitate information sharing, the two are not necessarily linked. Pennsylvania's criminal justice data is well-integrated, for example, but there is no single, statewide PSR format. The Pennsylvania Commission on Sentencing coordinated a PSR work group a few years ago and developed a boilerplate PSR that could be used by courts (and adapted to each judge's use). Early parts of this process involved obtaining sample PSRs to define best practices and to develop a list of data fields. In general, our Pennsylvania participants recommended an iterative series of consultation and planning — finding out what the “business” needs are, sketching out a plan and seeking feedback, and refining the plans and implementation based on that feedback. Pennsylvania participants recommended finding some area of information sharing that would provide some concrete results to both the judiciary and probation. At the very least, this approach might lead to a discussion of areas of coordination/collaboration between the development of the CCMS and any IT development underway or planned by a county probation office.

Arizona, like Pennsylvania, has an integrated case management system, but has prioritized standardization of risk/needs assessment rather than the text of the PSR itself. Each of Arizona's 15 county adult probation depart-

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THE PSR OUTSIDE CALIFORNIA CONTINUED

ments is integrated on a statewide automated case management system: the Adult Probation Enterprise Tracking System (APETS). Counties enter case level information, client level information, and results from state assessments into the APETS database. The PSR report text is not contained in APETS, however, nor is it standardized across counties. While APETS facilitates information sharing among county probation offices, individual probation officers still face difficulties in obtaining information from other agencies, particularly information relating to an offender's criminal history.

The perspectives of the out-of-state participants provided a useful illustration of possible routes California might take as it seeks to promote better coordination and collaboration between probation and the judiciary.

PSRS ON THE GROUND:

THE PERSPECTIVES OF PROBATION OFFICERS, JUDGES, AND COURT ADMINISTRATORS

After the group discussion about PSRs, participants broke into small groups to discuss how collaboration could improve the creation and use of PSRs. Each group brought its own occupational perspective to the discussion: probation officers focused on how better information would improve their sentencing recommendations, judges focused on state organizational obstacles to standardization, and court administrators focused on the hazards of shifting from an obsolete but familiar IT system to a new, untested one.



A. PROBATION OFFICERS' PERSPECTIVES: BETTER INFORMATION MEANS BETTER RECOMMENDATIONS

Probation officers reported that better information sharing would enable them to be much more effective: to provide better services to victims, offenders, and families; to make more compelling recommendations and improve the quality of reports; and to help make better resource allocation decisions about whom to incarcerate and whom to divert. They also thought more accurate, more timely PSRs would allow them to support plea negotiations — currently, prosecutors and defendants are often left guessing about the potential sentencing range at stake.

Given these compelling advantages, the probation officers analyzed why informational and operational collaboration has been slow to take root. While the Chief Probation Officers of California (CPOC) is ready to share whatever data needs to be shared, the state lacks leadership. The AOC is rolling out the California Case Management System but it's unclear how other agencies will be able to use it. All other criminal justice agencies have their own systems, but it's unclear how they integrate.

The probation officers suggested that they “start in our own backyard” and teach criminal justice partners how collaboration will ultimately improve the administration of justice. Probation officers suggested looking for federal money, particularly homeland security money, since improving public safety is at the heart of the mission of homeland security.



B. JUDGES' PERSPECTIVES: STANDARDIZING PROBATION STATE-WIDE

The advantages of evidence-based, standardized PSRs were readily apparent to our judicial participants. In the individual case, more accurate PSRs would better inform individual judges' decisions, to the extent that sentencing laws permit discretion. On a systemic level, readily-available, machine-readable PSRs would enable the judiciary (and the court system generally) to create a database of offenders and sentences. This database would help the state to make better sentencing policy decisions and could measure unwarranted disparities in sentencing.

Judges identified several obstacles to implementing standardized, machine-readable PSRs, most notably the localization of probation. (While there are clearly some obvious technological deficits and needs, the problem is mostly one of resource allocation — how agencies prioritize IT staffing and expenditures.) Judges generally agreed that probation could be more of a statewide enterprise — but they were vehement that probation not become a part of the CDCR. Judges thought that resistance to making probation a state function would not come from probation officials as an entity, but, instead, from other local and county officials (e.g., labor unions).

Without strong leadership at the state level, probation is likely to remain as it is — an underfunded, non-standardized local function. From the judges' perspective, finding leadership is a problem: the state legislature is relatively weak (due to structural and policy limitations placed on it by initiatives), but the judiciary — a state system, since the state funds trial courts — is a possibility. However, the California Chief Justice has less constitutional authority over the state government than, say, the Pennsylvania Chief Justice has over the Commonwealth. The idea of a state judicial branch of government is itself somewhat novel in California, given that court unification is so recent. What might be needed is collaboration among all three branches of state government, with the state giving some money to counties. This income stream would depend on outcomes — but this would, again, require some discussion of the metric and measure of success (e.g., a given percentage decrease in the number of offenders a county sends to state prison, especially for technical violations).



C. COURT ADMINISTRATORS: BALANCING INTER-AGENCY COLLABORATION WITH CORE COURT NEEDS

The AOC's investment in the new, electronic CCMS provides an opportunity for a statewide information exchange: county court systems will be able to

exchange information with each other. The CCMS could also serve as a key part of a larger criminal justice information ecosystem, but significant barriers must first be overcome. Of course, one problem is that the state cannot mandate standards without providing funding for complying with them. The CCMS can establish rules and encourage probation departments to make their systems compliant, but there is no way for the state to enforce these standards without significant expenditure. A second problem is the localization problem — the AOC is a single statewide agency, while the probation “system” is actually 58 different county systems. Some statewide networks exist, but it’s not clear whether the individual state agencies will be willing to open up the systems to enable them to communicate with the CCMS.

A bigger problem, though, is the AOC’s fear of “mission creep.” The AOC’s core mission is to provide courtwide information sharing, not to provide the solution to all of the state’s data integration problems. For example, the state courts currently do not maintain comprehensive files on all aspects of an offender’s contact with criminal justice agencies, and the AOC should not have to shoulder this burden under the rubric of better information sharing.

There are also concerns regarding public safety, particularly where the county criminal justice partners and the courts are well integrated. Some are worried that integration will reduce effectiveness by creating gaps in the data — for example, where family and criminal courts currently communicate with law enforcement and jails about cases of domestic violence. Finally, in some cases the county/court IT “divorce” has been bitter, with both sides arguing over resources and data. In these cases, it’s hard to organize agencies to share information when there are intense “custody battles” going on.



D. MOVING FORWARD

Despite the obstacles, there are significant opportunities available for information sharing and collaboration at the front-end of sentencing. The AOC’s CCMS might create de facto state standards: as one of the biggest pieces of any potential statewide information exchange, the protocols the AOC establishes for its own system will be the starting point for any future agency. The AOC is currently meeting with local criminal justice agencies to discuss exchanging information with CCMS using a process called LIAM (Local Integration Assessment Methodology). It has started with a few key

counties, most notably Los Angeles, Ventura, Sacramento, San Diego, and Orange. Other courts involved with CCMS include Fresno, San Francisco, Kern, San Bernadino, and a small-court consortium.

In the meantime, counties don't necessarily need to wait for the state to begin collaborating. Counties can organize amongst and within themselves, and individual agencies can meet with in-county officials and their counterparts in other counties to begin sharing criminal justice information.

In the medium- to long-term, risk/needs assessments can be incorporated into a more information-rich pre-sentence environment. Probation officers in attendance suggested that the CPOC strategic plan be amended to express support for the inclusion of risk/needs assessment tools in PSRs. The Judicial Council could also amend the Rules of Court to require a risk/needs assessment as part of its PSR regulations. Plans for a pilot program to standardize PSRs are underway.

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CONCLUSION

PSRs present an opportunity to move towards evidence-based policies and practices. The AOC is already meeting with counties to promote information sharing between the CCMS and other systems, but it is understandably unwilling to shoulder the entire burden of the state's local and statewide criminal justice information needs.

Some critical questions emerged from the participant questionnaire that were not fully examined at the meeting, but that deserve a more thorough examination, namely: what is the purpose of the PSR, and is it accomplishing that purpose? Asking questions about how to improve PSRs requires figuring out precisely what PSRs should do. Is the purpose of a PSR to help with sentencing only? If so, why should a probation officer prepare a PSR for a crime with a mandatory sentence? Is the purpose to help with treatment, either in prison or through diversion? If so, what purpose does a "short form" PSR serve?

In the meantime, counties need to organize themselves. As a result, the next Executive Sessions meeting will focus on two key geographic regions: Southern California and the San Francisco Bay Area. This geographic focus will enable Executive Sessions participants to delve more deeply into the specific issues that confront criminal justice and government officials at the county and city levels and to address the complexities of information sharing and organizational cooperation between contiguous counties. With the combination of statewide leadership and local organization, California will move toward a criminal justice environment with better information, improvements in public safety, and evidence-based policies and practices.

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