

*The Stanford Executive Sessions on
Sentencing and Corrections*

**Catch and Release:
Using Risk-Needs Assessment
to Manage Local Custodial
Populations**

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Stanford Law School

About The Stanford Criminal Justice Center

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“The premise of the December 2008 meeting was that using Risk/Needs Assessments (RNAs) at the local level might help counties meet the challenges associated with large offender populations and shrinking budgets.”

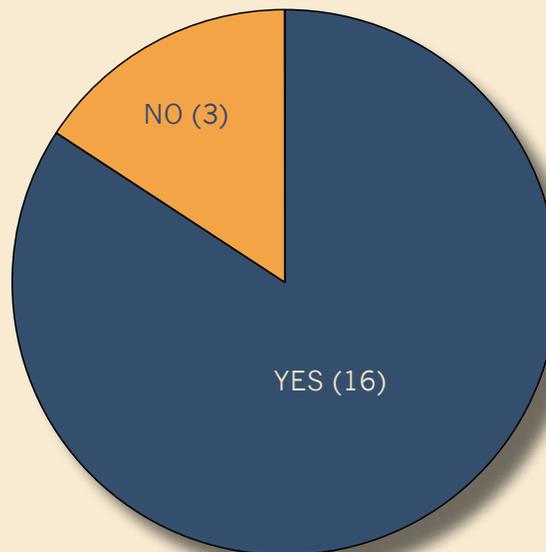
EXECUTIVE SUMMARY

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.

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.

The premise of the December 2008 meeting was that using Risk/Needs Assessments (RNAs) at the local level might help counties meet the challenges associated with large offender populations and shrinking budgets. Before the meeting we sent a questionnaire to prospective participants in order to learn from the experts themselves about those aspects of managing local populations that warrant the most attention in this context. The first third of the meeting was devoted to a discussion of how counties might use RNAs in determining whether pre-trial release of an offender is feasible. In the second third of the meeting, we focused on how RNAs might help with decisions about programming and classification inside jails. In the final third of the meeting, we

QUESTION 1: Does your agency currently perform risk assessments?



EXECUTIVE SUMMARY CONTINUED

discussed the use of RNAs in supervising offenders after their release from jail.

We learned that there are several potential uses of RNAs at the local custodial level. First, RNAs can function as a remarkably useful tool to aid public officials in making informed decisions about whether, when, and how to incarcerate offenders locally by giving them a metric to help make difficult but necessary decisions about where to draw cost-beneficial lines. Second, RNAs can be useful in helping local officials (probation officers in particular) and CBOs to match offenders with the services they need and to improve the ability of local law enforcement in matching treatment to an offender's particularized risk factors. Finally, RNA data can be aggregated to help local officials analyze their offender populations as a whole and illuminate otherwise hidden circumstances in the administration of local criminal justice generally.

We also learned that there are a number of pitfalls local officials should be mindful of in considering the use of RNAs to manage local populations. One is simply that RNAs are probabilistic, in that they tell us more about median offenders with a given set of characteristics than they tell us about particular offenders—this raises potential concerns about profiling and accuracy in prediction. Second, RNAs are only as good as the services available in the community—it does little good to know what an offender's needs are if there are no treatment options available for meeting those needs. Finally, use of RNAs by individual jurisdictions might not turn out to be as useful as we might expect if there is no standardization in design, implementation, and training between jurisdictions.

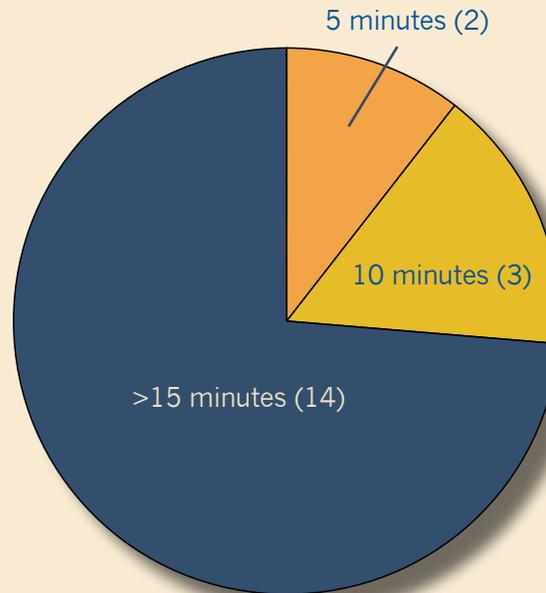
Lastly, we were able to draw out some instructive themes concerning the use of RNAs at the local level. Perhaps the most challenging of these is the difficulty of implementing a public safety tool in the context of a criminal justice system that is fundamentally adversarial and retributive in outlook—participants at this Executive Sessions meeting, particularly prosecutors and defense attorneys, grappled with this question at length. Another is the disproportionate role RNAs often play in informing decisions made at the back end of the criminal justice system—our system is full of incentives for counties to send offenders to prison rather than supervise them locally. A third theme relates to the question of decision-making: it is local agencies, not the tools themselves, who decide what to do with offenders at particular risk levels, and while RNAs can tell policymakers the likely risk offenders pose, they cannot themselves determine whether society should or should not pay

to avoid that risk.

We conclude by highlighting the importance of trust between county agencies—if a receiving agency does not use the information because it does not trust the validity of the administration or design of an RNA, many of the benefits of RNAs will be lost. Perfect uniformity in design and implementation of RNAs is too ambitious (and perhaps undesirable) a goal. Instead, reasonable uniformity of RNAs and standardized training of staff within agencies, along with transparency and adaptability across agencies, will lead to a level of trust among officials that will enable them to derive full value from assessment tools.

Of course, the need to reevaluate how the state and counties allocate criminal justice resources has never been more urgent—we believe, based on the conversation that evolved among the participants at this meeting—that RNAs deployed at the local level, while not magic bullets, can help illustrate a way out of California’s budget crisis and prison overcrowding problems.

QUESTION 2: What is the maximum amount of time you have (or would have) to conduct an assessment?



“Using RNAs at the local level might offer the multiple benefits of controlling jail populations, improving custodial classification and programming, and ensuring better case management and continuity of care in the community.”

INTRODUCTION

BACKGROUND

The overpopulation crisis in the California prison and parole system has recently dominated headlines. But local custodial populations in jail and on probation are also bursting, and this dramatic growth has been happening without sufficient attention from politicians, journalists, and academics. Jails, probation, and local community treatment facilities face increasing demands on their already strained capacities, and while the situation obviously has profound local effects, it is not merely a local problem. As local capacity dries up, counties will face increasing difficulties in absorbing prisoners returning from state facilities. One can easily imagine a vicious circle whereby counties without capacity send their offenders to state prisons, while state prisons contemplate early parole release back to the counties in order to ease overcrowding.

The premise of the December 2008 meeting of the Stanford Executive Sessions on Sentencing and Corrections was that using Risk/Needs Assessments (RNAs) might help counties meet the challenges associated with large offender populations and shrinking budgets. RNAs assess offenders for risk factors associated with threats to public safety. An assessment of statistically significant risks can help local officials make decisions about whom to release and whom to keep incarcerated. The “needs” component of the RNA assessment looks at criminogenic factors associated with higher risks—e.g. anti-social cognition, domestic problems, and substance abuse—as a means of giving the offender programming that will decrease his or her risk of reoffending. Using RNAs at the local level might offer the multiple benefits of controlling jail populations, improving custodial classification and programming, and ensuring better case management and continuity of care in the community.

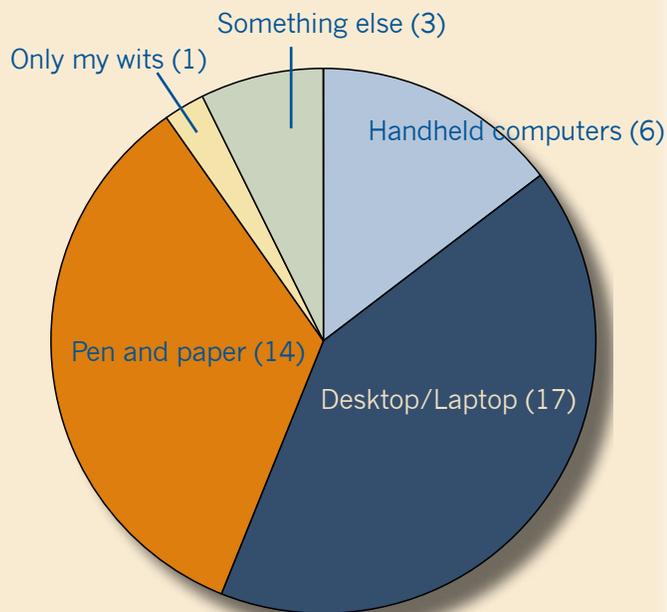
Participants at the meeting were both public officials — including representatives of local and county law enforcement, state parole and county probation, the judiciary, and District Attorneys — and leaders of non-profit and community-based organizations (CBOs) that assist offenders at the local level. This group reflects the array of functional perspectives on local populations, from those who arrest and detain offenders to those who monitor them in local communities.

Before the meeting SCJC sent a questionnaire to prospective participants in order to

INTRODUCTION CONTINUED

learn from the experts themselves about those aspects of managing local populations that warrant the most attention. Meeting participants received one of two versions of the questionnaire – one for those who produce RNAs and one for those who receive them for use in making programming and treatment decisions. Our goal in distributing the questionnaire was to generate some preliminary observations about the current use of RNAs among California’s criminal justice professionals to guide our development of the agenda and to provide some grounding for the meeting discussion. The questionnaire results appear in the narrative that follows to ground our observations, and they are also depicted visually in charts and graphs throughout this report.

QUESTION 3: When conducting assessments, do you/ could you use which of the following?



Notably, questionnaire respondents generally reported that they already use RNAs at the local level. More than 4/5 of respondents reported using some kind of risk assessment. Most reported having (or making) time to assess inmates – 74% said they had 15 minutes or more to do assessments; 89% of participants reported having access to laptops during assessments (indeed, laptops were needed in most cases because participants used web-based RNAs); and 79% reported that officers in their agencies receive training in assessments, and in a few instances participants indicated that this training was extensive.

The meeting evolved in

a manner similar to previous Executive Sessions. Upon receiving the questionnaire responses, SCJC prepared a very loosely-structured agenda; our intention in this meeting, as in previous Executive Sessions meetings, was to allow the conversation to develop organically rather than force participants in a particular direction. What follows in this report is SCJC's synthesis of the discussion. In this synthesis, we often broadly attribute ideas or questions to "participants" or "some participants," or, equally often, we describe an idea or question as having arisen at the meeting without specifically attributing it. The reason is that to encourage robust debate at our Sessions, we guarantee participants that they will not have their comments attributed to them individually.

DISCUSSION AT THE MEETING

The first third of the meeting was devoted to a discussion of how counties might use RNAs in determining whether pre-trial release of an offender is feasible. When a defendant is charged and taken into custody, an initial decision must be made about how, if at all, the defendant should be supervised. Some defendants will be bound over for trial, some will be released on bail, and some will be released either into treatment or on their own recognizance (OR, also called pre-trial release). Each of these decisions requires slightly different information. Bail and pre-trial release (PTR) require some kind of estimate about flight risk; release into treatment requires some estimate of a defendant's treatment needs; and the decision to bind a defendant over for trial requires some estimate of his threat to public safety. RNAs might be deployed as a helpful sorting mechanism when these initial decisions must be made.

In the second third of the meeting, we focused on how RNAs might help with decisions about programming and classification inside jails. In some ways, the division between supervision and treatment in custody and in the community is an artificial one because of the revolving door nature of local populations, characterized by the high volume of inmates being admitted and released. Most jail inmates will be released well within a year, and those that are not are bound over for trials that could result in their confinement in state prison. So an initial issue is simply figuring out which prisoners are going to be "in" long enough for the jail to justify doing something with them.

INTRODUCTION CONTINUED

In the final portion of the meeting, we discussed the use of RNAs in supervising offenders after their release from local jails. The issue of post-jail reentry presents challenges and opportunities different from those in post-prison reentry. Jail inmates generally reenter society in the very same areas where they have been incarcerated, so coordination with CBOs and supervising agencies—either through in-jail prerelease visits or through jail release management teams—is much easier. Because jail stays tend to be brief, disruptions in offenders’ access to key prosocial resources such as housing, employment, and family members tend to be less severe than for prisoners spending years behind bars. But at the same time, the short stays in jail create informational and administrative problems. It is harder to manage a steadily churning population, even if the number of people incarcerated at any one time is constant. The greater number of admittances and releases means that officials face a greater load of information to keep track of. Finally, some individuals—those simply released on their own recognizance pending trial—will not be subject to formal supervision or treatment. If these releases are handled well, they conserve resources for those reentrants who need it. If the releases are handled poorly, offenders who would have succeeded with more treatment or supervision may slip through the cracks.

ORGANIZATION OF REPORT

The main body of this report proceeds in three main parts. Part I examines the potential usefulness of RNAs at the local level as mechanisms for reducing risk, cutting costs, and managing custodial populations. Part II describes some of the potential pitfalls of using RNAs at the local level, as well as some of the limitations of RNAs more generally. Part III offers some broader observations about the complicated fit (and misfit) between evidence-based assessment and our justice system, observations which may point to some realistic changes to help California counties reap full advantage from RNAs. We hope the report will show how RNAs can serve to help agencies manage local populations in a way that maximizes the efficient use of resources within existing legal and regulatory frameworks.

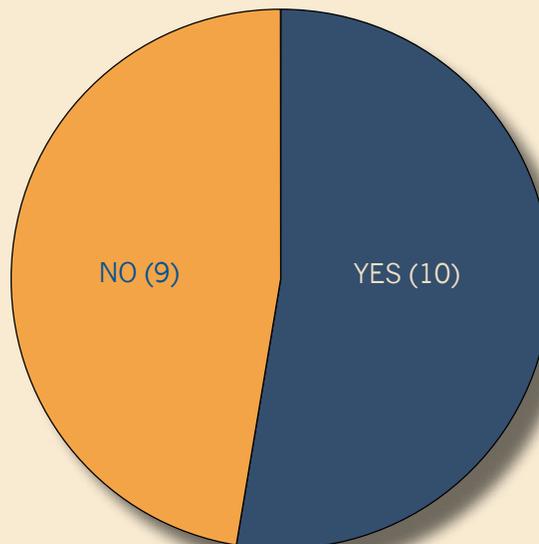
PART I: POTENTIAL LOCAL USES OF RNAs

A USEFUL DECISION-MAKING METRIC

Probably the most common use of RNAs is as a tool to aid local officials in making informed decisions about whether, when, and how to incarcerate offenders. The RNA thereby enables officials to allocate resources effectively without increasing dangers to public safety. Managing local overpopulation requires coordination among law enforcement, courts, and jailers, and this coordination in turn requires agencies to identify which inmates pose the lowest risk to the public safety if released. Given the combination of our current overpopulation crisis in our jails and prisons and the fiscal catastrophes governments face, we cannot grow our way out of the problem anymore. Instead we must make tough, zero-sum decisions about how to allocate resources, and RNAs can serve as an evidentiary basis for making these decisions consistently and transparently. For example, a simple risk needs assessment tool could be used by the District Attorney in deciding whom to charge, by the jail in deciding whether simply to cite and release the offender, and by the judge in deciding whether to release the offender on his or her own recognizance. In other words, an RNA might give local officials a metric to help make difficult but necessary decisions about where to draw cost-beneficial lines.

RNAs are particularly useful because they help standardize the decision-making process within a jurisdiction. Once an RNA protocol is adopted, every official will

QUESTION 4: Do you/could you have a quick way of screening out people who will be in jail less than 24 hours who would not be eligible, or require social services (e.g. drunk tank)?



be considering the same set of factors, and each factor is will be weighted the same amount across officials. RNAs can also streamline the decisionmaking process, because a simple one-page RNA can help sort offenders who are clearly “ins” or “outs” from each other. Staff can then do more detailed evaluations of offenders on the bubble, and treatment providers can refine the initial diagnosis of a particular offender with a more detailed RNA. Finally, an RNA tool can help local officials track outcomes, allowing them to refine policies and quantify risks to public safety. California’s current budget crisis reinforces the idea that state and local governments should take a hard look at the return on investment from criminal justice spending. The simple acts of measuring and tracking offenders through RNAs would be a step in the right direction.

PROGRAMMING AND SUPERVISION

RNAs are also useful at a level once removed from the initial decision-making stage. At that initial stage, RNAs often serve to draw rough binary distinctions (risky/not risky). But more refined RNA tools are available at the next stage to help local officials (probation officers in particular) and CBOs to match offenders with the services they need. For example, the Orange County Probation Department uses RNAs as a primary mechanism for determining appropriate levels of supervision and assigning offenders to treatment programs closely aligned with their needs.

As RNAs become more widely used in this arena, they should continue to improve the ability of local law enforcement to accurately match treatment to an offender’s particularized risk factors. Currently, when policymakers talk about resources—say, drug treatment—they tend to focus on the gross number of beds or placements. In reality, though, drug treatment is not a uniform activity: there are many different approaches to drug treatment, just as there are many different patterns and causes of drug abuse. Understanding which particular risks and needs can be addressed with particular approaches demonstrates that capacity means more than just “beds.” RNAs can help officials and service providers answer more detailed questions: What kind of beds? What kind of treatment? What kind of program? With what likely costs and benefits?

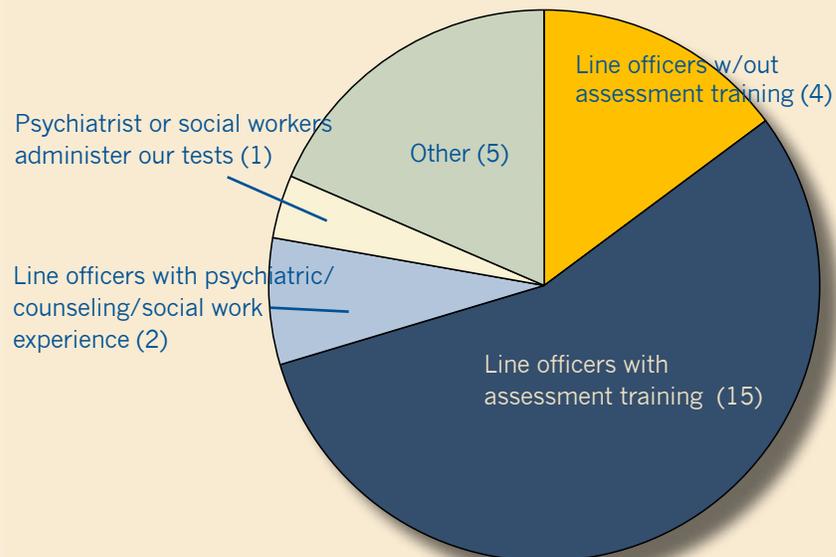
Again, it is crucial to remember that assessments are snapshots: Both needs and dynamic risk factors can change as programming and resources are applied, so agencies

should incorporate reassessment into their protocols. Offenders should be reassessed at reasonable intervals, and new assessments should drive custody, treatment, and sentencing decisions. If this updating occurs, some offenders can be safely released early upon reassessment, while officials will be able to detect that others who complete a course of treatment show continuing signs of dangerousness. In this process, an RNA is not a definitive answer, but, if properly updated, serves as a crucial starting point for decision-making. And an added benefit to reassessment is that it can help identify both which interventions work and when they work.

ANALYZING OFFENDER POPULATIONS

While quantifying the risks and needs of a given population cannot, without more, determine policy, such quantification can be an incredibly useful tool in helping local communities analyze their offender populations as a whole. In San Francisco, for example, officials knew that their probation population contained an unusually high number of high risk and high needs offenders. But the assessment process enabled officials to measure that proportion more accurately so as to enable more cost-efficient policies and in turn, to help inform public discussion about public safety

QUESTION 5: What kind of training/expertise/background do or would the people doing the assessments have?



concerns. In San Diego County, probation officers sit down with the sheriff's office for a weekly "arrest triage," where they review all the cases involving probationers who were arrested that week and booked into the jail. The assessments enable officers to answer three questions: What was probation doing wrong? What could it do better? Which of the offenders' needs can be met in custody? The Orange County Probation Department has done two interesting things with the information it has collected through the use of RNAs. First, the Department has shared the information with the courts, so judges can incorporate knowledge about the local probation population into their sentencing and revocation decisions. Second, the Department has used the information to adjust the ways it deals with budget cuts; probation used to simply look for ways to cut caseloads, but now it uses the results of RNAs to figure out how to better supervise existing caseloads.

The population-level information that can be gathered by aggregating individual RNAs can also illuminate circumstances that might otherwise be hidden from view that bear on criminal justice and crime-prevention more generally. One participant noted that when Alameda County officials examined the county's homicide cases, they found that people released from incarceration—both prison and jail—constituted a large proportion of the victims of homicide. Officials surmised that these victims owed someone for the money and drugs that were confiscated at the time of arrest. Thus, RNAs designed to identify people most likely to commit new crimes may, ironically, help officials anticipate crimes committed by others against the individuals being assessed.

Finally, RNAs can assist local officials in managing jail populations through better inventory techniques. Jail administrators want to know about custodial safety factors related to classification (such as gang membership) so they do not unwittingly increase the risk of violence in the jail. They also want to know about needs factors so that they can properly assign inmates to programs. But to be useful, this analysis of risks and related needs has to be conducted in the context of the likely length of the inmate's stay. For example, in one jurisdiction represented by a participant, some programs are designed to serve offenders who are likely to be released into the community within six months, and so officials do not provide programming for inmates charged with murder (who are likely to spend years in jail awaiting trial and then be shipped off to state prison). Another participant reported making different decisions with long-term inmates; thus, use

of a very bold program conceived by the Delancey Street project—one which puts rival gang members together as roommates—was so successful that prison-bound inmates kept asking for continuances so they could stay in the jail and continue to be a part of the program. In the former instance, then, resources are allocated according to imminence of reentry. In the latter, the concern is population management and ensuring positive long-term outcomes. In both cases, however, RNAs are useful in helping achieve these goals.

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“...standardization of RNAs across agencies within a jurisdiction, or among jurisdictions, is not crucial and not even necessarily desirable, so long as one other key criterion is satisfied. There must be a high level of trust among different units in the fairness and objectivity of the others’ RNAs.”

PART II: POTENTIAL PITFALLS OF THE LOCAL USE OF RNAS

THE PERILS OF PROBABILITY

RNAs are probabilistic: they tell us about the median offender with a given set of characteristics, not about this offender. This aspect of RNAs is a concern for several reasons. First, as many defense attorneys are apt to point out, it is arguably unfair to incarcerate someone on the basis of *what we think he might do* because of what some *other* people who share some of his characteristics *have done*. Second, it points to the potential for inaccuracy in prediction – the fact that others who share a defendant’s characteristics are not at high risk of re-offending does not enable us to predict with anything approaching certainty whether any particular defendant is likely to re-offend. Moreover, the accuracy of a given tool changes in terms of the different things one is trying to predict. Tools may only be accurate for one purpose in one location. Thus, some factor may be useful in predicting a person’s propensity to commit assaults in jail, while another may help predict a person’s vulnerability to falling in with drug dealers on the street, and no one factor is likely to be ideal for both of these questions.

Further, over-reliance on RNA-type tools might have unwelcome consequences. An RNA tool might give too much “cover” to judges and parole agents. That is, rather than serving as a tool to aid discretion, it can become the final word itself, with the official disclaiming responsibility by saying, in effect, “The tool made me do it.” Indeed, this concern might become greater as the tool is more fully implemented within a jurisdiction if officials seize the opportunity to avoid discretionary decision-making altogether.

Finally, the level of generalization at which RNAs operate might result in unfairly stereotypical perceptions about or treatment of whole groups of people. If certain factors simply appear to correlate with such status categories as race or ethnicity, then misuse of or misleading publicity about RNAs may reinforce social prejudices and even distort the discretionary decision-making of police and other authorities, thus becoming self-reinforcing. And the problem of stereotypical generalization is especially acute in the context of juvenile offenders. This is in part because the very terms “risks” and “needs” take on a special meaning in the juvenile system, where, given the paternalistic premises of state intervention, the individual is theoretically being helped as a needy dependent, not prosecuted as a true offender. For example, one risk factor highly correlated with fu-

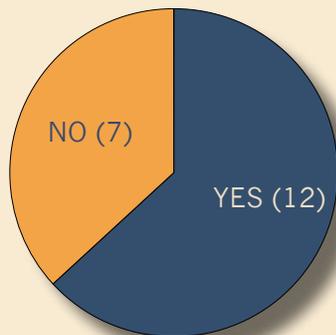
PART II CONTINUED

ture criminality is whether an offender was incarcerated as a juvenile. Incarcerated juveniles are disproportionately youth of color. But incarceration of youth is necessarily different from that of adults – one participant suggested that the decision to incarcerate a juvenile might not be made on the basis of the risk the youth poses, but on what risk is being posed to the youth. That is, minors who are not high risk might nevertheless be incarcerated because they are not safe in their home environment. Thus, inclusion of this risk factor might result in over-incarceration of offenders of color, and so officials must be on guard against the unintended consequences that too-easy reliance on a tool might cause. The problems inherent in deciding how this risk factor of early incarceration gets weighted and what this weighting results in for a certain demographic category are questions that must be addressed as RNAs are implemented.

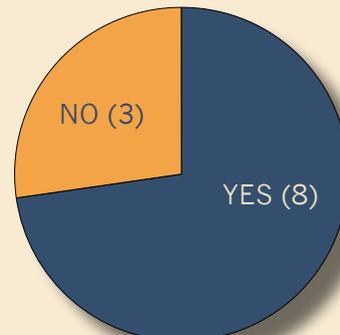
RNAs ARE JUST ONE PART OF A LARGER EQUATION

By themselves, RNAs do not generate resources—indeed they may cost resources (even if modestly so). Whether they make a criminal justice system more cost-efficient and more efficacious depends on how they are financially and operationally integrated into the system as a whole—indeed into the combined criminal justice and social services system. Some jurisdictions have huge numbers of high-risk offenders with-

QUESTION 6: Do you know who gets the results of risk-needs assessments besides your agency, if anyone?



QUESTION 7: If yes, have you asked them or heard from them if these assessments are useful, or how you might improve them?



out a correspondingly large budget for serving these populations, and if RNAs are not implemented in coordination with a coherent array of custodial and treatment options, officials will simply know better what the offenders need without being able to give it to them. RNAs are only as good as the uses to which they can feasibly be put, given the service and program resources and commitments of the jurisdiction. Thus, we cannot place a value on RNAs in the abstract; we can do so only in the context of an overall system.

For example an RNA might establish that a particular offender would pose no threat to public safety and would more likely avoid recidivism, if he were dealt with by mental health providers than if he were sent to jail. But a jurisdiction with the resources to produce this RNA would derive no benefit from the RNA unless two other conditions were present: (a) The jurisdiction would have to have sufficient capacity and resources of mental health treatment: (b) its legal system would have to provide mechanisms or decision points by which offenders may get diverted from the prosecutorial system into the mental health system. If there are insufficient mental health resources, or if the only treatment options are in jail, then there is not much choice about whether someone can be released into a secure treatment facility in the community, and an RNA will not help with dispositional decisions.

In other words, RNAs are not magic bullets, but are really just one small part of an integrated, inter-agency case plan. RNAs must be combined with programming, and they also require a commitment from local stakeholders (law enforcement, judges, jailers, probation, prosecution, and defense) that they will use the results to help drive decisions. On a systemic level, agencies also need to evaluate the efficacy of how RNAs are matched to programming, continually improving the fit between particular risks/needs and particular programs.

THE NEED FOR STANDARDIZATION

All of the participants at the meeting reported using different “brands” of assessments. The lack of statewide coordination in development and procurement of tools will sometimes create problems as agencies seek to share RNA results with one another. Scores from different tests are going to be based on different scales, and policymakers may have to design some metrics translating into some common standard. On the

other hand, an agency's use of a particularized tool is not necessarily bad, because RNAs need to be normed to local populations, not abstract national conceptions of offenders. The key to avoiding the pitfalls of non-standardization is to recognize that standardization itself is not an all-or-nothing concept. In this light, a few core principles of optimal standardization emerged from our discussion.

First, there ought to be standardization of tools (both their design and implementation) within a single agency or closely linked set of agencies dealing with a particular function. It does little good if the probation officers within one county are not using the same tool in a fairly uniform way. As a corollary, agencies must standardize the training of their employees in the use of the designated tool. As noted earlier, Executive Sessions participants reported high rates of specialized training in the use of RNA tools—around 80 percent. And 60% of questionnaire respondents said they use other agencies' RNAs for in-house programming purposes, although a main reason given was financial: recipients of RNAs said they would rather use their scarce human and financial resources on something besides redoing an assessment.

On the other hand, standardization of RNAs across agencies within a jurisdiction, or among jurisdictions, is not crucial and not even necessarily desirable, so long as one other key criterion is satisfied. There must be a high level of trust among different units in the fairness and objectivity of the others' RNAs. This means that an agency can comfortably rely on an outside RNA if it is confident about the rigor and fairness with which the other agency developed the RNA, and if the form in which it receives the RNA is sufficiently clear and transparent that the information can be adapted to the receiving agency's purposes. For example, a community based organization (CBO) is unlikely to rely on an RNA administered in jail if it does not trust that the RNA was done accurately or with the offender's future treatment in mind. Of course, the level of trust may depend on deeper factors associated with different organizational goals. Because criminal justice is inherently oppositional, it might not make sense for, say, a defense attorney to agree to an RNA even if it does make sense from a mental health treatment perspective. But because this issue is such a pervasive one, we discuss it in greater detail in the following Part.

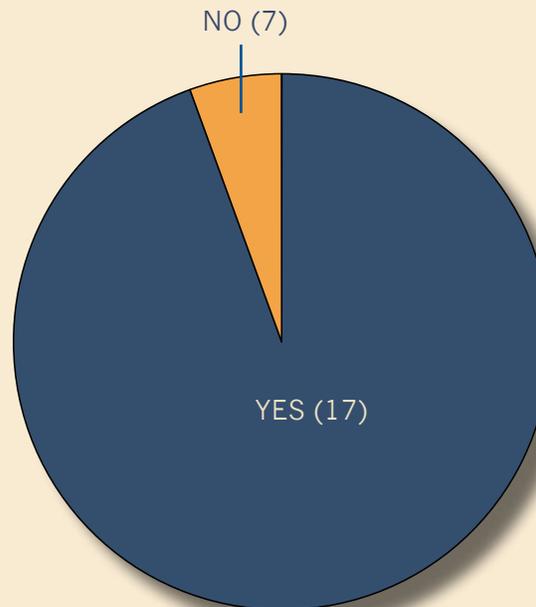
PART III: INSTRUCTIVE THEMES IN THE LOCAL USE OF RNAs

The discussion of specific issues concerning RNAs reported in the previous two parts helped us to draw some broader observations about the complex and challenging “fit” between RNAs and our criminal justice system. These observations can serve as cautionary lessons about how well RNAs can work but also help us point to opportunities to enhance their utility

PROTECTING PUBLIC SAFETY WHILE MANAGING A PUNITIVE SYSTEM

Research on evidence-based practices shows that it makes sense to intervene early in a potential criminal career. A fully treatment-based criminal justice system would diagnose people as soon as they entered the system and address their underlying risks and needs, thereby looking to the future to render them less dangerous. But for deep historical and constitutional reasons, our criminal justice system is based on offenses and accountability. We allocate resources based far more on the nature of the offense than on future risk, because the system is geared directly towards punishment, and only indirectly toward public safety. Sentencing decisions do sometimes turn on the goals of optimal incapacitation to constrain risk or rehabilitative measures to reduce it, but the core of criminal justice remains the punishment that

QUESTION 8: Do you/would you need face to face time with inmates for your current risk assessment instrument, or are you analyzing factors that can be obtained by referencing existing records and databases?



“... given the adversarial nature of our system, a defense attorney might be inclined (and may be ethically obligated) to oppose assessment-based decision making, even where it would result in speedy access to treatment and a better, healthier client, because the RNA might later serve as the basis for a conviction, sentence enhancement or civil commitment.”

the bad act deserves. Most agencies, for example, report that they do not perform assessments on offenders charged with misdemeanors; they only assess mid-level felons and up. Criminal charges for past acts are highly imperfect proxies for risk-predictions but we rely on them as proxies out of necessity. Both resources and legal constraints force us to make punishment the main priority.

But a system taking full advantage of RNAs would not categorize misdemeanants as inherently low risk. For any individual entering the system, the risk level and the offense level are not necessarily linked. Someone who has committed a crime of passion against an abusive spouse has a high offense level but may present a low risk of reoffending, whereas a teenager charged with vandalism has a low offense level but might be a high risk to reoffend. If the high risk offender does not get significant attention, he might graduate to felonies, by which point he will have caused more harm and be more resistant to treatment.

A related problem is that the criminal justice system is inherently oppositional or adversarial. Each participant represents a given point of view; consensus or compromise on the best outcome for an individual may happen only by happenstance or through the distorting pressures of plea bargaining. For example, given the adversarial nature of our system, a defense attorney might be inclined (and may be ethically obligated) to oppose assessment-based decision making, even where it would result in speedy access to treatment and a better, healthier client, because the RNA might later serve as the basis for a conviction, sentence enhancement or civil commitment. Fundamentally, the question is, as one Executive Sessions participant put it, whether we want to have a punishment system or a correctional system. Getting the criminal justice system to think more about risk than punishment—to make RNA results drive decisions—would be a massive undertaking. All players in the system—the charging DA, the sentencing judge, the defending attorney—would need to agree to it, and vast changes would need to be made. Such a foundational undertaking

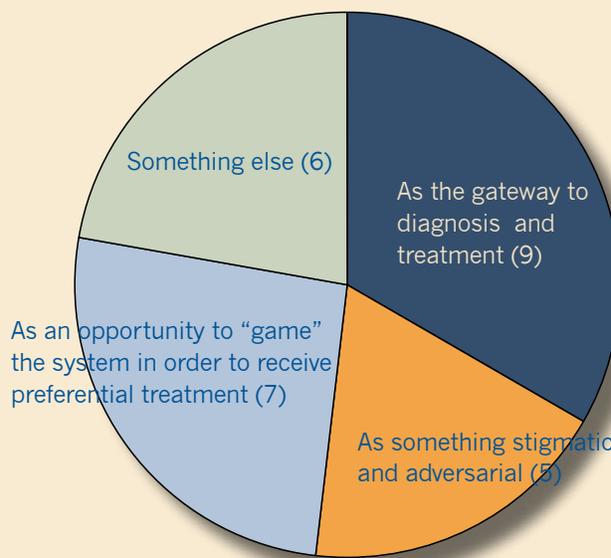
goes beyond the scope of an analysis of the role of RNAs.

But awareness of this fundamental mis-fit between evidence-based policy and criminal justice can at least point toward some realistic modifications in the system. A good example is bail. Setting the level of bail is supposed to serve two goals: ensuring that the individual will appear in court, and, if no bail is given, quarantining dangerous offenders to protect the community. But in California bail is not based on the risks and needs of the individual offender, but rather on a uniform schedule that looks only at the offense charged. Striving towards refining bail decisions through better use of RNAs would be very salutary and would not require challenging the fundamental premises of our system. The same can be said of several of the pretrial decisions discussed in the previous Part.

ALLOCATING RESOURCES

Just as RNAs are sometimes denied their full value because the legal system does not focus on the early points in the life cycle of the individual offender, risk analysis confronts a misfit in a larger structural sense as well. Even though RNAs do currently play a role in some of the decision points in the criminal justice process, that role is disproportionately influential at decision points at the “back-end”—i.e., prison and parole after conviction for very serious crimes—rather than at the front end, where RNAs may be far more cost-effective. Participants

QUESTION 9: If you do need face time, how do you think inmates view the purpose of the assessment?



generally agreed that the state and counties need to devote more resources at the “front end” of criminal justice to keep offenders from committing more serious crimes and going to prison. Early interventions are more effective; when no resources are directed towards misdemeanants, offenders end up “graduating” into felonies, by which time there may be little we can do about them. The intransigence of these “graduates” comes in part because there’s been no accountability beforehand. It is hard to modify a felon’s behavior when there have been no prior consequences for offending behavior.

The current structure of criminal justice, however, poses a barrier to reallocating resources. Most of the state’s resources in the area of assessment are set up at the back end—especially prison and parole—where interventions are least effective and most expensive. Such back-end emphasis creates perverse incentives within the state/county structure, because localities that intervene early with high levels of evidence-justified services to low-level offenders recoup none of their costs. For example, San Francisco has two percent of California’s population, but is the source of only one percent of the state’s prison population. It stands out for handling its high risk population locally. In some sense, one could say that San Francisco is subsidizing counties that send more people to prison, without being rewarded for diverting offenders from prison. Counties have no financial incentives to avoid commitments to state prisons, even though the long term dollar costs to the state are greater, and even though prison increases recidivism. In the short term, a county has to pay more, not less, to follow the sound policy associated with RNAs.

One way to address this problem would be to restructure criminal justice in California towards a unified corrections system, where one agency with a single pool of money is responsible for jails, probation, prison, and parole. The single agency could capture the money it saved through front-end investments; it would also end up paying for the mistakes made in letting misdemeanants “graduate” to felonies. At least 15 states now have unified corrections systems. Such unification would enable state and local officials to take much better advantage of the potential value of assessment tools.

A TOOL, NOT AN ANSWER

Local agencies and policymakers, not the tools themselves, decide what to do with

an offender who presents a particular level of risk. The RNA can tell the policymakers the likely risk an offender poses to public safety, but not whether society should or should not pay to avoid that risk. To use simplistic numbers for illustration, if an offender scores 5 on a scale of 0 to 10, that does not tell us how much protection society needs from the offender. At best it may tell us that this offender poses a greater risk than someone with a lower score. Of course, policy decisions about offenders are based on aggregate, not individual, data and so the key question may be where the offender stands on a percentile basis. At a particular decision point, a jurisdiction, say, might what to extend incarceration for those with scores above the 70th percentile or release those below the 30th. The problem is that as certain scores tend to get operationalized—say, the 30th percentile is released, the rest are kept in jail—those numbers tend to take on a life of their own. The problem is thus the allure of false precision, due to the scientific sound of these numbers and concepts. Drawing the line for release at the 30th percentile is not a scientific conclusion, but a policy choice. The line will be drawn where policymakers make reasonable, but always contestable, judgments about where the significant increments of danger are, and also, of course in terms of available resources.

Virginia's experience with its risk assessment pilot program is instructive here. The Virginia Criminal Sentencing Commission (VCSC) was instructed by the state legislature to generate a threshold score on its risk assessment tool that would result in a diversion of a particular percentage of offenders. However, the VCSC pointed out that offenders who scored higher than the threshold—and were thus ineligible for diversion—were not more likely to recidivate. The problem is that raising the threshold would increase the number of offenders eligible for diversion, and this larger number would increase the overall level of criminal activity, even as the rate remained the same. The threshold score, in other words, is not an inherent part of the science of actuarial assessments. It is a policy decision, based on levels of risk and recidivism that authorities, relying on their experience and judgment, deem acceptable.

“A prerequisite for successful reentry is making sure information about the offender travels to the right place. A reasonably standard, validated RNA that travels with offenders released from local custody would help reduce time lags in programming and ensure that different agencies supervising an offender (probation, prison, drug treatment, mental health care, parole) are reading off the same script.”

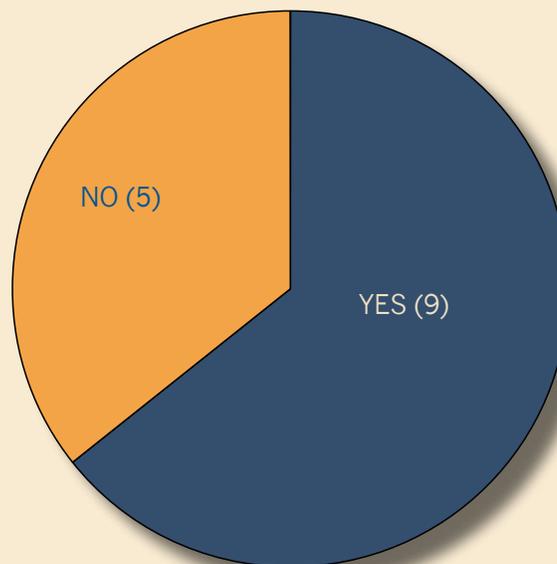
CONCLUSION: CHALLENGES MOVING FORWARD

Participants came to the Executive Sessions to talk about RNAs at the local level, but the discussion broadened to include many other areas of criminal justice—as has happened at each of the prior Executive Sessions. In some sense, the subject of integrated criminal justice naturally moves the discussion in the direction of the system as a whole: what it looks like, where the chokepoints are, and how it can be improved. Perhaps the biggest takeaway from the series of Executive Sessions is not the individual points of interest or policy suggestions, but the realization that process issues inevitably affect substance—and vice-versa.

The use of RNAs is, in some sense, instrumental: it serves as a means of achieving particular policy goals. But this particular means points almost inevitably to certain conclusions: that we need to adjust policies based on the populations we have, that we should measure results and shift funds away from underperforming interventions towards effective ones, and that different criminal justice agencies need to work with one another. These conclusions are not limited to RNAs, of course, but RNAs certainly reinforce and, in some cases, exemplify how important they are.

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QUESTION 10: Is the opinion in question 9 how inmates view assessments based on conversation/interview with inmates themselves?



CONCLUSION CONTINUED

tion, prison, drug treatment, mental health care, parole) are reading off the same script. RNA results are both envelope and letter, indicating both where the offender needs to go (e.g., to a treatment clinic or housing office), and what services he or she requires (e.g. the particular needs themselves). But information is useful only to the extent it is both accepted and trusted. If a receiving agency does not use the information—either because it is incapable or unwilling to do so, or because it does not trust the validity of the administration or design of an RNA—then many of the benefits of RNAs will be left on the table. As noted earlier, perfect uniformity in the design and implementation of RNAs is not the goal; instead, reasonable uniformity of RNAs and standardized training of staff within an agency, and then transparency and adaptability across agencies, will lead to the level of trust among officials that will enable them to derive full value from assessment tools.

One final point is that the time to reevaluate criminal justice policies—and to employ new tools in doing so—has never been more ripe. California’s budget crisis presents both a danger and an opportunity. Criminal justice RNAs at the local level can help illustrate a way out, a way to make tough choices about where to spend increasingly limited criminal justice dollars so that they generate the maximum return on investment, while avoiding programs that are costly and/or inefficient. Whether sound policies can gain the necessary political support—or, more importantly, ineffective policies can actually be cut—depends not on numbers themselves, but on how they are deployed. Participants at the Executive Sessions started the conversation. It remains to be seen whether the words can be turned into action.

