

SARATSO POLICIES AND PROCEDURES MANUAL

Introduction

The SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review and Training Committees select risk assessment instruments for the state of California, monitor risk assessments, and sponsor trainings on scoring risk assessment tools.¹ This policies and procedures manual is intended to assist those agencies mandated to perform sex offender risk assessment. The current instruments mandated for use in California are the Static-99 (adult males) and the JSORRAT-II (juvenile males). The SARATSO Review Committee has not yet selected a dynamic risk assessment instrument. The Committee has determined that currently no instrument meets the statutory criteria in California for selecting a risk assessment instrument for females, either adult or juvenile.

Many helpful resources can be found on the SARATSO web site at the California Department of Mental Health, including a document explaining the statutes governing the risk assessment process. To access the web site, go to www.dmh.ca.gov. Click on the link to "SARATSO" on the left side of the home page. There is an e-mail address provided for SARATSO's staff person at DMH if you have questions not answered in the manual.

For questions on scoring the instruments, see below. For legal questions about risk assessment, contact SARATSO Review Committee member Deputy Attorney General Janet Neeley at janet.neeley@doj.ca.gov.

I. TRAINING

Only Certified Personnel Can Score the Risk Assessment Instruments

Only persons who have received the official SARATSO training can legally perform sex offender risk assessment in California. The SARATSO Committee retains experts in the field of risk assessment who instruct persons from Probation, Parole, and the Department of Mental Health (DMH). The persons trained by the experts to score the risk assessment instruments are known as the "super-trainers." Once a super-trainer has been certified by SARATSO as having successfully completed the expert training course, he or she is authorized to train others within his or her organization to score the risk assessment instrument.

Use of Official SARATSO Curriculum Required

The super-trainer must use the authorized SARATSO curriculum to train within their agencies. The official Power Point presentation which must be used is available via e-mail from the SARATSO Committee to certified super-trainers. E-mail SARATSO staff for a copy of the training you need (see above for SARATSO web site address and DMH e-mail contact).

¹Penal Code sections 290.03-290.08.

Super-Trainers Must Submit Names of Persons Certified to Do Assessments To the SARATSO Committee Within Probation, Parole and DMH

The SARATSO Committee keeps a list of all probation, parole and DMH personnel who have been trained and are certified to perform risk assessments, along with the date of training. Within one week of the training, each super-trainer should submit the names of persons within their agencies that they have certified to score the risk assessment instruments to the SARATSO Committee by e-mailing the SARATSO staff person at DMH. List name of certified person and date of training.

Training Schedule

The SARATSO web site (see Introduction) posts scheduled trainings. Trainings are conducted yearly. All persons who are scoring risk assessment instruments must be re-trained every two years. (Pen. Code, § 290.05(d).) To sign up for a scheduled training, e-mail SARATSO staff at DMH to check availability.

II. SCORING RISK ASSESSMENT INSTRUMENTS

Only Persons Certified by SARATSO Can Score the Instruments

Only persons who have taken the official SARATSO training, given either by a SARATSO-retained expert or by a super-trainer who was certified by a SARATSO expert, and who have passed the test and been certified as capable of performing the task, are authorized to score the risk assessment instruments.

Where to Find the Scoring Sheets and Static-99 Coding Rules or JSORRAT-II Scoring Guidelines

The scoring sheets and Static-99 coding rules or JSORRAT-II scoring guidelines can be downloaded from the DMH web site.

When Risk Assessments Must be Scored

Risk assessment must be done by probation pre-sentencing. It must be done again 4-10 months prior to release from a sentence served at the California Department of Corrections and Rehabilitation (CDCR), or 4-10 months prior to release from placement at a DMH facility. All sex offender registrants on a probation caseload on January 1, 2010, must have been assessed.

Sex Offenders Eligible to be Scored

A. Adult Sex Offenders

1. Adult male sex offenders (offense committed at or after age 18) whose offense requires mandatory registration as a sex offender pursuant to Penal Code section 290 are eligible for assessment and must be assessed with the Static-99.

2. Adult male sex offenders (offense committed at or after age 18) whose offense was sexually motivated, but whose offense does not require mandatory registration under Penal Code section 290, must be assessed if probation is recommended that the sentencing court impose a requirement to register as a sex offender.

3. Adult male 290 registrants who are no longer on probation or parole must be assessed by January 1, 2012, if they have been released to the community for less than 10 years. If the registrant has been living in the community for more than 10 years, he is not eligible to be assessed unless he committed a new sex offense (misdemeanor or felony) during that period, or a new serious felony, as defined in Penal Code section 1192.7(c).

B. Juvenile Sex Offenders

1. Juvenile male sex offenders who are adjudicated for a sex offense requiring juvenile registration (Pen. Code, § 290.008), should be assessed using the JSORRAT-II pre-sentencing if probation is recommending placement at CDCR/DJJ, providing the juvenile is not yet 18 at the time of the assessment.² If the juvenile is 18 or older at time of assessment, the assessment should be done with the Static-99, providing the sex offense was committed when the juvenile was 16 or 17. If the offense was committed at a younger age, the person is not eligible to be assessed on any risk assessment tool.

2. Juvenile males who are convicted in adult proceedings for a sex offense requiring mandatory registration pursuant to Penal Code section 290 should be assessed pre-sentencing using the JSORRAT-II if the juvenile is under 18, and using the Static-99 if the juvenile is 18 or older, providing the sex offense was committed when the offender was 16 or 17. If the offense was committed at a younger age, the person is not eligible to be assessed on any risk assessment tool.

3. Juvenile males who are convicted in adult proceedings for an offense which does not require mandatory registration under Penal Code section 290, but as to whom probation is recommending registration be ordered at sentencing pursuant to Penal Code section 290.006, should be assessed using the appropriate risk assessment tool (see 2, above).³

Obtaining Records Needed for Scoring

Persons scoring risk assessment instruments are authorized by law to receive any record needed to complete the assessment, including but not limited to criminal history

²This is not clear in the current statute but will be clarified in future legislation.

³Courts have no discretion to order registration at sentencing for juveniles adjudicated on an offense that does not require mandatory juvenile registration (Pen. Code, § 290.008). (*In re Derrick B.* (2006) 39 Cal.4th 535.)

records, police and probation reports, judicial records, juvenile records, psychological evaluations and psychiatric hospital reports, sexually violent predator treatment program reports, and sealed records. The right to obtain these and other necessary records to score the risk assessment instrument exists notwithstanding any other provision of law. (Pen. Code, sec. 290.07.)

Conflicting Facts in Records

If there is a conflict between facts in two different records, the most reliable record should be used. For example, facts in a preliminary hearing transcript must be used rather than conflicting facts in a police report.

Submitting Questions About Scoring and Overrides to SARATSO Experts

If a person scoring an instrument has a question, he or she must first submit the question to a super-trainer for his or her agency. If the super-trainer is unable to answer the question, the super-trainer must submit it to the SARATSO expert for response. The method of submission is via e-mail to Dr. Amy Phenix for questions on scoring the Static-99 (amy@amyphenix.com) and to Dr. Douglas Epperson for questions on scoring the JSORRAT-II (dle@iastate.edu).

Questions about overrides should also be submitted to the expert on the risk assessment instrument in question. Requests should come through the super-trainers. The request for the expert to determine if a score is too high or low should include defendant's name and case number, and factors in the record supporting the override request. The expert shall be guided by empirical research in determining whether to raise or lower the SARATSO score, and his or her decision is final.

Tier Levels on the SARATSO Risk Assessment Instruments

A. Static-99

- Low risk: 0-1
- Low-moderate risk: 2-3
- Moderate-high risk: 4-5
- High risk: 6 and above

B. JSORRAT-II

- Low risk: 0
- Moderate-low risk: 1-3
- Moderate risk: 4-7
- Moderate-high risk: 8 and above

Recording and Submission of the SARATSO score

A. Pre-Sentencing Scores

The risk assessment score should be made part of any pre-sentencing or probation report. (Pen. Code, sec. 1203.) If no such report is prepared, it should be submitted on a separate document to the court prior to sentencing, and made available to the prosecutor and defense counsel. A process should be in place in the county that has either probation or the court clerk provide copies to those parties. In one county, the

court orders misdemeanor sex offenders at the plea hearing to report to probation for the SARATSO evaluation. At the plea hearing in that county, the offender also signs the Notice of Requirement to Register as a Sex Offender (DOJ form SS 8047).

The score should also be recorded on the Facts of Offense sheet, which can be sent to DOJ beginning on January 1, 2009.⁴ Fax the Facts of Offense sheet to DOJ at 916-227-3663, or mail it to Department of Justice, SHOP, 4949 Broadway, Sacramento, CA 95820. An electronic submission system is being developed but not yet in place. DOJ will post the risk assessment scores on the offender's record in the sex offender registry when the new registry is available, no later than July 1, 2010. The score will be accessible to law enforcement.

The Facts of Offense sheet should also be sent to CDCR for offenders sentenced to prison or to DMH for offenders placed in mental institutions, as part of the offender's file.

B. Approved Language for Submission of Scores to Courts

Use the following appropriate paragraph to submit the score to the sentencing court, or to explain why the person cannot be scored under the coding rules. Fill in the blanks about the percentile of risk for the individual offender by consulting the coding rules or scoring guidelines for the risk assessment instrument.

Static-99 score submission paragraph

"The Static-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sex offenders. This risk assessment instrument was developed by Hanson and Thornton (1999) based on follow-up studies from Canada and the United Kingdom with a total sample size of 1,301 sexual offenders. The Static-99 consists of 10 items and produces estimates of future risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are the presence of prior sexual offenses, having committed a current nonsexual violent offense, having a history of non sexual violence, the number of previous sentencing dates, age less than 25 years old, having male victims, having never lived with a lover for two continuous years, having a history of non contact sex offences, having unrelated victims, and having stranger victims. The recidivism estimates provided by the Static 99 are group estimates based upon re-convictions and were derived from groups of individuals with these characteristics (Hanson and Thornton, 1999)]. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. The offender's risk may be higher or lower than the probabilities estimated in the Static 99 depending on other risk factors not measured by this instrument. This instrument should not be used with young offenders (those less than 18 years of age) or women. Mr. X received a score of ____ on the Static 99. This score is in the ____ range of risk. Individuals with these characteristics, on average, sexually reoffend at XXXX percent over five years, XXXX percent over ten years and XXXX percent over 15 years. The Static

⁴Submission of the Facts of Offense sheet is mandatory beginning July 1, 2010, but DOJ will be able to accept these starting January 1, 2009. You will receive further instructions about submitting these.

99 is an accurate measure of this offender's risk;" OR [List the factors that override (increase or decrease) the risk level over the Static 99 score (health, age, time free in the community or completion of sex offender treatment).]

"The risk level on the Static 99 is measured for the purpose of determining Conditions of supervision on release and may play a role in level of community notification of the offender upon release or intensity of required sex offender treatment. The Static-99 risk level should not be used in isolation for the purpose of the sentencing decisions but it should be used in conjunction with all considerations and recommendations of the probation officer."

JSORRAT-II score submission paragraph

"The JSORRAT-II is a juvenile sexual offender risk assessment tool developed by Epperson, Ralston, Fowers, & Dewitt (2005). It was designed to provide empirically based estimates of risk for future juvenile sexual offenses (juvenile sexual recidivism) by male juveniles currently in the juvenile justice system for a prior sexual offense. This instrument should not be used with female sexual offenders. The JSORRAT-II is comprised of 12 items and produces estimates of risk for future juvenile sexual offending based upon the number and combinations of risk factors present in any one individual. The 12 risk factors scored on the risk assessment tool include the number of prior sexual offense adjudications, the number of different victims in sexual offenses, length of sexual offending, commission of a sexual offense while under court ordered supervision, commission of a felony level contact sexual offense in a public place, use of deception or grooming in a sexual offense, prior sex offender treatment failures, frequency of officially documented sexual abuse experienced as a victim, frequency of officially documented physical abuse experienced as a victim, placement in special education, history of discipline problems in school, and the number of non sexual offense adjudications.

The juvenile sexual recidivism estimates provided by the JSORRAT-II are group estimates based upon charges for new sexual offenses derived from groups of individuals scoring in the same range on the JSORRAT-II. As such, these estimates do not directly correspond to that of an individual offender. Any individual offender's risk may be higher or lower than the probabilities for their group given the presence or absence of risk factors not assessed by the tool; however, absent information on other compelling risk factors, the group estimate is generally the best estimate for individuals in a group.

Mr. X received a score of XXXX on the JSORRAT II. This score is in the YYYY range of risk. On average, ZZZZ percent of individuals scoring in this range sexually recidivate as juveniles. This level of risk is deemed accurate in this case because there are no compelling additional risk factors that would alter this estimate."

Use alternate paragraph if Dr. Epperson has authorized an override on a JSORRAT-II score:

“Although Mr. AAAA scores in the YYYY range of risk on the JSORRAT II, there are additional, compelling risk factors that override this risk estimate to a (higher or lower) level. Specifically, the following factors make a BBBB risk assignment more appropriate [list and discuss the factors].”

Paragraph for submission to court if sex offender is not eligible to be scored on the Static-99 under the Coding Rules

If an offender is not eligible for scoring on the Static-99, state in the pre-sentencing report: “The risk assessment score on the Static 99 must be done for every eligible person. Although Mr. X is required to register pursuant to Section 290, et seq., he is not eligible to be scored on the Static 99 under the official coding rules of the Static 99. His offense does not fit the criteria for those who can be assessed with this risk assessment tool.”

C. Scores Obtained Prior to Release from Prison or Mental Institutions

The risk assessment scores obtained prior to release from prison or a mental institution should be recorded in internal databases or spread sheets at CDCR or DMH. These scores are currently sent to DOJ as an Excel file, for eventual recording in the sex offender registry.

D. Scores Of Offenders No Longer on Supervision

Law enforcement is responsible for scoring registrants in the community who are eligible to be scored under the Static-99 coding rules. (See Sex Offenders Eligible To Be Scored, above.) A plan for assessing these registrants must be developed by the SARATSO Review and Training Committees in collaboration with local law enforcement and POST. (Pen. Code, sec. 290.05(c), 290.06(c).) When these offenders are assessed, the scores must be submitted to DOJ by faxing a copy of their scoring sheet, to 916-227-3663.. Eventually these scores will be electronically submitted.

E. Access to Risk Assessment Scores

When the new California Sex and Arson Registry is completed at DOJ (no later than July 1, 2010), the risk assessment scores will be posted on each offender's record in the registry and will be available to law enforcement, but not displayed on the public Megan's Law web site. For access to scores prior to posting in the California Sex and Arson Registry, law enforcement can call DOJ at 916-916-227-4736 or 4737.

III. Use of the Risk Assessment Score

A. Sentencing Court Must Consider Score

The risk assessment score must be considered by the sentencing court as one factor in determining the sentence. (Pen. Code, sec. 1203.)

B. Determines Placement on Supervision and GPS Monitoring

The risk assessment score must be used to determine whether a sex offender is placed on intensive supervision on probation or parole. (Pen. Code, sec. 1203f, 3005.) Offenders who are high risk on the SARATSO must be continuously electronically monitored while on probation or parole. (Pen. Code, sec. 1202.8, 3004.)

C. Sex Offender Treatment Placement

The risk assessment score should be used to determine placement in an appropriate sex offender treatment program.

D. Risk Assessment Can Support Community Notification Decisions

Law enforcement has the discretion to do community notification registered sex offenders determined to pose a risk to the public. (Pen. Code, sec. 290.45.) The risk assessment score may assist in the determination that a particular registrant poses a current risk.

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