

*The Thomas M. Cooley Law School and the Criminal Defense Resource Center of the State Appellate Defender Office presents a criminal justice training event for criminal defense attorneys, probation agents, prosecutors & judges:*

# **Use of COMPAS at Sentencing**

## **What Every Defense Attorney Needs to Know**

**Friday, May 2, 2014**

**12:00 p.m. to 2:00 p.m.**  
**Cooley Law School - Auburn Hills - LIVE**

**Simulcast at:**

Cooley Law School - Ann Arbor  
Cooley Law School - Grand Rapids  
Cooley Law School - Lansing

**Jacqueline McCann**  
**Assistant Defender**  
**State Appellate Defender Office &**  
**Author, Defender Sentencing Book &**  
**Defender Sentencing Guidelines Manual Annotated**

**Jacqueline J. McCann** is the current author of the Defender Sentencing Book & the Defender Sentencing Guidelines Manual Annotated. She has been an Assistant Defender for over 10 years with the State Appellate Defender Office. Her extensive experience on appeals, particularly sentencing issues, comes from having argued hundreds of cases in the Michigan Court of Appeals and numerous cases in the Michigan Supreme Court. She has argued several cases about the interpretation of the statutory sentencing guidelines, including *People v. Peltola*, 489 Mich. 174 (2011), *People v. Francisco*, 474 Mich. 82 (2006), and *People v. Smith*, 482 Mich. 292 (2008).

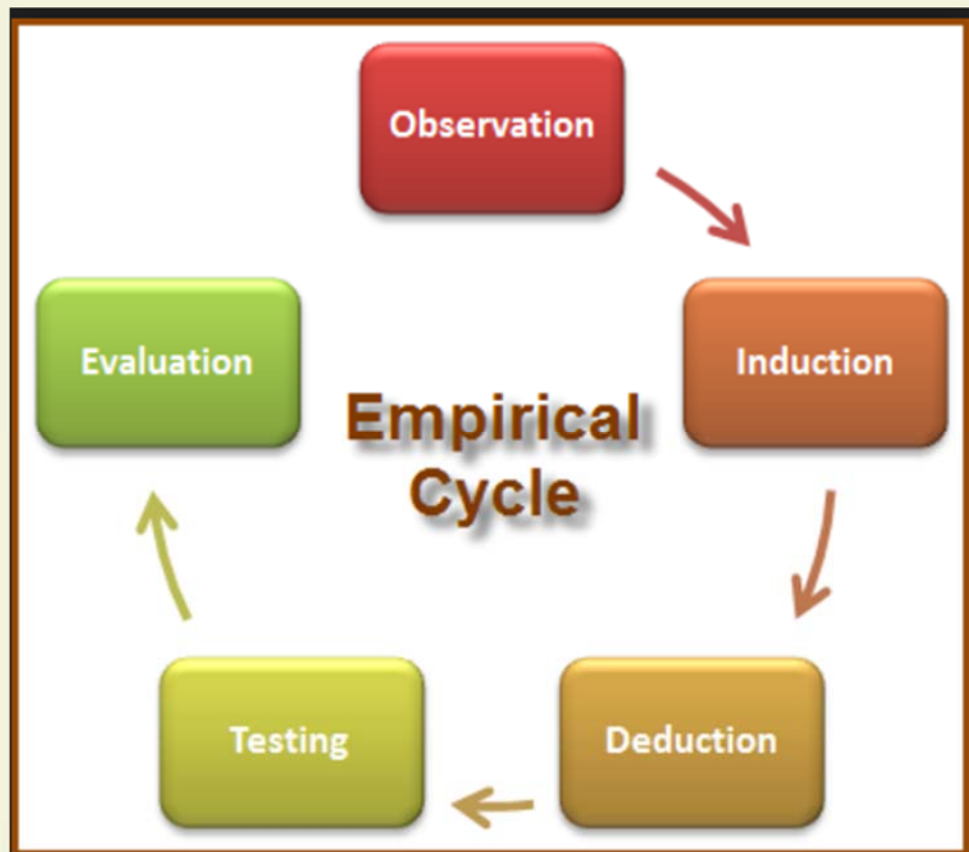
The seminar is supported through a generous grant from the Michigan Commission on Law Enforcement Standards

# COMPAS at Sentencing

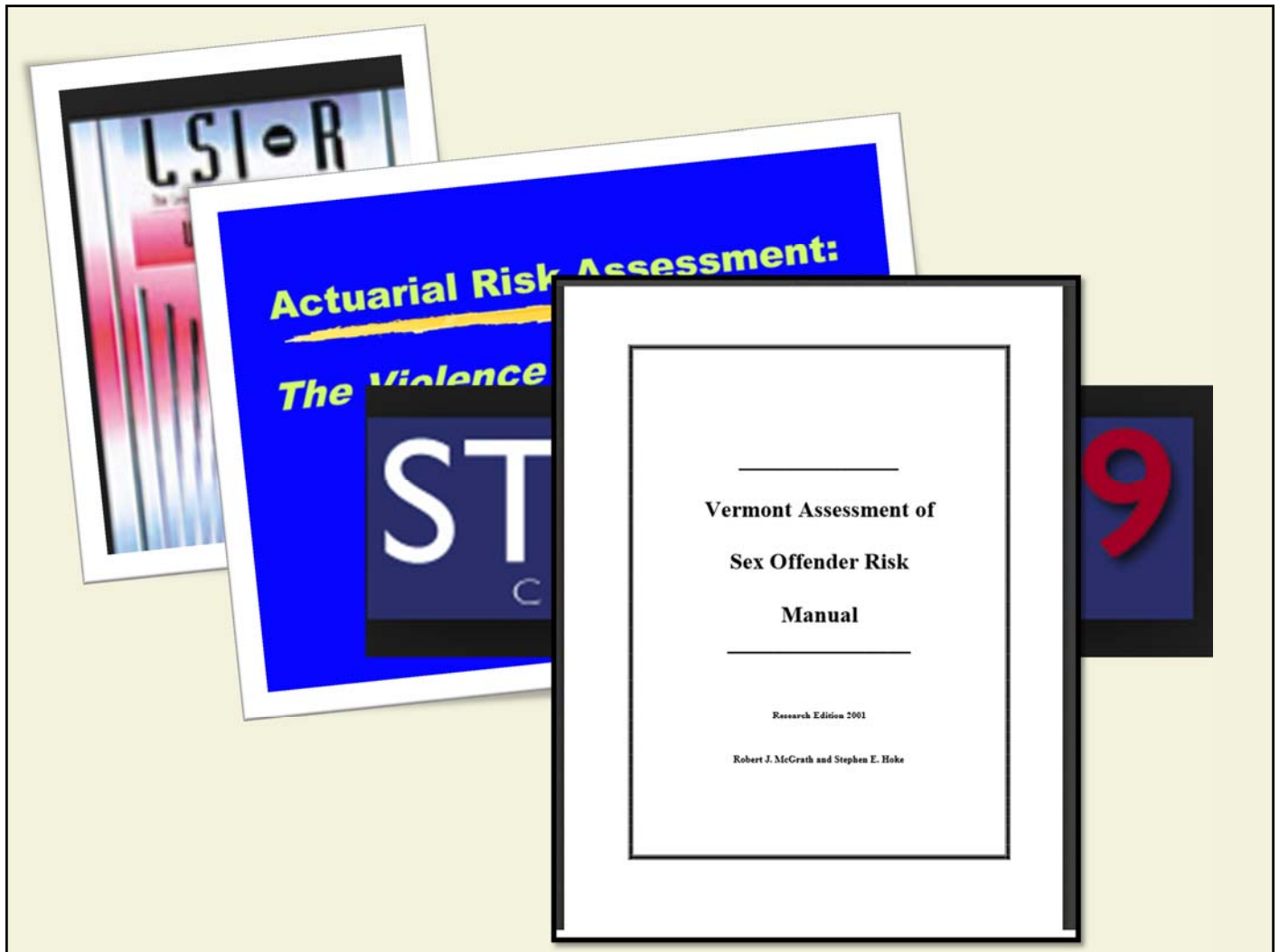
What Every Defense Attorney  
Needs to Know

State Appellate Defender Office  
2014

# What is Evidence Based Sentencing?



Evidence Based  
Sentencing is not  
“new”.



Evidence Based  
Practice is not “new”  
in Michigan, either.

Up until now, this has come up when our clients (or former clients) face the parole board.





Beginning this summer,  
an Evidence Based  
Sentencing assessment  
will be attached to  
every Pre-Sentence  
Investigation Report.

The report is *not*  
intended to  
determine the  
length of the  
sentence.

# C.O.M.P.A.S.

Correctional Offender  
Management Profiling for  
Alternative Sanctions



How does  
COMPAS  
work?

## COMPAS Core AS

Offender Name: Justin Example  
 Offender Number 2859483  
 Gender: Male  
 Scale Set: All Scales  
 Screener Name: Goodloe, Neal  
 Agency: Northpointe

## Current Charges

Note to Officer: Please reference the questions in this section.

- ☐ Homicide      ☐ Weapon  
☒ Robbery      ☐ Burglary  
☐ Drug Trafficking/Sales      ☐ Drug  
☐ Sex Offense with Force      ☐ Sex

1. Do any current offenses involve family violence?  
☒ No ☐ Yes
2. What offense category represents the most serious current offense?  
☐ Misdemeanor ☐ Non Violent Felony ☐ Violent Felony
3. Was this person on probation or parole at the time of the current offense?  
☐ Probation ☐ Parole ☒ Both
4. Based on the screener's observation, is the offender currently violent?  
☒ No ☐ Yes

Justin Example (2859483)

## Criminal History

Exclude the current case for these questions.

5. How many times has this person been arrested (excluding the current case)?  
☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5+
6. What was the age of this person when he or she was first arrested (excluding the current case)?  
☐ 15 ☐ 16 ☐ 17 ☐ 18 ☐ 19 ☐ 20 ☐ 21 ☐ 22 ☐ 23 ☐ 24 ☐ 25 ☐ 26 ☐ 27 ☐ 28 ☐ 29 ☐ 30 ☐ 31 ☐ 32 ☐ 33 ☐ 34 ☐ 35 ☐ 36 ☐ 37 ☐ 38 ☐ 39 ☐ 40 ☐ 41 ☐ 42 ☐ 43 ☐ 44 ☐ 45 ☐ 46 ☐ 47 ☐ 48 ☐ 49 ☐ 50 ☐ 51 ☐ 52 ☐ 53 ☐ 54 ☐ 55 ☐ 56 ☐ 57 ☐ 58 ☐ 59 ☐ 60 ☐ 61 ☐ 62 ☐ 63 ☐ 64 ☐ 65 ☐ 66 ☐ 67 ☐ 68 ☐ 69 ☐ 70 ☐ 71 ☐ 72 ☐ 73 ☐ 74 ☐ 75 ☐ 76 ☐ 77 ☐ 78 ☐ 79 ☐ 80 ☐ 81 ☐ 82 ☐ 83 ☐ 84 ☐ 85 ☐ 86 ☐ 87 ☐ 88 ☐ 89 ☐ 90 ☐ 91 ☐ 92 ☐ 93 ☐ 94 ☐ 95 ☐ 96 ☐ 97 ☐ 98 ☐ 99 ☐ 100 ☐ 101 ☐ 102 ☐ 103 ☐ 104 ☐ 105 ☐ 106 ☐ 107 ☐ 108 ☐ 109 ☐ 110 ☐ 111 ☐ 112 ☐ 113 ☐ 114 ☐ 115 ☐ 116 ☐ 117 ☐ 118 ☐ 119 ☐ 120 ☐ 121 ☐ 122 ☐ 123 ☐ 124 ☐ 125 ☐ 126 ☐ 127 ☐ 128 ☐ 129 ☐ 130 ☐ 131 ☐ 132 ☐ 133 ☐ 134 ☐ 135 ☐ 136 ☐ 137 ☐ 138 ☐ 139 ☐ 140 ☐ 141 ☐ 142 ☐ 143 ☐ 144 ☐ 145 ☐ 146 ☐ 147 ☐ 148 ☐ 149 ☐ 150 ☐ 151 ☐ 152 ☐ 153 ☐ 154 ☐ 155 ☐ 156 ☐ 157 ☐ 158 ☐ 159 ☐ 160 ☐ 161 ☐ 162 ☐ 163 ☐ 164 ☐ 165 ☐ 166 ☐ 167 ☐ 168 ☐ 169 ☐ 170 ☐ 171 ☐ 172 ☐ 173 ☐ 174 ☐ 175 ☐ 176 ☐ 177 ☐ 178 ☐ 179 ☐ 180 ☐ 181 ☐ 182 ☐ 183 ☐ 184 ☐ 185 ☐ 186 ☐ 187 ☐ 188 ☐ 189 ☐ 190 ☐ 191 ☐ 192 ☐ 193 ☐ 194 ☐ 195 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### OFFENDER INTERVIEW & SELF QUESTIONNAIRE

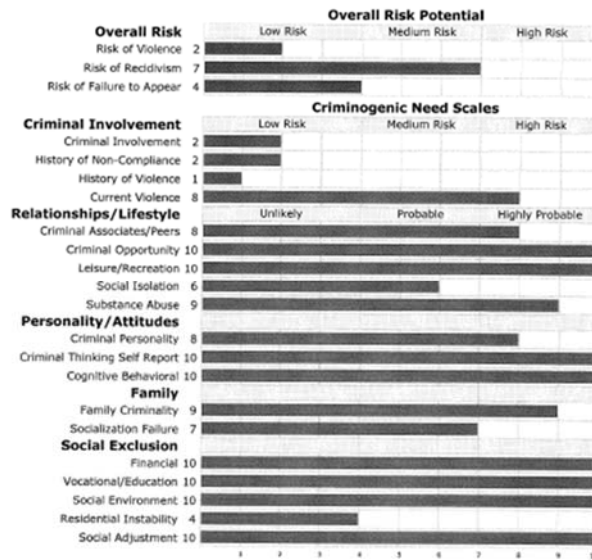
#### Residence/Stability

29. In the last 12 months before this incarceration, how often did you have contact with your family (may be in person, phone, mail)?
- ☐ No family ☐ Never ☐ Less than once/month ☐ Once per week ☒ Daily
30. In the last 12 months before this incarceration, how often did you move?
- ☐ Never ☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5+
31. Did you have a regular living situation prior to your current incarceration (an address where you usually stayed and could be reached)?
- ☐ No ☒ Yes
32. How long had you been living at your last address prior to this incarceration?
- ☐ 0-5 mo. ☒ 6-11 mo. ☐ 1-3 yrs. ☐ 4-5 yrs. ☐ 6+ yrs.
33. Was there a telephone at this residence (a cell phone is an appropriate alternative)?
- ☐ No ☒ Yes
34. Could you provide a verifiable residential address?
- ☐ No ☒ Yes
35. How long had you been living in that community or neighborhood (before this current incarceration)?
- ☐ 0-2 mo. ☐ 3-5 mo. ☐ 6-11 mo. ☒ 1+ yrs.
36. In the 12 months before this incarceration, did you live with family—natural parents, primary person who raised you, blood relative, spouse, children or boy/girl friend if living together for more than 1 year?
- ☐ No ☒ Yes
37. Did you live with friends (prior to this incarceration)?
- ☒ No ☐ Yes
38. Were you living alone (prior to this incarceration)?
- ☒ No ☐ Yes
39. In the last 12 months before this incarceration, did you have an alias (do you sometimes call yourself by another name)?
- ☐ No ☒ Yes

### COMPAS Core Risk Assessment

Name: Justin Example  
 Screening Date: 7/9/2008  
 Case #: 2859483-1  
 Scale Set: All Scales

DOB: 1/2/1986  
 Screener: Goodloe, Neal  
 Gender: Male  
 Ethnicity: Caucasian



### COMPAS Core Typology

**Name:** Justin Example      **DOB:** 1/2/1986      **Gender:** Male  
**Screening Date:** 7/9/2008      **Screeners:** Goodloe, Neal      **Ethnicity:** Caucasian  
**Case #:** 2859483-1  
**Scale Set:** All Scales

**Category 5 - Typical Pattern: Criminally Versatile - Young Marginalized offenders (often gang affiliated)**

This pattern has multiple co-occurring risk factors that suggest several jointly occurring explanatory/causal processes underlying their criminal behavior. The first is extreme social exclusion or marginalization - as demonstrated by educational and vocational failure, joblessness and poverty. The second consists of weak social control bonds as shown by their disconnect from both education and work, their boredom and lack of constructive use of leisure. Third, their high-risk criminal opportunity lifestyle coheres with weak pro-social bonds, boredom and gang affiliation (for some) that all may contribute to a high-risk lifestyle. Fourth, social learning is suggested by the conjunction of anti-social attitudes, gang membership (for some), early school failure and out-of-home placements, which would affiliate or channel (group) them toward other failing, rejected and weakly socialized peers. Finally, they also reflect anti-social personality that coheres with family disintegration, family crime, juvenile felonies and early onset. These themes reflect the poorly socialized and marginalized sociopathic type as described by Lykken 1995; Mealey 1995, and others.

The official criminal history data coheres strongly with the above high risk profile. These young offenders (22-23 average age) have an early age at first arrest (around 16), and higher scores for juvenile felonies, weapons arrests, current violence, current property and sex offense charges than other types. However, there are three anomalies. First, their relatively low substance abuse is unexpected. Second their "average" scores for prior arrests and convictions. This may be a function of their youth i.e. they are at a relatively early stage of their criminal career. This numerically "average" criminal history suggests many of these are only medium risk. This may underestimate the true risk of these young un-socialized persons.

**Note:** This is the "prototype" description of the closest category for this offender and each individual case usually has some differences from this prototype description.





#### Current History Summary

How many times has this person been returned to prison while on parole? 0  
 How many times has this person had a new charge/arrest while on probation? 1  
 How many times has this person been arrested before as an adult or juvenile (criminal arrests only)? 4  
 How many prior juvenile violent felony offense arrests? 0  
 How many times has this person been arrested for a felony property offense that included an element of violence? 0  
 How many prior murder/voluntary manslaughter offense arrests as an adult? 0  
 How many prior felony assault offense (not murder, sex, or domestic violence) arrests as an adult? 0  
 How many prior misdemeanor assault offense arrests (not sex, or domestic violence) as an adult? 0  
 How many prior weapons offense arrests as an adult? 0  
 How many prior family violence offense arrests as an adult? 0  
 How many prior sex offense arrests (with force) as an adult? 0  
 How many prior drug trafficking/sales offense arrests? 0  
 How many prior drug possession/use offense arrests? 3+  
 What was the age of this person when he or she was first arrested as an adult or juvenile (criminal arrests only)? 15

#### Non-Compliance History

How many times has this person been sentenced to probation as an adult? 2  
 How many times has this person's parole been violated? 0  
 How many times has this person's probation been violated or revoked? 0

#### CRIMINOGENIC NEEDS NARRATIVE SUMMARY

##### Criminal Associates/Peers

##### Criminal Associates/Peers Scale Score: Highly Probable [8]

The Criminal Associates and Peers Scale score indicates Mr. Justin Example likely has continuing involvement with antisocial friends and associates involved in crime, gangs and/or drugs. Restricting his contact with current friends and associates will help minimize criminal opportunity. Mr. Justin Example should be encouraged to affiliate with pro-social peers in various pro-social activities. Attitudes about peer relationships may be a focus of cognitive treatment.

##### Criminal Associates/Peers Statement:

Mr. Justin Example reports half or most of his friends and associates have been arrested before. He reports half or most of his friends and associates regularly take drugs. Mr. Justin Example reports few of his friends and associates have ever spent time in jail or prison. He reports never having been a gang member.

##### Treatment Implications:

Justin Example (2859483)

COMPAS Narrative Assessment Summary Page 2

Handout 2.2

**Major risk/need (criminogenic) factors and associated dynamic needs  
(i.e.: promising intermediate targets for reduced recidivism)<sup>1</sup>**

Major Risk/ Need Factor <sup>2</sup>	Characteristics	Dynamic Need
Antisocial Attitudes	Attitudes, values, beliefs, and rationalizations supportive of crime, and cognitive emotional states of anger, resentment, and defiance. Criminal/reformed criminal/anti-criminal identity.	Reduce antisocial cognition; recognize risky thinking and feeling; build up alternative, less risky thinking and feeling; adopt reform/anti-criminal identity.
Antisocial Friends and Peers	Close association with criminal others and relative isolation from anti-criminal others; immediate social support for crime.	Reduce association with criminal others; enhance association with anti-criminal others.
Antisocial Personality Pattern	Adventurous pleasure seeking, weak self control, restlessly aggressive, callous, and disagreeable.	Build problem-solving skills, self-management skills, anger management and coping skills.
Family/Marital	Two key elements are weak nurturance/caring and poor monitoring/supervision.	Reduce conflict, build positive relationships, and enhance monitoring and supervision.
Substance Abuse	Abuse of alcohol and/or other drugs.	Reduce substance abuse, reduce the personal and interpersonal supports for substance-oriented behavior, enhance alternatives to drug abuse.
School/Work	Low levels of performance and satisfactions in school and/or work (low socio-economic achievement).	Enhance performance, rewards, and satisfactions.
Leisure/ Recreation	Low levels of involvement and satisfactions in anti-criminal leisure pursuits.	Enhance involvement, rewards, and satisfactions.

<sup>1</sup> Excerpted from Andrews, D., & Dowden, C., *The Risk-Need-Responsivity Model of Assessment in Human Service and Prevention and Corrections: Crime Prevention Jurisprudence*, Canadian Journal of Criminology and Criminal Justice, 49 (4), 439-464 (2007).

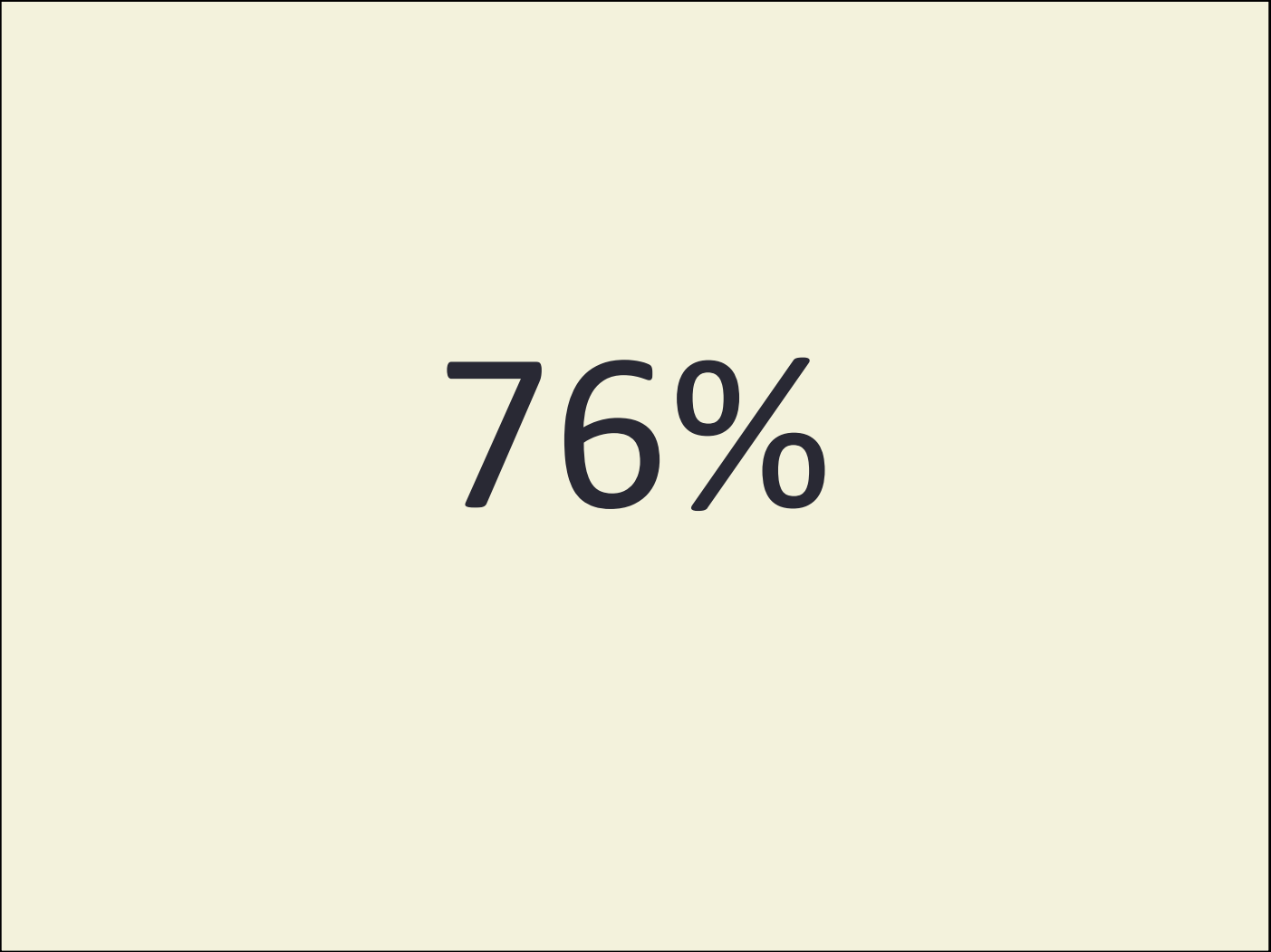
<sup>2</sup> The minor risk/need factors (and less promising intermediate targets for reduced recidivism) include the following: personal/emotional distress, major mental disorder, physical health issues, fear of official punishment, physical conditioning, low IQ, social class of origin, seriousness of current offence, and other factors unrelated or only mildly related to offending.

What is the  
relevance of  
any of these  
factors?

Is COMPAS  
reliable?

“[D]ue process is satisfied so long as the information the sentencing judge considers has sufficient indicia of reliability.”

*People v. Eason*, 435 Mich. 228, 234 (1990).



76%



We should at least consider the inadmissibility of the results of other instruments.

Will COMPAS  
reliably  
evaluate  
people?



What if the  
information itself  
isn't accurate?

“A defendant is entitled to be sentenced by a trial court on the basis of accurate information.”

*People v. Francisco*, 474 Mich. 82, 88 (2006).

“Michigan's Legislature has determined that the proper approach to sentencing is to favor individualized sentencing for every defendant.”

*People v. Sabin*, 242 Mich. App. 656, 661 (2000).

Considering  
characteristics of  
certain “groups” of  
people raises serious  
constitutional  
concerns.

COMPAS *explicitly* considers  
gender, age, and  
socioeconomic factors  
in evaluating risk.

### Family Criminality

The next few questions are about the family or caregiver you grew up with.

40. Which of the following best describes who principally raised you?
- ☐ Both Natural Parents
  - ☒ Natural Mother Only
  - ☐ Natural Father Only
  - ☐ Relative(s)
  - ☐ Adoptive Parent(s)
  - ☐ Foster Parent(s)
  - ☐ Other arrangement
41. If you lived with both parents and they later separated, how long after did you move?
- ☐ Less than 5
  - ☐ 5 to 10
  - ☐ 11 to 14
  - ☐ 15 or more
42. Was your father (or father figure who principally raised you) ever arrested?
- ☐ No
  - ☒ Yes
43. Was your mother (or mother figure who principally raised you) ever arrested?
- ☒ No
  - ☐ Yes
44. Were your brothers or sisters ever arrested, threatened, or harassed?
- ☐ No
  - ☒ Yes
45. Was your wife/husband/partner ever arrested, threatened, or harassed?
- ☒ No
  - ☐ Yes
46. Did a parent or parent figure who raised you ever use drugs or alcohol?
- ☐ No
  - ☒ Yes
47. Was one of your parents (or parent figure who raised you) ever in prison or jail?
- ☐ No
  - ☒ Yes

### Peers

Please think of your friends and the people you hang out with before your arrest/incarceration.

48. In the last couple of years before this incarceration, how many of your friends or hangout people have ever been arrested?
- ☐ None
  - ☐ Few
  - ☒ Half
  - ☐ Most

59. Have you ever been in formal treatment for drugs such as counseling, outpatient, inpatient, residential?
- ☐ No
  - ☒ Yes

60. Do you think you would benefit from getting treatment for alcohol?
- ☒ No
  - ☐ Yes

61. Do you think you would benefit from getting treatment for drugs?
- ☐ No
  - ☒ Yes

62. Did you use heroin, cocaine, crack or methamphetamines as a juvenile?
- ☐ No
  - ☒ Yes

### Social Environment

Think of the neighborhood where you lived during the time before your current offense.

63. In the neighborhood you lived in before this incarceration, was there much crime?
- ☐ No
  - ☒ Yes

64. In the neighborhood you lived in before this incarceration, did some of your friends or family feel they needed to carry a weapon to protect themselves?
- ☐ No
  - ☒ Yes

65. In the neighborhood you lived in before this incarceration, had some of your friends or family been crime victims?
- ☐ No
  - ☒ Yes

66. In the neighborhood you lived in before this incarceration, did some of the people feel they needed to carry a weapon for protection?
- ☐ No
  - ☒ Yes

67. In the neighborhood you lived in before this incarceration, was it easy to get drugs?
- ☐ No
  - ☒ Yes

68. In the neighborhood you lived in before this incarceration, were there gangs?
- ☐ No
  - ☒ Yes

“Both equal protection and due process emphasize the central aim of our entire judicial system—all people charged with crime must, so far as the law is concerned, ‘stand on an equality before the bar of justice in every American court.’”

*Griffin v. Illinois*, 351 U.S. 12, 17 (1956).

The constitutional  
problem incorporates  
the concern about  
individualized  
sentencing.



# Gender.



What is the state's  
justification for  
discriminating by  
gender?

*United States v. Virginia*, 518 U.S. 515 (1996).

The United States Supreme Court has rejected laws that punish men harsher than women based on statistical generalizations.

*See, e.g., Craig v. Boren, 429 U.S. 190 (1976).*



# Benefits.

# Jury Selection.



“Evidence Based Sentencing is all about generalizing based on statistical averages, and its advocates defend it on the basis that averages are right.”

Prof. Sonja B. Starr,  
*Evidence-Based Sentencing and the Scientific  
Rationalization of Discrimination.*

Is generalizing  
always bad?



Age.

In other contexts, defense attorneys have been spending a considerable amount of time lately arguing that their client's age should be a *mitigating* factor at sentencing.

*See, e.g.,*

*Roper v. Simmons*, 543 U.S. 551 (2005).

*Graham v. Florida*, 560 U.S. 48 (2010).

*Miller v. Alabama*, 132 S. Ct. 2455 (2012).





Financial status.

“[The state’s argument] is no more than a naked assertion that a probationer's poverty by itself indicates he may commit crimes in the future and thus that society needs for him to be incapacitated.”

*Bearden v. Georgia*, 461 U.S. 660, 671 (1983).

“Less restrictive  
alternatives”

= Strict Scrutiny

Or, at least,  
heightened  
scrutiny.

“Race” is not an  
explicit consideration,  
but.....

It also confirms the  
suspicion that the  
system  
“really is rigged.”

The constitutional challenges reinforce the reliability and accuracy challenges where recidivism is predicted based on *group* averages or norms, and not the individual at sentencing.

Isn't more  
information  
better than less?



Isn't it better than a  
judge interpreting  
the information  
herself?

At sentencing,  
the stakes are  
very high.

What should  
defense  
attorneys do at  
sentencing with  
COMPAS?

First: before  
sentencing, tell your  
client to answer the  
questions as honestly  
as possible.

Before sentencing:  
Ask to see the  
COMPAS report.

# Mistakes happen in COMPAS.

*See, e.g., In re Parole of Haeger,*  
294 Mich. App. 549, 571 (2011)  
(computer software error)

Make any and all *relevant* objections based on accuracy, reliability and constitutionality of the risk-assessment report.

The “accuracy” and “reliability” considerations are for both the instrument generally and the specific responses entered in your case for your client.



The “constitutionality” arguments will be especially prevalent if your client is an adult male, a young person, or a poor person.

Do what you can to differentiate your client from the “risky” groups, reinforce mitigating evidence and encourage individualized sentencing.

Remind the Court  
that the COMPAS  
evaluation itself is  
NOT to Determine  
Length of  
Incarceration.

Emphasize value  
of needs  
assessment  
**for your client.**

**Thank you!**

**Please fill out your  
evaluation of this GRANT  
FUNDED program.**

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