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”.
Vermont Assessment of Sex Offender Risk Manual

Research Edition 2001

Robert J. McCreath and Stephen F. Hark
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 Assessment

Offender Name: Justin Example
Offender Number: 2559483
Gender: Male
Agency: Northpointe
Scale Set: All Scales
Screener Name: Goodloe, Neal

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

- Homicide
- Robbery
- Drug Trafficking/Sales
- Sex Offense with Force
- Sex Offense without Force
- Violent Felony
- Drug Felony
- Nonviolent Felony
- Misdemeanor
- Juvenile Offense
- Juvenile Felony

1. Do any current offenses involve family? [ ] No [ ] Yes
2. What offense category represents the offense? [ ] Misdemeanor [ ] Non Violent Felony [ ] Violent Felony
3. Was this person on probation or parole? [ ] Yes [ ] No
   - Probation: [ ] Yes [ ] No
   - Parole: [ ] Yes [ ] No
4. Based on the screeners observations...
   - [ ] No [ ] Yes

Criminal History
Exclude the current case for these questions:

5. Has this person ever been arrested? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
6. How many times has this person been arrested? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
7. How many prior juvenile violent felony offenses? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
8. How many prior juvenile nonviolent felony offenses? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
9. How many prior commitments to a juvenile institution? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
10. How many times has this person been arrested for a crime of violence? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]

Note to Officer: The following Criminal History to add up the total number of specific offenses.

For each of the questions below, record the highest (if applicable).

Do not include the current case:

11. How many prior murder/voluntary manslaughter offenses? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]

Non-Compliance
Include the current case for these questions. See the 'Help' tab for further clarification.

23. How many times has this person violated his or her parole? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
24. How many times has this person been returned to prison while on parole? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
25. How many times has this person been arraigned while on parole? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
26. How many times has this person been arraigned while on probation? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
27. How many times has this person failed to appear for a court appearance? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]
28. How many times has the offender been arrested/charged with a new crime while on pretrial release? [ ] 0 [ ] 1 [ ] 2 [ ] 3 [ ] 4 [ ] 5+ [ ]

Justin Example (2559483)
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?
   ○ 0-3 mos.  ○ 4-6 mos.  ○ 7-9 mos.  ○ 10-12 mos.  ○ 13+ 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 (in years) have you been living in this community or neighborhood (before this current incarceration)?
   ○ 0-2 yrs.  ○ 3-5 yrs.  ○ 6-11 yrs.  ○ 12+ 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:** Julian Example  
**Screening Date:** 2/9/2008  
**Case #:** 259483-1

### Overall Risk Potential

<table>
<thead>
<tr>
<th>Risk</th>
<th>Low Risk</th>
<th>Medium Risk</th>
<th>High Risk</th>
</tr>
</thead>
<tbody>
<tr>
<td>Overall Risk</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Risk of Violence</td>
<td>2</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Risk of Recidivism</td>
<td>7</td>
<td>6</td>
<td>5</td>
</tr>
<tr>
<td>Risk of Failure to Appear</td>
<td>4</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

### Criminogenic Need Scales

<table>
<thead>
<tr>
<th>Scales</th>
<th>Unlikely</th>
<th>Probable</th>
<th>Highly Probable</th>
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</thead>
<tbody>
<tr>
<td>Criminal Involvement</td>
<td></td>
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<tr>
<td>History of Non-Compliance</td>
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<tr>
<td>History of Violence</td>
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<td></td>
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<tr>
<td>Current Violence</td>
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<tr>
<td>Relationships/Lifestyle</td>
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<td>Crime Associated with Peers</td>
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<td>Criminal Opportunity</td>
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<tr>
<td>Leisure/Recreation</td>
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<td>Social Isolation</td>
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<tr>
<td>Substance Abuse</td>
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<tr>
<td>Personality/Attitudes</td>
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<tr>
<td>Criminal Personality</td>
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<tr>
<td>Criminal Thinking Self Report</td>
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<tr>
<td>Cognitive Behavioral</td>
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<tr>
<td>Family</td>
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<tr>
<td>Family Criminality</td>
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<tr>
<td>Socialization Future</td>
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<tr>
<td>Social Exclusion</td>
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<tr>
<td>Financial</td>
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<tr>
<td>Vocational/Education</td>
<td></td>
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<tr>
<td>Social Environment</td>
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<tr>
<td>Residential Instability</td>
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<tr>
<td>Social Adjustment</td>
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</tbody>
</table>

### Scale Set: All Scales
COMPAS Core Typology

Name: Justin Example
Screening Date: 7/30/2008
Case #: 200948-1
Scale Set: All Scales

Gender: Male
Ethnicity: Caucasian
DOB: 1/2/1996

Category 9 - Typical Pattern: Criminally Versatile - Young Marginalized offenders (often gang affiliated)

This pattern has multiple co-occurring risk factors that suggest severe family discord, emotional or social problems, and family criminal behavior. The first is extreme social isolation or marginalization as demonstrated by educational and vocational failure, poverty, and substance use. The second consists of weak social control bonds as shown by their disinterest in both education and work, their boundary and lack of constructive use of leisure. Third, their high-risk criminal opportunity-limited offenses are associated with weak pro-social bonds, boredom and gang affiliation (or some) that all may contribute to a high-risk lifestyle. Fourth, social learning is suppressed by the personalization of anti-social attitudes, gang membership (for some), early school failure and out-of-home placements, which was followed by them toward other offending, rejected and weekly socialized peers. Finally, they also reflect anti-social personality that coexists with family disintegration, family crime, juvenile delinquency, and early crime. These themes reflect the poorly socialized and marginalized sociopathic type as described by Tonkon 1995, Hosley 1995, and others.

The official criminal history data correlates with the above high-risk profile. These young offenders (22-23 average age) have an early age of first arrest (around 14), and higher scores for juvenile offenses, 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 offenses (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


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 (299543)

COMRS Narrative Assessment Summary Page 2
Major risk/need (criminogenic) factors and associated dynamic needs
(i.e., promising intermediate targets for reduced recidivism)^

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

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The major risk/need factors (and less promising intermediate targets for reduced recidivism) include the following: personal/psychological distress, major mental disorder, physical health issues, fear of official punishment, physical condition, 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.”

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.”

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

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 cultural background growing up.

40. Which of the following best describes who primarily raised you growing up?
   ○ 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 many years?
   ○ Less than 5  ○ 5 to 10  ○ 11 to 14  ○ 15 or more

42. Was your father (or father figure who principally raised you)...
   ○ No  ○ Yes

43. Was your mother (or mother figure who principally raised you)...
   ○ No  ○ Yes

44. Were your brothers or sisters ever arrested, that you know of, or imprisoned?
   ○ No  ○ Yes

45. Was your wife/husband/partner ever arrested, that you know of, or imprisoned?
   ○ No  ○ Yes

46. Did a parent or parent figure who raised you ever go to prison?
   ○ No  ○ Yes

47. Was one of your parents (or parent figure who principally raised you)...
   ○ No  ○ Yes

Peers
Please think of your friends and the people you hung out with around incarceration.

48. In the last couple of years before this incarceration, how many friends 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 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.’”

The constitutional problem incorporates the concern about individualized sentencing.
Gender.
What is the state’s justification for discriminating by gender?

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

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.,*
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.”

“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.

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.
CREDITS & BIBLIOGRAPHY

We thank with extreme gratitude the following sources that informed our research and presentation today, including the following which we recommend for further reading:

Evidence-Based Sentencing and the Scientific Rationalization of Discrimination, forthcoming in Stanford Law Review 66 (2014), by University of Michigan Law Professor Sonja B. Starr, which can be downloaded at this link:  

Model Penal Code Sentencing Draft revisions by the American Law Institute Section 6B.09, found here:  

The Practitioners Guide to COMPAS:  

Emily Bazelon, Sentencing by the Numbers, New York Times Magazine, January 2, 2005


Manchak, Skeem, Douglas and Siranosian, Does Gender Moderate the Predictive Utility of the Level of Service Inventory – Revised (LSI-R) for Serious Violent Offenders? 36 Criminal Justice and Behavior, 325 (2009) found at http://cjb.sagepub.com/content/36/5/425.


