

Risk-Need Assessments In Tribal Justice: Concepts, Principles, Controversies & Enhancements

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- ▶ Defining Risk & the Risk Principle
- ▶ Use in Treatment and Alternate Sentencing
- ▶ Assessing Risk: Principles for Effective Risk Assessment
- ▶ Use of RNR tools in Indian Country

Lay of the Land

- ▶ Who is currently using an risk need responsivity assessment in their tribal courts?
- ▶ Which assessments do you use?
- ▶ On a scale of 1 to 5 how much do you like your assessment?
 - ▶ 1 = It's garbage
 - ▶ 5 = Its AWESOME

Risk-Need-Responsivity Theory in a Nutshell

- ▶ A model of crime prevention rooted in behavioral psychology (with a preference toward therapeutic intervention).
- ▶ Composed of three core principles.
- ▶ Grounded in three decades of research and a major influence in the resurgence of the rehabilitative model in corrections.
 - ▶ “Nothing Works”  “What Works?”

Risk-Need-Responsivity Theory: The Three Core Principles

- ▶ Risk Principle: **Who** to target.
 - ▶ Intervention is most effective with higher-risk individuals (risk of re-offending).
- ▶ Need Principle: **What** to target.
 - ▶ Assess and target “criminogenic” needs (i.e., needs that fuel criminal behavior).
- ▶ Responsivity Principle: **How** to intervene.
 - ▶ Tailor intervention to the characteristics and learning styles of the individual.

Disregarding the Risk Principle...

...here's the risk:

- ▶ Best Case Scenario:
Depletion of scarce resources.
- ▶ Worst Case Scenario:
Inappropriate treatments and/or increased risk of recidivism for previously low-risk offenders.



Rise of Risk Assessment in Criminal Justice

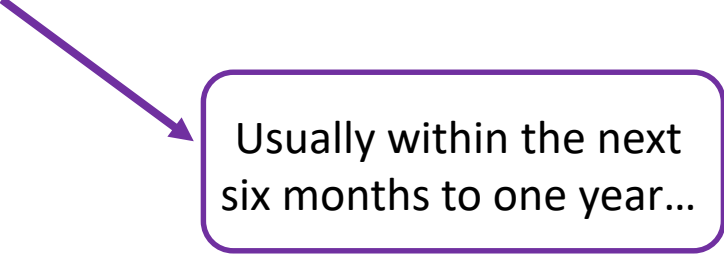
- ▶ The first actuarial parole prediction instruments date back to 1930s in Illinois.
- ▶ The reason for the new debate is not so much the fact of risk prediction or actuarial risk prediction but the exponential rise in their use.
 - ▶ Increased from five states in 1998 to 28 states in 2004.
 - ▶ There are now up to 60 risk assessment systems in use by jurisdictions across the country.
- ▶ Development and use of “dynamic risk-needs assessment” in the context of rehabilitative practice complicates the debate.

Foundation

DEFINING RISK

Here, Risk =

Likelihood of re-arrest for any charge.



Usually within the next
six months to one year...

Risk ≠


While relevant to decision-making...

- ▶ Risk ≠ Clinical Severity
- ▶ Risk ≠ Current Charge

And in most risk assessment tools....

- ▶ Risk ≠ Flight Risk (less than one percent of defendants engage in “flight”)
- ▶ Risk ≠ Failure to Appear (FTA)
- ▶ Risk ≠ Violence

The Risk Principle



Supported by
close to 400
studies!

Vary the intensity of intervention (treatment & supervision) by risk level.

- ▶ Higher-Risk: Provide more intensive intervention.
- ▶ Lower-Risk: Intervention can be harmful: **Why?**
 - ▶ Interferes with work or school.
 - ▶ Increases contact with higher-risk peers.
 - ▶ Can stigmatize and produce psychologically damaging effects.

Examples

Negative Effects of Short-term Incarceration

NYC:

- ▶ Net of other background factors, sentencing to jail **increases two-year re-arrest rate by 7 percentage-points.**

Effects are strongest in the low-risk population

Kentucky:

- ▶ When detained for 2-3 days, defendants were **40% more likely to commit a new offense pretrial.**

Kansas:

- ▶ Defendants who spent 15-30 days in jail pretrial had an **83% higher likelihood of a post-disposition offense.**

Risk-Based Decision-Making in the Courtroom

- ▶ **Minimal or Low Risk**: *Off-ramp ASAP* (e.g., pretrial release [ROR]; conditional discharge).
- ▶ **Moderate-to-Higher Risk**: *Supervision or treatment at appropriate intensity* (e.g., supervised release pretrial and alternatives to incarceration post-adjudication).
- ▶ **Moderate-High or High Risk for Violence**: Incarceration *if* unable to supervise safely (e.g., pretrial detention).

The Basics

ASSESSING RISK

Remember

Risk Principle → **Assess** & base intervention intensity on risk level.



What Determines Risk?

The “Central Eight” Risk/Need Factors

1. Criminal History (arrest, conviction, noncompliance)—STATIC
2. Antisocial personality
3. Antisocial peers/associates
4. Criminal thinking
5. Family or marital factors
6. Lack of education/Poor employment history
7. Lack of pro-social leisure/recreational activities
8. Substance abuse

Other Risk Factors with Strong Empirical Support

- **Residential Instability:** Homelessness and mobility.
- **Younger Age (STATIC):** Crime peaks in late teens.
- **Male Sex (STATIC):** Men are higher risk than women

Risk Factors

Static risk factors

- ▶ **Criminal history**
 - ▶ # of arrests
 - ▶ # of convictions
 - ▶ type of offenses
- ▶ Current charges
- ▶ Age at first arrest
- ▶ Current age
- ▶ Gender

Dynamic risk factors

- ▶ **Antisocial attitudes**
- ▶ **Antisocial friends & peers**
- ▶ **Antisocial personality pattern**
- ▶ Family/marital factors
- ▶ Lack of education/poor employment history
- ▶ Lack of pro-social leisure activities
- ▶ Substance abuse

What's missing from this list?

Responsivity Factors: Necessary but not Sufficient

Non-criminogenic needs, but recidivism-related

Psychosis/mania

Gender

Trauma

Self-esteem

Anxiety

Lack of parenting skills

Medical needs

Primary language

Literacy level

Homeless or eviction pending

Learning disability

		High Needs	Low Needs
Risk of Re-Offense	High	<p>High Risk & High Needs</p> <ul style="list-style-type: none"> • Menu of mid-length interventions: <ul style="list-style-type: none"> ➤ Cognitive-behavioral therapy (CBT) models, e.g., T4C, MRT; ➤ Social services (e.g., employment, GED, etc.); ➤ Trauma-focused models (e.g., Seeking Safety); and/or ➤ Intensive supervision (e.g., HOPE) • Treatment court programs, e.g., healing to wellness court, mental health court, hybrid models • Voluntary social & clinical services 	<p>High Risk & Low Needs</p> <ul style="list-style-type: none"> • Brief interventions (e.g., Restorative Justice, a 3- or 5-session intervention based on procedural justice principles, CBT, and trauma-informed practices) • Menu of rolling interventions, 6 Sessions+ <ul style="list-style-type: none"> ➤ Exact # of mandated sessions responsive to “going rates”/legal proportionality; ➤ Approximates the mid-length intervention models available for high risk & high leverage (e.g., MRT) • Voluntary social & clinical services
	Low	<p>Low Risk & High Needs</p> <ul style="list-style-type: none"> • Evidence-informed community-supervision model (e.g., the NYC supervised release model): <ul style="list-style-type: none"> ➤ Individual sessions (to avoid peer contagion effects); ➤ Incorporates a range of practices (e.g., procedural justice principles, Motivational Interviewing) • Voluntary social & clinical services 	<p>Low Risk & Low Needs</p> <ul style="list-style-type: none"> • Meaningful community service, with sites selected in collaboration with community-based organizations • Brief educational groups (1- or 2-session models) • Voluntary social & clinical services

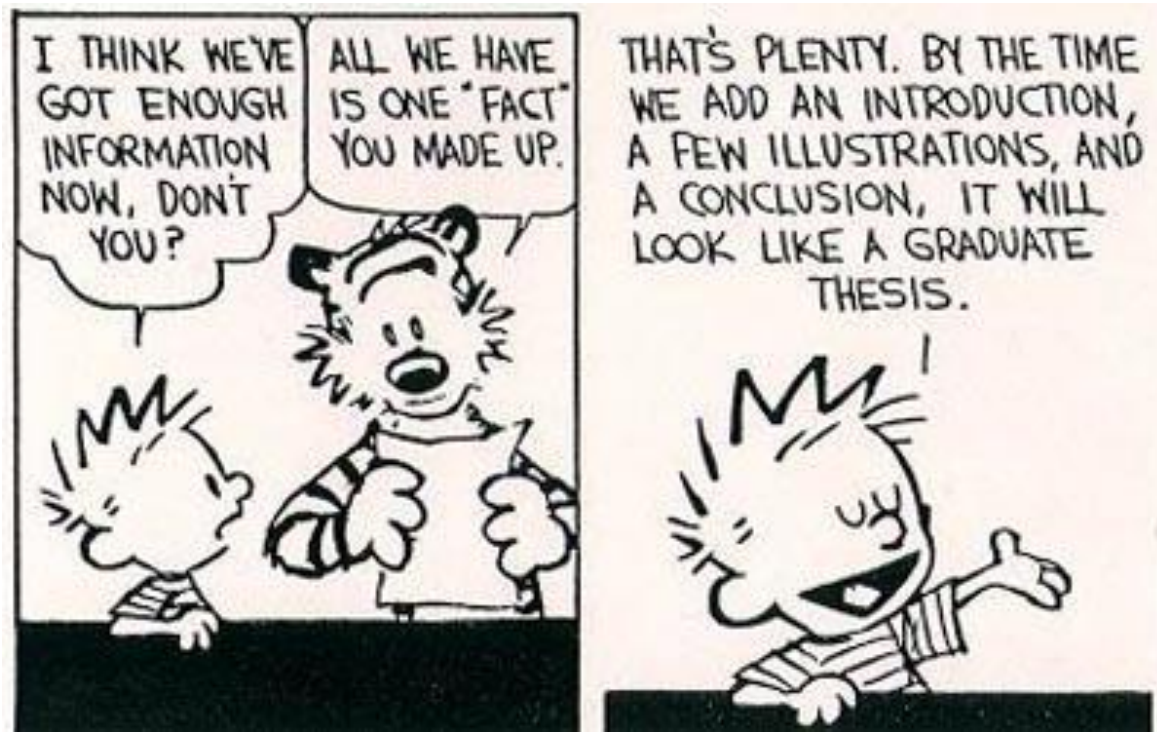
ATI & Risk Need Responsivity?

Stress Reduction Kit



- Step 1: Place kit on wall**
- Step 2: Follow directions**
- Step 3: Repeat as needed**

Old School Risk Assessment



Risk Assessment 201

- ▶ Involves the retrospective use of statistics to create evidence-based classifications (e.g., low-, moderate-, and high-risk).
- ▶ Specific algorithms can vary significantly across risk assessment instruments.

There are good tools!

And not-so-good tools!

Looking Under the Hood

- ▶ Validity: A tool is “validated” when...
 - ▶ The scores and categories it produces are shown to be statistically associated with recidivism.
- ▶ Accuracy: Even among validated tools, some are more accurate than others.
 - ▶ Some tools are less likely to misclassify (produce “false positives”).
 - ▶ The AUC statistic measures accuracy. Higher than .7 is good by industry standards.

Bringing it all back home

USE OF RNR TOOLS IN INDIAN COUNTRY

Supreme Court rules on controversial risk assessment tests accused of bias against Indigenous offenders



Tests used to determine inmates' security and parole accused of 'cultural bias' against Indigenous offenders

CBC Radio · June 13



Challenges with RNR tools in Indian Country

- ▶ Tools and algorithms are based on local population
 - ▶ Tools work best when adapted to their locality
 - ▶ Few studies have been done with specifically American Indian or Alaskan Native populations
- ▶ What tools lack
 - ▶ Questions about cultural identity and cultural connectedness
 - ▶ Culture as a protective factor
 - ▶ Questions about historical trauma
- ▶ ***What does this mean for the use of existing tools in Indian Country?***

Racial and RNR

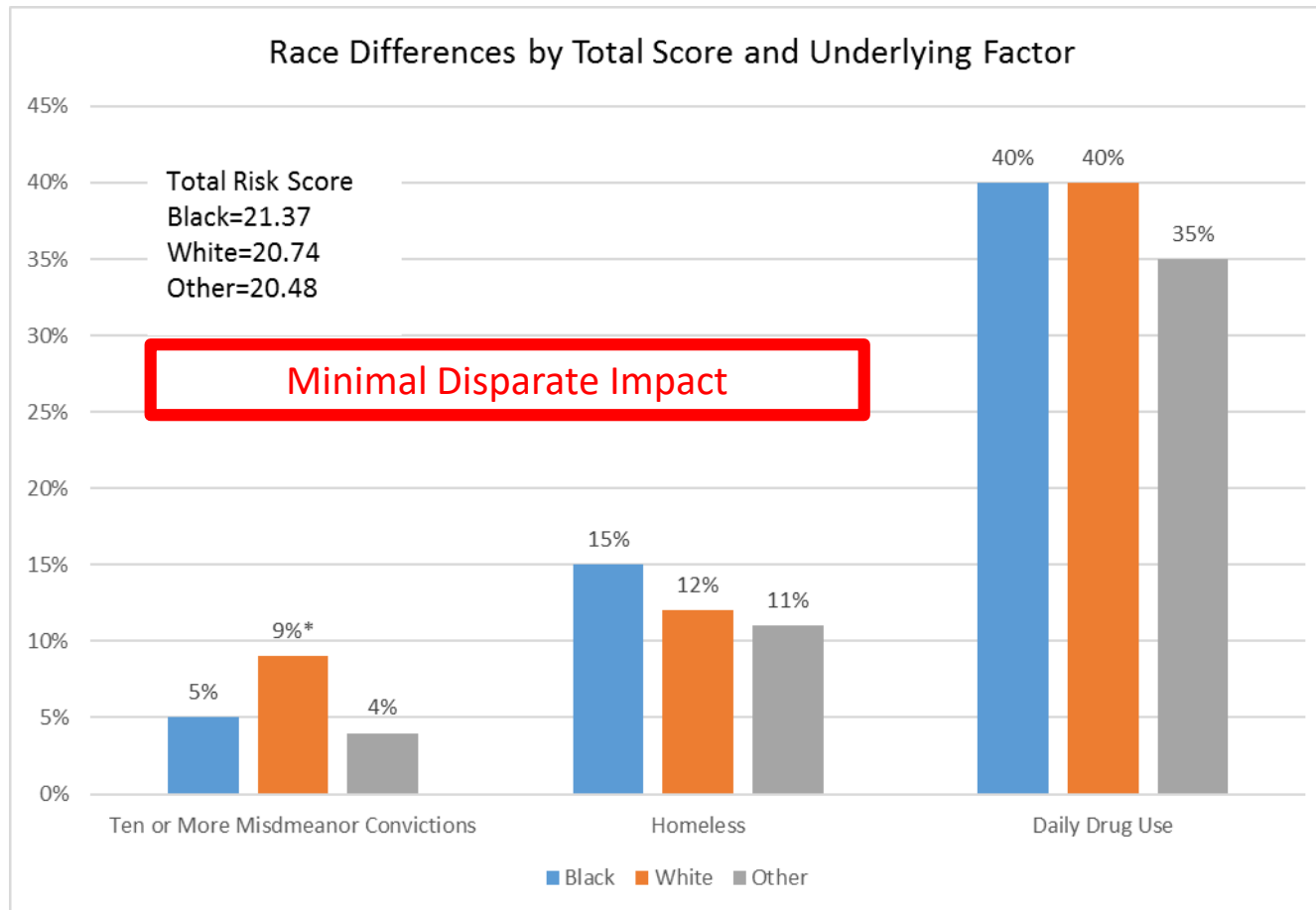
- ▶ Racial & Ethnic Disparities
 - ▶ Risk assessment has the potential to reduce or exacerbate disparities (research supports both outcomes).
- ▶ Criminal history/higher risk scores correlate with race
- ▶ Each factor should be isolated to ensure domains are racially neutral
 - ▶ Avoid “overclassifying” racial groups

Racial Equity in Risk Assessment

Two Aspects

- ▶ Predictive equity.
 - ▶ The tool is equally accurate in its classification of different racial & ethnic groups.
- ▶ Minimized “impact disparities.”
 - ▶ On average, different groups are similar in terms of risk scores, categories & underlying factors.

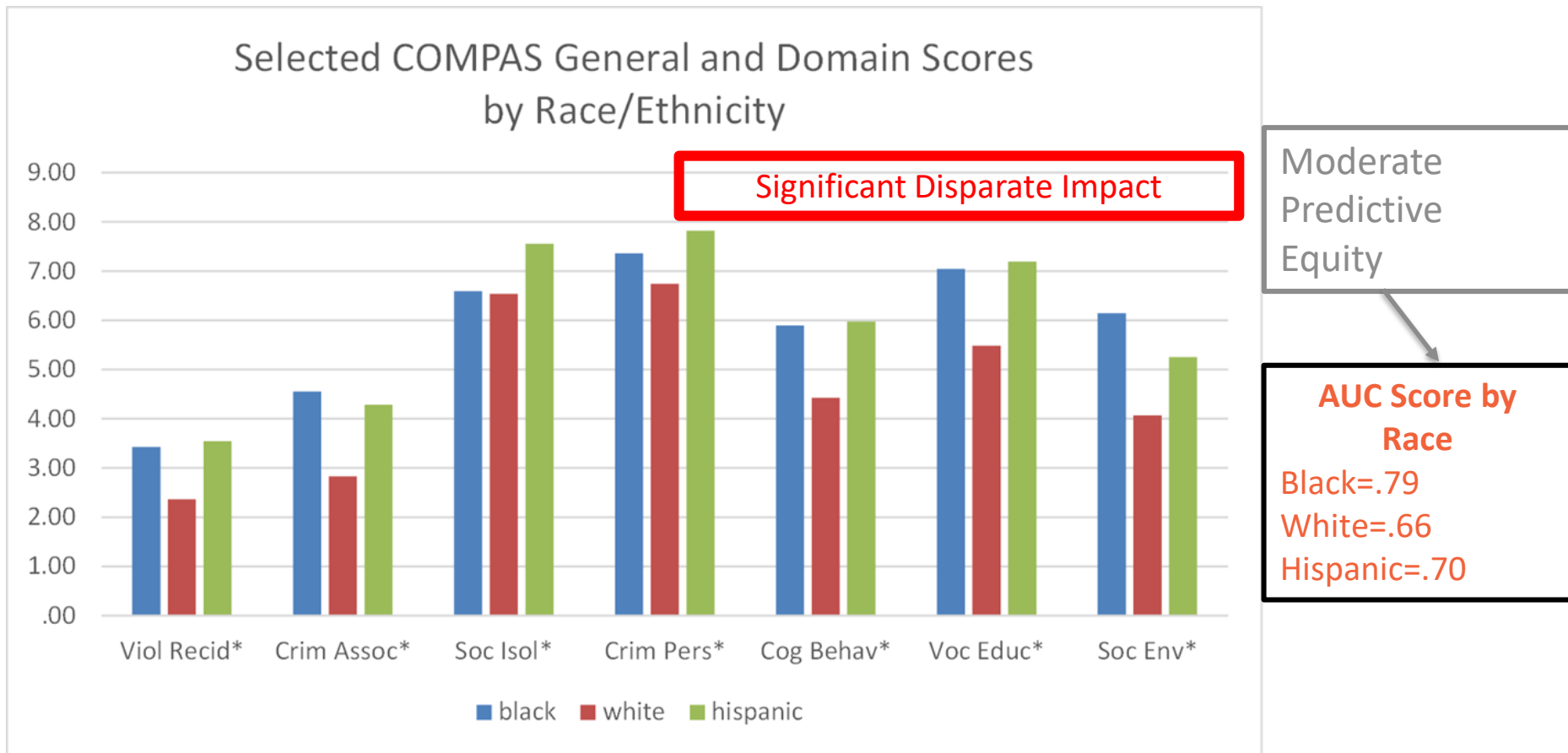
CCAT in the Misdemeanor Population



High Predictive
Equity

AUC Score by
Race
Black=.781
White=.762
Other=.764

COMPAS in Mental Health Courts



The Future

- ▶ More research needs to be done!
- ▶ CCI and the Public Defender's Office Confederated Tribes of Salish and Kootenai seek to address this gap.
 - ▶ Research risk/needs/responsivity factors
 - ▶ Develop an RNR tool for tribal courts
- ▶ Call to Action!
 - ▶ Please fill out our survey



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