

# Measuring Offender Risk

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A CRIMINAL JUSTICE  
SOURCEBOOK

Dean J. Champion

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## A CRIMINAL JUSTICE SOURCEBOOK

Dean J. Champion



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In memory of my late parents,  
Erma Janet Hackett Champion  
and  
Frank Dewey Champion

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## Preface

Forecasts of dangerousness and risk are made during every stage of the criminal justice process. Prosecutors decide whether diversion should be granted certain offenders or whether they should be prosecuted. These difficult decisions are influenced greatly by each prosecutor's personal evaluation and belief that an offender can benefit more from more lenient treatment, such as diversion, rather than from a formal criminal prosecution which may result in a conviction and criminal record. More lenient treatment for many first offenders and their success rates from participating in diversion programs are tangible evidence that at least some offenders benefit from such leniency. Defense counsel may submit psychological assessments of their clients or have private corporations prepare reports designed to show why their clients would be good candidates for diversion instead of being prosecuted. Often, these reports include results from one or more prediction instruments which purportedly indicate the offender's rehabilitative potential and the unlikelihood of reoffending.

When probation officers and others prepare presentence investigation reports (PSIs) about convicted offenders for judicial sentencing decisions, these PSIs almost always contain a probation officer's assessment of offenders and the officer's recommendation for lenient or harsh treatment. Particularly in those jurisdictions that have loosely regulated, indeterminate sentencing systems, judicial discretion varies greatly and disparities in decision making are pervasive. While judges are not bound by these recommendations in PSI reports, these documents often influence judicial decision making.

Many jurisdictions have implemented guidelines-based schemes, mandatory sentencing models, and determinate sentencing plans. While these plans have been designed, in part, to objectify judicial decision making and ensure more equitable treatment for all convicted offenders in the sentences they receive, sen-

tencing disparities continue. Such disparities are attributable to many factors, including race, ethnicity, gender, and socioeconomic status. Other subjective elements also impact upon sentencing decisions. These elements include “attitude” or acceptance of responsibility for the conviction offenses, the quality of defense counsel, and a complex appraisal of the offender’s potential for future offending. Almost every PSI contains a prediction about future offending and a recommendation from the probation officer about the most desirable punishment options. Probation officers throughout the United States frequently use risk assessment devices as a part of their PSI preparation. These instruments involve either anamnestic, actuarial, or clinical indicators about the offender’s potential for future offending.

If the sentencing decision is incarceration in either a jail or prison for either specified or unspecified intervals (as in determinate or indeterminate sentencing plans), corrections departments in different jurisdictions must make a determination of where these convicted offenders should be confined. Because chronic overcrowding characterizes most prisons and jails in every U.S. jurisdiction, this placement decision making is often a matter of finding available space to accommodate these convicts. If convicted offenders are sentenced to prison for a period of years, prison officials must accept these offenders, space permitting, and assign them to an appropriate custody level. Many of the larger prisons and penitentiaries have classification divisions whose sole responsibilities are to assess incoming prisoners and determine where they should be housed relative to other inmates. Some inmates are more dangerous than others. Some inmates have communicable diseases, such as AIDS, while others are mentally ill or chronic alcoholics or drug addicts. There are murderers, rapists, robbers, larcenists, and organized-crime figures who must be classified and placed. Should check forgers, stockbrokers convicted of fraud, and petty thieves be celled with those convicted of aggravated rape, assault, or murder? Because chronic overcrowding exists in many of these prison settings, finding different cell accommodations for prisoners with basically different criminal histories and records of dangerousness may be an unattainable luxury. In any case, some attempt is made to classify and place them most appropriately.

When inmates serve sufficient time to earn early release through parole, or if they become qualified for participation in leave programs such as work release, study release, or furloughs, paroling authorities must decide whether specific offenders will be successful if paroled or if they are assigned to particular programs. Parole boards are not perfect in their decision making, and frequently, inmates are released short of serving their full sentences only to reoffend within months of being paroled. For other inmates who are not granted early release, it is likely that many of these may never reoffend, although parole boards cannot make such forecasts. Again, decisions about early release are often made from prison conduct reports and instruments which attempt to forecast an inmate’s potential dangerousness and risk if released.

Most professionals agree that each of these decision-making stages is imperfect

or flawed in one or more respects. For instance, a certain proportion of those diverted, placed on probation, assigned minimum-security incarceration, and granted parole or participation in work release or furlough programs will "fail." Failure is measured in different ways, but often, it means simply that some offenders reoffend or violate one or more conditions of their programs. Additionally, few professionals will disagree that many offenders who will never reoffend or pose a danger or risk to others are actually overpenalized and/or incarcerated for longer periods as the result of faulty decision making by different actors in the criminal justice system. This is the false positive/false negative dilemma, and it has moral, legal, psychological, and social implications for both offenders and the public-at-large.

The criminal justice system exists to fulfill several goals, including punishment, "just deserts," deterrence, reintegration, rehabilitation, and greater accountability through acceptance of responsibility for one's criminal actions. But fundamental fairness is a principle ideally extended and applied to all offenders. Thus, whatever decisions are made that affect any offender should be couched in the context of fundamental fairness. Does the punishment fit the crime? Does the offender receive just deserts for the crime committed? When should leniency be exhibited and when should it be withheld?

This book is an examination of instruments and methods used by the criminal justice system in diverse ways to make decisions about offenders. It seeks to evaluate these instruments and methods, to target certain common elements or components of measures that purport to measure one's dangerousness or risk to others. Therefore, all stages of the criminal justice process will be investigated to determine how decisions are made which affect the lives of offenders.

In an attempt to collect only the most current professional information about dangerousness measures and risk assessment devices used at local, state, and federal levels, over 400 letters were sent to both juvenile and adult paroling authorities, departments of corrections, courts, and prison systems in all state and federal jurisdictions. These letters solicited copies of reports, scales, and indices of risk and dangerousness, classification guidelines, and needs assessment devices currently used by each agency or authority. The response was overwhelming. With the exception of two states and the District of Columbia, the remaining forty-eight states and several federal agencies and departments supplied much valuable information, including instrumentation presently used for different types of offender decision making. Although both juvenile and criminal justice systems were contacted in all states, only about half of the state jurisdictions provided information about juvenile offender processing and dangerousness scales. Nevertheless, with the abundant information supplied, a rich data source was created for this book's development and completeness.

Chapter 1 explores the historical origins and early use of prediction instruments designed to forecast risk and dangerousness. It investigates alternative meanings which have been given to these terms in contemporary decision making about offenders at different stages of justice processing. Finally, it establishes the

importance of such instruments for the criminal justice system and provides a foundation and context for the remaining chapters.

Chapter 2 illustrates the application of various risk assessment instruments at different stages in the criminal justice process. Numerous instruments have been devised over several decades. Some of these instruments have actually been created as subscales of more popular personality assessment instruments, such as the Minnesota Multiphasic Personality Inventory (MMPI) and Cattell's 16 Personality Factor Inventory (16 PF). Other instruments have been created independent of existing assessment devices. Some have relied heavily upon descriptions of the characteristics of recidivists for their composition. These actuarial devices are probably the most popular in use today by most jurisdictions. Dangerousness instruments vary widely in their sophistication and composition. Some measures consist of ten or fewer items, while more elaborate measures include numerous indicators. However, the length of prediction instruments is not necessarily indicative of the ability of the instrument to forecast dangerousness or risk. Sometimes, simple measures of risk are as effective as or more effective at behavioral forecasting than more elaborate, sophisticated, and complicated instruments. Chapter 2 also examines the philosophical bases for using risk assessment instruments, the way these instruments are used, and several contrasting implications for affected offenders.

Chapter 3 describes selective incapacitation, or selectively incarcerating certain offenders because they have been designated as dangerous by prediction instruments. Those believed to pose serious risks to others are, in effect, selectively confined, while others, considered not dangerous, are afforded probationary terms or other options (e.g., fines, community service, participation in educational, vocational, and counseling programs). This chapter also lists and assesses the characteristics of many of the current instruments used by states and the federal government in decision making about convicted offenders. Can dangerousness be accurately predicted? How should test results be interpreted? How much validity should be given to these instruments when policy decisions are made in correctional institutions and other agencies when processing criminals?

Chapter 4 describes early classificatory criteria used by prisons to segregate inmates. Those considered psychologically disturbed or mentally ill may be separated from others, space permitting. However, prison overcrowding renders such decision making a luxury in many penal institutions. Nevertheless, early typing of offenders is used also for "level-of-custody" decisions by prison officials. Such decision making is not foolproof, however, and many misclassifications occur. Sometimes, these misclassifications lead to lawsuits filed by inmates against various prison personnel, even against other prisoners. Although the success rates and payoffs of such litigation are negligible in many cases, better classification decision making would no doubt decrease the frequency of such suit filings.

Chapter 5 describes parole board decision making. Although some states, such as Maine, and the federal government have either abolished or are abolishing

their respective paroling authorities, parole boards exist in most U.S. jurisdictions. Parole boards are responsible for deciding whether inmates are entitled to early release short of serving their full prison terms. Early-release decisions by parole boards are difficult decisions. Many parole boards utilize prediction instruments to supplement their own knowledge of inmate conduct and face-to-face interviews. Because some inmates are granted early release and soon reoffend, some victims or their families have filed suits against parole boards because of their "mistakes." The legal liabilities of parole boards will be examined briefly, as well as some of the alternative strategies parole boards in different states use for making their early-release decisions.

Chapter 6 is an assessment and an evaluation of existing measures of dangerousness and risk. It explores the current and future use of such instruments at all stages of the criminal justice system. It highlights some of the major moral, ethical, legal, psychological, and social issues regarding the use of risk predictors and measures of dangerousness. The book concludes with an evaluation of existing risk assessment instruments. A comprehensive bibliography is included. Selected scales from various state jurisdictions will be illustrated in the Appendix for reference and comparison. Hopefully, this book will function as an informative resource about risk predictors and dangerousness assessment devices and be of value to both practitioners and theorists.

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# 1

## Risk Assessment and Dangerousness: An Historical Analysis

### INTRODUCTION

In the mid-1770s, John Howard (1726–1790), a prominent English prison reformer and sheriff of Bedfordshire, visited several European countries to investigate their respective prison systems and operations. His journey to France involved a tour of the *Maison de Force* (House of Enforcement) of Ghent, where he found prisoners were adequately clothed, well fed, and lodged in separate cells at night. He was shocked by such humanity displayed toward ordinary prisoners, since his own country celled large numbers of inmates, including males, females, and children, in workhouse common rooms with straw-strewn floors. In fact, mercantile and economic interests in England and Scotland systematically exploited prisoners, getting much free labor from them. Furthermore, a portion of inmate labor profits was given to jailers who made such prison labor available. Impressed with such different prison conditions in France and elsewhere, Howard successfully lobbied in the House of Commons where the Penitentiary Act was passed in 1779. This Act made it possible for new prison facilities to be created, where prisoners could be housed separately in more sanitary cells. Prisoners were not coddled, however; they were put to work where they could learn useful skills which they could apply when released back into their communities.

At about the same time in the American colonies, prison reformers such as Dr. Benjamin Rush (1745–1813) were hard at work to change inmate conditions, which closely mirrored those of England. Quakers, philanthropists, and other prominent citizens in Pennsylvania eventually established the Philadelphia Society for Alleviating the Miseries of Public Prisons in 1787. Through their efforts, the Pennsylvania legislature authorized the construction of a new facility, the Walnut Street Jail, in Philadelphia in 1790. This jail (actually a renovation of the

old High Street Jail built in 1776) was considered innovative, since it pioneered (1) the separation of prisoners according to offense seriousness, (2) the separation of inmates according to gender, and (3) the creation of solitary confinement (American Correctional Association, 1983).

These are probably the earliest recorded attempts at offender classification and placement. Admittedly, these classification schemes were crude. At the time, however, they represented pioneering events and had favorable consequences for affected inmates. Subsequently, in the United States, England, and elsewhere, more elaborate classification schemes have been devised for diverse purposes.

This book is about offender classification. Specifically, it seeks to describe the origin, development, and current state of the art of instruments and methods whereby effective offender classification may be achieved. For our purposes, *classification is differentiating among persons according to particular characteristics they possess*. This definition is closely related to measurement, where we might seek to distinguish between objects according to previously established criteria or rules. Actually, measurement is the vehicle whereby classification systems are established.

Furthermore, both qualitative and quantitative criteria are closely linked with measurement. Since those in the criminal justice system are mostly interested in offenders and offender processing, *measurement is the assignment of numbers to social, or behavioral, and psychological properties of offenders according to rules, and correlating these numbers with these properties* (Champion, 1993: 194–195; Cohen and Nagel, 1934; Stevens, 1951). Thus, measurement is the process of using numerical expressions to differentiate between offenders according to various individual and social properties. It is assumed that these properties are largely behavioral and attitudinal characteristics amenable to measurement (Champion, 1993:195). Offender classification systems are one product of the measurement process.

Other scholars have further clarified the meaning of classification by noting that it seeks to allocate persons in previously undefined classes into groupings or classes where the persons in each aggregate or class are in some way similar or close to one another (Cormack, 1971; D. Gottfredson, 1987:1). For example, we might distinguish between and classify offenders according to previously established criteria, such as felons (persons convicted of a felony) and misdemeanants (persons convicted of a misdemeanor). Or we might classify them according to whether they are violent offenders or property offenders. Obviously, offender classification schemes may be more or less elaborate. The *Uniform Crime Reports*, for example, is an annual compilation of reported crime in the United States. It divides certain index offenses into Class I and Class II categories, where the former are comparatively more serious than the latter.

The chapter organization is as follows. First, the functions and importance of offender classification schemes will be presented. These schemes often reflect offense seriousness, such as the violent/property distinction. If offenders are classified according to these particular criteria, we might make inferences about

their relative dangerousness. Violent offenses include homicide, rape, aggravated assault, and robbery (involving possible injury or death to others), while property offenses include larceny, burglary, and vehicular theft (involving contact with the property of others rather than victims themselves). Therefore, “violent” offenders are, *per se*, more dangerous than “property” offenders. One direct result of developing classification schemes is to categorize offenders according to their dangerousness or risk to others.

Measures of dangerousness and risk are pervasive throughout the criminal justice systems of all U.S. jurisdictions. This chapter will examine the development of such instruments as well as describe the rationale for their creation and application. Perfect classification schemes and assessments of dangerousness and risk have yet to be devised, however. All of these instruments are flawed in one or more respects. Notions of perfection and “flaws” are based upon the ability of any instrument to make behavioral forecasts or predictions. While our measures are imperfect, some of our measures are better predictors than others. Thus, we will examine some of the important criteria which determine an instrument’s predictive utility. A brief overview of methodological problems associated with instrument development will be presented. The chapter will conclude by considering the general question, “Can dangerousness and risk really be predicted?” Since most jurisdictions use various instruments to predict or forecast offender dangerousness and risk anyway, it seems safe to assume that some predictive utility is being realized through such applications. However, all measures are applied with varying margins of error. We will examine these margins of error and investigate whether any consistent standards of predictive acceptability are prevalent.

## **CLASSIFICATION: ITS IMPORTANCE AND FUNCTIONS**

### **The Importance of Classification**

Classification is of fundamental importance in the criminal and juvenile justice systems. In a technical sense, classification is used by law enforcement officers informally during their routine patrolling and decision-making activities. Their discretion when making arrests, conducting investigations, or simply patrolling city streets involves either conscious (manifest) or unconscious (latent) classifications of events and persons who are a part of these events. Whether to use weapons or verbal commands, whether to arrest or not arrest, whether to stop certain persons and ask them questions or simply pass by these same persons—each of these choices is influenced by crude and informal mental agendas based upon one’s past experiences. An officer’s interpretation of events or the conduct of particular persons is catalogued and classified one way or another (Morris and Miller, 1987). One interpretation or classification of the event will trigger actions by officers that would not necessarily be triggered or activated by alternative interpretations or classifications of events. This book is not about how police officers classify events or offenders, however.

*Police Discretion, Booking, and Bail Decision Making.* At other stages of the criminal justice system, decisions are made about different arrestees. During the booking process, for instance, decisions are made about the seriousness of offenses alleged. A judge or magistrate will decide to set a bail bond, release offenders on their own recognizance, or deny bail, depending upon the facts of each situation (Goldkamp, 1987). In a sense, these judicial officials classify those brought before them and decide the best course of action. In at least thirty-one states, laws exist for the pretrial detention of criminal defendants on the basis of the defendant's *perceived dangerousness* (Gottlieb and Rosen, 1984; Toborg, 1984). Again, this book is not about booking offenders or deciding whether to grant them bail or release them on their own recognizance.

*Prosecutorial Decision Making.* Similarly, prosecutors will be presented with various cases. They must decide whether to prosecute or decline prosecution. Again, informal classifications of offenders are made and prioritized. In those jurisdictions with especially high caseloads and crowded court dockets, it is unlikely that prosecutors will proceed against less serious or petty offenders. Rather, they may reserve their prosecutorial time for only the most serious offenders. Among those types of offenders who are more likely to be prosecuted are chronic recidivists and career criminals (Chaiken and Chaiken, 1987). Judges may be able to impose small fines and suspended sentences for those who have committed minor infractions. However, this book is not about prosecutorial decision making and case prioritizing.

*Classifying Convicted or Adjudicated Offenders.* Classification is particularly important, however, after offenders have been convicted of crimes or juveniles have been adjudicated delinquent (Fagan and Guggenheim, 1990; Maier, 1989; Towberman, 1992). In those cases requiring a judicial sentencing decision to incarcerate offenders or place them under some form of supervised probation or release, assessments are usually made which purportedly indicate the likelihood of their success if they are involved in one of several nonincarcerative sentencing options (Blackmore and Welsh, 1983; Campbell, McCoy, and Osigweh, 1990; Michigan Department of Management and Budget, 1986; von Hirsch, 1984; Wright, Clear, and Dickson, 1984). If offenders are sentenced to incarceration, those responsible for managing them while in custody must classify them as well (Craddock, 1987; Johnson, Simmons, and Gordon, 1983; Megargee and Carbonell, 1985; Morris, 1984; Wright, 1986b).

*Inmate Classification and Management.* Some offenders may require relatively little supervision, while other offenders must be confined in isolated cells and monitored closely (Apao, Haugh, and Meyer, 1988). For instance, the suicide potential among some inmates is greater than it is for others (Sperbeck and Parlour, 1986). Some inmates suffer from different types of mental illnesses and must be managed and treated differently (Danto, 1985; Mande and Covey, 1982; Morris, 1984). Other inmates may be considered violence-prone, potential escapees, and/or likely to present excessive disciplinary problems (Baird and Austin, 1986). Such decisions are influenced by various classification schemes developed by prison or correctional staffs.



*Periodic Reassessments of Inmates.* During the period of one's confinement, reassessments and further classifications are made periodically, since often, inmate behavior or conduct changes over time. It may be, for instance, that particular inmates who were initially classified as dangerous and placed in maximum-security prison areas are subsequently less dangerous or not dangerous at all (Brennan, 1987a). Thus, it might be safe to change their level of custody to medium-security or minimum-security status. Reclassification is done, therefore, as a means of rethinking one's original placement and deciding whether it should be continued (Bench, 1990; Hart, 1990; Wright, 1988).

*Early-Release Decision Making and Parole.* Under certain types of sentencing schemes, such as indeterminate sentencing, many prison inmates eventually qualify for consideration for early release or parole. Paroling authorities, such as parole boards, interview prospective parolee-applicants and decide whether to grant them early release (Baird et al., 1987; Gottfredson and Tonry, 1987). Much parole board decision making involves the use of classification schemes and assessments of their likelihood of success "on the outside," as parolees among other community residents (Wilbanks, 1985).

*The Relevance of Classification for Both Adults and Juveniles.* While much of this discussion focuses upon adult criminals, it is also quite relevant for many juvenile offenders who are processed by the juvenile justice system. It is well known that juvenile court judges consider the incarceration of juveniles as the "last resort" punishment or sentence (Champion, 1992:chs. 12-13). Yet annually, many juveniles are considered for secure confinement, and classification schemes are devised to assist juvenile courts in making these difficult placement decisions (Dembo et al., 1990; Feazell, Quay, and Murray, 1991). Those juveniles with drug or alcohol dependencies, or who have close gang affiliations, or who have histories as chronic recidivists, will be classified differently from those without drug/alcohol dependencies, no gang affiliations, or who are first offenders (Dembo et al., 1990). Offense seriousness is measurable as well, and it becomes an integral part of any classification scheme used by system officials (Van Vleet and Butts, 1990).

### The Functions of Classification

An extensive review of the classification literature has disclosed its following functions:

1. *Classification systems enable authorities to make decisions about appropriate offender program placements.* In the most general sense, those charged with offenses, whether they are adult or juvenile offenders, are considered for various types of programs, depending upon their availability among jurisdictions. Thus, defense attorneys may be able to convince prosecutors that their clients deserve diversion rather than a full-fledged prosecution. Among those considered least dangerous and potentially eligible for diversion consideration are shoplifters (Royse and Buck, 1991). Between May 1986 and May 1988, a diversion program at the county level was operated for first-offender shoplifters. Although the sam-