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

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► Background: RNR Theory & Rise of Risk Assessment

► Defining Risk & the Risk Principle

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► 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.
DEFINING RISK
Here, Risk =

 Likelihood of **re-arrest** for **any** charge.

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

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.

Supported by close to 400 studies!
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*.

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
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<thead>
<tr>
<th>High Risk &amp; High Needs</th>
<th>Low Risk &amp; High Needs</th>
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</thead>
<tbody>
<tr>
<td>Menu of mid-length interventions:</td>
<td>Evidence-informed community-supervision model (e.g., the NYC supervised release model):</td>
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<tr>
<td>- Cognitive-behavioral therapy (CBT) models, e.g., T4C, MRT;</td>
<td>- Individual sessions (to avoid peer contagion effects);</td>
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<td>- Social services (e.g., employment, GED, etc.);</td>
<td>- Incorporates a range of practices (e.g., procedural justice principles, Motivational Interviewing)</td>
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<td>- Trauma-focused models (e.g., Seeking Safety); and/or</td>
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<td>- Intensive supervision (e.g., HOPE)</td>
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<td>Treatment court programs, e.g., healing to wellness court, mental health court, hybrid models</td>
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<td>Brief interventions (e.g., Restorative Justice, a 3- or 5-session intervention based on procedural justice principles, CBT, and trauma-informed practices)</td>
<td>Menu of rolling interventions, 6 Sessions+</td>
</tr>
<tr>
<td>- Exact # of mandated sessions responsive to “going rates”/legal proportionality;</td>
<td>- Approximates the mid-length intervention models available for high risk &amp; high leverage (e.g., MRT)</td>
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<td>Meaningful community service, with sites selected in collaboration with community-based organizations</td>
<td>Brief educational groups (1- or 2-session models)</td>
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ATI & Risk Need Responsivity?

Stress Reduction Kit

- BANG
- HEAD
- HERE

Step 1: Place kit on wall
Step 2: Follow directions
Step 3: Repeat as needed
Old School Risk Assessment

I think we've got enough information now, don't you?

All we have is one "fact" you made up.

That's plenty. By the time we add an introduction, a few illustrations, and a conclusion, it will look like a graduate thesis.
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!
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

Race Differences by Total Score and Underlying Factor

Minimal Disparate Impact

Total Risk Score
Black=21.37
White=20.74
Other=20.48

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

High Predictive Equity
COMPAS in Mental Health Courts

Significant Disparate Impact

Moderate Predictive Equity

AUC Score by Race
Black=.79
White=.66
Hispanic=.70
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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