

EVALUATION FOR RISK OF VIOLENCE IN ADULTS

KIRK HEILBRUN |

EVALUATION FOR RISK OF VIOLENCE IN ADULTS

BEST PRACTICES IN FORENSIC MENTAL HEALTH ASSESSMENT

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To the memory of Saleem Shah.
I hope you would be pleased with how risk assessment has developed,
and know you would not be satisfied.
Both the advances and the demand for improvement are part of
your legacy to the field.

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About Best Practices in Forensic Mental Health Assessment

The recent growth of the fields of forensic psychology and forensic psychiatry has created a need for this book series describing best practices in forensic mental health assessment (FMHA). Currently, forensic evaluations are conducted by mental health professionals for a variety of criminal, civil, and juvenile legal questions. The research foundation supporting these assessments has become broader and deeper in recent decades. Consensus has become clearer on the recognition of essential requirements for ethical and professional conduct. In the larger context of the current emphasis on “empirically supported” assessment and intervention in psychiatry and psychology, the specialization of FMHA has advanced sufficiently to justify a series devoted to best practices. Although this series focuses mainly on evaluations conducted by psychologists and psychiatrists, the fundamentals and principles offered also apply to evaluations conducted by clinical social workers, psychiatric nurses, and other mental health professionals.

This series describes “best practice” as empirically supported (when the relevant research is available), legally relevant, and consistent with applicable ethical and professional standards. Authors of the books in this series identify the approaches that seem best, while incorporating what is practical and acknowledging that best practice represents a goal to which the forensic clinician should aspire, rather than a standard that can always be met. The American Academy of Forensic Psychology assisted the editors in enlisting the consultation of board-certified forensic psychologists specialized in each topic area. Board-certified forensic psychiatrists were also consultants on many of the volumes. Their comments on the manuscripts helped to ensure that the methods described in these volumes represent a generally accepted view of best practice.

The series’ authors were selected for their specific expertise in a particular area. At the broadest level, however, certain general principles apply to all types of forensic evaluations. Rather than repeat those fundamental principles in every volume, the series offers them in the first volume, *Foundations of Forensic Mental Health Assessment*. Reading the first book, followed by a specific topical book, will provide the reader both the general principles that the specific topic shares with all forensic evaluations and those that are particular to the specific assessment question.

The specific topics of the 19 books were selected by the series editors as the most important and oft-considered areas of forensic assessment conducted by mental health professionals and behavioral scientists. Each of the 19 topical books is organized according to a common template. The authors address the applicable legal context, forensic mental health concepts, and empirical foundations and limits in the “Foundation” part of the book. They then describe preparation for the evaluation, data collection, data interpretation, and report writing

and testimony in the "Application" part of the book. This creates a fairly uniform approach to considering these areas across different topics. All authors in this series have attempted to be as concise as possible in addressing best practice in their area. In addition, topical volumes feature elements to make them user friendly in actual practice. These elements include boxes that highlight especially important information, relevant case law, best-practice guidelines, and cautions against common pitfalls. A glossary of key terms is also provided in each volume.

We hope the series will be useful for different groups of individuals. Practicing forensic clinicians will find succinct, current information relevant to their practice. Those who are in training to specialize in forensic mental health assessment (whether in formal training or in the process of respecialization) should find helpful the combination of broadly applicable considerations presented in the first volume together with the more specific aspects of other volumes in the series. Those who teach and supervise trainees can offer these volumes as a guide for practices to which the trainee can aspire. Researchers and scholars interested in FMHA best practice may find researchable ideas, particularly on topics that have received insufficient research attention to date. Judges and attorneys with questions about FMHA best practice will find these books relevant and concise. Clinical and forensic administrators who run agencies, court clinics, and hospitals in which litigants are assessed may also use some of the books in this series to establish expectancies for evaluations performed by professionals in their agencies.

We also anticipate that the 19 specific books in this series will serve as reference works that help courts and attorneys evaluate the quality of forensic mental health professionals' evaluations. A word of caution is in order, however. These volumes focus on best practice, not what is minimally acceptable legally or ethically. Courts involved in malpractice litigation, or ethics committees or licensure boards considering complaints, should not expect that materials describing best practice easily or necessarily translate into the minimally acceptable professional conduct that is typically at issue in such proceedings.

This book attempts to synthesize the important developments in violence risk assessment with adults, particularly over the last two decades. It does not describe risk assessment with juveniles or with sexual offenders; both are addressed by other books in this series. It does, however, place violence risk assessment within the particular context of FMHA—so those using this book will find it useful in considering best practices in FMHA risk assessment, but not necessarily for risk assessment that is performed in other contexts.

Alan M. Goldstein
Thomas Grisso
Kirk Heilbrun

Acknowledgments

I gave my first workshop in risk assessment for the American Academy of Forensic Psychology in 1991. An intensive review of the literature had yielded a handout that was 18 pages long (including references). My current iteration of this handout approaches 150 pages; even that cannot provide in-depth consideration of many of the facets of risk assessment that have developed in the last two decades. This is one illustration of how risk assessment has grown, matured, and advanced empirically over this period. A book on best practice reflects these advances, to which many have contributed. First are the researchers, scholars, and practitioners who have contributed to these advances. Many of you are referenced in this book, as you have authored studies or written conceptual or applied articles. Others do not appear in the “literature,” but your contributions have been likewise important: considering these advances, applying them in your practice, teaching, and training, and struggling to reconcile the advances with the continuing limitations. I thank all of you.

The American Academy of Forensic Psychology (AAFP) has been a model for exemplary continuing education and advocacy for forensic practice at the highest levels. AAFP has been an important collaborator in this best practice series—appropriate, considering their modeling of forensic best practice—and I am grateful to the Academy for all they have done with this series and, more generally, for forensic mental health assessment. Alan Goldstein and Randy Otto deserve particular thanks for the work they do in directing the AAFP continuing education series. Alan and Tom Grisso also served as action editors for this book, and were unfailingly succinct, incisive, and timely throughout this process. It has been a great pleasure to work with both of them on this series. I also thank John Monahan and Kevin Douglas for their comments on this book and the ideas contained in it; it is much better as a consequence.

Finally, I am grateful to my wife, Patty Griffin, and our daughter Anna, for their love and patience—and for making my life so much better than it would otherwise be.

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FOUNDATION

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Violence is a very significant problem in our society. It is directly related to public safety and the perception of safety, one of the most fundamental priorities for a legal system. Unlike most of the other issues that are addressed by books in this series for best practices in forensic mental health assessment (FMHA), however, the risk of violence is not an ultimate legal question to be answered by the judge. It is considered in various criminal, civil, and juvenile/family decisions made by the courts. In this respect, it is more like the broad notion of “legal competencies” (Grisso, 2003) than one specific kind of competency. Appraising the risk of future violent behavior, and sometimes the needs for interventions that would reduce that risk, is part of FMHAs associated with a range of legal questions. The particular details of this appraisal are what distinguish one *risk assessment* from another.

This book will address best practice in the evaluation for risk of violence in adults. (Another book in this series will do the same for juveniles; see Andrews & Hoge, in press.) Because of the wide range of legal questions that focus on violence risk, this book does not attempt to provide a detailed review of violence risk assessment in the context of each legal question. Instead, the emphasis will be on violence risk assessment as a process—including the steps that are indicated, the role of specialized risk assessment tools, the scientific and applied debates surrounding this area, and the integration of risk assessment into the evaluation.

Sociolegal Purpose and History

The present priority on public safety manifests itself in a variety of ways. Individuals with severe mental illness who decline treatment can no longer be involuntarily hospitalized for treatment needs alone, but “danger to self or others” remains a cornerstone of U.S. civil commitment statutes. Defendants at different stages of the criminal justice system—from diversion to hospitalization, from sentencing to transfer within correctional facilities to release—may all be evaluated for their risk of harm to others as part of the particular legal decision. Thus it is not surprising that risk assessment has been one of the areas in which the law has most often sought expert opinions from mental health professionals.

However, this is a topic on which mental health professionals have not always had useful contributions. The American Psychiatric Association (1982), in an *amicus* brief filed in the U.S. Supreme Court case *Barefoot v. Estelle* (1983), argued that psychiatrists had no particular expertise in predicting *dangerousness*, as the Texas statute called on them to do in the context of capital sentencing:

Psychiatrists should not be permitted to offer a prediction concerning the long-term future dangerousness of a defendant in a capital case, at least in those circumstances where the psychiatrist purports to be testifying as a medical expert possessing predictive expertise in this area. . . . The forecast of future violent conduct on the part of a defendant in a capital case is, at bottom, a lay determination, not an expert psychiatric determination. To the extent such predictions have any validity, they can only be made on the basis of essentially actuarial data to which psychiatrists, *qua* psychiatrists, can bring no special interpretative skills. (p. 3)

Indeed, a review of Monahan’s seminal (1981) book entitled *Predicting Violent Behavior* provides a good idea just how problematic this professional task was at the time. The tone of the book was constructively critical but not nihilistic—though Monahan noted in the foreword that his working title had once been “Predicting Violent Behavior: Why You Can’t Do It.” It is fortunate that he decided that perhaps you could do it, but a tremendous amount

needed to be accomplished in the field before it could be done reasonably well. His book marked a major shift in the scientific and professional approach to the task of appraising the risk of future violent behavior. Monahan provided conceptual clarity, described the needs for supporting empirical evidence, and outlined guidelines for the mental health professional. He subsequently refined many of these ideas, and collaborated in providing much of the necessary data, that transformed the “prediction of dangerousness” to “violence risk assessment and risk management” in the nearly three decades that have passed since he wrote this book.

One of the important issues addressed by Monahan (1981) was the use of actuarial versus clinical approaches to predicting violence. A more contemporary view involves comparing structured approaches versus unstructured professional judgment (Monahan, 2008). These are discussed in some detail in this book. There have also been other important contributions since 1981; these will be described next.

The Algebra of Aggression

Megargee (1982) described four domains that influence whether an individual will engage in criminal violence: *instigation*, *inhibition*, *habit strength*, and *situation*. The first, instigation, is the sum of internal influences (thoughts, feelings, motivations, and the like) that incline an individual to behave violently. Inhibition, by contrast, is the sum of the internal influences that make it less likely that an individual will display violent behavior. Habit strength describes that individual’s history of violent and nonviolent behavior, while situational influences refer to factors that are not internal, including location, the presence of others, and the ingestion of drugs or alcohol. Megargee’s description was important for several reasons. Violent behavior is complex and multi-determined; the algebra of aggression provides a way of classifying these influences by domain, and considering how and where intervention is needed to reduce the risk of such behavior. It also prompted researchers, clinicians, and forensic evaluators to consider each domain. Situational influences on



INFO

The algebra of aggression (Megargee, 1982) classifies influences on risk of violence into the following domains:

- Instigation
- Inhibition
- Habit strength
- Situation

violence, for example, can be potent—but have received less empirical and professional attention than they deserve, as will be noted next.

Situational Influences

Just as Megargee described the importance of situational influences on violent behavior, Steadman (1982) provided a more detailed perspective on the contributions of context to violence risk.

Researchers paid little attention to this

domain in the 1970s. While context should receive more empirical scrutiny than it does, the influence of situations on violence risk has become much better recognized. Appraisals of risk have become better focused on situational considerations such as the location of the individual being evaluated (hospital or prison vs. community). Some specialized risk assessment tools prompt the user to describe the transition between hospital and community (see, e.g., the Risk section of the HCR-20; Webster, Douglas, Eaves, & Hart, 1997). There are even measures that incorporate situational aspects of risk for those in hospitals (Ogloff & Daffern, 2006) and prisons (Cooke, Wozniak, & Johnstone, 2008), as well as empirical research on the influence of neighborhood on violence risk (Silver, 2001). The consideration of situational influence is now an accepted part of FMHA risk assessment—a marked shift from how “dangerousness” was assessed as recently as two decades ago.

Shorter Outcome Periods

The period of time over which a legal decision maker is considering the risk of future violence varies across legal questions. In civil commitment, for example, this period is measured from hours to months, while the outcome period of interest for individuals in post-sentence *Hendricks* commitments for sexual offenders is far longer. Beginning in the 1980s, consistent with Monahan’s (1984) call for a “second generation” of research in violence, we began to see studies using outcome periods of 6–12 months rather than the far longer

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Situational influences and outcome periods are part of the context in which violence risk is assessed.

outcomes often used in previous research (see Otto, 1992, for a summary). This research allowed a better empirical foundation for FMHA evaluation of legal questions with outcome periods of varying lengths.

From Dangerousness to Risk Assessment

“Dangerousness” was the term most often used to describe the focus of this type of forensic assessment before the 1990s. This term continues to be used in legal language, but researchers and scholars have become more precise when describing their target behaviors. “Dangerousness” has at least three components: *risk factors* (variables empirically associated with the probability that aggression will occur), *harm* (the amount and type of aggression being predicted), and *risk level* (the probability that harm will occur) (National Research Council, 1989). Using the term “risk assessment” promotes disaggregation of these components. Speaking of “dangerousness” does the opposite (See Figure 1.1.). When an

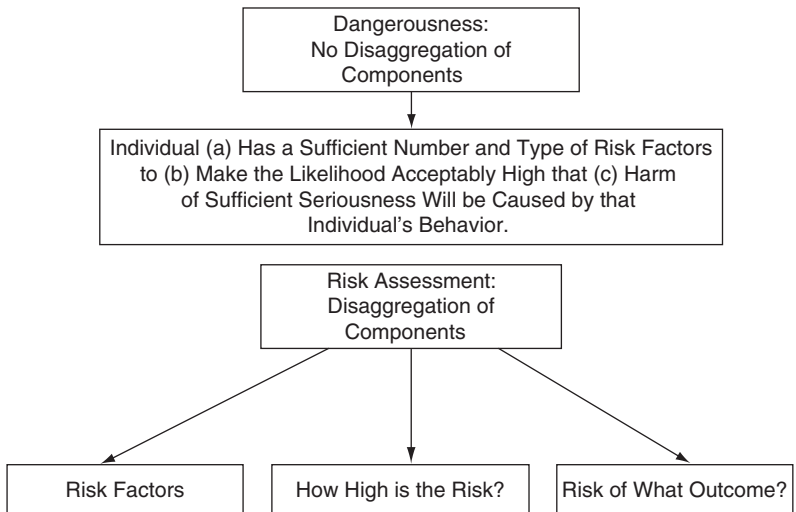


Figure 1.1 Dangerousness vs. Risk Assessment