

# **Static-99R Coding Rules**

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**In-Press Version**

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## How To Use This Manual

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This manual comprises the third published version of the Static-99, and now Static-99R, Coding Rules (previous versions: Hanson & Thornton, 1999; Harris, Phenix, Hanson, & Thornton, 2003). Each Coding Manual has been designed to provide greater detail and a more comprehensive review of how to code Static-99 and Static-99R. This is the first set of coding rules designed for the revised version: Static-99R. The Static-99R Coding Rules are designed to be used in all jurisdictions where Static-99R is scored. We recommend that evaluators using Static-99 should switch to Static-99R (Helmus, Thornton, Hanson, & Babchishin, 2012). If, however, evaluators still use Static-99 (for example, following legal or administrative requirements), these coding rules should be applied to Static-99 as well (with the exception that the age weights differ between Static-99 and Static-99R). Additionally, those using Static-99 should not report the recidivism norms from the 2003 Coding Manual as they are outdated and obsolete and should not be used in forensic evaluations or considered in applied decisions (instead, see Helmus, Hanson, & Thornton, 2009). Although the 2009 norms are not ideal, they are preferable to the 2003 norms. In particular though, the 2009 Static-99 norms should not be used for offenders who are aged 60 or older at release, as they have been found (Helmus, Thornton et al., 2012) to substantially overestimate risk of recidivism (or if an evaluator is legally required to use them, they should note that it is an overestimate).

In most cases, scoring Static-99R is fairly straightforward for an experienced evaluator. If you are unfamiliar with this instrument, we suggest that you turn to the back pages of this manual and find the one-page Static-99R Coding Form. You may want to keep a copy of this to one side as you review the manual.

The purpose of the scoring manual is to provide all information necessary to score the items and produce a total Static-99R score, with some additional context on the appropriate uses of the scale. For information on how to interpret and report the score results (including both relative and absolute risk information), the reader is referred to the Evaluators' Handbook (Phenix, Helmus, & Hanson, 2016) available at [www.static99.org](http://www.static99.org), in the section labelled "Norms." The handbook is updated periodically to incorporate advances in research, and evaluators are encouraged to check that their reports are based on the most recent version. The reason the coding rules and the workbook are in separate documents is that we expect updated research will require frequent updates to the latter, but not the former.

Although this version of the coding manual has non-trivial changes from the previous (2003) version which will result in different scorings for a small number of cases, we do not anticipate that these changes require re-calibration of the normative data for the scale. In other words, the existing Evaluator Workbook for Static-99R (Phenix et al., 2016) is still applicable. It is always possible, nonetheless, that future research will identify improvements to the normative data.

We strongly recommend you familiarize yourself with the entirety of the coding rules before scoring the instrument. We understand there is repetition in this manual and some material will be more pertinent than other sections. The coding manual has two broad sections. The first section has a lot of introductory and background material, as well as global recommendations on when/how to use the scale, including information on:

- Training
- Treatment
- Self-report information
- Inter-rater reliability

- Who can you use Static-99R on
- Time offence-free in the community after release from the index sex offence
- When the current offence is not sexually motivated
- Static-99R for offenders who are juveniles, developmentally delayed, institutionalized, who aided in a sex offence, are non-Caucasian, have mental health issues, or have undergone gender transformation
- Information required to score Static-99R
- Definitions for key concepts such as sex offence (including Category “A” versus Category “B” offences), charges, convictions/sentencing dates, offence clusters, pseudo-recidivism, and historical offences.

The second main section of the manual begins at the section entitled “Scoring the Ten Items” on page 45. This section provides the specific rules required to score each item. For each of the ten items, the coding instructions begin with three pieces of information: **The Basic Principle, Information Required to Score this Item, and The Basic Rule.** The following sections for each item provide fuller explanations of the item along with how the rules are intended to apply to unusual or difficult scoring cases, as well as how special circumstances affect the scoring and exclusions that may apply. Users should ensure that they are familiar with this more detailed guidance so they more fully understand the item and they know when to refer to it to resolve scoring difficulties. Often just reading these three small sections will allow you to score that item on Static-99R. The following sections for each item describe special circumstances or exclusions that may apply to your case. This expanded version of Static-99R coding contains much information that is related to specific uses of the Static-99R in unusual circumstances and many sections of this manual need only be referred to in exceptional circumstances or as occasional reminders. We also suggest that you briefly review the three appendices as they contain a self-test resource, helpful references, and the Static-99R Coding Form (pages 86 to 94).

If you find that you have a coding question not addressed in this manual, you can direct the question to [staticquestions@gmail.com](mailto:staticquestions@gmail.com) or at the website, [www.static99.org](http://www.static99.org). Please consult the coding manual and FAQs on the website prior to submission of questions.

We appreciate all feedback on the scoring and implementation of the Static-99R. Please feel free to contact any of the authors. Should you find any errors in this publication or have questions/concerns regarding the application of this risk assessment instrument or the contents of this manual, please address these concerns to:

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## Introduction

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### **Introduction to Static-99R**

Static-99R is intended to position offenders in terms of their relative degree of risk for sexual recidivism based on commonly available demographic and criminal history information that has been found to correlate with sexual recidivism in adult male sex offenders. When combined with an appropriate table of norms (e.g., Phenix et al., 2016), Static-99R characterizes the individual's relative risk for sexual recidivism in terms of how unusual it is (using percentiles) and in terms of how it compares to the risk presented by the typical sex offender (using risk ratios). Available norms also describe estimates of absolute recidivism rates over fixed follow up periods. The information provided by Static-99R can be thought of as a baseline estimate of risk for new sexual charges and convictions. This baseline assessment can be used to guide treatment and supervision strategies designed to reduce the risk of sexual recidivism.

The predecessor to Static-99R, Static-99 (Hanson & Thornton, 1999; 2000) was originally developed by R. Karl Hanson of the Solicitor General Canada and David Thornton at that time of Her Majesty's Prison Service, England and now at Forensic Assessment, Training & Research LLC. The original Static-99 was created by amalgamating two risk assessment instruments (the RRASOR and SACJ-Min). The RRASOR (Rapid Risk Assessment of Sex Offender Recidivism), developed by Hanson, consisted of four items: 1) having prior sex offences, 2) having a male victim, 3) having an unrelated victim, and 4) being between the ages of 18 and 25 years old. The items of the RRASOR were then combined with the items of the Structured Anchored Clinical Judgement – Minimum (SACJ-Min), an independently created risk assessment instrument written by Thornton (Grubin, 1998). The SACJ-Min consisted of nine items: 1) having a current sex offence, 2) prior sex offences, 3) a current conviction for non-sexual violence, 4) a prior conviction for non-sexual violence, 5) having 4 or more previous sentencing dates on the criminal record, 6) being single, 7) having non-contact sex offences, 8) having stranger victims, and 9) having male victims. These two instruments were merged to create Static-99, a ten-item prediction scale.

In 2009 a revised version of Static-99, called Static-99R, was released for use (Hanson, Phenix, & Helmus, 2009; Helmus, 2009; Helmus, Thornton, Hanson, & Babchishin, 2012). This revision was completed to better account for the relationship between age at release and sexual recidivism, and to provide updated norms for the scale on more contemporary samples. Because of these advantages and the reduction of sex offender reoffence rates in contemporary samples, evaluators are advised to switch from the use of Static-99 to Static-99R. This project to revise Static-99 (now Static-99R) has led to the creation of percentiles (Hanson, Lloyd, Helmus, & Thornton, 2012) and risk ratios (Hanson, Babchishin, Helmus, & Thornton, 2013), and an update of the recidivism estimates (Hanson, Thornton, Helmus, & Babchishin, 2016) and nominal risk categories (Hanson, Babchishin, Helmus, Thornton, & Phenix, in press) for the scale. Future advances in research on the scale will be available at [www.static99.org](http://www.static99.org).

Static-99R has a number of strengths. It uses risk factors that have been empirically shown to be associated with sexual recidivism (Helmus & Thornton, 2015). It has explicit rules for scoring these factors and then combining them into a total risk score. The instrument's ability to rank offenders in terms of their relative risk for sexual recidivism has been shown to be robust across many settings using a variety of samples (Hanson & Morton-Bourgon, 2009; Helmus, Hanson, Babchishin, Thornton, & Harris, 2012). Although some scoring decisions do require some judgement, Static-99R is relatively objective to score, which should reduce bias in decision-making, assuming the evaluator has carefully reviewed the coding manual.

Static-99R also has a number of weaknesses. On average it demonstrates only moderate predictive accuracy (AUC = .69 to .70 depending on how the analyses are conducted; Helmus, Hanson et al., 2012). It does not include all the factors that might be included in a comprehensive risk assessment (Fernandez, Harris, Hanson, & Sparks, 2014; Thornton & Knight, 2015; Olver, Wong, Nicholaichuk, & Gordon, 2007). Absolute recidivism rates associated with specific risk scores have also been found to vary across samples (Helmus, Hanson et al., 2012) in a way that has made estimation of absolute levels of recidivism risk more complex (see Hanson, Thornton, Helmus, & Babchishin, 2016, for our recommendations concerning how to associate Static-99R scores to sexual recidivism rates). For estimates of general and violent recidivism, we recommend evaluators use the BARR-2002R instead of Static-99R (Babchishin, Hanson, & Blais, 2016).

It is important to score all items according to the scoring rules in this coding manual. Although the coding rules may not address all possible situations (requiring some professional judgement) and there may be some situations where the coding rules seem counter-intuitive because of the nuances of a particular case, it is important to stick to these coding rules as much as possible and not to override them with your own judgement (even when strict adherence to the coding rules feels silly). The reason that it is necessary to stick to the coding rules as closely as possible is because the further you deviate from the rules, the less applicable the research base behind the scale will be, and the normative data from the scale (e.g., percentiles, risk ratios, and recidivism estimates) may no longer be applicable. In order to benefit from the evidence base that supports the use of the scale, you must use the scale in a way that is consistent with the manual.

Static-99R does not address all relevant risk factors for sex offenders. Consequently, a prudent evaluator will always consider other external factors, such as dynamic or changeable risk factors, that may influence risk in either direction. Additional factors in an individual case may also affect risk. An obvious example is where an offender states intentions to further harm or “get” his victims (higher risk), or an offender may be somewhat restricted from further offending either by health concerns or where his environment is structured such that his victim group is either unavailable or he is always in the company of someone who will support non-offending (lower risk). These additional factors should be stated in any report as “additional factors that were taken into consideration” and not “added” to the Static-99R score or used in any way to adjust the Static-99R score or the resulting risk information (e.g., recidivism estimates). Adding additional factors to Static-99R, or adding “over-rides,” distances Static-99R estimates from their empirical base and substantially reduces their predictive accuracy. In other words, Static-99R is intended as one component of a risk assessment report. Additional information should be considered external to the scale.

### **Missing Items**

The only item that may be omitted on Static-99R is “Ever Lived With a Lover” (Item #2). If no information is available, this item should be scored as a “0” (zero) – as if the offender *has lived* with an intimate partner for two years.

### **Recidivism Criteria**

For Static-99R, the recidivism criterion is considered a new charge or conviction for a sex offence. Note, however, that roughly half of the samples included in the normative data for the scale did not have access to charges and used solely convictions. Where available though, charges were used.

### **Non-Contact Sex Offences**

The Static-99R samples included a small number of offenders whose only known sex offences were non-contact. Static-99R predictions of risk are relevant for non-contact sex offenders, such as exhibitionists or break-&-enter fetishists who enter a dwelling to steal underwear or similar fetish objects.

### **Training**

The authors of this manual strongly recommend training in the use of Static-99R from a certified trainer before attempting risk assessments that may affect human lives. Training for Static-99R could be online or in person, but should involve opportunities for interaction (i.e., Q&A) and supervised practice of example cases. A list of certified Static-99R trainers is available from [www.static99.org](http://www.static99.org). Researchers, parole and probation officers, psychologists, sex offender treatment providers, and law enforcement involved in threat and risk assessment activities typically use this instrument. Researchers are invited to make use of this instrument for research purposes and this manual and the instrument itself may be downloaded from [www.static99.org](http://www.static99.org).

Furthermore, if you have been trained in Static-99 or Static-99R prior to the release of the 2016 version of the coding manual, we strongly recommend you obtain training on the updates to this coding manual, as there are many non-trivial changes (some of which may be missed if not pointed out by a trainer).

### **Treatment**

Participation in treatment is not considered in scoring Static-99R or in interpreting the normative data for the scale.

The samples used to generate normative data for Static-99R varied in whether they were exposed to treatment, and in the quality of the treatment. Most samples contained offenders mixed in their exposure to treatment (e.g., roughly 25%-75% received treatment) or we did not know the level of treatment exposure.

Meta-analytic research demonstrates that on average, completion of treatment is associated with reduced sexual recidivism (Hanson, Bourgon, Helmus, & Hodgson, 2009). However, this effect depends on the quality of treatment, and likely on the dosage. Also, there are very few high quality research studies on this topic. Additionally, at an individual level, it is likely more relevant how the person responded to treatment rather than whether they merely attended treatment sessions. Used by itself, Static-99R does not provide a way of incorporating a history of treatment participation into actuarial risk assessment. We therefore recommend that evaluators may want to comment on treatment participation in their reports, but this discussion should be external to the Static-99R assessment. In the future there may be ways of measuring response to treatment and statistically combining this with baseline assessments of risk, such as Static-99R. Promising developments of this kind have been reported for the Violence Risk Scale – Sexual Offender version (Olver, Beggs Christofferson, Grace, & Wong, 2014).

### **Self-Report and Static-99R**

Ten items comprise Static-99R. The amount of self-report that is acceptable in the scoring of these items differs across questions and across the three basic divisions within the instrument.

**Demographic Questions:** For Item #1 – Age at Release, although it is always best to consult official written records, self-report of age is generally acceptable. For Item #2 – Ever Lived With..., to complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. There may, however, be certain cases (immigrants, refugees from third world countries) where confirmation is not possible. In the absence of these sources, self-report



information may be utilized assuming, of course, that the self-report seems credible and reasonable to the evaluator. For further guidance on the use of self-report and Static-99R please see section “Item #2 – Ever Lived with an Intimate Partner – 2 Years.” Additionally, this is the only item where missing information is allowed. If the information is unavailable, the offender should be scored a “0”.

Criminal History Questions: For the five items that assess criminal history (Items 3, 4, 5, 6, and 7), an official criminal history record (e.g., from some law enforcement or correctional authority) is required to score these items and self-report is not acceptable. This being said, there may be certain cases (immigrants, refugees from third world countries, old out-of-state records) where self-report of crimes may be accepted if it is reasonable to assume that no records exist or that existing records are truly un-retrievable. In addition, the self-report must meet the threshold of Clear and Convincing Evidence to the evaluator (see page 19 for definition). For example, reports increase in credibility when it is consistent with his current sexual misbehaviour.

Although self-report (and any additional credible information) cannot be used to *substitute* official criminal records, it can be used to *supplement* official records. Specifically, official records are required to establish the existence of prior charges and convictions, but any credible information can be used to determine the nature of the offences (e.g., sexual motivation). For example, if the offender has a prior conviction for Trespassing at Night and the police report does not include any additional details, but the offender confesses that he was engaging in voyeurism, this self-report information can be used to classify the incident as a sex offence. The exception to this is that self-report information derived initially from a polygraph is normally not counted, even if the offender repeats that information later during treatment (page 18 for further explanation).

In some cases, evaluators may have official criminal records but they are incomplete and therefore not sufficient to establish a conviction. This may occur if the record displays a charge for an offence but is missing information on the outcome of the charge (i.e., conviction/acquittal/dismissal), or if the record indicates that there are youth convictions but does not specify what the convictions are for. In other circumstances, events which may constitute a conviction (e.g., for priests, military, etc.) may not necessarily appear on the criminal record. In these situations, credible self-report or additional information can be used to count these as convictions, provided that the self-report information is sufficient to confidently determine that the events in question meet the threshold of Clear and Convincing Evidence (page 19; note that this Clear and Convincing Evidence threshold applies). Static-99R should not be scored, however, in the absence of an official criminal record (except in rare occasions for immigrants or refugees). Self-reported offences that are subsequently discussed in a professional report are not considered "official records." However, a professional report that mentions a previous charge/conviction can count, if it is considered credible that an official record did/does in fact exist and has been obtained by a professional during a previous contact (e.g., if juvenile criminal records are no longer available, but a previous probation report mentions accessing that record and notes a charge or conviction).

Victim Questions: For the three victim items, self-report is generally acceptable assuming the self-report meets the basic criteria using the threshold of Balance of Probabilities (see page 19 for definition). Confirmation from official records or collateral contacts is always preferable. If the evaluator is scoring victim items that did not result in conviction then they should determine if, on the Balance of Probabilities, it is thought that a sex offence has occurred. If so, then the victim items for that crime should be scored.

### **Inter-Rater Reliability of Static-99R**

Given that Static-99R differs from Static-99 on only one of ten items, the extensive research on the rater reliability of Static-99 remains broadly applicable to Static-99R (for a summary, see Phenix & Epperson, 2015). Most studies have shown excellent levels of reliability for Static-99 scores in both research and applied settings (Hanson & Morton-Bourgon, 2009). Across 11 studies reporting inter-rater reliability, Helmus (2009) found consistently high reliability, with correlations ranging from .86 to .92 and Intra-Class Correlations (*ICCs*) ranging from .84 to .95.

A number of inter-rater reliability studies have been conducted in the field for Sexually Violent Predator (SVP) evaluators. An early unpublished study by Hanson (2001) examined 55 cases scored on Static-99 from SVP evaluations in California and found an *ICC* of .87. Levenson (2004) conducted a larger field reliability study in Florida and also found strong rater agreement in Static-99 total scores for 281 offenders evaluated for SVP commitment in Florida (*ICC* = .85).

Murrie et al. (2009) examined inter-rater agreement for Texas SVP evaluators. Reliability of Static-99 scores was high when comparing scores of experts on the same side of a case (*ICC* = .84 for petitioners' experts and *ICC* = .95 for respondents' experts). However, when comparing scores of petitioners' experts with respondents' experts, the *ICCs* dropped into the .60 range, suggesting that adversarial allegiance biases may impact risk assessment scores.

Field studies on inter-rater reliability have also been conducted in community supervision and treatment settings. In a Canadian study, the Dynamic Supervision Project, Static-99 scores across 88 cases produced an *ICC* = .91 (Hanson, Helmus, & Harris, 2015). Storey, Watt, Jackson, and Hart (2012) compared the ratings of clinicians in the field to those of researchers for 100 adult males who completed an outpatient sex offender treatment program. They found that clinicians and researchers showed excellent agreement for total scores on Static-99 (*ICC* = .92) and for most of the individual items.

Quesada, Calkins, and Jeglic (2014) examined the consistency of clinicians' item and total scores with those from researchers using a sample of 1,973 case files. Total scores showed a high degree of consistency, as reflected by an *ICC* = .92 for the combined sample of researchers and clinicians. There was exact agreement in total scores on 1,255 (63.6%) of the cases, though a small number of cases ( $n = 90$ ) achieved the same score despite some disagreements at the item level. An additional 557 (28.2%) cases yielded total scores that were within 1-point of each other. Overall, then, total scores from clinicians and researchers were identical or within one point of each other in 1,812 (91.8%) of the cases. Item-level agreement was also strong. Two of ten items produced outstanding agreement ( $K = 0.81$  to 1.00 range), and the remaining eight items yielded substantial agreement ( $K = 0.61$  to 0.80).

In a large study of field reliability with Static-99, Boccaccini et al. (2012) reviewed Static-99 scores for 600 sex offenders in Texas and 135 sex offenders in New Jersey. The Static-99 scores were generated by correctional officers in Texas and by doctoral-level evaluators in New Jersey. Unfortunately, no information was provided about how officers were trained on the scale in Texas. Texas evaluators produced an *ICC* = .79 and New Jersey evaluators produced an *ICC* = .88. In both state samples, about 55% of cases had identical scores from raters, and an additional 33% had scores within 1 point of each other. So, 88% of the time scores were the same or within one point of each other, consistent with many studies of inter-rater agreement on Static-99 scores.

For Static-99R specifically, McGrath, Lasher, and Cumming (2012) reported very high reliability (*ICC* = .89) when scored by researchers. Similarly, Thornton and Knight (2015) reported Static-99R inter-rater *ICC* of .89 for a single rater and .94 for the average of two raters.

Noting the importance of assessing reliability of scores produced by field workers, Hanson, Lunetta, Phenix, Neeley, and Epperson (2014) assessed the reliability of Static-99R scores from 55 corrections and

probation officers in California scoring a common set of 14 cases (the rigorous training system for California evaluators was described in detail in the paper). Overall rater reliability was acceptable (ICC = .78). There was a substantial difference in the reliability of scores from experienced scorers (ICC = .85) and less experienced scorers (ICC = .71), pointing to the importance of recent practice. Experienced scorers were those who had scored 26 or more sex offenders on Static-99R in the previous 12 months.

### **Revised Risk Levels**

In the original Static-99, total scores would translate into one of four risk categories: low, moderate-low, moderate-high, and high. When the scale was revised (creating Static-99R), we did not revise the cut-off scores for the risk categories. Our hope was that after completing our analyses on the other normative data for the scale (percentiles, risk ratios, and absolute recidivism estimates), we would revisit the risk categories to determine if they needed a change. As of 2016, we concluded that they did. We recommend that where the old Static-99R risk categories are used, the new levels should replace them, as they are based on stronger empirical and conceptual grounds.

The revisions to the risk levels are also part of a broader movement towards improved risk communication. The status quo in risk assessment has been for scale developers to translate total scores into risk levels in ways that were poorly defined and difficult to compare across measures. Consequently, it was common for similar scales to place the same offenders in different risk categories (Barbaree, Langton, & Peacock, 2006; Jung, Pham, & Ennis, 2013; Mills & Kroner, 2006). Compounding this confusion, it was also common for professionals to have very different interpretations of what labels like “low,” “moderate,” and “high” risk mean (Hilton, Carter, Harris, & Sharpe, 2008; Monahan & Silver, 2003; Slovic, Monahan, & MacGregor, 2000).

We believe that the way forward in risk assessment will involve the development of universal, non-arbitrary risk levels. Such categories should ideally describe psychologically meaningful characteristics of the individual (not the scale), be linked to realistic options for action, be evidence-based, applicable to all risk scales, use a simple professional language, and be easy to implement across diverse jurisdictions, scales, and offenders. As part of this broader goal, the United States Council of State Governments Justice Center has assembled a working group to develop standardized risk levels for general offenders (Hanson, Bourgon et al., 2016). This working group includes two members of the STATIC development team (R. Karl Hanson & Kelly Babchishin).

The Justice Center has currently proposed five broad risk levels for general reoffending. The lowest risk category (Level I) would be generally prosocial individuals who have nonetheless committed crime. They would not be expected to have the criminal backgrounds, criminogenic needs, or the prognosis typical of offenders. The recidivism rates of Level I offenders would be indistinguishable from the rates of spontaneous offending among non-offenders (e.g., young males). Level II would be higher risk than non-offenders, but lower risk than typical offenders. It is expected that Level II offenders would have some criminogenic needs, but that these life problems would be few and transient. Level III offenders would be the typical offenders in the middle of the risk distribution. Typical offenders have criminogenic needs in several areas, and require meaningful investments in structured programming to decrease their recidivism risk. Level IV offenders would be perceptibly higher risk than the typical offender. Most of these offenders would have chronic histories of rule-violations, poor childhood adjustment, and significant criminogenic needs across multiple domains. The Justice Center’s framework also included a fifth category for the highest risk offenders, defined as those virtually certain to reoffend. Level V offenders are those typically found in high security units, where considerable resources are devoted to managing *current* antisocial behaviour.

The new risk levels for Static-99R were developed in line with the Justice Center’s proposed risk levels and informed by empirically based risk communication metrics (percentiles, risk ratios, and recidivism estimates; for further explanation of the new categories, see Hanson, Babchishin, Helmus, Thornton, & Phenix, 2016). Given that the Justice Center’s standardized risk levels were based on general offending, not sexual offending, the new STATIC levels made two significant deviations from the Justice Center’s proposed categories. Firstly, we defined Level I offenders as those whose sexual recidivism rates are generally indistinguishable from non-sex offenders with no known history of sex offending. In other words, this is a group whose risk of sexual reoffending is not different from other offenders in the criminal justice system who are not considered sex offenders. Secondly, given the low base rates of sexual recidivism, we are not currently able to empirically identify a group of sex offenders who are “virtually certain” to reoffend. Consequently, no Static-99R scores meet the definition of a Level V offender. However, it is possible to distinguish two groups who are meaningfully higher risk than Level III offenders. Consequently, we have labelled the two highest risk levels for Static-99R as Level IVa and Level IVb.

**The revised Static-99R risk categories are as follows:**

- Level I – Very low risk (Scores of -3 to -2)
- Level II – Below average risk (Scores of -1 to 0)
- Level III – Average risk (Scores of 1 to 3)
- Level IVa – Above average risk (Scores of 4 to 5)
- Level IVb – Well above average risk (Scores of 6+)

We recognize that evaluators tend to prefer labels for risk levels (e.g., “very low risk”) and we have provided them above. However, we also encourage evaluators to recognize biases, heuristics, and emotional reactions that are inherent in such common language terms. Consequently, we encourage evaluators to use “Level I” (and so forth) either instead of or in addition to the labels for each level. The language of “Levels” has the advantage of consistency with the Justice Center’s proposed definitions, and hopefully will become a common language used across diverse risk scales.

Although these are the new risk levels for Static-99R, we recognize that risk categories are most useful when they are meaningfully linked to decisions (e.g., treatment or supervision resource allocation). Consequently, it is possible that some jurisdictions may develop their own risk categories to maximize the utility of Static-99R for their decision-making purposes. For example, if a jurisdiction wants to refer the 10% highest risk offenders for high-intensity treatment, then it may make sense to create a high risk category defined by the top 10% of scores (using percentiles). Alternately, matching offenders to tiered services may necessitate reducing the five risk categories to three (if so, we would recommend clumping the first two categories together and the last two categories together). When evaluators or jurisdictions develop their own risk categories linked to specific policy actions, we recommend that when different words are used to describe site specific levels (different from the standard language proposed above), and when the site specific levels are identified as different from those proposed by the STATIC development team, that the definition of the site specific risk categories are clearly described in the report.

**Whom Can You Use Static-99R On?**

Static-99R is an actuarial risk assessment instrument designed to assess risk of sexual recidivism for adult males who have already been charged with or convicted of at least one sex offence against a child or a non-consenting adult. This includes offenders who are under some type of mental health commitment such as those found unfit to stand trial or not guilty by reason of insanity. Static-99R may be used with first-time sex offenders.

This instrument is not recommended for females, young offenders (those having an age of less than 18 years at time of release – see additional restrictions on use with adolescents who have sexually offended on page 14), or for offenders who have only been convicted of prostitution related offences, pimping, sex in public locations with consenting adults, or possession/distribution of pornography/indecent materials including child pornography. Static-99R is not recommended for use with those who have never committed a sex offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sex offence. Static-99R is not appropriate for individuals whose only sexual “crime” involves consenting sexual activity with a similar age peer (e.g., Statutory Rape {a U.S. charge} where the ages of the perpetrator and the victim are close and the sexual activity was consensual); see page 76 for the criteria to determine consenting activity with a similar age peer.

Static-99R applies where there is reason to believe an actual sex offence has occurred (see pages 20 to 28) with an identifiable victim (see page 74) and the offender has received a charge or conviction (see pages 28 to 37). The offender need not have been convicted of the offence. The original samples used to create this instrument contained a number of individuals who had been found not guilty by reason of insanity and others who were convicted of non-sexual crimes, but in all cases these offenders had committed real sex crimes with identifiable victims. Static-99R may be used with offenders who have committed sex offences against animals. If an offender has only one sex offence on his record and was charged and found not guilty, and the evaluator believes that on a Balance of Probabilities, there was not a sex offence against an identifiable victim, then Static-99R should not be scored. If the offender was arrested or knows a warrant has been issued for his arrest, this counts as an arrest even if the offender flees the jurisdiction before he can be arrested. These arrests would count as equivalent to a charge. For a detailed explanation as to what may be counted as a charge or conviction please refer to pages 28–37 under the sections “Conviction/sentencing date versus charges” to “Index sex offence.”

Static-99R cannot be used with offenders only charged or convicted of possession or distribution of child pornography, unless their behaviour involved the creation of child pornography with a real identifiable child. Note that the creation of child pornography requires a real identifiable child. For example, an offender who takes pictures of neighbourhood children but morphs the images of neighbour children’s heads onto the images of child pornography, could not be scored on Static-99R.

### **Violent and General Recidivism**

Static-99R is intended to provide information on risk for sexual recidivism only. To comment on the risk for violent or general recidivism among sex offenders, we recommend using the BARR-2002R, which can be scored from Static-2002R items (see Babchishin et al., 2016).

### **Time Offence-Free in the Community After Release from the Index Sex Offence**

In some cases, evaluations may be for offenders who have had a substantial period at liberty in the community (since their release from the index sex offence; see definition and examples of “release” on pages 48) with opportunity to sexually reoffend, but have not done so. The longer an offender has been free of detected sexual offending since his release to the community from their index sex offence, the lower their risk of recidivism. Our research has found that, in general, for every five years the offender is in the community without a new sex offence, their risk for recidivism roughly halves (Hanson, Harris, Helmus, & Thornton, 2014). Consequently, we recommend that for offenders with two years or more sex offence free in the community since release from the index offence, the time they have been sex offence free in the community should be considered in the overall evaluation of risk. Static risk assessments estimate the likelihood of recidivism at the time of release and we expect they would be valid for approximately two years. For offenders released for longer than two years and who have remained sex

offence free, consider their overall behaviour and factors external to Static-99R in your overall risk assessment. For example, if the offender reoffended with a non-sex offence or non-sexual violence, this would be considered outside their Static-99R score (which is estimated from time of release from their index sex offence). Historical sex offences (i.e., where an offender has a recent charge/conviction for a sex offence that may have occurred years or decades earlier) are discussed further on pages 38 to 44 and represent a different situation than what is discussed here (as this section refers to time since release from the index offence, not since the commission of the index offence).

### **Static-99R When the Current Offence is Not a Sexually Motivated Offence**

Static-99R is appropriate for offenders with a history of sex offences but who are currently serving a sentence for a non-sex offence (note that in these cases, the paragraph above on time offence-free since release from the index sex offence may be applicable). Static-99R (and the age item) should be scored according to the most recent sex offence as the index offence (see pages 38 to 44 for further definition and examples). Their current non-sex offence (and any other criminal history accrued after release from their index sex offence) will not be considered anywhere in scoring Static-99R (although it should be considered elsewhere in a risk assessment report).

### **Static-99R with Adolescents who Sexually Offend**

The only circumstances where Static-99R could be used with adolescents who have sexually offended (and even then, we suggest using the scale with caution and including appropriate caveats in your report) is where the offender was released from the index sex offence at age 18 or older, was 17 years old when he committed the offence, AND the offence appears similar in nature to typical sex offences committed by adult offenders. If any of these conditions are not met, Static-99R should not be used.

It should be noted that there were a small number of people in the original Static-99 samples and in normative data samples who had committed sex offences as juveniles (under the age of 18 years) and who were released as adults. In some cases an assessment of Static-99R risk potential may be useful on an offender of this nature (see below for greater detail).

Evaluations of juveniles based on Static-99R must be interpreted with caution as there is a very real theoretical question about whether juvenile sex offending is the same phenomena as adult sex offending in terms of its underlying dynamics and our ability to affect change in the individual, with research increasingly concluding that adults and adolescents who commit sex offences are meaningfully different (Caldwell, 2010; Chaffin, 2008; Chaffin, Letourneau, & Silovsky, 2002; Letourneau & Miner, 2005). In addition, the younger the adolescent is, the more important these questions become. In general, the research literature leads us to believe that adolescents who commit sex offences are not necessarily younger versions of adult sex offenders. In comparison to adult sex offences, the sex offences committed by juveniles are more likely to involve peers as co-offenders, lack planning, and lack indicators of deviant sexual interests. Developmental, family, and social factors would be expected to impact on recidivism potential. We have reason to believe that people who commit sex offences only as children/young people are a different profile than adults who commit sex offences. In cases such as these, we recommend that Static-99R scores be used with caution and only as part of a more wide-ranging assessment of sexual and criminal behaviour.

Although a meta-analysis of eight studies (Viljoen, Mordell, & Beneteau, 2012) has found that Static-99R has acceptable discrimination with juvenile offenders (i.e., the scale ranks offenders in their likelihood of recidivism, so high-risk juvenile offenders are more likely to reoffend than low-risk juvenile offenders), there are no studies assessing the calibration of the scale (i.e., whether the predicted recidivism estimates associated with Static-99R are applicable to adolescents who sexually offend). It is possible that the scale

may over-estimate absolute recidivism rates for adolescents. Consequently, the recidivism rates from Static-99R should never be applied to individuals whose last known sex offence behaviour was before the age of 17.

In certain cases, the Static-99R may be useful with adolescents who have sexually offended, if used cautiously. There would be reasonable confidence in the instrument where the convictions are related to offences committed at the age of 17. In general, the younger the child, the more caution should be exercised in basing decisions upon Static-99R estimates. For example, if a 17-year-old offender committed a rape, alone, on a stranger female, you would have reasonable confidence in the Static-99R estimates. On the other hand, if the offender is now an adult (18+ years old) and the last sex offence occurred when that individual was 14 or 15, Static-99R estimates would not apply. If the sex offences occurred at a younger age or they look “juvenile” (participant in anti-social behaviour towards peers that had a sexual component) we would recommend that the evaluator use risk scales specifically designed for adolescent sex offenders.

The largest category of adolescents who sexually offend is generally antisocial youth who sexually victimize a peer when they are 13 or 14 years of age. These adolescents are most likely sufficiently different from adult sex offenders that we do not recommend the use of Static-99R nor any other actuarial instruments developed on samples of adult sex offenders. We would refer evaluators to other risk scales designed for juvenile sex offenders.

When scoring Static-99R, juvenile offences, when they are known from official sources, count as charges and convictions on “Prior Sex offences” regardless of the present age of the offender. Self-reported juvenile offences in the absence of official records do not count, except in rare situations (see pages 8-9).

### **Static-99R with Offenders Who are Developmentally Delayed**

The original Static-99 samples contained a number of developmentally delayed offenders. A subsequent meta-analysis found that Static-99R predicted sexual recidivism well for developmentally delayed offenders (Hanson, Sheahan, & VanZuylen, 2013); consequently, we recommend the scale for use with this population.

### **Static-99R with Institutionalized Offenders**

Static-99R is intended for use with individuals who have been charged with, or convicted of, at least one sex offence. Occasionally, however, there are cases where an offender is institutionalized for a non-sex offence but, once incarcerated, engages in sexual assault or sexually aggressive behaviour that is sufficiently intrusive to come to official notice. In some of these cases charges are unlikely (e.g., the offender is a “lifer”). If no sanction is applied to the offender, these offences are not counted. If the behaviour is sufficiently intrusive that it would most likely attract a criminal charge had the behaviour occurred in the community and the offender received some form of “in-house” sanction (e.g., administrative segregation, punitive solitary confinement, moved to a higher security prison or unit, etc.), these offences would count as charges on the Static-99R (see pages 36 to 37 for greater detail on what counts as equivalent to a charge). If that behaviour was a sexual crime, this would create a new index sex offence. However, if no sanction is noted for these behaviours, they cannot be used in scoring Static-99R.

### **Static-99R with Offenders who Aid in a Sex Offence**

Risk tools like Static-99R apply to individuals who have committed an offence with a sexual motivation against an identifiable victim. If the offence did not have sexual motivation, then it would be inappropriate to use Static-99R. For example, the offender may arrange for another offender to molest a

child but did not participate in the act for the purpose of sexual arousal (e.g., the motive may have been economic). It is also possible that the offender may want to watch a video of the molestation, which would indicate sexual motivation. It is appropriate to use Static-99R if, on a Balance of Probabilities (see page 19 for a definition of this term), it is believed that the offence had a sexual motivation.

### **Static-99R with Non-Caucasian Sex Offenders**

Although there is ample empirical support for risk factors and risk assessment tools among sex offenders, virtually all of this research has been conducted with samples of primarily Caucasian offenders.

Studies have found that Aboriginal (e.g., Babchishin, Blais, & Helmus, 2012), African-American (Varela, Boccaccini, Murrie, Caperton, & Gonzalez, 2013), and African-Asian offenders (Långström, 2004) score higher on Static-99R than Caucasian offenders, whereas Latino sex offenders score lower on Static-99R than Caucasian offenders (Varela et al., 2013). However, the fact that non-Caucasian offenders and Caucasian offenders exhibit differences on Static-99R risk factors does not mean that Static-99R predicts differently between these groups.

Table 1 (page 17) presents a summary of five studies which compared the relative predictive accuracy of Static-99R scores across racial groups. Despite a general trend of Static-99R scores predicting sexual recidivism better for Caucasian offenders (AUCs range from .57 to .86, *Mdn* = .76) than for non-Caucasian offenders (AUCs ranged from .52 to .79, *Mdn* = .70), the three studies that conducted comparison analyses did not find a statistically significant difference between groups. The variability of results, however, should be a consideration in applied risk assessments with sex offenders identified with an ethnic minority.

### **Static-99R and Offenders with Mental Health Issues**

The Static-99R samples contained significant numbers of individual offenders with major mental disorders. It is appropriate to use Static-99R to assess individuals with mental health issues, such as schizophrenia and mood disorders. A review of the literature has also generally found static risk scales to discriminate well among offenders with major mental illness (Kelley & Thornton, 2015). Although sex offenders with a history of psychiatric hospitalization are, on average, higher risk than other sex offenders, a history of psychiatric hospitalization provides limited information for risk prediction once established risk factors are considered (Lee & Hanson, 2016). In the Lee and Hanson (2016) dataset, Static-99R showed good discrimination for sexual recidivism among offenders with a history of psychiatric hospitalization (AUC = .76, 95% C.I. of .62 to .89, *n* = 108, with 17 recidivists). Given that mental health variables are generally not predictive of recidivism (Bonta, Blais, & Wilson, 2014), pending further calibration studies, there is no reason to suspect that the recidivism estimates for Static-99R would not be applicable to this subgroup.

### **Static-99R and Gender Transformation**

Static-99R is only recommended, at this time, for use with adult males. Male to female transgender clients are considered male until near end of the process. Specifically, to be considered no longer a male for Static-99R purposes, the individual must not have a penis and have lived for at least two years as a woman. Static-99R does not apply to female to male transgender offenders as they are outside the sampling frame of the scale.



Table 1

*Static-99R Studies Comparing the Relative Predictive Accuracy between Racial Groups*

| Study                                      | Country   | Comparison                     | Mean Follow-up | Scale      | Predictive Accuracy (Sexual Recidivism) |                       |                                   |                       |
|--|-----------|--------------------------------|----------------|------------|---|-----------------------|-----------------------------------|-----------------------|
|  |           |                                |                |            | <i>N</i> <sub>Caucasian</sub>           | AUC                   | <i>N</i> <sub>Non-Caucasian</sub> | AUC [95% CI]          |
| Babchishin et al. (2012) <sup>1</sup>      | Canada    | Non-Aboriginal vs. Aboriginal  | 6 years        | Static-99  | 1,269                                   | <b>.73</b> [.68, .77] | 319                               | <b>.70</b> [.62, .77] |
|  |           |                                |                | Static-99R |   |                       |                                   | <b>.74</b> [.70, .78] |
| Hanson, Lunetta et al. (2014) <sup>1</sup> | USA       | Caucasian vs. Hispanic         | 5 years        | Static-99  | 140                                     | <b>.86</b> [.72, .99] | 200                               | .75 [.40, 1.00]       |
|  |           |                                |                | Static-99R |   |                       |                                   | <b>.85</b> [.72, .98] |
|  |           | Caucasian vs. African American |                | Static-99  | 99                                      | <b>.86</b> [.72, .99] | <b>.75</b> [.55, .94]             |                       |
|  |           |                                |                | Static-99R |   |                       | <b>.85</b> [.72, .98]             | <b>.76</b> [.56, .97] |
| Långström (2004) <sup>2</sup>              | Sweden    | Nordic vs. Non-Nordic European | 6 years        | Static-99  | 1,085                                   | <b>.76</b> [.70, .84] | 49                                | <b>.79</b> [.59, .99] |
|  |           | Nordic vs. African Asian       |                | Static-99  | 1,085                                   | <b>.76</b> [.70, .84] | 128                               | .52 [.38, .65]        |
| Smallbone & Rallings (2013) <sup>2</sup>   | Australia | Non-Aboriginal vs. Aboriginal  | 29 months      | Static-99  | 320                                     | <b>.82</b> [.68, .91] | 67                                | <b>.76</b> [.61, .91] |
|  |           |                                |                | Static-99R |   |                       |                                   | <b>.79</b> [.68, .91] |
| Varela et al. (2013) <sup>1</sup>          | USA       | Caucasian vs. Hispanic         | 5 years        | Static-99  | 912                                     | .57 [.45, .70]        | 588                               | .59 [.45, .73]        |
|  |           |                                |                | Static-99R |   |                       |                                   | <b>.59</b> [.45, .72] |
|  |           | Caucasian vs. African American |                | Static-99  | 411                                     | .57 [.45, .70]        | <b>.58</b> [.43, .73]             |                       |
|  |           |                                |                | Static-99R |   |                       | <b>.59</b> [.45, .72]             | <b>.65</b> [.51, .78] |

*Note.* Bolded values denote that the Static-99R scores predicted sexual recidivism at  $p < .05$ .

<sup>1</sup>Conducted analyses comparing between groups and did not find a statistically significant difference between groups in Static-99/R predictive accuracy.

<sup>2</sup>Did not conduct analyses comparing between groups but concluded there was a difference in predictive accuracy.

## Information Required to Score Static-99R

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Although potentially useful, an interview with the offender is not necessary to score Static-99R.

Three basic types of information are required to score Static-99R: demographic information, an official criminal record, and victim information.

### **Demographic Information**

Two Static-99R items require demographic information. The offender's date of birth is required in order to determine age at release from the index sex offence. The second item that requires knowledge of demographic information is "Ever lived with an intimate partner – 2 years?" To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years prior to the index sex offence.

### **Official Criminal Record**

In order to score Static-99R, the evaluator must have access to an official criminal record as recorded by police, court, or correctional officials. From this official criminal record you score five of Static-99R's items: "Index non-sexual violence – Any convictions," "Prior non-sexual violence – Any convictions," "Prior sex offences," "Prior sentencing dates," and "Non-contact sex offences – Any convictions". Self-report is generally not acceptable to score these five items – in the Introduction section, see sub-section – "Self-report and Static-99R" (pages 8 to 9).

### **Victim Information**

Static-99R contains three victim information items: "Any unrelated victims," "Any stranger victims," and, "Any male victims." To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sex offences, the evaluator must know the gender and pre-offence degree of relationship between the victim and the offender. For additional information on handling missing information about victims, see page 77.

### **Polygraph Information**

Information derived solely from polygraph interviews or examinations (for example, information on victims or offence motivation) is normally not used to score Static-99R. The reason that polygraph information is excluded is that such information was not used in the development and validation of Static-99R. Polygraph-assisted disclosures typically provide greater diversity of victim types than gleaned from other sources; consequently, routinely including information from polygraph would inflate the scores compared to the procedures used to score Static-99R in the development and validation samples.

Where an admission is initially made in preparation for a polygraph examination, during the pre-polygraph interview, during a post-polygraph interview, or subsequent to testing deceptive on a polygraph examination, it would normally not be counted in scoring the Static-99R, regardless of whether it was subsequently repeated in treatment or in interviews. The one exception to this is where the disclosure eventually becomes sufficiently detailed that it essentially amounts to a confession of a specific criminal offense sufficient to make a new criminal investigation practical if the authorities were so minded. For example, "when I was 23, I sexually abused a 5 year old male by sucking his penis" would not be sufficiently detailed while "on January 15th 2013, in Marlborough, MA, when visiting with relatives Mark and Mary Smith, I sexually abused their 5 year old son by sucking his penis" would be sufficiently specific to count

## **Standards of Proof and Coding Static-99R**

“Standard of proof” is a legal concept that basically means “how sure are you” about something. Although the use of the terms in this manual will not always match that used by courts and related tribunals or administrative bodies, this terminology is nonetheless useful in establishing some general coding principles when dealing with the information in front of you. Legal systems vary, but most Western jurisdictions have the following three standards of proof:

- **Beyond a Reasonable Doubt**: This is the highest standard. It requires near certainty and is the standard necessary for criminal convictions and other high-stakes decisions.
- **Balance of Probabilities (a.k.a., Preponderance of Evidence)**: This is the lowest standard. It is common in civil cases and basically means “more likely than not,” or at least 51% certainty.
- **Clear and Convincing Evidence (a.k.a., Clear and Convincing Proof)**: This less-common and infrequently used standard has a higher threshold than Balance of Probabilities, but it is not quite as stringent as Beyond a Reasonable Doubt.

There are two general types of decisions involved in scoring Static-99R. The first involves whether something counts as a conviction/sentencing date. Generally, a sentencing occasion requires a criminal conviction or its equivalent (which is subject to the Beyond a Reasonable Doubt standard). Some “findings of guilt” occur outside the criminal justice system (e.g., priests, military) and special rules apply; minimally, the Clear and Convincing Evidence standard should be met. Decisions based on a Balance of Probabilities are generally insufficient to be counted as a sentencing occasion.

Aside from the issue of whether something “counts” as a conviction or sentencing occasion, most other coding decisions are subject to the Balance of Probabilities standard (e.g., Is this victim a stranger? Was this offence sexually motivated? Would this behavior be subject to criminal sanction if the offender was not already on parole/probation?).

## Definitions

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### **Sex Offence**

For the purposes of a Static-99R assessment a sex offence is an officially recorded sexual misbehaviour or criminal behaviour with sexual intent. To be considered a sex offence the sexual misbehaviour must result in some form of criminal justice intervention (e.g., an arrest or charge) or official sanction (e.g., conviction). For people already engaged in the criminal justice system the sexual misbehaviour must be serious enough that individuals could be charged with a sex offence if they were not already under legal sanction. **Do not count offences such as failure to register as a sex offender or consenting sex in prison.**

Sex offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances; please refer to the Introduction section – sub-section “Self-report and Static-99R.” Self-reported offences that are subsequently discussed in a professional report are not considered “official records.” However, a professional report that mentions a previous charge/conviction can count, if it is considered credible that an official record did/does in fact exist and has been obtained by a professional during a previous contact (e.g., if juvenile criminal records are no longer available, but a previous probation report mentions accessing that record and notes a charge or conviction).

An offence need not be called “sexual” in its legal title or definition for a charge or conviction to be considered a sex offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sex offences on Static-99R, regardless of the offender’s motive. Offences that directly involve illegal sexual behaviour are counted as sex offences even when the legal process has led to a “non-sexual” charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter but police reports indicate the offender’s intent was to steal underwear to use for fetishistic purposes, or the offender is convicted of Disorderly Conduct for approaching a child and making sexual comments.

In addition, offences that involve non-sexual behaviour are counted as sex offences if they had a sexual motive and are part of the same continuous event. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sex offence. Similarly, consider a man who strangles a woman to gain sexual compliance but only gets charged with assault; this assault charge would still be considered a sex offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, assaults “pled down” from sexual assaults, and credible threats that are specific to a sex offence (e.g., ‘if you don’t do as I say, I will rape you’).

Note, however, that not all charges and convictions that are part of the sentencing occasion (see definition on pages 28 to 37) for a sex offence will count as sexual. To count them as sexual, they should be part of the sexual motivation of the offence, or clearly part of the commission of the sex offence. For example, an offender is convicted of Breaking and Entering, Theft, and Rape, and the offence was that he broke into a house, stole some items, and also sexually assaulted the resident. In this example, the Breaking and Entering and Theft were not part of the sex offence and would not be counted as sex offence charges or convictions. If the offender was also convicted of Forcible Confinement for keeping the victim in the

house to facilitate the sexual assault, the Forcible Confinement would be counted as a sex offence charge and conviction. If, however, he locked the victim's boyfriend in the bathroom while he committed the sex offence, the Forcible Confinement would not be counted as sexual. If there is evidence that a sex offence charge has been pled down to solely a non-sexual charge/conviction then it can count as a sex offence charge and conviction. For example if there is evidence the intent of the Break and Enter was to steal panties but this was pled down only to a Break and Enter conviction, then the Break and Enter is counted as a sexual charge and conviction.

Non-sexually motivated physical assaults, threats of non-sexual violence, and stalking motivated by sexual jealousy do not count as sex offences when scoring Static-99R.

### **Additional Charges**

Offences that may not be specifically sexual in nature, occurring at the same time as the sex offence, and under certain conditions, may be considered part of the sexual misbehaviour. Examples of this would include an offender being charged with/convicted of the following:

- Sexual Assault (rape) in one section of the criminal code and False Imprisonment as a separate conviction from a separate non-sexual section of the criminal code.
- Sexual Assault (rape) and Kidnapping
- Sexual Assault (rape) and Battery

For a conviction to count as both non-sexual violence and a sex offence, the non-sexual violence behaviour must be part of the sex offence (e.g., same victim) and part of the behaviour necessary to achieve the sexual assault (e.g., the offender assaults the victim in order to gain compliance with the sexual behaviour). In instances such as these, the offender would be coded as having been convicted of two sex offences plus scoring in another item (index or prior non-sexual violence). For example, if an offender were convicted of any of the three examples above prior to the current "index" offence, the offender would score two prior sex offence charges and two prior sex offence convictions (On Item #5 – Prior Sex Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-Sexual Violence" or "Index Non-Sexual Violence" for a further explanation). If, on the other hand, the non-sexual violence was distinct from the sex offence (e.g., offender rapes a woman and then during his escape assaults a bystander), the conviction for Assault would be scored only as non-sexual violence and not both non-sexual violence and a sex offence.

### **Category "A" and Category "B" Offences**

For the purposes of Static-99R, sexual misbehaviours are divided into two categories. Category "A" offences involve most criminal charges that we generally consider "sex offences" and that involve an identifiable child or non-consenting adult victim. This does not mean the evaluator must know the personal identity of the victim(s). It means it must be clear that the intent of the offender was to target a being (child, adult, or animal), even if the personal identity of that person is unknown to the evaluator or even the offender. For example, an offender who surreptitiously takes photographs underneath women's skirts (i.e., "upskirt" photos or videos) has identifiable victims (the women whose privacy he has violated) even if the personal identity of those women is never ascertained. For internet offences as per the sections on victim items (pages 74 to 78), the victim is identified as the person the offender believes he is in contact with (e.g., a female child), even if the person on the receiving end of the communication is actually an adult police officer. Category "A" offences include contact offences, including sex with animals and dead bodies, and some non-contact offences with clear victims such as exposure to others, voyeurism, B&E (breaking and entering) with a sexual intent (e.g., stealing underwear), and some internet offences (e.g., solicitation offences).

Category “B” offences are typically identified by two main criteria: a) sexual behaviour that is illegal but the parties are consenting or no specific victim is involved and b) indecency without a sexual motive. Category “B” offences include consenting sex in public places, possession of pornography (including child pornography), failure to disclose HIV status, and all prostitution, pimping and related offences with the exception of paying for the sexual services of an individual incapable of providing consent (underage, mentally incompetent), which is a Category “A” sex offence. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category “B” offences. Behaviours that are revenge or anger motivated but have a sexual connotation can also be Category “B” offences for scoring purposes. An example includes distributing obscene images of a person without their consent (revenge porn).

Online sexual threats that are sufficiently serious to warrant a criminal charge can be scored as Category “A” or Category “B” sex offences, depending on the circumstances. Category “A” sexual threats would include those that are evaluated as a credible threat against an identifiable victim. Category “B” sexual threats are more impersonal, generic threats that can be perceived as sexually threatening but there is doubt that the threat could realistically be carried out (e.g., rape threats made anonymously online, typically to someone who is a stranger and lives in a different city). Behaviours that are not criminal in nature and would not result in criminal charges for someone not already involved in the criminal justice system, such as making offensive comments with some sexual connotation (e.g., an offender telling a female officer to “suck my dick” out of anger) do not count as a sex offence (Category “A” or “B”) even if the behaviour results in an institutional violation with a sanction.

Similar-age sexting (i.e., sending sexually explicit photos or messages, typically by phone) between underage peers that results in a criminal charge is scored as a Category “B” sex offence if the sexting is shared with other peers (e.g., other boys) but is not scored as a sex offence if the sexting is solely between the two underage peers (i.e., sender and receiver.)

“Publicity obscenities” (e.g., rude sexual comments made into a female journalist’s microphone) or other clearly attention seeking behaviours would not be counted as a sex offence for scoring purposes even if they result in criminal charges.

Evaluators should keep in mind that although many Category “B” offences are “non-contact” offences, as noted above, some non-contact offences, such as exhibitionism and voyeurism, are Category “A” offences.

**Rule:** if the offender has **any** Category “A” offences on their record - all Category “B” offences should be counted as sex offences for the purpose of scoring prior sex offences or identifying the Index offence. Category “B” offences do not count for the purpose of scoring victim type items (with the exception of victims from non-disclosure of HIV status). Static-99R should not be used with offenders who have only Category “B” offences.

Offence names and legalities differ from jurisdiction to jurisdiction and a given sexual behaviour may be associated with a different charge in a different jurisdiction. The following is a list of offences that would typically be considered sexual. Other offence names may qualify when they denote sexual intent or sexual misbehaviour.

#### **Category “A” Offences**

- Aggravated Sexual Assault
- Attempted sex offences (Attempted Rape, Attempted Sexual Assault)

- Compelling the commission of any sex offences (bestiality, incest, or sexual assault) or other sexual behaviour (e.g., flashing on a webcam), regardless of whether it is compelled in person or via the internet
- Conspiracy to commit a Category “A” sex offence
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Distributing obscene materials to minors (no economic motive; presume that intent is sexual unless there is clear economic motive)
- Covert photography (victim is person being photographed) for sexual purpose
- Exhibitionism (if the behaviour involved no sexual motive, this would count as a Category “B” offence; see indecent behaviour without sexual motive)
- Facilitating a sex offence with a controlled substance/Giving a noxious substance (when the purpose of giving the substance is to facilitate a sex offence)
- Forced oral copulation
- Forced penetration with a foreign object
- Incest
- Indecent Exposure
- Invitation to Sexual Touching
- Internet Luring
- Juvenile sex tourism (travelling to another country in order to engage in sexual behaviour with juveniles that is illegal in the country of origin)
- Lewd or Lascivious Acts with a Child
- Manufacturing/Creating Child Pornography where an identifiable child victim was used in the process. The offender must participate in the creation of the child pornography with a human child by being physically present or via the internet, such as in cases where the offender is watching sexual abuse occurring live on the internet. Remote creation of the child sexual abuse images without the offender present or watching the abuse live can be considered Category “A” if the offender directed or requested specific photographs or scenes to be created and the resulting child abuse images were shared with him or others. Obscene written stories that involve the sexual abuse of an identifiable child are considered a Category “A” sex offence if the stories are shared with others. If the obscene stories are solely for the offender’s own use then any charges/convictions are scored as a Category “B” sex offence. Similarly, digital creation of child abuse images (e.g., by super-imposing photos of a real child onto existing child pornography images) is counted as a Category “B” offence.
- Molest children
- Obscene phone calls
- Online Solicitation
- Paying for the sexual service of a minor/developmentally delayed person
- Rape (includes in concert. Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved by holding the victim down)
- Requesting feces or urine for the purpose of masturbation
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual Battery
- Sexual Communication with a Minor
- Sexual Homicide
- Sex offences against animals (Bestiality)
- Sex offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a minor; excludes consenting sexual activity among adults)

- Unlawful sexual intercourse with a minor (unless it falls under the category of consenting sex among similar age peers – see page 76).
- Voyeuristic activity (Trespass by Night)

### Category “B” Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images or digital creation of pornography are used).
- Possession of Child Pornography (digital, child bots, written stories including those that are for the offender’s own use and not shared, drawings that did not involve a live child model, avatars)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Not informing a sexual partner of HIV positive status (even if the charge/conviction indicates a Category “A” offence such as Aggravated Sexual Assault; note this is an exception in which the victim information can be used to score the victim items)
- Polygamy
- Prostitution-related offences
  - Offering prostitution services
  - Pimping/Pandering
  - Profiting from child prostitution
  - Coercing others into sex trade
  - Seeking/hiring prostitutes (unless this involved paying a minor for sexual services)
  - Solicitation of a prostitute (unless this involved soliciting a minor for prostitution)
  - Selling pornography to minors (giving pornography to minors for free is assumed to have a sexual intent and is considered Category “A”)
- Revenge or anger motivated behaviours with a sexual aspect (e.g., distributing obscene images without consent, such as “revenge porn”)
- “Sexting” (primarily sending sexual images of an underage person) shared with others without the original person’s consent (consensual sexting between two peers is not considered a sex offence for scoring purposes even if it results in a charge)
- Statutory Rape offences - refer to the section "Who can you use Static-99R on?" (page 12 for more details).

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place (with the exception of juvenile sex tourism, which is counted as a Category “A” offence). Consider the case of an offender who lived in Nevada where prostitution was legal, and who had an old prostitution conviction from California. Currently the offender is being supervised in the community for a sexual assault conviction. If he is supervised in Nevada, the prostitution offence would not count. But if he moved to California and was supervised there, then it would count.

In regard to the Category “B” offence of not informing a sexual partner of HIV positive status, in some jurisdictions this offence is prosecuted as Aggravated Sexual Assault or as another charge that is typically considered a Category “A” sex offence. Regardless of the name of the offence, the behaviour of not disclosing HIV positive status to an otherwise consenting partner is a Category “B” offence. However, this offence is unusual for Category “B” offences as it includes an identifiable victim. Consequently, victim information is scored for this (and only this) Category “B” offence.



Prostitution and pimping offences are considered Category “B” offences, with the exception of paying for the sexual service of a minor, which is a Category “A” offence. In contrast, profiting from the child prostitution is a Category “B” offence.

### **Exclusions**

The following offences would not normally be considered sex offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency)
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children’s clothing, pictures, toys
- Stalking (unless sex offence appears imminent, please see definition of “Truly Imminent” below)
- Reports to or investigations by child protection services (without charges)
- Non-sexual breaches of community supervision conditions such as alcohol or drug use

**Rule:** Simple questioning by police or child service authorities not leading to an arrest or charge is insufficient to count as a sex offence, even if the child protection services consider the case “founded”

### **Probation, Parole or Conditional Release Violations as Sex Offences**

**Rule:** Probation, parole, or conditional release violations resulting in arrest or revocation/breach are considered sex offences when the behaviour could have resulted in a charge/conviction for a sex offence if the offender were not already under legal sanction and the behaviour results in a sanction.

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sex offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the index offence if they were the offender’s most recent criminal justice intervention for a sex offence (and for possession of child pornography, if the offender has also had a Category “A” offence somewhere on their record). The violation must result in a "sanction," such as a suspension or revocation of conditional release, and not be limited to an investigation or report. For discussion of when these violations count as equivalent to a charge versus a conviction/sentencing date, see pages 29 to 31.

Generally, violations due to “high-risk” behaviour would not be considered sex offences. The most common of these occurs when the offender has a condition not to be in the presence of children but is nevertheless charged with a breach - being in the presence of children. A breach of this nature would not be considered a sex offence. This is a technical violation. The issue that determines if a violation of conditional release is a sex offence or not is whether a person who has never been convicted of a sex offence could be charged and convicted of the breach behaviour. A person who has never faced criminal sanction could not be charged with being in the presence of minors; hence, because a non-criminal could not be charged with this offence, it is a technical violation. Non-sexual probation, parole, and conditional release violations, and charges and convictions such as property offences or drug offences are not counted as sex offences, even when they occur at the same time as sex offences, or during community supervision for a sex offence conviction. Do not count offences such as failure to register as a sex offender, being in the presence of minors, or violations of alcohol or drug abstinence conditions.

Taking the above into consideration, some high-risk behaviour may count as a sex offence if the risk for sex offence recidivism was truly imminent and an offence failed to occur only due to chance factors, such as detection by the supervision officer or resistance of the victim (see definition below).

### **Definition of “Truly Imminent”**

For an offence to be truly imminent, it should be established based on Clear and Convincing Evidence (see page 19 for definition of thresholds of proof) that a sex offence would have occurred as part of the same behavioural sequence (minutes to hours) but for the detection and intervention from others. Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a “naked wrestling game.” Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car. A real case in the Static-99 research samples involved an offender who was convicted for a technical violation for bringing a mattress into a ladies’ washroom. Here, the intent was clearly to rape a woman, but he was interrupted by security officials. A sex offender being in the presence of children, even against his conditions of community release, is not considered “truly imminent” as the offender may choose not to molest for an indefinite period of time or even at all. Being in the presence of minor would only qualify as “truly imminent” if there was other convincing evidence, such as stated intentions to offend, or material preparations.

### **Institutional Rule Violations**

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sex offence would be possible were the offender not already under legal sanction. In other words, “if he did it on the outside would he get charged for it?” Institutional disciplinary reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody **count as a charge**. Poorly timed or insensitive homosexual advances, consenting sexual interactions with another offender, or consenting sexual interactions with a visitor would not count even though this type of behaviour might attract institutional sanctions. The exception would be if the sexual behaviour was so flagrant that it seemed clear the offender wanted someone to witness the sexual interaction (see the discussion of targeted versus non-targeted activity below). This would be more akin to a form of exhibitionism. The second condition is that the evaluator must be sure that the sexual misbehaviour actually occurred (based on a Clear and Convincing Evidence threshold – see page 19), and the third condition is that it is clear the institutional punishment was in response to the sexual misbehaviour (based on the Clear and Convincing Evidence threshold - see page 19). Finally, if the punishment is an institutional move, it must also be clear that the move is to a more secure environment and not a parallel move.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports (with sanctions) that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a “charge” and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a disciplinary report. Violations of this “non-targeted” nature do not count as a “charge” and could not stand as an index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

- (1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of Static-99R, even if a disciplinary charge and institutional punishment resulted.
- (2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sex offence for the purposes of scoring Static-99R if it resulted in an institutional punishment.

An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring Static-99R, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.

**Rule: Prison misconducts and institutional rule violations for sexual misbehaviours count as one charge per sentence**

Prison misconducts for sexual misbehaviours count as one charge per sentence, **even if there are multiple incidents and sanctions**. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sex offences, such as rape and attempted rape, will generally result in official criminal charges. Official criminal charges for behaviours that occurred in prison are exempt from the one-charge-per-sentence rule.

If the offender is released and then returned to prison under the same sentence, subsequent misconducts and institutional rule violations for sexual misbehaviours following the return to prison on the same sentence would be clustered with any misconducts or rule violations from prior to the return (even if they are separate instances), and would all count as one charge for this sentence. Similarly, if an offender is civilly committed directly from prison, time spent in civil commitment would count as part of the original sentence.

**Similar Fact Crimes**

Sometimes an offence may not have included a sexual component, but on the basis of the offender's pattern of offending, it may be possible to conclude that the offence was sexually motivated. For example, an offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sex offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sex offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sex offence. **Note:** This crime would also count as Non-Sexual Violence.

Please also read subsection "Coding Crime Sprees" in section "Item #5 – Prior Sex Offences" (page 65).

**Noxious Substance or Giving Alcohol to a Minor**

The charge or conviction for giving a noxious substance (or its equivalent, drugs, alcohol, or other stupeficient) can count as a sex offence if the substance was given with the intention of making it easier to commit a sex offence. If there was evidence that the substance was given to the victim just prior to a sexual assault with the intent to facilitate a sex offence, this would count as a sex offence. If there was no evidence about what went on, or the temporal sequence of events, the “giving of noxious substance” would not count as a sex offence.

### **What Counts as a Conviction/Sentencing Date Versus a Charge**

Some items or coding decisions require a charge to be present, whereas others require a conviction or sentencing date to be present. Here we discuss which criteria must be met for something to count as a charge or to count as a conviction/sentencing date. For Static-99R coding purposes, the criteria for what counts as a conviction or sentencing date are the same. The primary distinction is that a single sentencing date may include several convictions. For the item “prior sex offences,” you count EACH conviction, even if there are multiple convictions on the same sentencing date. For the item “prior sentencing dates,” the unit that is being counted is the sentencing date, not the number of convictions. So if an offender is convicted of six sex offences on a single day (e.g., two convictions for child molestation and four convictions for child luring), that would count as six convictions for the “prior sex offences” item and one sentencing date for the “prior sentencing dates item” (this applies whether the offender is sentenced on the same day as he is convicted, or at a later date). So convictions and sentencing dates are counted up differently, but something that meets the criteria for a conviction will meet the criteria of a sentencing date (and vice versa).

Charges follow a lower threshold than convictions and sentencing dates. Anything that counts as a conviction or sentencing date would also count as a charge. Additionally, there are many other circumstances that count as a charge, but not as a conviction or sentencing date. The sections below will provide examples of what counts as a conviction or sentencing date, and then what additionally counts as a charge.

### **Conviction/Sentencing Date**

A conviction or sentencing date is typically when the offender attends court, admits to the offence or is found guilty, and receives some form of sanction (fine, prison, conditional sentence). A determination of disposition by a court following a finding of not criminally responsible due to mental disorder (or its equivalent) also counts as a conviction/sentencing date if that disposition involves either institutional and/or mandated community sanction/care. Offenders may be convicted of more than one offence at the same sentencing date. Offenders may go to court and receive more than one sentence for a single crime spree. In this case, all convictions related to the same crime spree count as one sentencing date. Count both adult and juvenile offences. If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication (i.e., an alternative sanction), this counts as a sentencing date. Examples include what has been termed restorative justice, reparations, family group conferencing, community sentencing circles. In England, an official caution counts as a sentencing date.

Sanctions for a conviction may include the following:

- Alternative resolution agreements (e.g., restorative justice)
- Community supervision
- Conditional or absolute discharges
- Fines
- Imprisonment
- Community-based Justice Committee Agreements

**Count** as convictions:

- Juvenile offences count (if there is official documentation available confirming them)
- Where applicable, “Probation before judgement” counts as a conviction
- Where applicable, “Consent decree” counts as a conviction
- Suspended sentences count as a conviction
- Misdemeanors

Do not count very minor offences for which it would be impossible to go to jail or to receive a community sentence (e.g., drinking under age, speeding). In Canada, all criminal code offences would be deemed serious enough to count; in contrast, most municipal by-laws would be of insufficient seriousness to count (e.g., parking, zoning infractions, keeping animals in the city). Graduated penalty offences (see below) are counted if it is at all possible to receive a custodial sentence, even if not on the first offence.

**Determining Whether Something is a Conviction**

A conviction requires a) a court or administrative tribunal using due process, resulting in b) an admission or finding of guilt and c) a sanction. This threshold is fairly high; arrests and charges (without convictions) do not count. The finding of guilt should be Beyond a Reasonable Doubt (i.e., a legal standard that generally refers to near certainty that the offence happened; see page 19 for additional information on standards of proof). It is possible to use a lesser criterion of Clear and Convincing Evidence (i.e., a legal standard with a higher threshold than Balance of Probabilities but lower than Beyond a Reasonable Doubt) for sanctions administered outside of the criminal justice system (e.g., Canon law for priests, military court martial, civil commitment procedures for the mentally ill). Institutional rule violations (e.g., prison misconducts), however, are insufficient to meet the standard of Clear and Convincing Evidence. Many of these special circumstances are addressed in subsections below.

Most convictions and sentencing dates are easy to identify (there is a conviction for a criminal offence, accompanied by a sanction). Sometimes an evaluator must make a decision about a situation that does not clearly fall under one of the rules outlined in the manual. In these circumstances, it is helpful to refer to the essential features articulated above.

Within the criminal justice system, a finding of guilt has a relatively clear meaning (something equivalent to a conviction) and a specific due process associated with that finding, such that our confidence in that finding is high. Establishing the equivalent of a finding of guilt outside typical criminal courts requires a consideration of the standard of proof and the due process involved in that finding (keeping in mind that there will be variability in the terminology used by many decision-making bodies). Beyond a Reasonable Doubt is a high standard of proof and findings of guilt using this standard would generally count, but this standard is rarely used outside criminal trials. However, to count something as a conviction, you would want to see a finding of guilt based on a standard that is higher than a Balance of Probabilities. As such, decisions based on a standard equivalent to or higher than Clear and Convincing Evidence could be considered convictions. It is also helpful to consider the due process involved in the finding of guilt. In criminal cases, accused parties have due process rights, including the right to hear the evidence against them and to have their side heard. Generally, to count something as a conviction, you would want to see those basic elements of due process present in some form (exact rules may vary).

**Probation, Parole, or Conditional Release Violation**

Generally, a probation, parole, or conditional release violation would count as equivalent to a charge and may be counted as an index sex offence (defined further on page 38). In some circumstances (defined

below), it could be counted as a conviction. If it does not meet the criteria to be considered a conviction, it can still be counted as a charge (which is the presumed default option).

In Static-99R, to be considered a conviction or sentencing date, at least one aspect of the offending behaviour must be an offence that would normally result in arrest and conviction had the offender not already been under sanction (this will be discussed further below). As well, there are additional criteria for probation and parole violations. A violation of a probation order counts as a conviction and a sentencing occasion if there is a court hearing, finding of guilt, and a new sanction. The name of the charge can be "violation of probation" as long as the evaluator is reasonably certain at least one aspect of the underlying behaviour was a crime, not just a technical violation. A parole violation counts as a conviction when a paroling authority functioning as a quasi-judicial body determines that:

a) the offender has committed a criminal offence that would normally result in arrest and conviction, and  
 b) the offender is required to remain in custody after the determination of guilt (not just time served; time served refers to time spent detained in custody prior to sentencing). Simply having parole revoked without a finding of guilt for new offending does not count as a sentencing occasion.

In the absence of information on the nature of any conditional release violation, the following rules apply:

- (a) If the sanction for the violation involved custodial time being ADDED to the offender's pre-existing sentence, the behaviour will be presumed to have been serious enough to count as an offence (and therefore a sentencing occasion).
- (b) For parole violations, if the offender was returned to custody to serve all or part of the time remaining on the pre-existing sentence but nothing more, then presume it was solely a technical violation.
- (c) If the offender was on probation and the sanction for the violation involved any time in custody (either time served or a custodial sentence; time served refers to time spent detained in custody prior to sentencing), the behaviour will be presumed to be serious enough to count as an offence (and conviction). Otherwise, assume it was solely a technical violation.

Charges or convictions for parole or probation violations can only count as a sexual charge or conviction if the underlying behaviour is a sex offence that would normally result in arrest (to count as a charge) and conviction (to count as a conviction) had the offender not already been under sanction. Sentencing for "technical" violations do not count as new sentencing occasions for a sex offence, or as a charge for a sex offence. For example, if an offender had a condition prohibiting being in the presence of children, a breach (violation) of this condition would not be counted as a new sentencing occasion or as a sex offence charge.

There are rare circumstances when behaviour resulting in a purely "technical" breach can be considered a sentencing occasion if the behaviour was clearly an attempted sex offence. This can occur in either of two circumstances: (a) in some jurisdictions the person may be charged with a new sex offence, but after his conditional release is revoked (breached) and he is sent back to prison with a substantial remaining sentence, the charges are dismissed by the prosecutor who decides there is little more to be gained by pursuing the new conviction; or (b) very restricted, uncontroversial cases where it is clear that an offence would have occurred had it not been for the intervention of a third party or for the resistance of the victim. For example, the offender is caught luring a child using the same modus operandi of his previous offences, or the offender is caught alone with a child and has a rape kit in his possession (see definition of "Truly Imminent" on page 26 for further examples). Note that merely being in the presence of children without supervision could not be considered a sex offence because it is not certain that an offence would have occurred had there not been some form of intervention. Note that the threshold to consider a breach as a sexual sentencing occasion is extremely high and the sex offence must be imminent. Being in the presence of children, failing to register, and the like are not considered sexual sentencing occasions.

For "lifers" or others serving indeterminate sentences, release violations may be scored as a charge, conviction, and sentencing date [please see section below on "Revocation of Conditional Release for 'Lifers', Dangerous Offenders, and others with indeterminate sentences" below].

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge. Note that this differs for counting institutional misconducts, where multiple events in a sentence are only counted as one charge.

However, multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge if the charges are filed all together, even if there were multiple sex violations. To count parole or probation violations as separate charges, the offender would need to have committed the violation behaviour after receiving the formal sanction for the previous misbehaviour.

These rules about counting multiple violations apply regardless of whether the criminal behaviour is sexual or non-sexual (e.g., non-sexual violence), or whether the violations meet the criteria of a conviction or a charge (although note that for all items except "prior sex offences," a conviction would be required to score the item).

### **Revocation of Conditional Release for "Lifers," Dangerous Offenders, and Others with Indeterminate Sentences**

Occasionally, offenders on conditional release in the community who have a life sentence, who have been designated as Dangerous Offenders (Criminal Code of Canada, S. 753), or other offenders with indeterminate sentences either commit a new offence or breach their release conditions while in the community. Sometimes, when this happens the offenders have their conditional releases revoked and are simply returned to prison rather than being charged with a new offence or violation. Generally, this is done to save time and court resources as these offenders are already under sentence.

If a "lifer," Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour this can be considered equivalent to a conviction if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged and convicted with a criminal offence given the same behaviour (and if the offence was sexually motivated, this would also be considered a sex offence, and a potential index offence). Note: the evaluator should be confident that were this offender not already under sanction that it is highly likely that a charge would be laid by police and a conviction would be likely. This section essentially lowers the threshold for counting parole violations as convictions compared to non-lifers. For non-lifers, the rules in the previous section apply.

### **Adjudication Withheld/Sanction Without Conviction**

In some jurisdictions it is possible to have a disposition of "Adjudication Withheld," in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence (a consequence representing a loss of freedom and/or some other cost) was given. When it is clear that a determination has been made by a judge that an offence was committed, it counts as a conviction even if adjudication is withheld or other language is used (e.g., "without conviction"), as long as there is still some kind of sanction (e.g., supervision).

### **Clergy, Military, and Other Professions**

For members of the military or religious groups (e.g., clergy) and regulated professionals some investigative processes, parallel legal processes, and movements within their own organizations can count as charges or convictions and hence, index or prior sex offences. First, the behaviour must be equivalent to a criminal code offence (something for which someone outside of that organization would be criminally charged). A complaint to a professional regulatory body (e.g., College of Physicians and Surgeons) that results in an investigation does not count as a charge because regulatory bodies are statutorily required to investigate all allegations. However, if following the investigation, the regulatory body decides there are reasonable and probable grounds that an offence occurred and this results in a sanction against the member, then this may count as a charge but not a conviction. In military law or church canon law (i.e., where there is an officially determined and parallel justice system), allegations that result in an investigation and parallel legal process may count as charges. When the parallel legal process results in a clear sanction this may also count as a conviction and sentencing date. Examples include the “de-frocking” of a priest or minister. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender’s problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and, therefore, a sentencing date.

For members of the military, a religious group (clergy), or teachers (and similar professions) being transferred to a new parish/school/post, being given an administrative post away from the public with no formal sanction, or being sent to graduate school for re-training does not count as a charge or conviction. Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction, these moves would not count as charges or convictions.

In the military, if an offender is given a sanction (military brig, lowered rank, or similar) for an offence this counts as a charge, conviction, and sentencing date. If an “undesirable discharge” or an equivalent sanction is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military), this counts as a charge, conviction and sentencing date as well. However, if the member left the military when he normally would have and the “undesirable discharge” is equivalent to a bad job reference, then the criminal behaviour would not count as a charge, conviction, or sentencing date. Pure military offences (conduct unbecoming, insubordination, not following a lawful order, dereliction of duty, etc.) do not count when scoring Static-99R.

### **Conditional/Absolute Discharges**

Where an offender has been charged with an offence and receives a conditional or absolute discharge, for the purposes of Static-99R a discharge counts as a conviction. (A conditional discharge can occur in Canada when a person is found guilty of an offence but is given conditions for release into the community that, if followed, result in the conviction being removed from their record. An absolute discharge is similar, but without the conditions.)

### **Consent Decree**

Consent Decree counts as a conviction.

### **Court Supervision**



In some states it is possible to receive a sentence of court supervision, where the court provides some degree of minimal supervision for a period (e.g., one year). This is similar to probation and counts as a conviction.

### **Diversionsary Adjudication**

If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication, this counts as a conviction. Examples include what has been termed restorative justice, reparations, family group conferencing, treatment courts, and community sentencing circles. It is not uncommon for an alternative sanction to be determined and for formal criminal justice processing to be deferred to a later date. For example, an offender may be required to attend treatment, and, if successful, would expect to receive a lenient sentence at a later date (or the charges would be dropped). In these cases, the initial diversionary determination would be considered as the conviction date.

### **Extension of Sentence by a Parole Board (or similar)**

If an offender is assigned extra time added to his sentence by a parole board for a new offence this counts as an additional conviction if the new time extended the total sentence. This would not count as a conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date (these situations would, however, count as a charge). This situation is presently not possible in Canada. The only exception to this rule is for “Lifers,” Dangerous Offenders, and others with indeterminate sentences. For offenders with indeterminate sentences, if their parole is revoked and they are returned to prison for a new offence, this counts as a conviction. The rationale for this difference is that in general, the standard of proof necessary to return an offender to prison without adding additional time to their sentence is insufficient to meet the standards that typically define a conviction. However, for offenders with an indeterminate sentence, even when there is enough evidence to obtain a conviction, it is rare to charge the offender with the new offence.

### **Failure to Register as a Sex Offender**

If an offender receives a formal legal sanction, having been convicted of Failing to Register as a Sex Offender, this conviction would count as a sentencing date. However, it should be noted that charges and convictions for Failure to Register as a Sex Offender are not counted as sex offences.

### **Graduated Penalty Offences**

In some jurisdictions, an offence committed once is not punishable by jail or a community sentence, but can only be punished by a fine. Further offending of the same type, however, can lead to a jail sentence. For example, a first offence of driving while intoxicated (or under the influence) may maximally lead to a fine, but subsequent adjudications of guilty for driving while intoxicated (or under the influence) can each result in a jail sentence. If a behaviour can eventually lead to jail and/or community supervision, it can count as a charge or conviction.

### **Juveniles**

All justice systems recognize that children have diminished criminal responsibility, although the specific thresholds vary. Most jurisdictions specify an age at which children have no criminal responsibility, and one or more thresholds at which young people have diminished responsibility. For Static-99R scoring purposes, do not count any offences committed at age 11 or younger, regardless of whether the child was considered criminally responsible in that jurisdiction. Furthermore, do not count offences if the child was 12 or older at the time of the offence but still below the absolute threshold for criminal responsibility in

that jurisdiction (e.g., in jurisdictions where children cannot be charged with a criminal offence prior to the age of 14). For Static-99R scoring purposes, all offences committed at age 18 or older are counted as adult offences (full criminal responsibility), regardless of whether the charges were processed in a separate system for young offenders (e.g., some jurisdictions extend juveniles courts to age 21).

Between the ages of 12 and 17, many jurisdictions distinguish between youth who have committed crimes that should be managed according to the goals of child welfare (e.g., out-of-home placements, special schools) and youth that should be managed as young offenders (charges, convictions, probation, open custody, secure custody). When the jurisdiction allows for juveniles to be considered as young offenders, and the young person's crimes are addressed in that way, juvenile charges, convictions and sentencing occasions are counted the same way as adult offences.

On the other hand, when the crimes are addressed through the juvenile care systems (e.g., social services), certain interventions can be counted as a charge. Specifically, placement in a secure setting or transfer to a more secure setting could count as a charge. Note that any specific intervention (placement, transfer) would only count as one charge, regardless of the number of criminal instances motivating the intervention.

For offences committed between ages 12 and 15, count only one charge regardless of the number of actual offences committed or interventions applied. Consequently, the maximum possible score for the Static-99R item Prior Sexual Offences based on social service interventions for behaviour committed at age 15 or younger is one (one charge). For social service interventions connected to sexual offences committed at age 16 or older, each intervention is counted as a separate charge (the usual maximum of 3 is possible).

Transfers can count as charges if the criminal behaviour is sufficiently serious that someone outside of the juvenile system would be charged (criminal code level), if the transfer was in response to the criminal behaviour (based on the Clear and Convincing Evidence threshold; see page 19), AND if the transfer was to a more secure setting (based on the Clear and Convincing Evidence threshold). Instances in which juveniles (ages 12–17) are placed into residential care for aggression (sexual or otherwise) would count as a charge. In such instances, the young person is managed by the juvenile care system (social system) as an alternative to a juvenile justice system (not charged, tried, and sent to jail as adults are but rather, they are sent to a “home” or “placement”). Such social service interventions would count as a charge but not a conviction. Other dispositions such as home containment or other informal sanctions and conditions can be counted as a charge but not a conviction if there is Clear and Convincing Evidence that the informal sanction was a direct result of the misbehaviour (criminal code level) and the sanction is really a sanction (i.e., punitive in nature).

Note that the above scoring of social service interventions for juveniles is a change from the previous Static-99 Coding Rules – Revised 2003 (Harris et al., 2003) where certain transfers for juveniles could count as a conviction. The change was implemented to promote more consistency between the scoring of juvenile and adult offences.

In some jurisdictions, it is possible for juvenile offenders to get convicted of an offence whereas in other jurisdictions the juvenile has a “petition sustained,” is “adjudicated delinquent,” or other phrase essentially of the same meaning. For the purposes of scoring Static-99R, these are equivalent to an adult conviction because there are generally liberty-restricting consequences. Any jurisdictional dispositions meaning a juvenile is convicted would count as a conviction. There have been cases where a juvenile has been removed from his home by judicial action under a “Person In Need of Supervision” (PINS) petition due to aggression. This counts as a conviction (if the evaluator is convinced based on Clear and Convincing Evidence that this removal was directly due to the criminal behaviour).

### **Mentally Disordered and Developmentally Delayed Offenders**

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as a charge and could count as a conviction if it meets the general principles from determining if something stands as a conviction (see “Determining Whether Something is a Conviction”, p. 29).

### **Not Criminally Responsible due to Mental Disorder/Not Guilty by Reason of Insanity**

Being found “not criminally responsible due to mental disorder” (or its equivalent) is counted as a conviction if the court-determined disposition from the finding involved institutional and/or mandated community sanction/care.

Note that being found unfit to stand trial, however, counts as a charge but not a conviction (see section below on what counts as a charge).

### **Official Cautions – United Kingdom**

In the United Kingdom, an official caution should be treated as equivalent to a charge and a conviction.

### **Pardoned/"Expunged" Offences**

If official criminal records (e.g., police reports) still include the charges or convictions relevant to that sex offence they may be counted even if the offender was pardoned or otherwise excused for the behaviour. Youthful Offender adjudications count even though the nature of the offence is obscured from the public and replaced with a generic adjudication on the criminal history report. For assessment purposes, the behaviour still occurred. A professional report that mentions a previous charge/conviction can count if it is considered credible that an official record did/does in fact exist and was obtained by a professional during a previous contact (e.g., if juvenile criminal records are no longer available, but a previous probation report mentions accessing that record and notes a charge or conviction).

### **“PINS” Petition (Person In Need of Supervision)**

There have been cases where a juvenile has been removed from his home by judicial action under a “PINS” petition due to aggression. This counts as a conviction (if the evaluator is convinced based on Clear and Convincing Evidence that this removal was directly due to the criminal behaviour).

### **Probation before Judgement**

Probation before judgement counts as a conviction.

### **Stayed Charges/Sentences**

Stayed charges/sentences take different forms in different jurisdictions. If there is a sanction associated with the stay of proceedings (e.g., stayed pending attendance in community treatment), stayed charges would count as a conviction, similar to other forms of alternative measures. They should not be considered convictions if there is no finding or admission of guilt, and no associated sanction (formal or informal).

## **Suspended Sentences**

In Canada, a suspended sentence counts as a conviction.

## **Charges**

Anything that counts as a conviction or sentencing date also counts as a charge (see above for examples). In addition, the sections below outline circumstances that count only as a charge (they cannot be counted as a conviction or sentencing date). Note that the only item that counts ‘charges’ is prior sex offences, so in the sections below, these situations are only applicable for sex offences.

The following count as equivalent to a charge:

- Arrests (if the offender knows a warrant has been issued for his arrest, this counts as an arrest even if the offender flees the jurisdiction before he can be arrested)
- Charges not resulting in convictions (e.g., where there is an acquittal, or charges are withdrawn, dismissed, or stayed). This includes municipal citations for sexually motivated offences.
- Convictions subsequently overturned on appeal
- Parole and probation violations (they may also sometimes count as convictions; see pages 29 to 31)

## **Acquittals**

Acquittals count as charges. The reason that acquittals are scored this way is based upon a research study completed in England that found that men acquitted of rape were more likely to be convicted of sex offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill et al., 1980).

## **Convictions Overturned on Appeal**

Convictions that are subsequently overturned on appeal are considered a charge, but not a conviction or sentencing date.

## **Dismissals**

Being charged with an offence, but subsequently having the charge dismissed, counts as a charge.

## **Institutional Rules Violations (e.g., Prison Misconducts)**

See pages 26 to 27 for further discussion of the circumstances under which institutional rules violations can count as a charge.

## **Loss of Institutional Time Credits (e.g., Worktime Credits)**

Generally, "worktime credit" or "institutional time credits" means credit towards (time off) a prisoner's sentence for satisfactory performance in work, training, or education programs. Any prisoner who accumulates "worktime credit" may be denied or may forfeit the credit for failure or refusal to perform assigned, ordered, or directed work or for receiving a serious disciplinary offence. Loss of worktime or institutional time credit for sexual misbehaviour may count as a charge.

## **Not Guilty**

A finding of "not guilty" counts as a charge.

### **Peace Bonds, Judicial Restraint Orders, and “810” Orders**

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when charges are dropped or dismissed or when an offender leaves jail or prison. An order of this nature, when it is primarily preventative, is not counted as a charge or conviction for the purposes of scoring Static-99R.

There are some occasions when these orders are used reactively as a sanction for criminal behaviour (e.g., after a domestic violence incident, the offender enters a peace bond in exchange for dropping the charges). If the peace bond is a “protective” measure it is not counted. If the peace bond is a “sanction” it can count as a charge but not a conviction. In these cases the peace bond is usually associated with dismissed charges followed by the offender entering into a peace bond on the same date. When used as a sanction, these orders are not considered convictions because there is no official determination of guilt preceding the sanction and as such the peace bond can only count as a charge. In contrast, peace bonds implemented at the end of a sentence to prevent future offences would be considered preventive and do not count as a charge or conviction.

### **Unfit to Stand Trial**

Being found unfit or incompetent to stand trial does not count as a conviction, even if the offender is detained for treatment. A declaration of unfit to stand trial essentially halts criminal proceedings. If the offender subsequently receives a finding of guilt (e.g., a conviction or its equivalent), then the subsequent sanction would count as a conviction. Regardless, the charge that led to the finding of being unfit would count as a charge.

### **Situations That Do Not Count as Charges OR Convictions**

#### **“Detected” by Child Protection Services**

Being “detected” by the Children’s Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. Criminal charges must result from the detection for it to count as a sex offence for scoring purposes.

#### **Failure to Appear**

If an offender fails to appear for sentencing for an offence, this is not counted. The original charge counts as a charge, and if the offender subsequently attends court and is convicted, the conviction would count.

#### **Juvenile Extension of Detention**

In some states it is possible for a juvenile to be sentenced to a detention/treatment facility for an offence. At the end of that term of incarceration it is possible to extend the period of detention. Even though a judge and a prosecutor are present at the proceedings, because there has been no new crime or charges/convictions, the extension of the original order is not considered a charge or a conviction.

#### **Questioned by Police**

Being questioned by police (without being arrested or charged) does not count as a charge.

## **Index Sex Offence**

The index sex offence is generally the most recent sex offence. It could be a charge, arrest, conviction, or rule violation (see earlier definitions of a sex offence, conviction/sentencing date, and charge).

Sometimes index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the index offence. Convictions for sex offences that are subsequently overturned on appeal can count as the index offence. Charges for sex offences can count as the index offence, even if the offender is later acquitted. Please review earlier sections – anything that counts as either a charge or a conviction can count as an index offence, as long as it also meets the definition of a sex offence (i.e., is sexually motivated).

Most of the offenders in the Static-99R normative samples (about 60% of cases from the routine, unselected samples) had no prior sex offences on their record; their index offence was their first recorded sexual misbehaviour. As a result, Static-99R is valid with offenders facing their first sexual charges, as well as offenders with a history of sex offence charges or convictions.

## **Offence Clusters, Pseudo-Recidivism, Historical Offences, and Prior Offences**

### **Historical Offences**

The evaluator may face a situation where an offender is brought before the court on a series of sex offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and, as these children mature, they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances, and convictions become what is known as an “index cluster” and they are all counted as part of the index offence. Static-99R applies once the offender is charged, even if the sexual behaviours occurred many years ago. Identifying ‘prior’ offences in the presence of such historical cases can be quite complicated – please review pages 41 to 44 for additional description.

### **Index Cluster**

An offender may commit a number of sex offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an index cluster. These “spree” offences would group together – the early ones would not be considered “priors” and the last, the “index” - they all become the index cluster. This is because the offender has not been “caught” for the earlier offences and then “chosen” to reoffend in spite of the detection.

Furthermore, historical offences that are detected after the offender is convicted of a more recent sex offence would be considered part of the index offence (pseudo-recidivism) and become part of the index cluster (see subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected (i.e., arrested or charged) and/or sanctioned for the previous offence. For example, a sex offence committed while an offender was released on bail for a previous sex offence would supersede the previous charge and become the index offence. This is because the offender knew he had been detected for his previous crimes but chose to reoffend anyway.

For the purposes of this section, ‘detection’ refers to some kind of official detection for the offence, such as an arrest or a charge. Anything in the coding manual that counts as a charge, conviction, or sentencing date would count as ‘detection.’ Having a sex offence detected by a family member, friend, or child protection services does not count as official detection.

### **An index cluster can occur in three ways.**

The first occurs when an offender commits multiple offences at the same time or over a period of time. Subsequent to committing all offences, the offender is charged and these offences are then dealt with as a group by the police and the courts.

The second occurs when an index offence has been identified for an offender and following this the evaluator becomes aware of previous historical offences for which the offender has never previously been charged or convicted. These previous offences come forward and become part of the index cluster. This is also known as “pseudo-recidivism.” It is important to remember, these historical charges do not count as priors because the offending behaviour was not officially detected before the offender committed the index offence. The issue being, the offender has not been previously officially detected for his behaviour and then made the choice to reoffend.

The third situation arises when an offender is charged with several offences that come to trial within a short period of time (a month or so) sometimes in different jurisdictions. For example, an offender might sexually offend in different counties of a state and have trials in different counties for a spree of offending. When the criminal record is reviewed it appears that a cluster of charges were laid at the end of an investigation and that the court could not attend to all of these charges in one sitting day. When the evaluator sees groups of charges where it appears that a lot of offending has finally “caught up” with an offender – these can be considered a “cluster.” If these charges happen to be the last charges they become an index cluster. The evaluator would not count the last court day as the “index” and the earlier ones as “priors.” A second example of this occurs when an offender goes on a crime “spree” – the offender repeatedly offends over time, but is not detected or caught. Eventually, after two or more crimes, the offender is detected, charged, and goes to court. But he has not been independently sanctioned between the multiple offences.

For Example: An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime “spree” – these charges and possible eventual convictions would be considered separate crimes (even if the offender is subsequently convicted for both on the same day). If these charges were the last sex offences on the offender’s record – the second charge would become the index and the first charge would become a “prior.”

However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August, this constitutes a crime “spree” because he was not detected or consequenced between these crimes. As such, this spree of sex offences, if they were the most recent sex offences on the offender’s record, would be considered an index cluster and all four rape offences would count as the index, not just the last one. In a slight variation of this, consider what would happen if the offender were caught and charged in August for just one of the offences (perhaps the one from March). Maybe the offender was convicted. Perhaps the following year he was subsequently caught and convicted for the January and July offences, and then the year after that he was convicted for the May offence. In this example, they would still all count as one cluster, even though there are separate convictions in three different years, because the offender never reoffended after being caught for the first time.

### **Pseudo-Recidivism**

Pseudo-recidivism occurs when an offender who has been involved in the criminal justice system is charged with old offences for which they have never before been charged. This occurs most commonly with sex offenders when public notoriety or media publicity surrounding their trial or release leads other victims of past offences to come forward and lay new charges. Because the offender has not been charged or consequenced for these misbehaviours previously, they have not been officially detected and then chosen to reoffend.

**For Example:** Mr. Jones was convicted in 2012 of three sexual assaults of children. These sexual assaults took place in the 1990's. As a result of the publicity surrounding Mr. Jones' possible release in 2015, two more victims, now adults, come forward and new charges were laid in 2015. These offences also took place in the 1990's but these victims did not come forward until 2015. Because Mr. Jones had never been detected for these offences, they were not on his record when he was convicted in 2012. Offences for which the offender has never been detected that come to light once the offender is in the judicial process are considered pseudo-recidivism and are counted as part of the index cluster. Historical charges of this nature are not counted as priors. In this case, both the 2012 convictions and 2015 charges form part of the index cluster, even though they are several years apart.

The basic concept in order to disentangle clusters or sentencing occasions is that the offender has to be officially detected for previous misbehaviours and then "choose" to ignore that sanction and reoffend anyway. If he chooses to reoffend after being officially detected then he creates a new offence and this offence is considered part of the record, usually a new index offence. If historical offences come to light, for which the offender has never been detected, once the offender is in the system for another sex offence, these offences "come forward" and join the index offence to form an index cluster. Further complications in historical cases (when a series of offences occur in between the index behaviour and the detection for the index) are described on page 41, under the section of "Prior Offences."

### **Post-Index Offences**

Offences where the behaviour occurs after the sentencing date for the index offence are considered post-index offences and do not count for Static-99R purposes. Post-index sex offences create a new index offence (and would prompt a re-scoring of the scale). Post-index violent or non-violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour. Technical violations after conviction for an index sex offence are also not considered anywhere in Static-99R scoring.

Static-99R is intended to summarize the offender's risk of sexual recidivism on the day of their first opportunity to reoffend after the index offence (e.g., release from prison for the index sex offence, conviction date if they received a non-custodial sentence, or date of charge if there was no conviction). No matter how much time has passed since then, the score still summarizes what their risk was like on that day. Events occurring after that point in time may be relevant for risk management and supervision, but they would be considered as separate from the Static-99R assessment.

If an offender commits an offence before the sentencing date for the index offence, but the conviction occurs after the index offence sentencing date (or even after the offender's release), it can still count for scoring purposes. This may mean that a Static-99R score will be updated after an offender's release from the index offence if there is a new conviction for misbehaviour that occurred before the index sentencing date but was detected after the index sentencing date.



When the index sex offence does not result in a sentencing date (e.g., the index offence resulted in a charge but not a conviction), then the latest date of processing for the charge (e.g., the day the charges were dismissed) is treated as equivalent to the sentencing date for the purposes of defining post-index offences.

**For Example, Post-Index Sex Offences:** Consider a case where an offender commits a sex offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sex offence, is apprehended, and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime “spree.” He chose to reoffend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered a separate crime. In a situation of this nature the new charges would create a new sex offence and become the new index offence. If these charges happened to be the last sex offences on the offender’s record – the most recent charges would become the index and the charge on which he was first released on bail would become a “prior sex offence.”

**For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sex offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-Sexual Violence convictions) or Item #4 (Prior Non-Sexual Violence convictions) but would be referred to separately, as an “external risk factor,” outside the context of the Static-99R assessment, in any subsequent report on the offender.

**For Example, NOT a Post-Index Offence:** Consider a case where an offender is released on bail for the index sex offence, commits an assault, and then is later convicted for the index sex offence. One year later, the offender is convicted for the assault. This would NOT count as a post-index offence because the behaviour occurred before the index sentencing date. In an alternate situation, however, if the offender was not convicted for the index sex offence, then the assault WOULD be a post-index offence, because in the absence of a conviction, behaviour after detection for the index offence would count as a post-index offence.

### **Prior Offence(s)**

An offence (sexual, non-sexual violent, or non-violent) would be counted as a prior offence if the offender committed a new offence after being detected for the offence in question, but prior to the detection for the index sex offence (or the latest index sex offence detection in a cluster). Examples will follow. Generally for something to count as a new offence, the offender must reoffend after detection for a previous offence. If the offender was aware that they were under some form of legal restraint and then goes out and sexually reoffends in spite of this restriction, the new offence(s) would create a new index offence. An example of this could be where an offender is charged with “Sexual Communication with a Person Under the Age of 14 Years” and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an “Invitation to Sexual Touching” offence after being charged and released, the “Invitation to Sexual Touching” would become the new index offence and the “Sexual Communication with a Person Under the Age of 14 Years” would automatically become a prior sex offence.

In order to count violations of conditional release as priors they must be “real crimes,” something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as being in the presence of minors or drinking prohibitions do not count (see section on “parole, probation, and conditional release violations” on pages 29 to 31).

Identifying prior offences can be particularly tricky when the index offence is historical in nature – in these cases, the offender may accumulate an extensive criminal history after the index sex offence is committed, but before he is detected for it. When handling these cases, always reflect on the underlying

rule that an offence will count as a prior if, after being detected for it, the offender commits a new offence (which could be the index sex offence) that is still prior to detection for the index sex offence. Examples are provided in the next section.

### **Separating Index Clusters and Prior Offences**

There are cases where it can be difficult to distinguish index clusters from prior offences, particularly when sexual offending occurs over a period of several years. Keep in mind the general rule that to be a prior offence, the offence and its official detection must have occurred before another offence that is prior to the detection for the index sex offence. Some examples are provided below.

#### Example No. 1

Joe Smith sexually offends against his daughter between 2010 and 2015 and is charged and sentenced in 2016. He commits a sexual assault against another victim in 2011 and is sentenced in 2011. He commits a non-sexual assault in 2014 and is charged and convicted in 2014. Both the 2011 and 2014 circumstances count as priors (although only the 2011 conviction would be for prior sexual offending) because some of the index sex offence behaviour was committed after he was detected for the previous offences. The offender chose to keep offending after being detected in 2011, and again in 2014.

#### Example No. 2

John Johnson sexually offends against his daughter between 2010 and 2014 and is charged and sentenced in 2016. He commits a sexual assault against another victim in 2011 and is charged in 2011. He commits a non-sexual assault in 2015 and is charged and sentenced in 2015. The 2011 charge is a prior sex offence because he continued the index sexual behaviour after being sanctioned for the 2011 offence. The non-sexual assault becomes part of an index cluster because even though he was charged and sentenced for the assault before being detected for the index sex offence, the assault occurred after the index sex offence was committed. So the offender did not choose to commit the index sex offence after being detected for the non-sexual assault. So the non-sexual assault would be part of the index cluster.

#### Example No. 3

Richard Jones sexually offends between 1986 and 1989. He commits a sex offence in 1998 and is sentenced in 1999. He commits a sex offence in 2012. Due to publicity for this offence, his victims from the 1980s come forward and he is convicted and sentenced for the 2012 offence as well as the historical offences from the 1980s. In this example, the offences from the 1980s are part of the index cluster. The sex offence in 1998 is a prior. Even though it occurred after the historical offences, it still occurred and was detected before the 2012 sex offence that formed part of the index cluster.

#### Example No. 4

James Smith sexually offends between 1986 and 1989. He commits a sex offence in 2002 and is sentenced in 2005. In 2012 he is charged for the offences in the 1980s. Even though the two sentencing dates are almost a decade apart, they are considered an index cluster because the offences for which the offender was sentenced in 2012 were not committed after the offender was detected in 2005.

The following examples will highlight additional scenarios that can occur with a purely historical index sex offence. Given that they are subtle variations of similar circumstances, they will be presented as a list of events ordered chronologically (the time gaps between each event could be days, months, or years – it does not matter). In complex cases, we have found that stripping the offence history to the essential dates facilitates the coding of prior and index offences.

#### Example No. 5

Index sex offence behaviour

Non-sexual offence behaviour  
 Non-sexual offence detection/conviction  
 Index sex offence detection/conviction

In this example, there are no prior offences, because the offender has never reoffended after detection for a previous offence. These offences would all be part of an index cluster. If the non-sexual offence were violent, it would count as index non-sexual violence in Item 3.

#### Example No. 6

Index sex offence behaviour  
 Non-sexual offence 1 behaviour  
 Non-sexual offence 1 detection/conviction  
 Non-sexual offence 2 behaviour  
 Non-sexual offence 2 detection/conviction  
 Index sex offence detection/conviction

In this example, the first non-sexual offence counts as a prior because after detection, the offender reoffended prior to detection for the index offence (and if it were a violent offence, it would count as prior non-sexual violence in Item 4). The second non-sexual offence does not meet the definition of a prior offence because the offender did not reoffend after detection and, consequently, it is clustered with the index offence (and if it were a violent offence, it would be counted as index non-sexual violence in Item 3).

#### Example No. 7

Index sex offence behaviour  
 Non-sexual offence 1 behaviour  
 Non-sexual offence 1 detection/conviction  
 Non-sexual offence 2 behaviour  
 Index sex offence detection/conviction & non-sexual offence 2 detection/conviction (at the same time)

Similar to Example 6, the first non-sexual offence counts as a prior because after detection, the offender reoffended prior to detection for the index offence (and if it were a violent offence, it would count as prior non-sexual violence in Item 4). The second non-sexual offence is still clustered with the index offence (like in Example 6) because the offender has not chosen to reoffend after the second non-sexual violent offence.

#### Example No. 8

Index sex offence behaviour  
 Non-sexual offence 1 behaviour  
 Non-sexual offence 1 detection/conviction  
 Non-sexual offence 2 behaviour  
 Index sex offence detection/conviction  
 Non-sexual offence 2 detection/conviction (at the same time)

Similar to Example 6, the first non-sexual offence counts as a prior. The second non-sexual offence is part of the index because the behaviour occurred prior to detection for the index offence. To count this as a post-index offence, the behaviour would have had to occur after the sentencing date for the index offence.

#### Example No. 9

Non-sexual offence 1 behaviour  
 Non-sexual offence 1 detection/conviction

Index sex offence behaviour  
Non-sexual offence 2 behaviour  
Index sex offence detection/conviction  
Non-sexual violence 2 detection/conviction

Similar to Example 6, the first non-sexual offence counts as a prior. The second non-sexual offence is part of the index because the behaviour occurred prior to the sentencing date for the index sex offence even though the detection and conviction didn't occur until after the detection/conviction for the index sex offence. If this was a violent offence it would count as index non-sexual violence.

Example No. 10  
Non-sexual offence 1 behaviour  
Non-sexual offence 1 detection/conviction  
Index sex offence behaviour  
Index sex offence detection/conviction  
Non-sexual offence 2 behaviour  
Non-sexual violence 2 detection/conviction

In this example the first non-sexual offence counts as a prior. The second non-sexual offence is considered post-index because the behaviour occurred both after the behaviour and detection/conviction for the index sex offence.

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## Scoring the 10 Items

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## Item # 1 – Age at Release from Index Sex Offence

**The Basic Principle:** The rates of almost all crimes decrease as people age (Hirschi & Gottfredson, 1983; Sampson & Laub, 2003). Sexual offending does not appear to be an exception. Most studies have found that older sex offenders are lower risk to reoffend than younger sex offenders (Barbaree & Blanchard, 2008; Hanson, 2002; Helmus, Thornton, et al., 2012). Research has found that the original Static-99 did not fully account for age at release and that a new age weighting improved the predictive accuracy (Helmus, Thornton, et al., 2012). With the new age weighting (used in this item), age at release from the index sex offence no longer significantly contributed to the prediction of sexual recidivism after controlling for Static-99R scores (in other words, the new age item fully accounted for age at release). Similar results were found in subgroups of rapists and child molesters.

**Information Required to Score this Item:** To complete this item the evaluator has to confirm the offender's birth date (from the official records if possible) or have other knowledge of the offender's age through collateral report or offender self-report. The evaluator would benefit from access to an official criminal record as compiled by police, court, or correctional authorities that identifies the date of release from the index sex offence.

**The Basic Rule:** Score 1 to -3 points depending on the age of the offender when they are released from their index sex offence referencing the table below:

|                  |    |
|------------------|----|
| Aged 18 to 34.9  | 1  |
| Aged 35 to 39.5  | 0  |
| Aged 40 to 59.9  | -1 |
| Aged 60 or older | -3 |

Static-99R is not intended for those who are less than 18 years old at the time of first release from the index sex offence (see "Static-99R with Adolescents who have Sexually Offended," page 14 for discussion of the limited circumstances in which Static-99R can be applied for offenders who committed the index sex offence as a juvenile).

Under certain conditions, such as anticipated release from custody or presentence reports, the evaluator may be interested in an estimate of the offender's risk at some specific time in the future. Static-99R may be scored months or years before the offender's release to the community and the offender may advance an age scoring category by the time he is released. For assessing risk in the future, consider what his age will be on the date of release from the index sex offence. In this case, you calculate risk based upon age at anticipated exposure to risk.

Sometimes the release date may be uncertain, for example, if he is eligible for parole but may not qualify for release due to an inadequate release plan. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change with a delayed release date.

In any situation where the offender has not yet been released from the index sex offence and their first possible release date is uncertain (e.g., pre-sentence assessments, in-custody assessments, civil commitment proceedings), the evaluator has several options available in scoring this item:

- 1) The item can be scored based on the offender's current age, with conditional wording included in the report to note how the risk results would change if the offender were released later.
- 2) The item can be scored based on a first likely release date, with conditional wording in the report noting how the risk results would change if the release date were to change.

3) The item can be scored multiple ways, reflecting a range of possible release dates (e.g., the earliest and latest release dates), with conditional wording included in the report to explain how the risk score would change based on this range.

Whichever option is chosen should be clearly explained in the risk assessment report.

Note that in some cases, the index sex offence identified for Static-99R scoring purposes may not be the same as the offender's current offence. For example, sometimes an offender is serving a sentence for a non-sexual offence but they are assessed as a sex offender due to a prior sex offence. Because this item is scored using age at release from the index sex offence rather than age of release from the current offence, the offender may now be significantly older than when they were released from their index sex offence. For example, an offender may be released from custody on their index sex offence at age 35 and they may be released at age 55 from a current prison term after committing a non-sexual offence. In these cases where an offender has committed subsequent non-sexual offences and is now much older, the effect of aging on sexual recidivism (as well as their continued criminality after the index sex offence) will need to be considered outside Static-99R. For Static-99R assessment purposes, however, the scale will describe the offender's risk when he was released at age 35.

For offenders who are released from their index sex offence and are placed on conditional release for several years, they may incur one or more conditional release revocations. The age used would be the age at release after the index sex offence and not the age at release from the revocation.

For offenders with an index cluster consisting of multiple release dates, this item should be scored based on the initial release date from the latest sex offence in the cluster.

There are limited circumstances where it is possible to make a judgement call that although an offender was "released" from the index sex offence, they were returned to custody for a technical violation so quickly that the case is more comparable to someone who has been continually incarcerated with no release at all, and you could score their age based on their current anticipated age of re-release. This type of decision is a deviation from the general coding rules and should only be made in extreme circumstances. Specifically, to consider making this judgement, all of the following conditions must apply: the offender was in the community for a short period of time after the initial release from the index offence (no more than 6 months), he was returned to custody for a technical violation (not any behaviour that would be considered a new offence, sexual or non-sexual), and since the revocation, the offender has been in custody for 10 or more years without any kind of release. These situations are most applicable to offenders who are released to the community but are quickly revoked for technical violations and civilly committed. If this decision is made, the evaluator should clearly explain why they did not count the initial release.

For purposes of offenders subject to civil commitment in the United States, an offender may be found to meet the criteria as a Sexually Violent Person/Sexually Dangerous Person and not released to the community when their prison term expires. They may be sent directly to the SVP/SDP treatment center where they may be detained for lengthy periods of time. Evaluators conducting evaluations while the offender is detained or committed as an SVP/SDP should use the current age of the offender if the last prison term was for a sex offence. This is because the offender has still not been released to the community since their index sex offence. If the last prison term was for a non-sexual offence then the evaluator should use age at release from the index sex offence.

For offenders who are released from their index sex offence and remain in the community for more than two years without a new sex offence please refer to the section on "Time Offence Free in the Community after Release from Index Sex Offence" (page 13).

### **What does “release” mean?**

“Release” refers to when the offender is “free” (in the community) after the index sex offence is processed and therefore has an opportunity to reoffend. It may refer to release from court, jail, prison, psychiatric hospital, or the like. Offenders are considered in the community if they are on parole, probation, or other types of community supervision. If they do not receive a custodial sentence for their index offence, the release date would be the date of conviction. If the index sex offence was a charge that did not result in a conviction, date of release is the day the charges were dropped/dismissed.

An offender is still considered “released” to the community if they are:

- on parole
- on probation
- on supervised or conditional release (see below for exceptional circumstances where community supervision may not count as release)
- under GPS (Global Positioning System) monitoring
- while on bail
- while under court order to return to court on a certain date (e.g., released under their own recognizance)
- while living in a psychiatric facility or chemical dependency program on a voluntary basis (i.e., for treatment)

An offender is not considered released if they are:

- Living in an institution but with work release (e.g., daytime release to work)
- While on escape or elopement status no matter where the offender is living
- While living in a treatment facility on an involuntary basis (i.e., based on a court determination of relevant dangerousness and/or in lieu of further criminal proceedings and/or to obtain a postponement of legal proceedings concerning one or more criminal charges)
- While living in the community under severe restrictions such that the opportunities to offend would be similar to those in institutional settings (e.g., house arrest, some forms of community supervision, group home with 24-hour staff supervision)



## Item # 2 – Ever Lived with an Intimate Partner – 2 Years

**The Basic Principle:** Research suggests that having a prolonged intimate connection to someone may be a protective factor against sexual reoffending. See Hanson and Bussière (1998), Table 1 – Items “Single (never married) and Married (currently).” On the whole, we know that the relative risk to sexually reoffend is lower in men who have been able to form and maintain intimate partnerships.

**Information Required to Score this Item:** To complete this item it is highly desirable that the evaluator confirm the offender’s relationship history through collateral sources or official records.

**The Basic Rule:** If the offender has never had an intimate adult relationship of two years’ duration you score the offender a “1” on this item. If the offender has had an intimate adult relationship of two years’ duration you score the offender a “0” on this item. This is scored based on relationship history prior to release from the index offence. Live-in relationships lasting longer than two years occurring after the offender is released from the index offence should not be used to score this item; rather, they should be considered outside of Static-99R.

The intent of this item is to reflect whether the offender has the personality/psychological resources as an adult to establish a relatively stable “marriage-like” relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual or polyamorous. The gender identification/expression of both partners is also not considered in this item.

### Missing Information

This is the only item that may be omitted on Static-99R. If no information is available this item should be scored a “0” (zero) – as if the offender has lived with an intimate partner for two years. To complete this item the evaluator should make an attempt to confirm the offender’s relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized assuming, of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the Balance of Probabilities (see page 19 for definition), is convinced this person has lived with an intimate partner for two years the evaluator may score this item a “0”. It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.

### Considerations in Scoring

In cases where confirmation of relationship history is not possible or feasible the evaluator may choose to score this item both ways and report the difference in results in their final report.

If a person has been incarcerated most of their life, is not allowed to establish an intimate relationship (e.g., priests), or is still quite young and has not had the opportunity to establish an intimate relationship of two years’ duration, they are still scored as never having lived with an intimate partner for two years. They score a “1.” There are two reasons for this. The first being, this was the way this item was scored in the original samples and to change this definition now would distance the resulting norms and recidivism estimates from those validated on Static-99R. Secondly, having been part of, or experienced, a sustained relationship may well be a protective factor for sexual offending. As a result, the reason why this protective factor is absent is immaterial to the issue of risk itself.

Offenders may have less traditional living arrangements such as homelessness. In this case, homelessness would not count as living with an intimate partner. Additionally, roommates who had sex a few times but

did not consider themselves in a relationship would not be counted. Long-distance relationships also do not count, regardless of the duration (see section on extended absences below for possible exceptions).

Non-traditional relationships such as polyamory can count, as long as the offender lived with one of their partners for two or more years while they considered themselves in a romantic/intimate relationship, regardless of other people that were also involved in that relationship.

You can count live-in relationships with an intimate partner even if they are living with one of the partner's parents, or if one person in the relationship is a sex worker.

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person. If the co-habitation started with a partner who was not an adult but continued into adulthood, this can still be counted if the co-habitation continued for at least two years after both parties reached the age of consent to marry, and the offender did not sexually offend against this partner until at least two years after they reached age of consent to marry (to determine whether allegedly consensual sexual activity was a sex offence, see page 76). Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (incestuous relationship with his mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender sexually abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Generally, relationships with adult sex offence victims do not count. However, if the offender and the victim had two years of an intimate, co-habiting relationship before the sex offences occurred then this relationship would count and the offender would score a "0" on this item. However, if the sexual abuse started before the offender and the victim had been living together in an intimate relationship for two years then the relationship would not count regardless of its length.

If the offender sexually offended against their partner's children, the relationship can still count if the offender lived with the partner for at least two years (regardless of the sexual abuse of the partner's children).

### **Exclusions**

- Legal marriages involving less than two years of co-habitation do not count (see section below on extended absences for possible exceptions)
- Prison lovers do not count
- Prison marriages (of any duration) where the offender is incarcerated during the term of the relationship do not count
- Illegal relationships, such as when the offender has had an incestuous relationship with his mother do not count
- Intimate relationships with non-human species do not count
- Relationships with sex offence victims do not count (see above for exception)
- Priests and others who for whatever reason have chosen, as a lifestyle, not to marry/co-habitate are still scored as having never lived with an intimate partner

### **Extended Absences**

In some jurisdictions it is common for an offender to be away from the marital/family home for extended periods. The offender is generally working on oilrigs, fishing boats, bush camps, military assignment, or other venues of this nature. Although the risk assessment instrument requires the intimate co-habitation to be continuous, there is room for discretion. If the offender has an identifiable “home” that he/she shares with a lover and the intimate relationship is longer than two years, the evaluator should look at the nature and consistency of the relationship. The evaluator should attempt to determine, in spite of these prolonged absences, whether this relationship looks like an honest attempt at a long-term committed relationship and not just a relationship of convenience.

If this relationship looks like an honest attempt at a long-term committed relationship then the evaluator would score the offender a “0” on this item as this would be seen as an intimate relationship of greater than two years’ duration. If the evaluator thinks that the relationship is a relationship of convenience (and note that this is the only circumstance where you would consider the quality of the relationship or the offender’s motive for the relationship), the offender would score a “1.” If the living together relationship is of long duration (three plus years) then the periods of absence can be fairly substantial (four months in a logging camp/oil rig, or six months or more on military assignment).

Note that these guidelines for extended absences generally refer to situations where the absence is necessary for employment or possibly other reasons (e.g., taking care of a parent who is ill). Absences due to incarceration do not apply under this section. Short periods of incarceration (1 month or less) can be tolerated (i.e., would not nullify the relationship for scoring purposes) if the cumulative live-in relationship (when the offender is not in jail) is over two years. Absences of 32 days or more would be considered breaks in the relationship that restart the clock.

#### **Sexless Relationships/Quality of Relationship**

With minor exceptions (described above for extended absences or where the offender has sexually offended against his partner), the quality of the relationship, including the presence of verbal, emotional, and physical violence is not part of scoring this item. It is the presence or absence of the two year live-in relationship that should be the primary factor in scoring. To score a ‘0’ (zero) on this item the individuals must have engaged in sexual activity at least once during their live-in relationship.

### Item # 3 – Index Non-Sexual Violence (NSV) – Any Convictions

**The Basic Principle:** A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences.” The presence of non-sexual violence predicts the seriousness of damage were a reoffence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). This item was included in Static-99R because in the original samples it demonstrated a small positive relationship with sexual recidivism (Hanson & Thornton, unpublished data).

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sex offences (Thornton & Travers, 1991). More recently, an updated meta-analysis of the Static-99R items found that this item was a significant predictor of recidivism in some analyses, but not in others (Helmus & Thornton, 2015). Moderator analyses found that the item significantly predicted sexual recidivism in samples from North America, but not in studies outside North America. Consequently, when using Static-99R outside North America, this item may not be a strong predictor and caution in assessments may be warranted.

**Information Required to Score this Item:** To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and Static-99R” in the Introduction section (pages 8-9).

**The Basic Rule:** If the offender’s criminal record shows a conviction for a non-sexual violent offence that is part of the index sex offence (or index cluster), you score the offender a “1” on this item. If the offender’s criminal record does not show a conviction for a non-sexual violent offence with the index offence cluster, you score the offender a “0” on this item (see pages xx to xx for multiple examples on separating index, prior, and post-index offences).

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the index sex offence or that clusters with the index sex offence (for more information on identifying clusters, see pages xx to xx). Typically, a separate non-sexual violence conviction in that sentencing occasion (or cluster) is required to score this item (although following the examples below, there are some situations where a single conviction may stand as both the sex offence and the non-sexual violence conviction). These convictions can involve the same victim as the index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the index sex offence(s), or they form part of the index cluster. Further examples are provided below. Non-sexual violence offences committed after the index offence cluster should be considered risk factors external to the measure (see section on post-index offences on page X).

In other words, to score this item, an evaluator should identify all non-sexual violent convictions where the behaviour was committed prior to detection for the last component of the index sex offence. These non-sexual violent convictions can then be classified as either “index” non-sexual violence or “prior” non-sexual violence. If the offender was detected for the index sex offence after detection/sanction for the non-sexual violence, then the non-sexual violence would be counted as a “prior.” If not, it would be counted as part of the index.

Both adult and juvenile convictions count in this section.

Anything that counts as a conviction or sentencing date (defined on pages 28 to 37) would count on this item.

**Included are:**

- Abduction
- Aggravated assault
- Arson
- Assault
- Assault causing bodily harm
- Assault peace/police officer
- Attempted abduction
- Attempted child stealing
- Attempted robbery
- Attempted assault cause bodily Injury
- Any 'attempt' at a violent offence would count
- Battery
- Car jacking
- Child abuse
- Compelling the commission of an offence
- Criminal harassment
- Cruelty to animals/Animal neglect
- Extortion
- False imprisonment
- Felonious assault
- Forcible confinement
- Give noxious substance (alcohol, narcotics, or other stupeficient in order to impair a victim)
- Grand theft person ("Grand theft person" is a variation on Robbery and may be counted as non-sexual violence)
- Home invasion
- Juvenile non-sexual violence convictions count on this item
- Kidnapping
- Manslaughter
- Murder
- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for non-sexual violence (if the evaluator is convinced based on Clear and Convincing Evidence that this removal was directly due to the criminal behaviour).
- Robbery
- Threatening/Menacing
- Stalking (non-sexual)
- Using/Pointing a Weapon/Firearm in the commission of an offence (but NOT possessing a weapon or unsafe storage of weapons)
- Violation of a domestic violence order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was Battery, Assault, Forcible Confinement, Kidnapping, or Murder and the evaluator knew that there was a sexual component, this would count as a sex offence and as a non-sexual violence offence. This means that non-sexual violent offences are non-sexual in the offence name, but may have been sexual in the behaviour (note that this is different than Static-2002R coding rules, where the behaviour must also be non-sexual).

Unlike sex offences (which are classified as “sexual” based on the motivation), this item (and the following item) requires that the name of the conviction must refer to a violent offence – it is not judged on the offender’s motivation or the particular circumstances of the offending.

When determining if a conviction not listed above should be counted as non-sexual violence, review the relevant legal definition of the offence name. If the definition includes a mandatory component involving some sort of intentional force, touching, threats, and/or the behaviour directly and intentionally leads to concern for one’s safety (except in the cases of dangerous driving or negligence), then count as violent. Note that intention is important in the legal definition of the conviction. An offence may cause the victim to fear for their safety, but to count the offence as violent, the legal definition of the offence must require that the offender’s behaviour intentionally caused fear for safety. For example, if an offender breaks into a house not knowing that the victim was home and startles the victim, there was no intent to cause fear for safety.

**Excluded are:**

- Arrest/charges (and their equivalents) do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the index offence cluster does not count
- Institutional rules violations cannot count as non-sexual violence convictions
- Do not count impaired driving, driving accidents, or convictions for negligence causing death or injury.

**Non-Sexual Violence As Part of the Index Cluster**

Index non-sexual violence requires a conviction for non-sexual violence as part of the index cluster. To be part of the index cluster, the non-sexual violence must be detected at the same time as the index sex offences are detected, or if detected at different times, there must be no new offending behaviour between detection for the index sex offence and detection for the non-sexual violence offences. For something to count as two separate convictions (and therefore not both part of the index cluster) the offender must be detected (i.e., charged or equivalent) for one behaviour (e.g., index sex offence) and then choose to reoffend with non-sexual violence (considered post-index offending). In the opposite case the offender must have been detected for the non-sexually violent behaviour (considered prior non-sexual violence) and then choose to reoffend sexually after the sanction for the non-sexual violence (some exceptions to this in the case of prior offences are described on pages 41 to 44).

Example 1:

The sexual offending behaviour occurred between 2010 and 2015, and the offender was charged and convicted in 2016. The assault occurred in 2011, and the offender was charged and convicted in 2011. Another assault occurred in 2014, and the offender was charged and convicted in 2014.

In this case both the 2011 and 2014 assaults would be prior non-sexual violence occasions and would not count as index non-sexual violence. The reason they are not considered part of the index (even though the index sexual behaviour started first) is because the offender continued committing the index sex offence behaviour AFTER being detected for both assaults. The offender was sanctioned for non-sexual violence and chose to reoffend sexually, so the assaults are considered separate sentencing dates prior to the index sex offence.

Example 2:

The sexual offending behaviour occurred between 2010 and 2014, and the offender was charged and convicted in 2016. The assault occurred in 2011, and the offender was charged and convicted in 2011. Another assault occurred in 2013, and the offender was charged and convicted in 2015.

The 2011 conviction is prior non-sexual violence because the index sex offence behaviour continued after the sanction for assault (i.e., the offender chose to reoffend sexually). The 2013 assault is index non-sexual violence because there was no new offending between 2014 and 2015, and the second assault behaviour occurred after the 2011 conviction. The offender did not choose to reoffend sexually after the 2015 sanction for assault, therefore this assault conviction becomes part of the index sex offence.

Example 3:

The sexual offending behaviour occurred between 2005 and 2009, and the offender was charged and convicted in 2010. The assault occurred in 2006, and the offender was charged and convicted in 2006. Another assault occurred in 2012, and the offender was charged and convicted in 2012.

The 2006 conviction is prior non-sexual violence, and the 2012 assault is considered a post-index offence and should be considered as a risk factor external to Static-99R.

In cases where the evaluator does not have specific information regarding the dates the sexual and non-sexually violent offensive behaviour occurred, the evaluator should default to the chronological charge/conviction dates included in the official criminal history.

An index non-sexual violence conviction may be counted when the associated index sex offence is a charge.

### **Weapons offences**

Weapons offences do not count unless the weapon was used in the commission of a violent or a sex offence. For example, an offender might be charged with a sex offence and then in a search of the offender's home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the sex offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sex offence.

A conviction for possession of a firearm or possession of a firearm without a licence or improper storage of a firearm would generally not count as a non-sexual violent offence. A conviction for pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item. Similarly, if an offender was carrying a weapon while committing an offence, it would only count as a violent offence if the offender revealed or mentioned the weapon to threaten or gain victim compliance.

### **Resisting arrest**

“Resisting Arrest” does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with “Assault a Peace/Police Officer” which would count as non-sexual violence.

### **Convictions that are coded as only “sexual”**

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault Causing Bodily Harm are not coded separately as non-sexual violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as non-sexual violence.
- Convictions for “Sexual Battery” (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as non-sexual violence.

### Situations considered both a sex offence and a non-sexual violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sex offences (they could be used as an index offence or could be used as priors if appropriate) as well; a risk point would be given for non-sexual violence (index or prior as appropriate).

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the Balance of Probabilities, this was a sex offence - this offence may count as the index sex offence or you may score this conviction as a sex offence under prior sex offences, whichever is appropriate given the circumstances. These convictions would also count as non-sexual violence.

#### For Example

| <b>Criminal Record for Joe Smith</b>   |                      |                      |   |
|--|----------------------|----------------------|---|
| <b>Date</b>  | <b>Charge</b>        | <b>Conviction</b>    | <b>Sentence</b>                               |
| July 2000  | Forcible Confinement | Forcible Confinement | 20 Months incarceration and 3 years probation |
| <p><b>If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as one sex offence (either for “priors” or an “index”) and one non-sexual violence (either “prior” or “index”)</b></p> |                      |                      |   |

However, were you to see the following:

| <b>Criminal Record for Joe Smith</b>  |  |  |   |
|---|--|--|---|
| <b>Date</b>   | <b>Charge</b>                                | <b>Conviction</b>                            | <b>Sentence</b>                               |
| July 2000   | 1) Forcible Confinement<br>2) Sexual Assault | 1) Forcible Confinement<br>2) Sexual Assault | 20 Months incarceration and 3 years probation |
| <p><b>If the evaluator knows that the Forcible Confinement was directed toward the victim of the sex offence it counts; if it is against an incidental or accidental victim then it does not count as a sex offence (see section on identifying victims) even if the behaviour is instrumental to the sex offence being carried out. For example, forcible confinement of the victim while committing the sex offence would count as two sex offences (either for “priors” or an “index”) and one non-sexual violence (either “prior” or “index”). In contrast, forcible confinement of the victim’s boyfriend in another room would count only as non-sexual violence (the Sexual Assault would still count as a sex offence).</b></p> |  |  |   |

### **Military**

If an “undesirable discharge” is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a non-sexual violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the “undesirable discharge” is equivalent to a bad job reference, this offence would not count as non-sexual violence or as a sentencing date.



**Murder – With a sexual component**

A sexual murderer who only gets convicted of murder would get one risk point for non-sexual violence, but this murder would also count as a sex offence.

**Revocation of conditional release for “Lifers,” Dangerous Offenders, and others with indeterminate sentences**

If a “lifer,” Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a separate criminal charge for a violent offence, this offender can be scored for index non-sexual violence when the accompanying sexual behaviour stands as the index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sex offence charge and a violent offence charge would be laid by police, and the violence charge would likely result in conviction.

## Item # 4 – Prior Non-Sexual Violence – Any Convictions

**The Basic Principle:** A meta-analytic review of the literature indicates that having a history of violence is a predictive factor for future violence. See Hanson and Bussière (1998), Table 2 – Item “Prior Violent Offences.” The presence of non-sexual violence predicts the seriousness of damage were a reoffence to occur and is strongly indicative of whether overt violence will occur (Hanson & Bussière, 1998). Additionally, Andrews and Bonta (2010) found that having a criminal history is one of the “Big Four” predictors of future criminal behaviour.

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sex offences (Thornton & Travers, 1991). In some English datasets this item has also been predictive of reconviction for any sex offence. Analyses of additional datasets confirm the relationship between prior non-sexual violence and sexual recidivism (Helmus & Thornton, 2015).

**Information Required to Score this Item:** To score this item the evaluator must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and Static-99R” in the Introduction section (pages 8 to 9).

**The Basic Rule:** If the offender’s criminal record shows a separate conviction for a non-sexual violent offence prior to detection for the index offence, you score the offender a “1” on this item. If the offender’s criminal record does not show a separate conviction for a non-sexual violent offence prior to detection for the index offence, you score the offender a “0” on this item.

This item refers to convictions for non-sexual violence that are dealt with on a sentencing occasion that pre-dates and is separate from the index sex offence sentencing occasion/cluster (specifically, prior to detection for the index sex offence). A separate non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the index sex offence or they can involve a different victim, but the offender must have been detected for this non-sexual violent offence before detection for the index offence. All non-sexual violence convictions are included, providing they were detected for the offence prior to the index sex offence.

In other words, to score this item, an evaluator should identify all non-sexual violent convictions where the behaviour was committed prior to the detection for the last component of the index sex offence. These non-sexual violent convictions can then be classified as either “index” non-sexual violence or “prior” non-sexual violence. If the offender was detected for the index sex offence after detection/sanction for the non-sexual violence, then the non-sexual violence would be counted as a “prior” (with some exceptions for prior offences; see pages 41 to 44). If not, it would be counted as part of the index.

Both adult and juvenile convictions count in this section.

Anything that counts as a conviction or sentencing date (defined on pages 28 to 37) would count on this item. See also pages 38 to 44 for examples of separating the index offence from prior sentencing dates.

### Included are:

- Abduction
- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm

- Assault Peace/Police Officer
- Attempted Assault Cause Bodily Injury
- Attempted Abduction
- Attempted child stealing
- Attempted Robbery
- Any 'attempt' at a violent offence would count
- Battery
- Car Jacking
- Child Abuse
- Compelling the commission of an offence
- Criminal Harassment
- Cruelty to Animals
- Extortion
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupeficient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Home Invasion
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder
- "PINS" Petition (Person in need of supervision). There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence (if the evaluator is convinced based on Clear and Convincing Evidence that this removal was directly due to the criminal behaviour).
- Robbery
- Threatening/Menacing
- Stalking (non-sexual)
- Using/Pointing a Weapon/Firearm in the Commission of an Offence (but NOT possessing a weapon or unsafe storage of weapons)
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was Battery, Assault, Forcible Confinement, Kidnapping, or Murder and the evaluator knew that there was a sexual component, this would count as a sex offence and as a non-sexual violence offence. This means that non-sexual violent offences are non-sexual in the offence name, but may have been sexual in the behaviour (note that this is different than Static-2002R coding rules, where the behaviour must also be non-sexual).

Unlike sex offences (which are classified as "sexual" based on the motivation), this item (and the following item) requires that the name of the conviction must refer to a violent offence – it is not judged on the offender's motivation or the particular circumstances of the offending.

When determining if a conviction not listed above should be counted as non-sexual violence, review the relevant legal definition of the offence name. If the definition includes a mandatory component involving some sort of intentional force, touching, threats, and/or the behaviour directly and intentionally leads to concern for one's safety (except in the cases of dangerous driving or negligence), then count as violent.

Note that intention is important in the legal definition of the conviction. An offence may cause the victim to fear for their safety, but to count the offence as violent, the legal definition of the offence must require that the offender's behaviour intentionally caused fear for safety. For example, if an offender breaks into a house not knowing that the victim was home and startles the victim, there was no intent to cause fear for safety.

**Excluded are:**

- Arrest/charges (and their equivalents) do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the index offence cluster does not count
- Institutional rules violations cannot count as non-sexual violence convictions
- Do not count impaired driving, driving accidents, or convictions for Negligence causing Death or Injury.

**Weapons offences**

Weapons offences do not count unless the weapon was used in the commission of a violent or a sex offence. For example, an offender might be charged with an offence and then in a search of the offender's home the police discover a loaded firearm. As a result, the offender is convicted, in addition to the original offence, of unsafe weapons storage. This would not count as a conviction for non-sexual violence as the weapons were not used in the commission of a violent or sex offence.

A conviction for possession of a firearm or possession of a firearm without a licence or improper storage of a firearm would generally not count as a non-sexual violent offence. A conviction for pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item. Similarly, if an offender was carrying a weapon while committing an offence, it would only count as a violent offence if the offender revealed or mentioned the weapon to threaten or gain victim compliance.

**Resisting arrest**

"Resisting Arrest" does not count as non-sexual violence. In Canadian law this charge could apply to individuals who run from an officer or who hold onto a lamppost to delay arrest. If an offender fights back he will generally be charged with "Assault a peace/Police officer" which would count as non-sexual violence.

**Convictions that are coded as only "sexual"**

- Sexual Assault, Sexual Assault with a Weapon, Aggravated Sexual Assault, and Sexual Assault causing Bodily Harm are not coded separately as non-sexual violence – these convictions are simply coded as sexual
- Assault with Intent to Commit Rape (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as non-sexual violence.
- Convictions for "Sexual Battery" (U.S. Charge) – A conviction under this charge is scored as only a sex offence – Do not code as non-sexual violence.

**Situations considered both a sex offence and a non-sexual violence offence**

An offender may initially be charged with one count of Sexual Assault of a Child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences would be considered sex offences (they could be used as an index offence or could be used as priors if appropriate) as well; a risk point would be given for non-sexual violence (index or prior as appropriate).

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the Balance of Probabilities, this was a sex offence - this offence may count as the index sex offence or you may score this conviction as a sex offence under prior sex offences, whichever is appropriate given the circumstances. These convictions would also count as non-sexual violence.

### For Example

| <b>Criminal Record for Joe Smith</b>   |                      |                      |   |
|--|----------------------|----------------------|---|
| <b>Date</b>  | <b>Charge</b>        | <b>Conviction</b>    | <b>Sentence</b>                               |
| July 2000  | Forcible Confinement | Forcible Confinement | 20 Months incarceration and 3 years probation |
| <p><b>If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as one sex offence (either for “priors” or an “index”) and one Non-Sexual Violence (either “prior” or “index”)</b></p> |                      |                      |   |

However, were you to see the following:

| <b>Criminal Record for Joe Smith</b>   |  |  |   |
|--|--|--|---|
| <b>Date</b>  | <b>Charge</b>                                | <b>Conviction</b>                            | <b>Sentence</b>                               |
| July 2000  | 1) Forcible Confinement<br>2) Sexual Assault | 1) Forcible Confinement<br>2) Sexual Assault | 20 Months incarceration and 3 years probation |
| <p><b>If the evaluator knows that the Forcible Confinement was directed toward the victim of the sex offence it counts; if it is against an incidental or accidental victim then it does not count (see section on identifying victims) even if the behaviour is instrumental to the sex offence being carried out. For example, forcible confinement of the victim while committing the sex offence would count as two sex offences (either for “priors” or an “index”) and one Non-Sexual Violence (either “prior” or “index”). In contrast, forcible confinement of the victim’s boyfriend in another room would count only as non-sexual violence (the Sexual Assault would still count as a sex offence).</b></p> |  |  |   |

### **Military**

If an “undesirable discharge” is given to a member of the military as the direct result of a violent offence (striking an officer, or the like) this would count as a non-sexual violence conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have and the “undesirable discharge” is equivalent to a bad job reference, this offence would not count as non-sexual violence or as a sentencing date.

### **Murder – with a sexual component**

A sexual murderer who only gets convicted of murder would get one risk point for non-sexual violence, but this murder would also count as a sex offence.

### **Revocation of conditional release for “Lifers”, Dangerous Offenders, and others with indeterminate sentences**

If a “lifer”, Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a non-sexual violent offence that happened prior to the index sex offence (or index cluster) this revocation can

stand as a conviction for non-sexual violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police, and the violence charge would likely result in conviction.

## Item # 5 – Prior Sex Offences

**The Basic Principle:** This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911, Thorndyke stated that the “the best predictor of future behaviour, is past behaviour.” Andrews and Bonta (2010) found that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. Specific to sex offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item “Prior Sex Offences.”

**Information Required to Score this Item:** To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and Static-99R” in the Introduction section.

**The Basic Rule:** This is one of only two items in Static-99R that is not scored on a simple “0” or “1” dichotomy (the other is the age item). From the offender’s official criminal record, charges and convictions for prior sex offences are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. Convictions are counted as both a charge and a conviction. If the record you are reviewing only shows convictions, this item may be scored on the basis of the convictions only.

Charges and convictions are summed separately and these totals are then transferred to the chart below.

**Note:** For this item, arrests for a sex offence are counted as “charges.”

| Prior Sex Offences |             |                  |
|--------------------|-------------|------------------|
| Charges            | Convictions | Final Item Score |
| None               | None        | 0                |
| 1-2                | 1           | 1                |
| 3-5                | 2-3         | 2                |
| 6+                 | 4           | 3                |

Whichever column, charges or convictions, gives the offender the higher final score is the column that determines the final score. Examples are given later in this section.

See pages 28 to 37 for more information about what counts as a charge versus a conviction and under what circumstances (e.g., institutional rule violations, parole/probation/conditional release violations).

### Do not count the Index Sex Offence

The index sex offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time. See pages 38 to 44 for more information and examples on separating index and prior offences.

### Count all sex offences prior to the Index Sex Offence

All pre-index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, “counts count” for this item. If an offender is

charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a “6” under charges and a “2” under convictions. Convictions do not take priority over charges (although this item can be scored on the basis of convictions where information on charges is not available). Each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons or “pled down” to obtain a final plea bargain.

In some cases a number of charges are laid by the police and as the court date approaches these charges are “pled-down” to fewer charges. When calculating charges and convictions you count the number of charges that go to court. Arrest sheets may include more charges than the prosecutor feels comfortable proceeding with in court. Use the charges that are still in place at the time the trial begins or just prior to the plea bargain.

In other cases the police may charge an offender with a serious sex offence (Aggravated Sexual Assault) and the prosecutor decides to pursue two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police. In the event that no charges go to court (i.e., they are dismissed before getting to initial court processing), you count one charge. Do not include proceedings in which the only authority of the court was to determine whether charges go forward (e.g., Just Cause Hearings or arraignments) – you would count the final charges that went forward (or if no charges went forward, you would count one charge).

When scoring this item, counting charges and convictions, it is important to use an official criminal record. One incident can result in several charges or convictions. For example, an offender perpetrates a rape where he penetrates the victim once digitally and once with his penis while holding her in a room against her will. This may result in two convictions for Sexual Battery (Sexual Assault or equivalent) and one conviction of False Imprisonment (Forcible Confinement or equivalent). So long as it is known that the False Imprisonment was part of the sex offence, the offender would be scored as having three (3) sexual charges, three (3) sexual convictions, and an additional risk point for a conviction of non-sexual violence [the False Imprisonment] (Either “index” {Item #3} or “prior” {Item #4} as appropriate).

Note, however, that not all charges and convictions that are part of the sentencing occasion for a sex offence will count as sexual. To count them as sexual, they should be part of the sexual motivation of the offence, or clearly part of the commission of the sex offence. For example, an offender is convicted of Breaking and Entering, Theft, and Rape, and the offence was that he broke into a house, stole some items, and also sexually assaulted the resident. In this example, the Breaking and Entering and Theft were not part of the sex offence and would not be counted as sex offence charges or convictions. If the offender was also convicted of Forcible Confinement for keeping the victim in the house to facilitate the sexual assault, the Forcible Confinement would be counted as a sex offence charge and conviction. If, however, he locked the victim’s boyfriend in the bathroom while he committed the sex offence, the Forcible Confinement would not be counted as sexual. If there is evidence that a sex offence charge has been pled down to solely a non-sexual charge/conviction then it can count as a sex offence charge and conviction. For example if there is evidence the intent of the Break and Enter was to steal panties but this was pled down only to a Break and Enter conviction, then the Break and Enter is counted as a sexual charge and conviction.



For additional information in scoring this item, please review earlier sections defining sex offences (pages 20 to 28), index offences/clusters (pages 38 to 44), and what counts as a charge versus a conviction/sentencing date (pages 28 to 37).

The following is an example of counting charges and convictions.

| <b>Criminal History for John Jack</b> |  |  |                 |
|---------------------------------------|--|--|-----------------|
| <b>Date</b>                           | <b>Charges</b>   | <b>Convictions</b>   | <b>Sanction</b> |
| July 1996                             | Lewd and Lascivious with Child (X3)<br>Sodomy<br>Oral Copulation<br>Burglary | Lewd and Lascivious with Child (X3)<br>Sodomy (dismissed)<br>Oral Copulation (dismissed)<br>Burglary (dismissed) | 3 Years         |
| May 2001                              | Sexual Assault on a Child  |  |                 |

To determine the number of prior sex offences you first exclude the index offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the index offence. After excluding the May 2001 charge, you sum all remaining sex offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous sex offence charges. You then sum the number of prior sex offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sex offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

| <b>Prior Sex Offences</b> |                    |                    |
|---------------------------|--------------------|--------------------|
| <b>Charges</b>            | <b>Convictions</b> | <b>Final Score</b> |
| None                      | None               | 0                  |
| 1-2                       | 1                  | 1                  |
| 3- <b>5</b>               | 2- <b>3</b>        | <b>2</b>           |
| 6+                        | 4                  | 3                  |

Charges and convictions are counted separately – the column that gives the higher final score is the column that scores the item. It is possible to have six (6+) or more charges for a sex offence and no convictions. Were this to happen, the offender’s final score would be a three (3) for this item.

Any disposition that results in a sentencing date is considered equivalent to a conviction. Please see pages 28 to 37 for further definitions of what counts as charges versus convictions.

### **Arrests count**

In some instances, the offender has been arrested for a sex offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sex offence and no formal charges are filed, a “1” is coded under charges, and a “0” is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues. If an offender is questioned about a sex offence but is not arrested, then this would not count as a charge.

### **Coding “crime sprees”**

Occasionally, an evaluator may have to score Static-99R on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into five homes, each of

which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, Break and Enter with Intent (X2), and an Assault. The question is, do all the charges count as sex offences, or just the two charges that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as non-sexual violence? Note as well that all of these would have to be prior to the index sex offence to count for this item.

In cases such as this, code all five offences as sex offences - based upon the following thinking:

- 1) From the evidence presented this appears to be a "focused" crime spree – We assume the evaluator has little doubt what would have happened had the women not escaped or fought back.
- 2) Our opinion of "focus" is reinforced by the exclusive nature of the victim group, "elderly females." This offender appears to want something specific, and, the very short time span - 20 days – leads us to believe that the offender was feeling some sexual or psychological pressure to offend.
- 3) An attempted contact sex offence is scored as a contact sex offence for the purposes of Static-99R. Charges such as Attempted Sexual Assault (Rape) and Invitation to Sexual Touching are coded as contact sex offences due to their intention. See Item #7 for more information on contact versus non-contact sex offences.
- 4) We recommend that if the evaluator, based on “the Balance of Probabilities” (not “Beyond a Reasonable Doubt”) - is convinced that offences were sexually motivated, then these actions can be counted as sex offences.
- 5) Please also read sub-section “Similar Fact Crimes” (page 27) in the “Definitions” section.

Note that the Assault would also count as a non-sexual violent offence (in addition to a sex offence).

### **Counting probation, parole and conditional release violations**

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as charges and may or may not count as convictions (see explanation on pages 29 to 31 for more detail on when they can count as a sex offence).

### **Post-index offences**

Offences that occur after the index sentencing occasion do not count for Static-99R purposes. Post-index sex offences create a new index offence (and would prompt a re-scoring of the scale). Post-index violent and non-violent offences should be considered “external” risk factors and would be included separately in any report about the offender’s behaviour. Technical violations after conviction for an index sex offence are also not considered anywhere in Static-99R scoring. For more information on post-index offences, see pages 40 to 41.

Static-99R is intended to summarize the offender’s risk of sexual reoffence on the day of their first opportunity to reoffend after the index offence (e.g., release from prison for the index sex offence, conviction date if they received a non-custodial sentence, or date of charge if there was no conviction). No matter how much time has passed since then, the score still summarizes what their risk was like on that day. Events occurring after that point in time may be relevant for risk management and supervision, but they would be considered as separate from Static-99R assessment.

Also note that the offender’s risk on the day of release from the index sex offence (which is measured by Static-99R) is not necessarily the same as their risk upon first opportunity to reoffend after committing the index sex offence. In the case of historical offenders, they may have been in the community for decades after committing the index offence before they were detected for it. Static-99R, however, specifically speaks to their risk on the day they are released from the sanction (or charge) associated with the index

sex offence. Although historical offenders were included in the development and validation datasets for Static-99R, if the offender was in the community offence-free for decades after committing the index sex offence but before being detected for it, that may be something to discuss in a report, external to the Static-99R score.

**For example, post-index sex offences:** Consider a case where an offender commits a sex offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sex offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime “spree.” He chose to reoffend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sex offence and become the new index offence. If these charges happened to be the last sex offences on the offender’s record – the most recent charges would become the index and the charge on which he was first released on bail would become a “prior” sex offence.

**For example, post-index violent offences:** Consider a case where an offender in prison on a sex offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-Sexual Violence convictions) or Item #4 (Prior Non-Sexual Violence convictions) but would be referred to separately, outside the context of Static-99R assessment, in any subsequent report on the offender.

## Item # 6 Prior Sentencing Dates

**The Basic Principle:** This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the “the best predictor of future behaviour, is past behaviour.” Andrews & Bonta (2010) found that having a criminal history is one of the “Big Four” predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

**Information Required to Score this Item:** To score this item you must have access to an official criminal record as compiled by police, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section on Self-report and Static-99R in the Introduction section.

**The Basic Rule:** If the offender’s criminal record indicates four or more separate sentencing dates prior to the latest detection for at least part of the index sex offence, the offender is scored a “1” on this item. If the offender’s criminal record indicates three or fewer separate sentencing dates prior to the index offence, the offender scores a “0” on this item.

Count the number of distinct occasions on which the offender was sanctioned for criminal offences. The number of charges/convictions does not matter, only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor are convictions overturned over on appeal. The index sentencing date or most recent sentencing date is not included when counting up the sentencing dates.

Multiple convictions that cluster together into a single sentencing occasion (see pages 38 to 44 for further examples of clusters and disentangling priors) are counted as one sentencing date, even if they span multiple dates. To count a conviction (or its equivalent) as a distinct, prior sentencing date, the offender has to commit a new offence after being detected for the previous offence. For additional information on identifying prior offences, see pages 41 to 44.

If the offender is on some form of conditional release (parole/probation/bail etc.) purely “technical” violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. Even if a conditional release violation could potentially be charged as a new crime, unless it extends the offender’s sentence (in jurisdictions that have that option: see section on parole/probation violations on pages 29 to 31), or the individual receives a new sentence it cannot count as a sentencing occasion.

Institutional rule violations do not count as a sentencing date, even when the offence was for behaviour that could have resulted in a legal sanction if the offender had not already been incarcerated.

### Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction, pages 8 to 9)
- Anything that counts as a conviction will count as a sentencing date. See pages 28 to 36 for further examples of what counts as a conviction.
- Sentencing dates prior to the index sentencing date (it can be tricky to disentangle index from prior offences; see some examples on pages 42 to 22).

### Do Not Count:

- Stayed charges do not count as sentencing dates (but a stayed sentence does count)
- Institutional disciplinary actions/reports do not count as sentencing dates

- Arrests and charges do not count as sentencing dates

The offences must be of a minimum level of seriousness. The offences need not result in a serious sanction (the offender could have been fined), but the offence must be serious enough to permit a sentence of community supervision or custody/incarceration (as a juvenile or adult). Driving offences generally do not count, unless they are associated with serious penalties, such as driving while intoxicated, dangerous driving, or reckless driving causing death or injury.

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can only result in fines do not count. Graduated penalty offences, however, do count (e.g., where it is not possible to receive community supervision or custody on the first offence, but it is possible on subsequent offences).

Sentences for historical offences received while the offender is incarcerated for a more recent offence (pseudo-recidivism) are not counted. For two offences to be considered separate sentencing dates, the second offence must have been committed after the offender was detected for the first offence.

**Post-index offences**

Post-index offences are not counted as sentencing dates for Static-99R.

## Item # 7 - Any Convictions for Non-Contact Sex Offences

**The Basic Principle:** This item was intended as a behavioural indicator of illegal paraphilic interests such as exhibitionism, voyeurism, pedophilia, and some forms of fetishism (e.g., stealing underwear). Offenders with illegal paraphilic interests are at increased risk for sexual recidivism (Hanson & Bussière, 1998). As well, convictions for non-contact sex offences have been consistently related to increased sexual recidivism risk (Helmus & Thornton, 2015).

**Information Required to Score this Item:** To score this item you must have access to an official criminal record as compiled by police or other law enforcement agencies, court, or correctional authorities. Self-report of criminal convictions may not be used to score this item except in specific rare situations, please see sub-section “Self-report and Static-99R”, pages 8 to 9 in the Introduction section.

**The Basic Rule:** If the offender’s criminal record indicates a conviction for a non-contact sex offence, the offender is scored a “1” on this item. If the offender’s criminal record does not show a conviction for a non-contact sex offence, the offender is scored a “0” on this item.

This category requires a conviction for a non-contact sex offence such as:

- Possessing obscene material (child pornography, including written child pornography and drawings or paintings)
- Obscene telephone calls
- Voyeurism
- Exposure to others
- Illicit sexual use of the internet for unwanted sexual chat
- Sexual harassment (unwanted sexual talk)
- In certain jurisdictions “Criminal Trespass” or “Trespass by Night” may be used as a charge for voyeurism – these would also count
- Secretive peeping or watching others for sexual purposes (including secret recordings)
- Breaking into a house and stealing fetish items (women’s or children’s underwear)

The conviction for a non-contact sex offence may be an index or prior offence, and it may be the only sex offence, or there may be contact sex offences on the offender’s record as well (in the same or in different sentencing occasions as the non-contact sex offence).

To count an offence in this item, it must meet the general definition of a sex offence (see pages 20 to 28) in addition to meeting the definition of a non-contact offence (see below). Note that if the offender has a Category “A” offence somewhere on their record, then Category “B” offences can be counted for this item (including offences without a sexual motive, such as public urination).

Anything that counts as a conviction or sentencing date would count for this item, if the behaviour was for a non-contact sex offence. See pages 28 to 36 for more examples of what counts as a conviction.

The general definition of a non-contact sex offence is the following:

Any illegal sexual act where the offender did not physically touch the victim or any physical touching that occurred was incidental to the offending, and either of the following:

- 1) The victim is actively coerced into nothing beyond perceiving (i.e., seeing, listening to) sexually offensive materials (e.g., seeing the offender masturbate, listening to an obscene phone call, viewing pornographic email attachments).

OR

- 2) No attempt was made by the offender to make the victim aware of being victimized at the time. This latter category includes actions such as possession of child pornography and most voyeuristic behaviours including both live “peeping” and/or surreptitiously recording individuals in settings where privacy would normally be expected (e.g., audiotaping women urinating in public restrooms, hiding cameras in toilets).

By this rule, compelling the commission of a sex offence counts as a contact offence, even if there is no physical contact between the offender and the victim. Similarly, restraining and forcing a boyfriend to watch his girlfriend being sexually assaulted represents a contact sex offence because the boyfriend is being physically restrained or positioned in some way. Sending the boyfriend a videotape of his girlfriend being sexually assaulted represents a non-contact sex offence. Blackmailing a teenager to undress or masturbate represents a contact offence, whether or not the offender was present at the time, because the victim is coerced into participating in a sexual activity (not just perceiving it) and the offender deliberately made the victim aware of the victimization.

Note that the current definition is not identical to the definition described in the previous Harris et al. (2003) scoring manual. The reason for the change is to address inconsistencies in the previous scoring rules, particularly relevant to internet offences, which were rare when the original coding rules were developed. These types of offences require a more nuanced scoring rather than considering all internet sex offenders as one homogenous group. The results will generally mean lower scores for some internet offenders, which is consistent with their generally lower risk. This new definition also allows greater consistency and flexibility when applied to novel offences.

In cases where it is a judgement call the evaluator should consider that non-contact offences are often repetitive and more reflective of paraphilic interests and not reflective of behaviours designed to result in normative sexual contact (e.g., mutual genital sex.)

The definition of “non-contact” is based on the behaviour. For example, an offender convicted of “trespassing” for peeping would get the risk point. When the offence details are unknown, it is possible to score this item based on the names of the offences (e.g., Exhibitionism). When the offence details are unknown and the offence name does not exclusively restrict its scope to non-contact sex offences, the offender would receive a score of “1” if the offence name is usually used for non-contact sex offences (e.g., Gross Indecency was commonly used for exhibitionism in Ontario during the 1980s). In the case of “Criminal Trespass” or “Trespass by Night,” the offence may be related to either voyeurism or break and enter. In these ambiguous circumstances, consider the nature of the case. For example, if the offender has numerous break and enter convictions (which were not sexually motivated) and denies a sexual motivation in the trespassing, you would likely not count it on the grounds that a non-sexual motive is highly plausible. However, if the offender has a lengthy sexual offending record or has a history of or interest in voyeurism, the trespass can be presumed sexual based on a Balance of Probabilities.

The offender must be convicted for a non-contact sex offence for it to count. Institutional rule violations, charges, and arrests do not count, nor do self-reported offences. The index offence(s) may include a conviction for a non-contact sex offence and this conviction can count as a non-contact sex offence.

If the offender is convicted in the same sentencing occasion of a contact sex offence such as lewd and lascivious behaviour with a child and a non-contact sex offence such as using an underage person for obscene matters, then the item is scored 1 since the offender committed a non-contact offence. Another example may occur if, during an investigation of child molestation, police seize the offender’s computer and find images of child pornography downloaded from the internet. The offender is subsequently

convicted of Sexual Interference (the Canadian term for a sex offence involving a victim under 16 years old) and Possession of Child Pornography. A non-contact sexual conviction would be coded here for the pornography.

If the offender engages in both contact and non-contact offending (e.g., he exposes himself to the victim and then sexually assaults her) but is only convicted of the contact sex offence (e.g., Sexual Assault) he does not get a point for non-contact sex offences. There must be a separate conviction for the non-contact sexual behaviour. A common example of this is where an offender is investigated for child molestation and police discover child pornography on the offender's computer, but the offender is only convicted for the child molestation (not for Possession of Child Pornography).

### **Attempted contact offences**

Sex offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences because of their intention (e.g., invitation to sexual touching, attempted rape).

### **Internet crimes**

None of the Static-99R samples had enough internet-only offenders to provide for meaningful analysis. As a result, determining how to score internet crimes on Static-99R requires interpretation beyond the available data.

Internet crimes can be roughly divided into two distinct groups because they seem to include elements of either contact or non-contact offences. For example, some offenders engage in sexual chat with minors on the internet without attempts to lure the minor into meeting them. We consider communicating with children over the internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sex offences.

If the offender manipulates the victim into engaging in sexual acts (sending nude or partially nude pictures/videos; engaging in sexual activity either on camera or while in verbal contact with the offender) then it crosses into a contact/attempted contact offence (because the victim is being coerced into more than perceiving the offence). Judgements should be based on the intent of the offender and not the victim's engagement. Clear and Convincing Evidence (for definition, see page 19) that the offender's motivation was to manipulate the victim into doing more than just listening or talking, but engaging in a physical sexual event through threats, coercion, or in the case of children under the age of 16 years, manipulation should be considered a contact/attempted contact offence. The evidence needs to go beyond simply a request that is rebuffed. For example, an offender who requests the victim send a nude picture but is rebuffed and does not pursue it further would be considered non-contact. If the offender threatens to find and rape the victim or uses coercion such as offering payment or threatening to spread rumours or tell friends and family about their sexual conversations if they do not comply with sending the nude picture/masturbating, etc., this would cross over to attempted contact.

Other internet offenders will engage in sexual chat with minor victims and attempt to meet them for the purpose of engaging in illegal sexual activities. If the offender attempts to meet the victim then we consider that internet offence to be more similar to contact offences like rape and child molestation and should be scored as a contact/attempted contact offence. If the offender suggests a meeting but makes no attempts to follow through and attend a meeting, it should be coded as non-contact (the presumption being that the meeting is more of a fantasy, rather than something the offender is trying to accomplish).

Keeping in mind the general rules distinguishing contact and non-contact offences, viewing child pornography online is considered non-contact. However, paying to view a child being abused live, paying



to have specific child pornography created, or directing a child to engage in sexual behaviour or another adult to sexually engage with a child during a live chat counts as a contact offence even though the offender is not physically present when the child is abused.

Written instructions to a child victim directing sexual activity would be considered non-contact unless the offender uses manipulation (e.g., threats) to engage the victim in sexual acts, at which point it crosses over into contact/attempted contact. Judgements should be based on the intent of the offender and not the victim's engagement. Clear and Convincing Evidence that the offender's motivation was to manipulate the victim into doing more than just reading the sexually explicit material, but engaging in a physical sexual event through threats, coercion, or, in the case of children under the age of 16 years, manipulation should be considered a contact/attempted contact offence.

Written instructions to another adult about how to sexually abuse a child would also be considered non-contact if the intent was limited to sharing of sexually explicit instructions with another adult. If this instruction was intended to result in another adult sexually abusing the victim it crosses over into a contact/attempted contact offence.

If you do not have this detail of information then assume the most common offence associated with the name of the offence (e.g., manufacturing child pornography is contact, possession of child pornography is non-contact).

Individuals whose only sexual convictions involve possessing/distributing child pornography and have no Category "A" offences are not scored on Static-99R. Internet child pornography offences are only counted when the offender also has at least one Category "A" offence involving an identifiable victim (see pages 21 to 25). Note, however, that it is possible to score Static-99R for sex offenders whose only sex offences are non-contact, as long as at least one of the non-contact offences are Category "A" offences, such as exhibitionism or voyeurism.

### **Pimping and prostitution related offences**

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution) do not count as non-contact convictions, even when the offender has a Category "A" sex offence on record.

### **Plea bargains**

Contact (or attempted contact) sexual behaviour that was pled down to a non-contact charge does not count as a non-contact sex offence conviction. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. In this case the offence would not be a conviction for a non-contact sex offence because the behaviour indicated contact, but would still count as a conviction for the purposes of identifying the index or prior sex offences.

### **Revocation of conditional release for "Lifers", Dangerous Offenders, and others with indeterminate sentences**

If a "lifer," Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a non-contact sex offence that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a non-contact sex offence, this revocation of conditional release would count as a conviction for a non-contact sex offence. The evaluator should be confident that were this offender not already under sanction that it is highly likely that a non-contact sex offence charge would be laid by police and a conviction would be likely.

## Items #8, #9, & # 10 – The Three Victim Questions

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category “A” sex offences). Do not score victim information from non-sex offences or from sex offences related to prostitution/pandering, possession of child pornography, public sex with consenting adults, or other Category “B” sex offences. There is one exception to this rule: if the offence is for not disclosing HIV-positive status (a Category “B” sex offence), the victim of this offence is still counted. Victims of other Category “B” sex offences are not counted. Do not score victim information on sex offences against animals (Bestiality and similar charges). Victim items include all contact offences including sex with dead bodies (but not animals), and some non-contact offences with clear victims such as exposure to others, voyeurism, and Breaking and Entering with a sexual intent (e.g., stealing underwear).

The evaluator does not need to know the personal identity of the victim or victims. The offence must have a clear target (child or adult) even if the personal identity of that person is unknown to the evaluator or even the offender. For example, an offender who surreptitiously takes photographs underneath women's skirts (i.e., "upskirt" photos or videos) has identifiable victims (the women whose privacy he has violated) even if the personal identity of those women is never ascertained.

For internet offences, the victim is identified as whoever the offender believes he is in contact with (e.g., a female child), even if the person on the receiving end of the communication is actually an adult police officer.

In addition to all of the “everyday” sex offences (Sexual Assault, Rape, Invitation to Sexual Touching, Buggery (Sodomy), you also score victim information on the following charges:

- Illegal use of a minor in nudity-oriented material/performance
- Importuning (Soliciting for immoral purposes)
- Indecent exposure (When a specific victim has been identified)
- Sexually harassing telephone calls
- Voyeurism (When a specific victim has been identified)

**You do not score Victim Information on the following charges:**

- Compelling acceptance of objectionable material
- Deception to obtain matter harmful to juveniles
- Disseminating/Displaying matter harmful to juveniles
- Offences against animals
- Pandering obscenity
- Pandering obscenity involving a minor
- Pandering sexually-oriented material involving a minor
- Prostitution related offences

### “Accidental victims”

Occasionally there are “Accidental Victims” to a sex offence. An example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim’s four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of “Lewd and lascivious act with a minor” in addition to the rape. In court the offender pleaded guilty to

both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sex offence against him. He would not count in any of the three victim items regardless of the conviction in court.

A common example of an accidental victim occurs when a person in the course of his/her daily life or profession happens across a sex offence. Examples include police officers, park wardens, janitors, and floor walkers who observe a sex offence in the course of their duties. If a male officer were to observe an exhibitionist exposing himself to a female, the offender would not be given the point for “male victim” as there was no intention to expose before the male officer. The evaluator would not give the offender a point for “male victim” unless the offender specifically chose a male officer to expose himself to. In the same vein, a floor walker or janitor who observes an offender masturbating while looking at a customer in a store would not be counted as a “stranger victim” or an “unrelated victim.” In short, there has to be some intention to offend against that person for that person to be a victim. Merely stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

When the offender actively restrains another individual such that the individual is forced to witness a sexual crime, the individual is only counted in the victim items if there is evidence that forcing the individual to witness the sexual crime was sexually motivated. For example, if an offender forces a boyfriend to watch the sexual assault of his girlfriend due to expediency the boyfriend would not be counted as a victim of a sex offence (see item "Any Male Victim" on page 84 for further clarification).

### **Acquitted, found not guilty, or dismissed charges**

The criteria for coding victim information is “all credible information.” Please refer to the discussion of Standards of Proof in the Introduction Section (page 19) for more details. Scoring of victim items is guided by: “On a Balance of Probabilities, what is most likely to be true?” If the assessor, “On a Balance of Probabilities” feels that the offence more likely than not took place, the victims may be counted, even in the absence of formal charges.

For the assessment, therefore, it may be necessary to review the cases in which the offender was acquitted, found “Not Guilty,” or where charges were not filed, and make an independent determination of whether it is more likely than not that there were actual victims. If, in the evaluator’s opinion, it was more likely that there was no sex offence the evaluator would not count the victim information. In the resulting report the evaluator would generally include a score with the contentious victim information included and a score without this victim information included, showing how it affects the risk assessment both ways.

This decision to score acquittals and not guilty in this manner is buttressed by a research study in England that found that men acquitted of rape were more likely to be convicted of sex offences in the follow-up period than men who had been found guilty {with equal times at risk} (Soothill, Way, & Gibbens, 1980).

### **Child pornography**

Victims portrayed in child pornography are not scored as victims for the purposes of Static-99R. They do not count as unrelated, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child should be scored as a victim on Static-99R victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally or photographically] is not sufficient – a real child must be present). Making child pornography with a real child victim counts as a “Category A” offence and, hence, with even a single charge of this nature, Static-99R is appropriate to use. Note, however, that the offender does not need to be present to consider someone as a real child victim. If the offender watches a child being abused live on the internet or pays for specific child pornography to be created with a live child victim,

this would be counted. If the child pornography existed on the internet before the offender came across it, the victims would not count, even though a live child was abused at some point in the past. The difference is that this offender has not **directly** participated in this abuse.

The evaluator may, of course, in another section of the report make reference to the apparent preferences demonstrated in the pornography belonging to the offender.

### **Conviction, but no victim**

For the purposes of Static-99R, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category “B” offences. Examples of this are prostitution offences and sexual behaviour in public places (Please see “Category “A” and Category “B” offences” in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sex offence, the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report indicates that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding. Additionally, this behaviour would not be considered a sex offence for scoring purposes (e.g., would not be included in prior sex offences). If this was the offender’s only sex offence, Static-99R should not be used.

The criteria for deciding there was no victim for scoring purposes underlying a conviction for a statutory rape offence are as follows:

- (a) The “alleged victim” states the sexual interaction was cooperative and has never claimed otherwise;
- (b) The offender had no pre-existing power relationship over the “alleged victim” (e.g., swim instructor, therapist); AND
- (c) If the “victim” was younger than the age of consent and of correspondingly approximately equal cognitive development to the offender and the offender was less than 3 years older than the person. If the “victim” was younger than the age of consent and the offender is obviously of a lesser cognitive developmental capacity, then the age difference between the offender and the victim can be up to 5 years. If there is no information available on the offender’s cognitive development, then the 3-year age difference applies.

### **Credible information**

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts, and offender self-report. If the information is credible (Children’s Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences. Please refer to the discussion of Standards of Proof in the Introduction Section for more information (page 19). For all information, the evaluator must make a determination of whether they believe, on a Balance of Probabilities that a sex offence occurred, in order to count the victim information.

An example of a collateral source that may be deemed not credible would include an ex-spouse with whom the offender is currently involved in heated divorce proceedings and whose motivation is likely to disparage the offender.

If there is a source of relevant information for which the degree of credibility is not clear, the evaluator’s report should generally include both a score with the contentious victim information included and a score

without this victim information included, in this way showing how the information affects the risk assessment both ways.

### **Exhibitionism/exposing to others**

In cases of exhibitionism, the three victim items may be scored if there was a targeted victim, and the evaluator is confident that they know whom the offender was trying to exhibit to. If the offender exhibits before a mixed group, males and females, do not score Male Victim unless there is reason to believe that the offender was exhibiting specifically for the males in the group. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Example: If a man exposed to a school bus of children he had never seen before (both genders), the evaluator would score this offender one risk point for Unrelated Victim, one risk point for Stranger Victim, but would not score a risk point for Male Victim unless there was evidence the offender was specifically targeting the boys on the bus.

In cases where there is no sexual context (i.e., the psychotic street person who takes a shower in the town fountain) there are no victims regardless of how offended they might be or how many people witnessed the event.

### **Internet victims and intention**

If an offender provides pornographic material over the internet or engages in sexual discussions, the intent of the communication is important. In reality a policeman may be on the other end of the net in a “sting” operation. If the offender thought he was providing pornography to or engaging in sexual discussions with a child, even though the recipient is a police officer, the victim information is counted as if a child received it. In addition, when offenders attempt, over the internet, to contact face-to-face a “boy or girl” they have contacted over the internet, the victim information counts as the intended victim, even if they only “met” a policeman.

Intention is important. In a case where a child was pretending to be an adult and an adult “shared” pornography with that person in the honest belief that they were (legally) sharing it with another adult there would not be a victim.

### **Juvenile offences**

Victims of juvenile offences count for all three victim items.

### **Missing information**

The evaluator needs to know the pertinent victim characteristics (gender and relationship to offender) for at least one victim to score these items. If there are additional victims but their characteristics are unknown, the evaluator should always make a note of this missing information when reporting the total score. The evaluator should consider what the score would be with the most probable characteristics of the other victims. In most cases, it is plausible to assume that the characteristics of the other victims are consistent with known victims. In some situations, however, alternate characteristics are plausible. For example, if the known victim is related (e.g., the offender’s daughter) and the offender has a previous sex offence from when he had no children or stepchildren, the victim from this prior offence was probably unrelated. If the probable characteristics of the other victims would result in a different total score, the evaluator should report the total score both ways (with the missing information, as well as with the plausible characteristics of other victims).

### **Polygraph information**

Victim information derived solely from polygraph examinations is not used to score Static-99R unless it can be corroborated by outside sources or the offender provides sufficient information to support a new

criminal investigation. Please refer to the discussion of polygraph information in the Introduction section for more information (page 18).

**Prowl by night - voyeurism**

For these types of offences the evaluator should score specific identifiable victims. However, assume only female victims unless you have evidence to suggest that the offender was targeting males.

**Sex offences against animals**

While the sexual assault of animals counts as a sex offence, animals do not count as victims. This category is restricted to human victims. It makes no difference whether the animal was a member of the family or whether it was a male animal or a stranger animal.

**Sex with dead bodies**

If an offender has sexual contact with dead bodies, these people do count as victims. The evaluator should score the three victim questions based upon the degree of pre-death relationship between the perpetrator and the victim.

**Stayed charges**

Victim information obtained from stayed charges should be counted.

**Victims not at home**

If an offender breaks into houses (regardless of whether or not the victims are there to witness the offence) to commit a sex offence, such as masturbating on or stealing their undergarments or does some other sex offence – victims of this nature are considered victims for the purposes of Static-99R. Assume only female victims unless you have evidence to suggest that the offender was targeting males.

Do not count all household occupants as victims. Include only individuals who appeared to be the offender's target victims. Count the offender's intended victim as opposed to the actual victim. For example, if the offender masturbated with clothing that would presumably belong to a female (such as a thong) but in actual fact it belonged to a man, the victim would still be considered an adult female unless there was evidence indicating that the offender knew the item belonged to a male.

## **Item # 8 – Any Unrelated Victims?**

**The Basic Principle:** Research indicates that offenders who offend only against family members recidivate at a lower rate compared to those who have victims outside of their immediate family (Harris & Hanson, 2004; Helmus & Thornton, 2015). Having victims outside the immediate family is empirically related to a corresponding increase in risk.

**Information Required to Score this Item:** To score this item use all available credible information. “Credible Information” is defined in the previous section “Items #8, #9, & #10 -The Three Victim Questions” (pages 74 to 78).

**The Basic Rule:** If the offender has victims of sex offences outside their immediate family, score the offender a “1” on this item. If the offender’s victims of sex offences are all within the immediate family score the offender a “0” on this item.

A related victim is one where the relationship is sufficiently close that marriage would normally be prohibited, such as parent, brother, sister, uncle, grandparent, stepbrother, and stepsister. Spouses (married and common-law) are also considered related, provided that they have been in this relationship for at least 2 years before the sexual abuse started. When considering whether step-relations are related or not, consider the nature and the length of the pre-existing relationship between the offender and the victim before the offending started. Step-relationships lasting less than two years would be considered unrelated (e.g., step-cousins, stepchildren). Adult stepchildren would be considered related if they had lived for two years in a child-parent relationship with the offender.

### **Time and jurisdiction concerns**

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, Canada there were 17 relations a man could not marry, including such oddities as “nephew’s wife” and “wife’s grandmother.” In 1998 the law changed and there are now only five categories of people that you cannot marry in Ontario, Canada: grandparent, parent, child, sibling, and grandchild (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim, but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man’s choice of victim and his resulting risk of reoffence. As a result the following rules have been adopted.

When considering whether someone is related or not please use the following guidelines (summarized below in a table). The guidelines hold for step-relations or adoptions, if they are more than two years in duration:

- For the offender - all first degree relatives; all second degree relatives; third degree relatives within one generation (i.e., plus or minus one generation); fourth degree relatives of the offender's own generation.
- For the offender's spouse - all first degree relatives; all second degree relatives; third degree relatives within one generation
- For the offender's sibling's spouse - all first degree relatives; second degree relatives of the offender's own generation. All marital-like relationships (e.g., offender's sibling’s spouse) must also meet the two-year rule.

In the table below, underlined and italicized relationships are considered related for scoring purposes.

|                 | 1st degree                    | 2nd degree          | 3rd degree          | 4th degree                |                                |
|-----------------|-------------------------------|---------------------|---------------------|---------------------------|--------------------------------|
| <i>offender</i> |                               |                     |                     | great-great grandparents  | <b>generation 4</b>            |
|                 |                               |                     | great-grandparents  |                           | <b>generation 3</b>            |
|                 |                               | <i>grandparents</i> |                     | great uncle/aunt          | <b>generation 2</b>            |
|                 | <i>parent/parent's spouse</i> |                     | <i>uncle/aunt</i>   |                           | <b>generation 1</b>            |
|                 |                               | <i>sibling</i>      |                     | <i>first cousin</i>       | <b>offender's generation 1</b> |
|                 | <i>child/child's spouse</i>   |                     | <i>nephew/niece</i> |                           | <b>generation 1</b>            |
|                 |                               | <i>grandchild</i>   |                     | great nephew/niece        | <b>generation 2</b>            |
|                 |                               |                     | great-grandchildren |                           | <b>generation 3</b>            |
|                 |                               |                     |                     | great-great grandchildren | <b>generation 4</b>            |

|                          | 1st degree                    | 2nd degree          | 3rd degree          |                                |
|--------------------------|-------------------------------|---------------------|---------------------|--------------------------------|
| <i>offender's spouse</i> |                               | <i>grandparents</i> | great-grandparent   | <b>generation 3</b>            |
|                          | <i>parent/parent's spouse</i> |                     | <i>uncle/aunt</i>   | <b>generation 2</b>            |
|                          |                               | <i>sibling</i>      |                     | <b>generation 1</b>            |
|                          | <i>child/child's spouse</i>   |                     | <i>nephew/niece</i> | <b>offender's generation 1</b> |
|                          |                               | <i>grandchild</i>   |                     | <b>generation 1</b>            |
|                          |                               |                     | great-grandchild    | <b>generation 2</b>            |
|                          |                               |                     |                     | <b>generation 3</b>            |

|                                    | 1st degree     | 2nd degree     |                              |
|------------------------------------|----------------|----------------|------------------------------|
| <i>offender's sibling's spouse</i> | <i>parents</i> | grandparents   | <b>generation 2</b>          |
|                                    |                | <i>sibling</i> | <b>generation 1</b>          |
|                                    | <i>child</i>   |                | <b>offender's generation</b> |
|                                    |                | grandchild     | <b>generation 1</b>          |
|                                    |                |                | <b>generation 2</b>          |

Decisions about borderline cases (e.g., those not listed in the table above) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related. Additionally, the two-year rule applies for relationships not generally considered related in the above tables. For example, although great-grandchildren are not generally considered related, if the offender and victim lived together for two or more years before the sexual offending started, then the victim would become related.

#### **Blood relation known for less than 2 years**



In some families, the existence of certain family members has been hidden from other family members. If the offender is unaware that a victim is a family member, the victim counts as unrelated. If the offender and victim are blood relations (e.g., brother, half-sister, niece) and the offender is aware of the family relationship, the victim would be considered related for Static-99R scoring purposes, unless the offender sexually offended against this person within 24 hours of first meeting them (in this case, the victim would count as both an unrelated and a stranger victim). Given a blood relationship, it is not necessary that the offender and the victim have lived with each other for two years – just that the offender knew the relationship existed and did not sexually offend against this person within the first 24 hours of meeting them.

**Becoming “unrelated”**

If an offender who was given up for adoption (removed etc.) at birth (e.g., mother and child having no contact since birth or shortly after) and the mother (sister, brother etc.) is a complete stranger that the offender would not recognize (facial recognition) as their family, these biological family members could count as Unrelated Victims. This would only happen if the offender did not know they were offending against a family member.

## Item # 9 - Any Stranger Victims?

**The Basic Principle:** Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière's (1998) Table 1 – Item “Victim Stranger (versus acquaintance)” and Helmus and Thornton (2015).

**Information Required to Score this Item:** Use all credible information to score this item. “Credible Information” is defined in the section “Items #8, #9, & #10 - The Three Victim Questions” (pages 74 to 78).

**The Basic Rule:** If the offender has victims of sex offences who were strangers at the time of the offence, score the offender a “1” on this item. If the offender's victims of sex offences were all known to the offender for at least 24 hours prior to the offence (or vice versa), score the offender a “0” on this item. If the offender has a “stranger” victim, Item #8, “Any Unrelated Victims,” is always scored as well.

A victim is considered a stranger if the victim did not know the offender (or vice versa) 24 hours before the offence. Victims contacted over the internet are not normally considered strangers unless the criminal behaviour occurs less than 24 hours after initial communication.

For stranger victims, the offender can either not know the victim or it can be the victim not knowing the offender. In the first case, where the offender does not know the victim (the most common case), the offender may choose someone who they are relatively sure will not be able to identify them (or they just do not care) and offends against a stranger. However, there have been examples where the offender “should” have known the victim but just did not recognize them. This occurred in one case where the perpetrator and the victim had gone to school together but the perpetrator did not recognize the victim as someone they knew. In cases like this, the victim would still be a stranger victim as the offender's intention was to attack a stranger.

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy beer, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said “Hi” to them on occasion, the child is no longer a stranger victim.

The evaluator must determine whether the victim “knew” the offender twenty-four hours (24) before the assault took place. The criteria for “know/knew” is quite low but does involve some level of interaction. They do not need to know each other's names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as “known.”

In another common example, the offender and the victim may go to school together. If they know of each other (i.e., could recognize and identify names) but have never interacted, they would still be considered strangers. Recall though that the threshold for interaction is low – having said ‘hello’ once (even in primary school) would be enough to make them not strangers.

### **The reverse case**

In cases of “stalking” or stalking-like behaviours the offender may know a great deal about the victim and their habits. However, if the victim does not know the offender when they attack, this still qualifies as a stranger victim.

The “24 hour” rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had “known of” the performer for years, but the

performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

### **Internet, e-mail, and telephone**

Sometimes offenders attempt to access or lure victims over the internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the internet (e-mail, skype, message boards) for more than twenty-four (24) hours before the meeting where the criminal behaviour occurred, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring Static-99R.

It is possible in certain jurisdictions to perpetrate a sex offence over the internet, by telephone or e-mail and never be in physical proximity to the victim. If the offender transmits sexually explicit/objectable materials over the internet within 24 hours of first contact, this can count as a stranger victim; once again the “24 hour rule” applies. However, if the perpetrator and the victim have been in communication for more than 24 hours prior to the sending of the indecent material or the starting of indecent talk then the victim can no longer be considered a stranger.

When the interaction is based on a totally false identify, it is possible, however, to change from acquaintance to stranger in the face-to-face meeting. For example, the offender interacts with the victim posing as a 16 year old boy but is actually a 45 year old male. From the victim’s perspective, meeting the 45 year old would be equivalent to meeting a stranger. Do not count as strangers individuals who mildly misrepresent themselves as younger, richer, and more good looking than they actually are. Only count individuals as strangers when there is no plausible expectation that their false identify could be maintained in a face-to-face meeting.

### **Becoming a “stranger” again**

It is possible for someone who the offender had met briefly before to become a stranger again. It is possible for the offender to have met a victim but to have forgotten the victim completely (over a period of years). If the offender believed he was assaulting a stranger, the victim can be counted as a stranger victim. This occurred when an offender returned after many years’ absence to his small hometown and assaulted a female he thought he did not know, not realizing that they had gone to the same school. It can also occur on the internet when an offender known to the victim disguises himself and offends against the victim and she did not know who he was.

## Item # 10 - Any Male Victims?

**The Basic Principle:** Research shows that offenders who have offended against males recidivate at a higher rate compared to those who do not have male victims (Helmus & Thornton, 2015). Having male victims is correlated with measures of sexual deviance and is seen as an indication of increased sexual deviance; see Hanson and Bussière (1998), Table 1.

**Information Required to Score this Item:** To score this item use all available credible information. “Credible Information” is defined in section “Items #8, #9, & #10 - The Three Victim Questions” (pages 74 to 78).

**The Basic Rule:** If the offender has male victims of sex offences (non-consenting adults or child victims), score the offender a “1” on this item. If the offender’s victims of sex offences are all female, score the offender a “0” on this item.

Included in this category are all sex offences involving male victims. Possession of child pornography involving boys, however, does not count unless the offender created the child pornography (or had it created) using a real live child. Although a child pornography collection focusing on males would be an indicator of sexual interest in males, this is not scored in this item because victims of Category “B” offences are not counted and were not included in the development and validation research for Static-99R. However, this information may be helpful to discuss in the risk assessment report, external to the Static-99R score.

Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the internet does count.

If an offender assaults a transvestite or transgender person in the mistaken belief the victim is a female (may be wearing female clothing), do not score the transvestite or transgender person as a male victim. If the offender knew or thought he was assaulting a male before the assault (or if he continued to sexually assault him after discovering he was a male), score a male victim.

In some cases a sex offender may beat up or contain (lock in a car trunk) another male in order to sexually assault the male’s date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on Static-99R. In order for the male to count as a victim of a sex offence, there must be evidence that the assault/restraint of the male was sexually motivated. For example, if the perpetrator involves the male in the sex offence by tying him up and making him watch a rape (forced witness), there would need to be additional signs of sexual motivation for the male victim to count, such as self-admitted fantasies, preparing for forced witnesses as part of offence planning, or statements made to the forced witness during the offence that suggested a sexual motivation in the presence of the male witness.

## Scoring Static-99R & Computing the Risk Estimates

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Using the Static-99R Coding Form (Appendix C), sum all individual item scores for a total risk score based upon the ten items. This total score can range from “-3” to “12.” Risk levels associated with each score are noted at the bottom of the Coding Sheet.

Once a total score is obtained, the “Evaluators’ Handbook” is used to interpret the score. It includes information on communicating both relative (e.g., percentiles, risk ratios) and absolute (e.g., recidivism estimates) risk, as well as suggested reporting paragraphs for reporting Static-99R scoring results (Phenix, et al., 2016). Evaluators are encouraged to periodically check for updates, which are posted at [www.static99.org](http://www.static99.org).

## Appendix A: Self-Test

1. **Question:** In 2010, Mr. Smith is convicted of molesting his two stepdaughters. The sexual abuse occurred between 2005 and 2009. While on conditional release in 2015, Mr. Smith is convicted for another sex offence. The offence related to the abuse of a child that occurred in 2000. Which conviction is the Index offence?

*Answer:* This is an example of an index cluster. The 2010 and 2015 convictions would both be considered part of the index offence. Neither would be counted as a prior sex offence. The 2015 conviction is pseudo-recidivism because the offender did not reoffend after being charged with the 2010 offence.

2. **Question:** In April 2016, Mr. Jones is charged with sexual assault for an offence that occurred in January 2016. He is released on bail and reoffends in July 2016, but this offence is not detected until October 2016. Meanwhile, he is convicted in September 2016, for the January 2016 incident. The October 2016 charge does not proceed to court because the offender is already serving time for the September 2016 conviction. You are doing the evaluation in November. What is the Index offence?

*Answer:* The October 2016 charge is the index offence because the offence occurred after Mr. Jones was charged for the previous offence. The index sex offence need not result in a conviction.

3. **Question:** In January 2007, Mr. Dixon moves in with Ms. Trembley after dating since March 2006. In September 2009, Mr. Dixon is arrested for molesting Ms. Trembley's daughter from a previous relationship. The sexual abuse began in July 2008. Is the victim related?

*Answer:* No, the victim would not be considered related because when the abuse began, Mr. Dixon had not lived for two years in a parental role with the victim.

4. **Question:** At age 15, Mr. Miller was sent to a residential treatment centre after it was discovered he had been engaging in sexual intercourse with his 12 year old stepsister. Soon after arriving, Mr. Miller sexually assaulted a fellow resident. He was then sent to a secure facility that specialized in the treatment of sex offenders. Charges were not laid in either case. At age 24, Mr. Miller sexually assaults a cousin and is convicted shortly thereafter. Mr. Miller has how many prior sex offences?

*Answer:* For Item #5, Prior Sex Offences, score this as 1 prior charge and 0 prior convictions. Although Mr. Miller has no prior convictions for sex offences, there are official records indicating he has engaged in sex offences as an adolescent that resulted in custodial sanctions on two separate occasions. However, only count one charge in total for all social service interventions for sexual offences committed between 12 and 15 years old (see page 34). Note that this is a change from the previous version of the Static-99 Coding Rules – Revised 2003 (Harris et al., 2003) which would have allowed this scenario to be scored as 2 charges and 2 convictions. The change is to create more consistency between the scoring of juvenile and adult offences. Here, these sanctions do not meet the typical threshold of a conviction (e.g., proof Beyond a Reasonable Doubt, due process). The index offence at age 24 is not counted as a prior sex offence.

5. **Question:** Mr. Smith was paroled from a non-sexual offence in January, 2012, and returned to prison in July 2012 for violating several conditions of parole for behaviour that included child molestation, lewd act with a child, and contributing to the delinquency of a minor. Once back in prison he sexually assaulted another prisoner. Mr. Smith has now been found guilty of the sexual assault against the inmate and the judge has asked you to contribute to a pre-sentence report. How many Prior Sex Offence (Item #5) points would Mr. Smith receive for his parole violations?

*Answer:* 1 charge and no convictions. Probation, parole and conditional release violations for sexual misbehaviours are counted as one charge, even when there are violations of multiple conditions of release.

6. **Question:** Mr. Moffit was charged with child molestation in April 2007 and absconded before he was taken into custody. Mr. Moffit knew about the charges when he left. He travelled to another jurisdiction where he was arrested and convicted of child molesting in December 2012. He served 2 years in prison and was released in 2014. He was apprehended, arrested and convicted in January of 2016 for the original charges of Child Molestation he received in April 2007. Which offence is the Index offence?

*Answer:* The most recent offence date, December 2012 becomes the index offence. In this case, the offence dates should be put back in chronological order given that he was detected in 2007 and continued to offend. The April 2007 charges and subsequent conviction in January of 2016 become a prior sex offence.

7. **Question:** While on parole, Mr. Jones, who has an extensive history of child molestation, was found at the county fair with an eight-year old male child. He had met the child's mother the night before and volunteered to take the child to the fair. Mr. Jones was in violation of his parole and he was returned to prison. He subsequently got out of prison and six months later sexually reoffended. You are tasked with the pre-sentence report. Do you count the above parole violation as a prior sex offence charge?

*Answer:* No. Being in the presence of children is not counted as a charge for prior sex offences unless an offence is imminent. In this case, Mr. Jones was in a public place with the child among many adults. An incident of this nature exhibits "high-risk" behaviour but is not sufficient for a charge of a sex offence.

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## Appendix C: Static-99R Coding Form and Comments

### Coding Form Preamble

In some situations an item score may be tentative due to uncertainty about a decision (e.g., anticipated age at release) or insufficient or conflicting information (e.g., victim information) and it may make sense to complete separate coding sheets for both alternatives and clearly discuss the reason for the different scores and the associated impact on Static-99R results in all reports.

During audits of Static-99R scoring sheets the most commonly identified error is mechanical (e.g., incorrect summing of item scores). Consequently it is strongly recommended that evaluators sum the item scores and check the total at least twice. A mechanized process, such as specialized scoring software or an excel spreadsheet into which item scores may be entered and then summed electronically can be helpful to minimize mathematical errors.

Interestingly, Hanson, Helmus, and Harris (2015) found a meaningful difference between those community supervision officers who completed all the assessments requested of them and those officers who sent incomplete information (e.g., a STABLE score without a Static score). Among officers who completed all assessments, the predictive accuracy of Static-99R was very high (AUC = .80) and significantly higher than the Static-99R assessment of officers with incomplete assessment packages (AUC = .68). The lesson here is clear - commitment to the assessment can greatly improve your ability to predict sexual recidivism. Consequently, we recommend requiring evaluators to attest to the completeness of their scoring by signing the score sheet. Organizations may want to consider including a standard statement such as the one at the bottom of the coding form on the following page.

## Static-99R – TALLY SHEET

Assessment date: \_\_\_\_\_ Date of release from index sex offence: \_\_\_\_\_

| Item # | Risk Factor  | Codes   |   | Score              |
|--------|--|---|---|--------------------|
| 1      | Age at release from index sex offence                    | Aged 18 to 34.9<br>Aged 35 to 39.9<br>Aged 40 to 59.9<br>Aged 60 or older |   | 1<br>0<br>-1<br>-3 |
| 2      | Ever lived with a lover                                  | Ever lived with lover for at least two years?<br>Yes<br>No                |   | 0<br>1             |
| 3      | Index non-sexual violence -<br>Any convictions           | No<br>Yes   |   | 0<br>1             |
| 4      | Prior non-sexual violence -<br>Any convictions           | No<br>Yes   |   | 0<br>1             |
| 5      | Prior sex offences                                       | <u>Charges</u><br>0<br>1,2<br>3-5<br>6+                                   | <u>Convictions</u><br>0<br>1<br>2,3<br>4+ | 0<br>1<br>2<br>3   |
| 6      | Four or more prior sentencing dates<br>(excluding index) | 3 or less<br>4 or more  |   | 0<br>1             |
| 7      | Any convictions for non-contact sex<br>offences          | No<br>Yes   |   | 0<br>1             |
| 8      | Any unrelated victims                                    | No<br>Yes   |   | 0<br>1             |
| 9      | Any stranger victims                                     | No<br>Yes   |   | 0<br>1             |
| 10     | Any male victims   | No<br>Yes   |   | 0<br>1             |
|        | <b>Total Score</b>                                       | <b>Add up scores from individual risk<br/>factors</b>                     |   |                    |

| Nominal Risk Levels<br>(2016 version) | <u>Total</u> | <u>Risk Level</u>                    |
|---------------------------------------|--------------|--------------------------------------|
|                                       | -3, -2,      | <b>I - Very Low Risk</b>             |
|                                       | -1, 0,       | <b>II - Below Average Risk</b>       |
|                                       | 1, 2, 3      | <b>III - Average Risk</b>            |
|                                       | 4, 5         | <b>IVa - Above Average Risk</b>      |
|                                       | 6 and higher | <b>IVb - Well Above Average Risk</b> |

There [ was, was not] sufficient information available to complete the Static-99R score following the coding manual (2016 version). I believe that this score [ fairly represents, does not fairly represent] the risk presented by Mr. **XXXX** at this time. Comments/Explanation: \_\_\_\_\_

\_\_\_\_\_  
(Evaluator name)

\_\_\_\_\_  
(Evaluator signature)

\_\_\_\_\_  
(Date)