

Definitions

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.