How to Complete SVP Evaluations:
From Referral to Testimony
and Everything In Between

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Madison, Wisconsin, USA

July 16, 2025

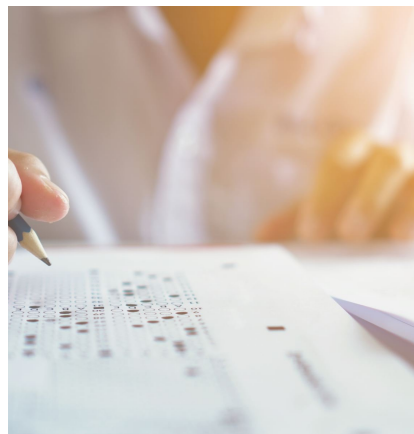Virtual training through SAARNA

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Introductions & Audience Poll

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Course schedule – Eastern Standard Time

- 10am – 1pm: Understanding the legal question(s)
  Should I take the case?
  What risk tools should I use?
  Application of important research studies
- 1pm – 2pm: LUNCH
- 2pm – 5pm: Common biases & bias mitigation strategies
  SVP report writing: What to do and what not to do
  Communication with attorneys & tips for testimony

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Before we begin…

- This training is being recorded

- For technical questions about the training, contact SAARNA

- For training content questions, contact Sharon:
- Sharonmkelley@gmail.com

- No, this training does not include CEs

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Before we begin...

I primarily practice in Wisconsin, but I have experience completing SVP evaluations in other states. Each state's SVP law is different. It is up to you to know how the laws work in the state(s) where you practice (i.e., read the entire statute and any relevant case law). What I do in Wisconsin (and other states) may not work in your state. This training should be broad enough to give you options.

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Before we begin...AND IMPORTANTLY,

- This training is designed as an orientation for doing SVP evaluations. It is in no way a complete training package, and it does not certify anyone to do SVP evaluations. Those wishing to be SVP evaluators should:
  - Have formal training in the risk assessment tools they use
  - Seek consultation from more experienced peers
  - Watch more experienced peers testify in SVP hearings
  - Ask more experienced peers to review their initial reports
  - Read relevant research and statutes
  - Keep up to date on research & best practices

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At the beginning: Referral

- Referrals can come directly from the court or an agency
- Referrals can also come from the state's prosecution department or the respondent's defense attorney
- Referral source shouldn't matter or change methodology
- What is the referral question? When do they need it? Is this something you can do?
  Expertise/competence, time
1. Who is the payer? Get written confirmation/contract with an understanding of expectations.
2. How will you access records and obtain an interview?
3. If an attorney refers, do they want a report if you know your opinion is not favorable?

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At the beginning: Referral

SVP evaluations usually involve answering the following questions
1. Does the individual meet the commitment criteria (initial commitment case)?
2. Has the individual's risk or diagnosis changed such that they no longer meet the commitment criteria (update evaluation/re-evaluation/discharge evaluation)?
3. Does the individual meet criteria for the conditional/supervised release program?

Other types of referrals involve expert opinions on specific issues

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This training will focus on:

SVP evaluations usually involve answering the following questions

1. <mark>Does the individual meet the commitment criteria (initial commitment case)?</mark>
2. <mark>Has the individual's risk or diagnosis changed such that they no longer meet the commitment criteria (update evaluation/re-evaluation/discharge evaluation)?</mark>
3. Does the individual meet criteria for the conditional/supervised release program?

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At the beginning:
Initial commitment & re-evaluation referrals

Most SVP commit laws require 3 prongs to be met:

1. Conviction of $\geq$ 1 "sexually violent offenses"
2. Predisposing mental condition
3. Risk indicates "likely" or "more likely than not" (not always the same thing)

Each state's statute defines these prongs.

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Prong #1

Sexually Violent Offenses

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Wording of SVP laws – Some examples Wisconsin

- "Sexually violent person" means a person who has been ==convicted== of a sexually violent offense, has been ==adjudicated delinquent== for a sexually violent offense, or ==has been found not guilty of or not responsible for a sexually violent offense by reason of insanity or mental disease, defect, or illness==, and who is dangerous because he or she suffers from a mental disorder that makes it likely that the person will engage in one or more acts of sexual violence.

- Things to note: includes NGI cases but not CST; includes juvenile cases; must be a conviction

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Wording of SVP laws – Some examples New Jersey

- "Sexually violent predator" means a person who has been convicted, adjudicated delinquent or found not guilty by reason of insanity for commission of a sexually violent offense, or has been charged with a sexually violent offense but found to be incompetent to stand trial, and suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for control, care and treatment.

- Similar but incudes CST

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Wording of SVP laws – Some examples Washington

- "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual violence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

- Allowing "charged" offenses results in NGI cases being included and potentially other types of cases

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Wording of SVP laws – Some examples Wisconsin

- What counts as Sexually Violent Offenses are listed in statute
- Must be contact sexual offenses involving 1st, 2nd, 3rd SA; attempt to commit a similar contact sexual offense, and/or certain criminal offenses that have been determined to be sexually motivated (e.g., burglary; robbery).
- Does not include exhibitionism, CSEM offenses, etc.

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Wording of SVP laws – Some examples California

"Sexually violent offense" means the following acts when committed by force, violence, duress, menace, fear of immediate and unlawful bodily injury on the victim or another person, or threatening to retaliate in the future against the victim or any other person, and that are committed on, before, or after the effective date of this article and result in a conviction or a finding of not guilty by reason of insanity, as defined in subdivision (a): a felony violation of Section 261, 262, 264.1, 269, 286, 288, 288a, 288.5, or 289 of the Penal Code, or any felony violation of Section 207, 209, or 220 of the Penal Code, committed with the intent to commit a violation of Section 261, 262, 264.1, 286, 288, 288a, or 289 of the Penal Code.

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Wording of SVP laws – Some examples Massachusetts

- Contact sex offenses
- enticing away a person for prostitution or sexual intercourse under section 2 of chapter 272; drugging persons for sexual intercourse under section 3 of chapter 272; inducing a person under 18 into prostitution under section 4A of said chapter 272; living off or sharing earnings of a minor prostitute under section 4B of said chapter 272; open and gross lewdness and lascivious behavior under section 16 of said chapter 272; incestuous intercourse under section 17 of said chapter 272 involving a person under the age of 21; dissemination or possession with the intent to disseminate to a minor matter harmful to a minor under section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual conduct under section 29B of said chapter 272; purchase or possession of visual material of a child depicted in sexual conduct under section 29C of said chapter 272; dissemination of visual material of a child in the state of nudity or in sexual conduct under section 30D of chapter 27

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Wording of SVP laws – Some examples Massachusetts

- accosting or annoying persons of the opposite sex and lewd, wanton and lascivious speech or behavior under section 53 of said chapter 272; and any attempt to commit any of the above listed crimes under the provisions of section six of chapter two hundred and seventy-four or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority; and any other offense, the facts of which, under the totality of the circumstances, manifest a sexual motivation or pattern of conduct or series of acts of sexually-motivated offenses

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Prong #2

Mental disorder

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Wording of SVP laws – Some examples

- Wisconsin: "Mental disorder" means a congenital or acquired condition affecting the emotional or volitional capacity that predisposes a person to engage in acts of sexual violence.

- Iowa: "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity of a person and predisposing that person to commit sexually violent offenses to a degree which would constitute a menace to the health and safety of others.

- Texas: "Behavioral abnormality" means a congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense, to the extent that the person becomes a menace to the health and safety of another person.

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Mental Disorder

- Most, if not all, states do not require the use of the DSM-5-TR
  - Most evaluators use DSM-5-TR
  - Sometimes evaluators refer to the ICD-11 (e.g., Compulsive sexual behaviour disorder)
  - Deviating from DSM-5-TR or using controversial diagnoses may increase the chances of an evidentiary hearing (depends on the state)
- All mental disorders or either congenital or acquired. I am not aware of any states requiring you to specify this.
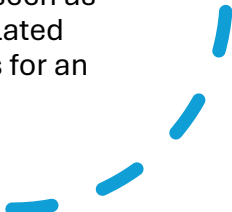
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Mental Disorder

- "...condition affecting the emotional <u>or</u> volitional capacity that <u>predisposes</u> a person to commit sexually violent offenses..."
  - It is *either* emotional or volitional but does not have to be both
  - Must involve a nexus between the mental disorder and dangerousness (Kansas v. Hendricks, 1997)
  - States are not required to show complete inability to control behavior (Kansas v. Crane, 2002)
  - Not all states require evaluators to explain the emotional or volitional impairment (e.g., Wisconsin)
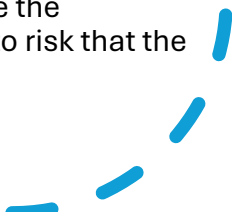
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Mental Disorder

- "...condition affecting the <u>emotional</u> or <u>volitional</u> capacity that predisposes a person to commit sexually violent offenses..."
  - <u>Volitional</u> impairment typically seen as reflecting repetitive sexual offenses or reoffenses after sanctions
    - Each case may be different – calls for clinical judgment
  - <u>Emotional</u> impairment typically seen as reflecting callousness or unregulated emotions that are the precursors for an individual's sexual offense cycle

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Mental Disorder

- "...condition affecting the emotional <u>or</u> volitional capacity that <u>predisposes</u> a person to commit sexually violent offenses..."
  - Consider this separately from the dangerous issue
  - Some individuals will meet prong #2 but not prong #3 (Simon, 2015)
  - It is an error to assume that since the diagnosis is statistically related to risk that the diagnosis is then predisposing

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Prong #3

Likely standard

Wording of SVP laws – Some examples
California*: People v. Superior Court (Ghilotti, 2002)

- "does not mean the risk of reoffense must be higher than 50 percent."
- Instead: "he or she presents a substantial danger – that is, a serous and well-founded risk – of reoffending in this way if free."
- Can consider whether he/she will voluntarily pursue treatment or has done so already

    *Frye state

Wording of SVP laws – Some examples Massachusetts*: Commonwealth v. Boucher, 2002

- "While 'likely' indicates more than a mere propensity or possibility, it is not bound to the statistical probability inherent in a definition such as 'more likely than not', and the terms are not interchangeable. To conclude that 'likely' amounts to a quantifiable probability, absent a more specific statutory expression of such a quantity, is to require mathematical precision from a term that, by its plain meaning, demands contextual, not statistical, analysis."

  *Daubert state

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Wording of SVP laws – Some examples Washington*

- RCW 71.09: "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition.
- In re Detention of Moore, 216 P. 3d 1015 (2009) – Wash Supreme Court:
  - Includes a temporal component and a statistical likelihood

  *Frye state

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Wording of SVP laws – Some examples Wisconsin*:

- State v. Smalley, 2007: "Likely" means "More likely than not," which means more than 50%.

- State v. Stephenson, 2020:
  - Courts do not have to rely on the results of actuarial assessments
  - Likely also includes lifetime and undetected sexual offenses

  *Daubert state

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Conclusions for Prong #3

- The way the statute and/or case law defines "likely" will inform decisions about risk tools and methodology
  - Quantitative thresholds suggest statistical risk estimates (e.g., actuarial tools)
  - Qualitative thresholds allow for the possibility of more diverse tools including SPJ measures
- Some states with qualitative thresholds create "cultural rules" regarding thresholds (e.g., minimum Static-99R score)
- For those in states with qualitative thresholds, it is worth considering how risk assessments can be done reliably without introduction or influence of factors that are not empirically associated with sexual recidivism

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What risk tools should I use?

Existing tools along with pros and cons

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Consider this first

1. How is "likely" defined in your state? Is it a qualitative standard, quantitative standard, or a blend of the two?
   a. Quantitative standards will require tools that provide probabilistic estimates
2. What is the admissibility standard in your state? Frye, Daubert, or something else?
3. Is there a requirement in your state to follow a specific methodology or use particular a particular tool? Virginia law requires the use of the Static-99R.

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Standards of admissibility

Frye *(Frye v. U.S., 1923)*

- In Frye, the court did not admit polygraph results, ruling that it did not meet a standard of the underlying principle attaining "general acceptance in the ***particular field*** in which it belongs."
- Frye = General acceptance test

Daubert *(Daubert v. Merrell Dow Pharmaceuticals, 1993)*

- In Daubert, a civil suit was filed against the pharmaceutical company due to the drug, Benedictine, causing birth defects in pregnant women. Determined Frye is superseded by the Federal Rules of Evidence:
  - General acceptance test
  - Reliability standard (reliable, valid, relevant)
  - Subject to peer review
  - Known error rate
  - Maintenance of standards (e.g., coding manual)
- Judge as gatekeeper
- Daubert criteria flexible – applied to issue at hand

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Admissibility standards for some U.S. States

Frye

- California
- Illinois
- New Jersey
- New York
- Washington

From Helmus et al., 2022

Daubert

- Arizona (since 2010)
- Florida (since 2019)
- Kansas (since 2014)
- Massachusetts
- Missouri
- New Hampshire
- Texas
- Wisconsin (since 2011)
- (U.S. federal & military courts)

Other

- Iowa
- Minnesota
- Virginia

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Static risk tools

Static-99R

Static-2002R

Risk Matrix 2000 (RM2000)

VRS-SO

VASOR-2

RRASOR

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Psychology, Public Policy, and Law

Static-99R: Strengths, Limitations, Predictive Accuracy Meta-Analysis, and Legal Admissibility Review

L. Maaike Helmus, Sharon M. Kelley, Annabelle Frazier, Yolanda M. Fernandez, Seung C. Lee, Martin Rettenberger, and Marcus T. Boccaccini

Online First Publication, May 12, 2022. http://dx.doi.org/10.1037/law0000351

CITATION

Helmus, L. M., Kelley, S. M., Frazier, A., Fernandez, Y. M., Lee, S. C., Rettenberger, M., & Boccaccini, M. T. (2022, May 12). Static-99R: Strengths, Limitations, Predictive Accuracy Meta-Analysis, and Legal Admissibility Review. *Psychology, Public Policy, and Law*. Advance online publication. http://dx.doi.org/10.1037/law0000351

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Static-99R

PROS

- Most frequently used in SVP evaluations
- Numerous validity studies in various countries and with different races & ethnicities
- Meets Frye & Daubert
- Good IRR (*ICC*s .79-.96 with more experience associated with higher *ICC*s)
- Moderate predictive accuracy (Meta *AUC* = .69, *n* = 71,515)
- Statistically integrated with DRF tools: STABLE-2007, VRS-SO, & SOTIPS (and SAPROF-SO)
- Recidivism norms out to 20 years
- Large number of cases in Routine norms (N = 7,244 for 5yr data)

CONS

- Lengthy and detailed scoring manual
- Rapid advances in development (some might call this a con)
- Need to select a reference group when using norms
  - Selection of norms can lead to problematic practices
- Limited number of cases in the HR/N group (especially for 10-year rates)
- Absolute recidivism rates unstable across samples
- Does not capture everything important in risk assessments (e.g., DRFs)

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Static-2002R

PROS

- Items selected to be a theoretical tool
- 2nd most commonly used static risk scale
- Can use non-sexual items to determine individuals' risk for general violence (BARR-2002R)
- Some more problematic items changed (e.g., relationship item)
- Similar IRR & AUC as Static-99R
- Statistically integrated with STABLE-2007

CONS

- Notably less cases in norms
  - Routine: K = 4, N = 1,964
  - HR/N: K = 2, N = 497
- No 10-year recidivism rates; cases followed for fixed 5yr but projected 20-yr estimates available
- Counts only convictions/sentencing dates (may increase possible undetected sexual re-offense risk)
- Less validation studies than Static-99R and RM2000
- Not statistically integrated with VRS-SO

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RM2000

PROS

- Easier to score than Static-99R & relies on less data
- Doesn't use concept of index offense – no age at release issue
- Includes a subscale to measure general violence
- Sexual and violence scales co-normed on same samples
- Good IRR and predictive validity for both sexual and general violence (AUC of .7+)
- 2nd most validated static risk tool
- Statistically integrated with the STABLE-2007
- Can be used for CSEM cases

CONS

- Counts only convictions/sentencing dates (may increase possible undetected sexual re-offense risk)
- Norms limited to 4 Routine samples
- Less frequently used in the U.S. than Europe
- Not statistically integrated with the VRS-SO

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VRS-SO

PROS

- Developed on a higher risk incarcerated sample
- Demonstrates similar predictive accuracy to Static-99R (AUC = .68-.74)
- Relatively easy to score with good reliability (ICC$_W$ = .97)
- Norms include 4 samples & 913 cases followed out to 10yrs, which are the same for the dynamic portion of the VRS-SO
- Statistically integrated with the dynamic portion of the VRS-SO
- Includes charges & convictions
- Age at release item includes release from current institution as opposed to release from index offense

CONS

- Less validation studies than Static-99R and RM2000
- Higher AUC found for child molesting men (AUC = .71 - .79) then the rapist-mixed subgroup (AUC = .63 - .69), but this finding may not be specific to VRS-SO
  - See Olver et al. (2016)
- Age item has not been updated; doesn't adequately account for protective effect of older age
- Not statistically integrated with the STABLE-2007 or SOTIPS
- Less frequently used in risk assessments in U.S.

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VASOR-2

PROS

- Uses charges & convictions
- Meta-analysis of 4 samples found good predictive accuracy for 5 years (AUC = .74)
- Relatively easy to score
- Statistically integrated with the SOTIPS

CONS

- Norms limited to routine cases paroled in Vermont (N = 877) followed for 5yrs
- Only 2 published validation papers (VT & Canada samples)
- Studies on predictive accuracy limited to men who have offended against children but not for those with adult victims
- Studies and norms based on predominately White samples
- Not statistically integrated with the STABLE-2007 or VRS-SO
- See McGrath et al. (2014): Small # of very high-risk men should dissuade evaluators from using this tool in SVP cases

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RRASOR

PROS

- None. The developers have told us to stop using this instrument.

CONS

- Age item has not been updated; grossly over-estimates risk for older men
- Officially available norms have not been updated and are outdated (over-estimates risk)
- Only considers risk from sexual deviance items

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Dynamic tools

Actuarial/Mechanical Dynamic Risk Factor Assessment

- Violence Risk Scale-Sexual Offense Version (VRS-SO)
- Stable-2007
- Sex Offender Treatment Intervention and Progress (SOTIPS)
- Structured Risk Assessment – Sex Offense Version (SRA-FV)

Structured Professional Judgment Risk Factor Assessment

- Sexual Violence Risk – 20 (SVR-20)
- The Assessment of Risk and Manageability of Individuals With Developmental and Intellectual Limitations Who Offend – Sexually (ARMIDILO-S)

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Violence Risk Scale-Sexual offense Version (VRS-SO)

PROS
- Manual with interview guide and scoring instructions (2017)
- User's workbook (2019).
- Developed on higher risk, incarcerated sample (Olver et al., 2007)
- Provides a clear dynamic risk baseline
- Assesses and quantifies change (modified version of stages of change)
- Psychometric properties:
  - interrater reliability: .73 to .97(pretx dynamic); .68 to .83 (change)
- Good discrimination: .71, .72 (Olver et al., 2007) and calibration (E/O index: 1.01 (Olver and Eher, 2020)

- Logistic regression calculator yields customized risk information (N=913)
- 755/913 are from high-intensity treatment programs.
- Can be combined with VRSSO Static or Static-99R static scales.
- Good results with indigenous population
- Among the top two most used DRF instrument in the SVP field (Kelley et al., 2020).

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VRS-SO (Cont.)

CONS

- Provides clear instructions to score 0 and 3, but not 1 and 2
- Range of scores and change scores can lead to more variation in scoring
- Requires intensive training
- No field reliability studies

- Takes a long time to score
- Norms limited to 4 samples
- How Time 1 is defined makes a difference in estimated risk
  - There is guidance about this in the workbook, but guidance is not firm.

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https://psynergy.ca/vrs-so

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STABLE-2007

PROS

- Manual with interview guide (2017); exceptionally good scoring instructions and examples
- Evaluator workbook (2017)
- Easier to score
- Most widely used in SVP settings (Kelley et al., 2020)
- Scores range from 0-2, so less variation
- Psychometric properties
  - ICC - .56 to .91 (Fernandez, 2008)
  - Cross-validated (Eher et al., 2012)
- Good discrimination AUC .76 (Hanson et al., 2015)
- Good discrimination/calibration for incarcerated sample – AUC = .77; E/O = 1.13 (above average) and well above average . 84(Looman et al., 2021)

- Includes East Asian, South Asian, Black, Latino, and Indigenous Canadian samples
- Can be combined with Static-99R using a logistic regression calculator (N = 611 for Stable+Static combination)
- Can be combined with Static-2000 as well as Risk Matrix 2000 for recidivism rates (categories)
- Cross-validation (Eher et al., 2012).
- Field validity (Helmus et al., 2021).
- Incremental contribution (Brankley et al., 2021).
- Can be used for CSEM offending (Babchishin et al., 2023)

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STABLE-2007

CONS

- Normed on a community sample (dynamic supervision project)
- No "change" score
- No guidance for prorating
- Balancing historical risk and current change may be more difficult in SVP settings (e.g., inconsistency in coding)

- N = 611 for Stable+Static combination
- Calculator uses margin of error and not confidence interval
- Composite tables inappropriate for reporting absolute recidivism rates due to lack of precision

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Stable-2007 LR Calculator

5 Year Sexual Recidivism Risk Using Static-99R and STABLE-2007

	Static-99R	STABLE-2007

B0	B1	B2
-2.512	0.215	0.0677

5-Year Predicted Sexual Recidivism =

Clear Prior Values

MARGIN OF ERROR BASED ON STABLE-2007 ONLY		
	Lower	Upper
95%		
90%		

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SEX OFFENDER TREATMENT INTERVENTION AND PROGRESS (SOTIPS; McGrath et al., 2013)

PROS
- Can be combined with VASOR-2 or Static-99R (AUC of SOTIPS+Static-99r = .67 to .89; McGrath et al., 2012)

- Manual with scoring guidelines and examples (McGrath et al., 2013)

- Psychometric properties
  - ICC - .77 to .87 (McGrath et al., 2012, 2013)
  - SEM $\pm$ 3
- AUC = .60 to .85 (McGrath et al., 2012)

- Assess recidivism at intake and as a result of treatment– score every six months

CONS
- Probation/parole sample
- Scores range from 0-3 – can lead to more variations
- Recidivism rates for risk categories
- More suitable for probation/parole, treatment staff

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STRUCTURED RISK ASSESSMENT – FORENSIC VERSION
(Thornton, 2010)

PROS

- Has a manual/scoring guide
- Empirically derived risk factors (Mann et al., 2010)
- Normed/cross validated on high risk/need samples (N = 566; Knight & Thornton, 2013)
- Psychometric Properties
- Interrater reliability - .78 (Thornton & Knight, 2013)
- SVP - .55; .68 (after excluding 48 patients who had significant mental illness/cognitive deficits.
- Good discrimination: AUC = .73 and .73 for 5/10 years (Thornton and Knight, 2013)
- Incremental predictive ability (Knight and Thornton, 2013)
- Guidance on choosing Static-99R reference groups based on Level of Need

- Can be scored using treatment notes
- Research on SRSTC patients and CA outpatient samples
- Level of Need (LONI) – incremental contributions – Static-99R, SORAG, SVR-20

CONS

- Several versions
- Lack of extensive publications
- Long term vulnerabilities rather than recent behavior – only meant to capture pretreatment risk
- Lower interrater reliability for lower functioning individuals (ICC - .55)
- PCL-R
- Dr. Thornton has testified it cannot measure change.

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SEXUAL VIOLENCE RISK – 20 (SVR-20) (Hart et al., 2003) &
RISK FOR SEXUAL VIOLENCE PROTOCOL (RSVP)
(Hart & Broer, 2010)

PROS

1. Collection of sex offense risk relevant factors
2. Combination of static and dynamic items
3. Manual with scoring guidelines
4. Informs risk management strategies
5. SVR-20 ICC - .62 (Sjöstedt and Långström, 2002) to .65 (deVogel et al., 2004)
6. SVR-20 AUC - .66 (Parent, Guay and Knight, 2011) to .83 (Ramirez et al., 2008)
7. SVR-20 – good predictive within hospital settings (AUC = .88)

RSVP - ICC - .53 (Sutherland, 2010) to . 96 (Watt et al., 2006)

RSVP - Predictive accuracy – r = .31 (Hart et al., 2007)

CONS

1. Work in progress
2. Summary risk rating of high, moderate, or low risk "it is not possible to specify a method for reaching a summary or final decision that is appropriate for all situations. (pg. 35)
3. Not an actuarial scale
4. Craig et al. (2006) not a significant predictor of sexual and violent recidivism

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JUVENILE-ONLY
Meta-analyses

STUDY	K	N	Recidivism	Follow-up
Caldwell (2010)	63	11,219	7.08%	5 years
Caldwell (2016)	106	33,783	5%	5 years
1980-995		9,106	10%	58 months
2000-2015		20,008	3%	44 months
Caldwell and Caldwell (2022) Adolescent sex offense risk rapidly declined after age eighteen with further rapid decline in the mid-twenties. Continuing to sexually offend into adulthood is an exception rather than a rule for adolescents.		349	10%	27 ½ years

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Application of Important Research

Lifetime risk, undetected sexual offending, SVP recidivism rates, and other factors to consider or not consider

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Undetected and lifetime risk
Why is this important?

Undetected

- Estimated recidivism rates from actuarial tools rely on official criminal databases
- Thus, they may underestimate actual or "true" risk
- Some states expect risk assessments to consider this
- Expect questions about this in court

Lifetime

- Many states (especially those with qualitative thresholds) consider one's lifetime risk, not just their risk over the next 5 years
- Most static-dynamic combinations have only risk estimates out to 5-10 years
- 20-year risk projections are available and better represent lifetime risk

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Original Research Article

Do Sanctions Affect Undetected Sexual Offending?

Sharon M. Kelley[1] , Rachel E. Kahn[2], James C. Mundt[2] , and Robert M. Barahal[1]

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What are undetected sexual offenses?

- Undetected refers to illegal sexual behaviors/offenses/crimes for which the person was not arrested, charged, or convicted.

- It is <u>NOT</u> legal but risky sexual behavior (e.g., hanging around a playground) or breaches of community supervision that otherwise would not be against the law.

- It is also <u>NOT</u> only offending behavior that has never been detected by anyone else.
    - Example: The offense may have been reported to someone, but it did not result in any form of sanction (e.g., arrest), so it would not show up on a rap sheet or count as a prior sex offense on actuarial tools.

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Adjusting Recidivism Estimates to Allow for Undetected Offending

- Recidivism norms are based on detected sexual recidivism available in official rap sheets (detected offenses)
    - May be charges or convictions. Tools using convictions are ignoring arrests & charges, which result in a potentially larger proportion of undetected offenses)

- Allowing for undetected offending means estimating what these risk probabilities would have been if recidivism had included both detected and undetected reoffending

- At least two statistical models have been developed to do this
    - Hanson et al., 2003
    - Scurich & John, 2019

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Hanson et al., 2003

Hanson, R. K., Thornton, D., & Price, S. (2003, October 9). *Estimating sexual recidivism rates: Observed and undetected* [Conference session]. Association for the Treatment of Sexual Abusers (ATSA) Annual Research and Treatment Conference, St. Louis, MO, United States.

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From Hanson et al., 2003

RRR x DRI = ORR

RRR = ORR / DRI

RRR = Real Recidivism Rate

ORR = Observed Recidivism Rate

DRI = Detection Rate per Individual

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DRI Depends on DRV and # of Victims in Follow Up Period

- DRV = Detection rate per victim
- # of Victims in follow up = # of victims if not detected by end of follow up

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Estimates of DRV from Kelley et al.

Proportion of victims detected in the first release period (n = 189)	Proportion of victims detected for all cases who had at least one release following a sanction (n =193)	Options
• 0.36	• 0.31	• Use proportion from first release period 0.36 • Use 0.31 as based on most victims

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Estimates of # of Victims

About 1 new victim per year

- First Release Period = 1.24
- Mean of Marginal Means = 1.38

Median victims per offending individual:

- Med = 5.0 (95% CI: 4.0, 6.0)

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For DRV = 0.36

		Cumulative N
Detection Rate per Victim (DRV)	0.36	
Expected Number of Victims per Recidivist	5	
For one hundred recidivists		
	Average N Caught after Victim	Undetected
Before first victim	0	100
Victim 1	36	64
Victim2	23.04	40.96
Victim 3	14.7456	26.2144
Victim 4	9.437184	16.777216
Victim 5	6.03979776	10.73741824
Cumulative % Caught after 5 Victims	89.26258176	
Proportion Caught after 5 victims	0.892625818	

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For DRV = 0.31

	Detection Rate per Victim (DRV)	0.31	
	Expected Number of Victims per Recidivist	5	
	For one hundred recidivists		
		Average N Caught after Victim	Cumulative N Undetected
	Before first victim	0	100
	Victim 1	31	69
	Victim2	21.39	47.61
	Victim 3	14.7591	32.8509
	Victim 4	10.183779	22.667121
	Victim 5	7.02680751	15.64031349
	Cumulative % Caught after 5 Victims	84.35968651	
	Proportion Caught after 5 victims	0.843596865	

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Estimating True 5-Year Recidivism Rates

RRR for 5-Years = Observed Recidivism for 5-Years / 0.84

(95% CI: .89, .77)

For Example:

- Observed 5-year Rate = 26% (5-yr rate for a Static-99R score of 6)
- RRR for 5-Years = 26% / 0.84 = **30.9% (95% CI: 29.2%, 33.7%)**

- Note that a multiplier of 1.19 provides the result, which can be easier for laypeople to understand

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Translating this in SVP reports

LIFETIME RISK

A limitation of the Static-99R and the VRS-SO is that the re-arrest or reconviction statistics might underestimate "true" reoffending risks (e.g., official recidivism figures often fail to account for the large numbers of unreported or unresolved crimes, arrests/reconvictions occurring beyond 10-year follow-ups, and classification of some charges as nonsexual that, in fact, have underlying sexual motivations). A new study examined rates of undetected victims of contact sexual offenses, which were obtained from Sexual Offense Disclosure questionnaires completed by current and former SVP patients in Wisconsin. The questionnaires selected had been validated by truthful polygraph results. When examining the 193 patients who had at least one release following a formal sanction for a sexual offense, their total number of detected and undetected victims were about 1.19 times higher than their number of detected victims. Utilizing the Kelley et al. (2022) study as an empirical guide, Mr. X's "true" (detected + undetected) 5-year sexual recidivism risk is estimated to be approximately X% (95% CI: X%, X%).

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That's all great, but…

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The Influence of Race on Detected and Undetected Sexual Offense Histories: A Comparison of White and Black Men Committed as Sexually Violent Persons

Sharon M. Kelley[1] ⦿, Rachel E. Kahn[1], and Gangaw Zaw[2]

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The short story

White men had significantly more
- total (undetected + detected) victims
- undetected victims
- total child victims
- detected child victims
- undetected child victims
- total male victims
- undetected male victims
- total acquaintance victims
- undetected acquaintance victims

Black men had significantly more

- detected adult victims

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The short story

- Extrapolating for undetected sexual offending appears appropriate for White men, especially those with child victims
  - Note that a number of White men detected only for adult victims also had child victims
- But extrapolation would greatly over-estimate risk for Black men without a diagnosis of Pedophilic Disorder
- Not enough cases to make conclusions for Black men with a diagnosis of Pedophilic Disorder

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Translating this in SVP reports

LIFETIME RISK

...

Additional research using this same sample has identified racial and diagnostic differences in the rates of detected and undetected victims. In short, White men were more likely to be diagnosed with Pedophilic Disorder and to have significantly more *undetected* victims, especially prepubescent child victims. Black men had a greater number of victims who were *detected* as opposed to undetected when compared to White men. Further, Black men had more *detected* sexual offenses involving victims who were adult females. Overall, the research currently points to the continued need to extrapolate for undetected risk for most individuals, but using this method for Black men without a pedophilic diagnosis would grossly over-estimate their risk. Mr. XX is a Black man who does not meet the diagnostic criteria for pedophilic disorder and does not have any prepubescent victims. Consequently, I did not extrapolate for undetected sexual offense risk in this case.

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What about lifetime risk?

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Article

High-Risk Sex Offenders May Not Be High Risk Forever

Journal of Interpersonal Violence
1–22
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sagepub.com/journalsPermissions.nav
DOI: 10.1177/0886260514526062
jiv.sagepub.com
SAGE

R. Karl Hanson,[1] Andrew J. R. Harris,[2] Leslie Helmus,[3] and David Thornton[4]

Abstract
This study examined the extent to which sexual offenders present an enduring risk for sexual recidivism over a 20-year follow-up period. Using an aggregated sample of 7,740 sexual offenders from 21 samples, the yearly recidivism rates were calculated using survival analysis. Overall, the risk of sexual recidivism was highest during the first few years after release, and decreased substantially the longer individuals remained sex offense–free in the community. This pattern was particularly strong for the high-risk sexual offenders (defined by Static-99R scores). Whereas the 5-year sexual recidivism rate for high-risk sex offenders was 22% from the time of release, this rate decreased to 4.2% for the offenders in the same static risk category who remained offense-free in the community for 10 years. The recidivism rates of the low-risk offenders were consistently low (1%-5%) for all time periods. The results suggest that offense history is a valid, but time-dependent, indicator of the propensity to sexually reoffend. Further research is needed to explain the substantial rate of desistance by high-risk sexual offenders.

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Slide 75

Reductions in Risk Based on Time Offense-Free in the Community: Once a Sexual Offender, Not Always a Sexual Offender

R. Karl Hanson
Public Safety Canada

Andrew J. R. Harris
offenderrisk.com

Elizabeth Letourneau
Johns Hopkins University

L. Maaike Helmus
Victoria University of Wellington

David Thornton
Madison, Wisconsin

Whereas there is a common assumption that most individuals with a criminal record can be eventually reintegrated into the community, the public has different expectations for sexual offenders. In many countries, individuals with a history of sexual offenses are subject to a wide range of long-term restrictions on housing and employment, as well as public notification measures intended to prevent them from merging unnoticed into the population of law-abiding citizens. This article examines the testable assumption that individuals with a history of sexual crime present an enduring risk for sexual recidivism. We modeled the long-term (25-year) risk of sexual recidivism in a large, combined sample ($N > 7,000$). We found that the likelihood of new sexual offenses declined the longer individuals with a history of sexual offending remain sexual offense-free in the community. This effect was found for all age groups and all initial risk levels. Nonsexual offending during the follow-up period increased the risk of subsequent sexual recidivism independent of the time free effect. After 10 to 15 years, most individuals with a history of sexual offenses were no more likely to commit a new sexual offense than individuals with a criminal history that did not include sexual offenses. Consequently, policies designed to manage the risk of sexual recidivism need to include mechanisms to adjust initial risk classifications and determine time periods where individuals with a history of sexual crime should be released from the conditions and restrictions associated with the "sexual offender" label.

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Slide 76

Estimating Lifetime and Residual Risk for Individuals Who Remain Sexual Offense Free in the Community: Practical Applications

David Thornton[1], R. Karl Hanson[2], Sharon M. Kelley[3], and James C. Mundt[3]

Abstract
Although individuals with a history of sexual crime are often viewed as a lifelong risk, recent research has drawn attention to consistent declines in recidivism risk for those who remain offense free in the community. Because these declines are predictable, this article demonstrates how evaluators can use the amount of time individuals have remained offense free to (a) extrapolate to lifetime recidivism rates from rates observed for shorter time periods, (b) estimate the risk of sexual recidivism for individuals whose current offense is nonsexual but who have a history of sexual offending, and (c) calculate yearly reductions in risk for individuals who remain offense free in the community. In addition to their practical utility for case-specific decision making, these estimates also provide researchers an objective, empirical method of quantifying the extent to which individuals have desisted from sexual crime.

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Hanson et al. (2018)

- Used data from 20 different samples (follow-up time of 6 months to 31.5 years (*M* = 8.2, *SD* = 5.3)
  - Hazard rates for sexual recidivism were modeled using discrete time survival analysis
  - Meaning? For every six months a ratio was generated: those detected of sexual offending / those who presumably have not sexually reoffended. This tells us the absolute recidivism rates in each discrete time period.
  - Once we have that, we can use survival analysis to obtain the hazard rate, which helps us to estimate the likelihood of future sexual reoffending

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Hanson et al. (2018)

Notable findings:

- Relative risk reductions were constant across risk levels
  - Regardless of Static-99R scores, all individuals show a time free effect
  - Individuals with higher scores take longer to reach the statistical definition of desistance (<2% in this article)
- Aging in the community (once accounted for by using Static-99R) was not related to recidivism risk, and it did not interact with the time free effect
- Non-sexual offense convictions are associated with increased risk for sexual offending, but this does not erase the time free effect.
  - Risk will increase but then start decreasing again

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Thornton et al. (2021)

- Aims: Make the Hanson et al. (2018) results usable for evaluators/clinicians in an applied way
  - Extrapolate beyond 10-year sexual recidivism estimates
  - Estimate the sexual recidivism risk for someone with prior sexual offenses but whose most recent offense is nonsexual
  - Calculate years reductions in risk for those who remain offense free in the community (e.g., time free effect)

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Clinicians / evaluators can use the 2021 Static-99R Evaluator's Workbook

Static-99R Recidivism Estimates
ROUTINE/COMPLETE SAMPLES

		Logistic Regression Estimates					Projected 20-year Estimates (Average)
		5-Year Sexual Recidivism Rates		10-Year Sexual Recidivism Rates			
Score	Risk Level	Predicted Recidivism Rate	95% CI	Predicted Recidivism Rate	95% CI		
-3	I	0.7	[0.5 1.0	1.2	0.7	2.1	1.5
-2	I	1.1	0.8 1.4	1.8	1.1	2.9	2.2
-1	II	1.6	1.2 1.9	2.5	1.7	3.8	3.1
0	II	2.2	1.8 2.7	3.6	2.6	5.1	4.5
1	III	3.2	2.7 3.7	5.1	3.9	6.7	6.3
2	III	4.6	4.0 5.2	7.2	5.8	8.9	8.9
3	III	6.5	5.8 7.2	10.1	8.5	11.9	12.5
4	IVa	9.2	8.4 10.1	13.9	12.1	15.9	17.2
5	IVa	12.8	11.7 14.1	18.8	16.4	21.5	23.4
6	IVb	17.6	15.8 19.6	25.0	21.5	28.9	31.2
7	IVb	23.7	20.9 26.7	32.5	27.3	38.2	40.2
8	IVb	31.0	27.0 35.4	40.9	33.7	48.6	50.3
9	IVb	39.5	34.1 45.2	50.0	40.7	59.2	60.9
10	IVb	48.7	42.0 55.4	--	--	--	--
11	IVb	--	-- --	--	--	--	--

Source: Lee & Hanson (2021) for 5- and 10-year estimates; methods from Thornton et al. (2021) used to generate 20-year projections

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But what if...

You are using a dynamic risk instrument alongside the Static-99R?

His life expectancy is greater than 10 years but less than 20 years?

He has been in the community and earning time free credit?

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Excel Calculator (credit Jim Mundt)

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Calculator Demonstration:

20-year rate

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Calculator Demonstration:

15-year rate

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Pulling it together

Steps to extrapolation

1. Start with the estimated 5-year rate from the actuarial instruments
2. Extrapolate to account for undetected sexual offending in the 5-year risk estimate
3. Consider life expectancy
4. Extrapolate from the *"true"* 5-year risk estimate to account for lifetime risk

Lifetime = 20 years

- Mr. Red is a healthy 40yo White man with no substantial medical conditions and who is being examined for possible SVP commitment
- He has never participated in sex offense specific treatment
- Static-99R = 4
- STABLE-2007 = 7
  - Static/Stable = IVa Above Average Risk with a 5-yr rate of **11.1%**

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Lifetime = 20 years

- Step 2: Obtain the true 5-year rate by accounting for undetected sexual offended

- **11.1% / .84 = 13.2% (95% CI: 12.5%, 14.4%)**

- CI formula: 11.1% / .89 for lower end & 11.1% / .77 for higher end

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Lifetime = 20 years

- Step 3: Consider life expectancy
- Mr. Red has no major medical conditions that could reduce his life expectancy.
- The average 40 yo male in the U.S. can be expected to live another 37 years
  - See: https://www.ssa.gov/OACT/STATS/table4c6.html
- We can extrapolate his sexual reoffense risk out to 20 years

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Step 4: Use the Thornton et al. 2021 calculator

			Date of Release from Index Offense		Independently Modelled Risk		
					Years in Community Offense Free	Year End Date	Residual Lifetime Risk
Recidivism Risk?					0		
At what year?					1	#VALUE!	
			Any nonsexual offense convictions after index offense while in the community?		2	#VALUE!	
					3	#VALUE!	
					4	#VALUE!	
					5	#VALUE!	
			Offender removed from community for any reason after release from Index Offense?		6	#VALUE!	
					7	#VALUE!	
					8	#VALUE!	
					9	#VALUE!	
					10	#VALUE!	
					11	#VALUE!	
		RESET			12	#VALUE!	
					13	#VALUE!	
					14	#VALUE!	

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			Independently Modelled Risk		
	8/1/24	Date of Release from Index Offense	Years in Community Offense Free	Year End Date	Residual Lifetime Risk
Recidivism Risk?	13.2		0	8/1/24	24.1
At what year?	5		1	8/1/25	21.3
	No	Any nonsexual offense convictions after index offense while in the community?	2	8/1/26	18.8
			3	8/1/27	16.5
			4	7/31/28	14.4
			5	8/1/29	12.5
	No	Offender removed from community for any reason after release from Index Offense?	6	8/1/30	10.9
			7	8/1/31	9.4
			8	7/31/32	8.0
			9	8/1/33	6.8
			10	8/1/34	5.8
			11	8/1/35	4.8
	RESET		12	7/31/36	4.0
			13	8/1/37	3.3
			14	8/1/38	2.6
			15	8/1/39	2.0
	Instructions		16	7/31/40	1.5
	Always start by resetting the workbook.		17	8/1/41	1.1
	Only enter data in yellow highlighted cells.		18	8/1/42	0.7
			19	8/1/43	0.3
			20	7/31/44	0.0
	Today		August 1, 2024		24.1

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Translating this in SVP reports

[This follows from the undetected paragraphs]

Utilizing this study as an empirical guide, Mr. Red's 5-year risk estimate when accounting for undetected sexual offending is approximately 13.2% (95% CI: 12.5%, 14.4%). In order to calculate what Mr. Red's estimated "true" (detected + undetected) lifetime risk for future sexual offending, I utilized the statistical model offered by Thornton et al. (2021) to extrapolate from a "true" 5-year sexual reoffense risk of 13.2% to a "true" 20-year risk rate. In short, this model provides 20-year projections based on 7,225 cases. Based on this, Mr. Red's "true" lifetime sexual recidivism risk is estimated to be approximately 24.1% across 20 years ($\pm$ 5% points).

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Time Free

- Applies only in conditions when individuals have a level of freedom similar to that of busy, working adults (i.e., they have the freedom and opportunity to offend or not offend)
- This includes individuals on typical parole or probation conditions
- This will not typically include supervised/conditional release for those under SVP commitment unless there is clear data they have earned a level of privileges similar to standard parole/probation.
- Indicators that time free DOES NOT apply: Restrictive schedule that requires pre-approval, GPS monitoring, chaperones/monitors, covert observations

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Time Free in SVP Evaluations

- When individuals were in the community prior to the current SVP evaluations, time free issues must be considered
- The time free effect refers to an observed decreased risk and movement towards desistance with each year an individual remains in the community without criminally reoffending.
- Without further convictions for sexual or non-sexual offenses, risk projections decrease in a steady, linear manner. That is, the more time an individual remains in the community, the less likely they are to sexually reoffend.

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Time Free in SVP Evaluations

- The model also accounts for a non-sexual conviction. In these cases, risk increases before continuing to decrease again as the individual remains offense free in the community.
- Statistical desistance refers to the recidivism rate that is comparable to the rate of spontaneous out-of-the-blue sexual offenses by individuals with criminal records but no history of sexual offenses ($\leq$2% risk). See:

Kahn, R. E., Ambroziak, G., Hanson, R. K., & Thornton, D. (2017). Release from the "sex offender" label. *Archives of Sexual Behavior, 46*, 861-864.

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Time Free in SVP Evaluations

Considerations:

- When was he released from the index offense?
  - Should have been in the community for at least 1 year
- What occurred in the community?
  - Non-sexual offense convictions?
  - Custody time? (need those dates)
  - Why is he being evaluated now? (Increased DRFs, offense allegations, recent overt act)

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Simple Time Free Example: Mr. Midwest

- Mr. Midwest is completing a prison sentence for a parole revocation (tech vio) and was referred for an initial SVP evaluation
- 32 yo man with sexual offenses involving children
- Released from index on Oct. 1, 2021 & returned to custody on April 23, 2024
- No new criminal offenses
- Static-99R = 5
- VRS-SO pre-treatment dynamic = 32, change score = 1.75
- 5-year sexual recidivism estimate = 21.0%

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Complicated Time Free Example: Mr. East Coast

- Mr. East Coast (48yo) is completing a prison sentence for a non-sexual criminal offense (robbery). He has prior sexual (rape of adult females) and non-sexual offenses.
- Completed SOT after index offense conviction
- Released from index on July 31, 2015 to parole (age 39)
- Tech vios → custody periods: May 2, 2016 – June 12, 2016 & Nov 8, 2016 – Nov 20, 2016.
- Parole ended July 31, 2017
- Conviction for current offense (robbery) on Feb 2, 2021
- Received D-reports during current incarceration period for having contraband (pornography with themes of bondage; list of female COs' names and addresses)

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Complicated Time Free Example: Mr. East Coast

Steps:

1. Calculate Static-99R and DRF measure at time of release from index offense.
   a) Static-99R = 6, STABLE-2007 = 13
   b) 5-year risk probability: 22.3%

2. Calculate his 20-year risk less time in the community and accounting for custody time & robbery conviction

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Date of Release from Index Offense: 7/31/15

22.3
5

Any nonsexual offense _convictions_ after index offense while in the community? Yes

Date of first one: 2/2/21

Offender removed from community for any reason after release from Index Offense? Yes

How many times? 3

RESET

Instructions
Always start by resetting the workbook.
Only enter data in yellow highlighted cells.

Independently Modelled Risk

Years in Community Offense Free	Year End Date	Residual Lifetime Risk
0	7/31/15	38.9
6	3/20/25	26.1
7	3/20/26	22.7
8	3/20/27	19.7
9	3/20/28	16.9
10	3/20/29	14.3
11	3/20/30	12.1
12	3/20/31	10.0
13	3/20/32	8.2
14	3/20/33	6.5
15	3/20/34	5.1
16	3/20/35	3.8
17	3/20/36	2.7
18	3/20/37	1.7
19	3/20/38	0.8
20	3/20/39	0.0
Today	August 1, 2024	28.4

Event #	Date Removed from Community	Duration (Days)
1	5/2/16	41
2	11/8/16	12
3	2/2/21	1276

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Complicated Time Free Example: Mr. East Coast

Steps:

1. Calculate Static-99R and DRF measure at time of release from index offense.
   a) Static-99R = 6, STABLE-2007 = 13
   b) 5-year risk probability: 22.3%
2. Calculate his 20-year risk less time in the community and accounting for custody time & robbery conviction
3. Consider current risk issues

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Assessing current risk issues following time free calculations

- Follow the guidance outlined by

Hanson, R. K., & Thornton, D. (2021, Winter). Using static and dynamic factors to assess recidivism risk for individuals who have been many years sexual offence-free in the community. *The Forum Newsletter of ATSA*, 34(1).

- Re-score STABLE-2007 based on current DRF presentation
- Consider factors that would be "exceptional factors…[that] may invalidate the initial risk + time-free actuarial calculation (Meehl's 'broken leg' factors).
- Clinical overrides for imminent risk or rare circumstances where there is a clear escalation of offense-related behavior that will lead to a new sexual offense in the immediate future (not sometime in the next few years or more) but in the next day or few days. Should be used very sparingly.
- When "struggling to balance the time-free effects with the influence of dynamic risk factors, privilege the time-free effect."

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Mr. East Coast

- STABLE-2007 at time of release from index: 13 (High)
  - 22.3% (5yr)
- Current STABLE-2007 = 17 (High)
  - 27.4% (5yr)

- Note that neither accounts for current age
- No way to statistically model the increased risk into our estimates, but we can indicate in our reports whether his risk is likely to have decreased or increased due to changes in DRFs since release from index.
- Does he meet commitment threshold? Depends.

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SVP Sexual Offense Recidivism Rates

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SVP Recidivism Studies

1. Milloy (2007)
2. Boccaccini et al., (2009)
3. Mercado et al., (2011)
4. DeClue and Rice (2016)
5. Azizian et al., (2022)
6. Tyre et al. (2024)
7. Mundt et al., (2024)

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WASHINGTON (Milloy, 2007)

N = 135 dismissed individuals; Follow up: 6 years

Recidivism Table (Pg 4)   (Pg 6)

Number Convicted of Each Type of Offense

Type of Offense	Number of Offenders	Percentage of Offenders
Felony		
Sex	31	23%
Violent (not sex)	17	13%
Violent Total*	45	33%
Non-Violent	30	22%
Felony Total*	67	50%
Misdemeanor		
Sex	5	4%
Violent (not sex)	20	15%
Non-Violent	42	31%
Misdemeanor Total*	54	40%
Failure to Register	25	19%

Age of Offenders at Time of Release

Age at Release	Number of Offenders	Percentage of Offenders
18 – 24 years	9	7%
25 – 29 years	19	14%
30 – 34 years	25	19%
35 – 39 years	32	24%
40 – 44 years	23	17%
45 – 49 years	11	8%
50 – 54 years	8	6%
55 – 59 years	4	3%
60 + years	4	3%
Total	135	101%*

*Total does not add to 100% due to rounding.

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TEXAS (Boccaccini et al., 2009)

N = 1,928 screened for SVP proceedings

Follow up = 4.77 years

TYPE OF OFFENSE	%
VIOLENT SEXUAL	2.6%
ANY SEXUAL	3.2%
VIOLENT NONSEXUAL	6.1%
NONVIOLENT NONSEXUAL	18.3%
SEX OFFENDER REGISTRY VIOLATIONS	11.8%

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NEW JERSEY (Mercado et al, 2011)

N = 127 dismissed individuals; Follow-up: 6.5 years

Pg 53

TYPE OF OFFENSE	%
ANY NEW OFFENSE	59.1%
SEXUAL	11.8%
VIOLENT	11.8%
NONVIOLENT	21.8%
DRUG RELATED	12.6%
PAROLE VIOLATION:FAILURE TO REGISTER	13.4%
PAROLE VIOLATION:GENERAL	18.5%

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FLORIDA (DeClue & Rice, 2016)

N=761 dismissed individuals; Follow-up 6.45 years

Pg. 28

- Any sexual recidivism: 9.7%
- Sexual felony conviction: 5.5%
- AUC for Static-99R: .61

Detected Sexual Recidivism Rates for Two Groups of Sex Offenders Released from Florida

	Randomly Selected Released Sex Offenders	Released "SVPs"
5-Year Fixed Sample	5.3% (25 of 474)	9.2% (28 of 303)
10-Year Fixed Sample	13.8% (33 of 240)	13.1% (25 of 191)

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CALIFORNIA (Azizian et al., 2022)
Pg. 14
N = 335 mixed sample

- 8.7% overall; 7.8% over five years fixed follow-up
-

Table 4. Calibration Analyses: E/O Index Comparing California Sample With 2016 Static-99R Normative Samples (Routine and High Risk-Need) on Rates of 5-Year Sexual Recidivism.

Static-99R common language metric				Expected			Observed		E/O Index (95% CI)			
				Routine		High risk-need		California SVP		Routine		High risk-need	
	Risk category	Total score	Study *n*	%	*n*	%	*n*	%	*n*				
I	Very low	−3, −2	3	1.3	0.04	—	—	0	0	—	—	—	—
II	Below average	−1, 0	6	2.8	0.2	7.2	0.4	0	0	—	—	—	—
III	Average	1 to 3	54	6.8	3.7	12.7	6.9	9.3	5	0.74	[0.31, 1.77]	1.38	[0.57, 3.32]
IVa	Above average	4, 5	74	13.4	9.9	19.6	14.5	5.4	4	2.35	[0.88, 6.26]	3.63	[1.36, 9.67]
IVb	Well above average	6 to 12	68	27.4	18.6	30.7	20.9	10.3	7	2.67	[1.27, 5.60]	2.99	[1.43, 6.27]
	Overall		205	17.3	35.5	22.3	45.7	7.8	16	2.22	[1.36, 3.62]	2.86	[1.75, 4.67]

Note. Significant E/O index values in bold font. E/O = expected/observed; SVP = Sexually Violent Predator; CI = confidence interval.

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Wisconsin et al. (Tyre et al., 2024)
(N=755) referred for 980 but did not meet commitment criteria

Definition of Recidivism	Recidivism Rate
Rearrest/Reconviction	7.8%
Parole/Probation Violation	15.4%
Offense Parallelling Behaviors	23.6%

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Wisconsin (Mundt et al., 2024)

	Dismissed Individuals (n = 124)		Discharged Individuals (n = 121)		Combined Group (n = 245)	
	Fixed 5-Year Follow-up	Varying Follow-up M = 17.7 Years SD = 5.79 Years	Fixed 5-Year Follow-up	Varying Follow-up M = 11.2 Years SD = 4.00 Years	Fixed 5-Year Follow-up	Varying Follow-up M = 14.5 Years SD = 5.94 Years
Sexually Violent Offense	12 (9.7%)	19 (15.3%)	17 (14.0%)	17 (14.0%)	29 (11.8%)	36 (14.7%)
Sexually Nonviolent Offense	3 (2.4%)	8 (6.5%)	3 (2.5%)	3 (2.5%)	6 (2.4%)	11 (4.5%)
Any Sexual Offense	13 (10.5%)	24 (19.4%)	18 (14.9%)	18 (14.9%)	31 (12.7%)	42 (17.1%)
Nonsexual, Violent Offense	9 (7.3%)	22 (17.7%)	12 (9.9%)	18 (14.9%)	21 (8.6%)	40 (17.1%)
Nonsexual, Nonviolent Offense	40 (32.3%)	60 (48.4%)	36 (29.8%)	46 (38.0%)	76 (31.0%)	106 (43.3%)
Any Type of Offense Sexual or Nonsexual	46 (37.1%)	66 (53.2%)	49 (40.5%)	59 (48.8%)	95 (38.8%)	125 (51.0%)
Sexual Violation of DOC Supervision	7 (5.6%)	9 (7.3%)	2 (1.7%)	3 (2.5%)	9 (3.7%)	12 (4.9%)
Nonsexual Violation of DOC Supervision	75 (60.5%)***	83 (66.9%)***	22 (18.2%)	29 (24.0%)	97 (39.6%)	112 (45.7%)
Any Offense or Violation of DOC Supervision Rules	97 (78.2%)***	107 (86.3%)***	58 (47.9%)	67 (55.4%)	155 (63.3%)	174 (71.0%)

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Wisconsin (Mundt et al., 2024)

- AUC for Static-99R = .484 (for SV offenses)
- AUC for Static-99R = .527 (any sexual offense)
- Among Static-99R, Release Type, and Age at Release, only Age at Release predicted sexual recidivism
- Each additional year of age decreased the hazard by 2-4% depending on sexual recidivism type
- Routine norms were best calibrated for SV offenses.

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WHAT DO THE STUDIES TELL US?

1) Dynamic risk factor assessment matters
2) Age matters
3) Treatment matters

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Bias in Forensic Risk Assessment

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Bias in Forensic Risk Assessment

- What is bias?
  - Any systematic factor beyond random error that determines judgment other than the truth (Neal & Grisso, 2014; West & Kenny, 2011)
  - Perfect agreement between forensic evaluators is unrealistic but the outcomes should be expected to be similar if they have access to the same facts/data (Boccaccini et al., 2008)
  - Despite bias being used as a derogatory label, overt bias is rare (Murrie & Boccaccini, 2015; Neal, 2011)

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Types of Bias

- Bias Blind Spot
  - Tendency to see bias in others as more of an issue than bias in oneself
- Confirmatory Bias / Anchoring Effect
  - When evaluators work backwards from an a priori belief, impression, or hypothesis and seek information to confirm that belief while ignoring alternative data
- Adversarial Allegiance
  - Strong pull for one side that effects choices in methodology, scoring, diagnosis, etc.

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Types of Bias

- Hindsight Bias
  - Tendency to let outcome information impact perception and judgment about the predictability of the outcome
- Illusory Correlation
  - Tendency to see a relationship between two variables when no relationship exists
- Base Rate Neglect
  - Tendency to assume an outcome is at increased likelihood to occur without considering the actual probability that it will occur

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Triggers for Bias

- Order of file review
- Initial consult with attorney/referral source
- Florid case details
- Only working for one side (e.g., the defense or prosecution expert)
- Wanting to "win" in court (e.g., evaluator as "Gladiator")
- Seeing self as gatekeeper or privileging personal beliefs about the law/community safety/etc. (e.g., the advocate or the protector)
- Knowledge of prior assessment cases (e.g., reoffending cases)
- More subjective risk tools or methodology
- Other evaluator differences (e.g., personality traits; personal experiences)

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Evaluator Differences

- Most obvious when evaluators retained by different sides (e.g., adversarial allegiance effect)
- Still present when both evaluators are supposedly "neutral"
  - Boccaccini et al. (2008): 30% of variability in PCL-R scores due to evaluator – some high vs. low scorers
  - Boccaccini et al. (2013): Replicated finding in PCL-R finding but moderated by formal PCL-R scoring training
  - Kahn et al. (2022): Evaluators' commitment recommendations predominately predicted by who the evaluator was; the evaluator had a much higher effect size than the Static-99R
- Creates a "luck of the draw" scenario for those facing a commitment trial (Dror & Murrie, 2018)

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Risk Tinted Spectacles

AMERICAN PSYCHOLOGICAL ASSOCIATION

Psychology, Public Policy, and Law

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ISSN: 1076-8971

https://doi.org/10.1037/law0000333

Risk-Tinted Spectacles: What Influences Evaluator Decision Making in Sexually Violent Persons Examinations

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Study 1: Individual Differences and Potential Evaluator Bias
N = 94

IV:

1. Florid details
2. PCL-R score
3. Sexual sadism

Constant:

1. Age
2. Race
3. Static-99R Score
4. Diagnosis
5. Victim type
6. Drfs
7. offense history

DV:

1. Risk
2. Commitment likelihood

RISK RATINGS

1. Florid details: $F(1, 93)$ = 12.31, p = .001
2. High PCL-R score: $F(1, 93)$ = 138.63, p <.001
3. Sexual sadism diagnosis: $F(1, 93)$ = 32.49, p<.001
4. PCL-R x sexual sadism: $F(1, 93)$ = 4.27, p < .05
5. Evaluator: $F(14, 172)$ = 7.27, p < .001

COMMITMENT RATINGS

1. Florid details: $F(1, 93)$ = 9.92, p < .01
2. High PCL-R: $F(1, 93)$ = 102.31, p < .001
3. Sexual sadism diagnosis: $F(1, 93)$ = 22.91, p < .001
4. PCL-R x florid details: $F(1, 93)$ = 4.79, p, .05
5. Evaluator: $F(14, 172)$, p = 5.39; < .001

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Study 2: Systematic Influence of Evaluator Differences in the Field
N = 353 Reports, N = 13 Evaluators

IV:

1. Static-99R
2. Diagnoses
3. Evaluator Assignment below average, average, above average
4. Treatment status

DV:

Commitment recommendations

1. Static-99R: p < .001; OR = 1.97
2. Major Mental Illness: p < .05, OR =2.87
3. Evaluator Assignment: p < .001; OR = 3.23
4. Comparison of commitment recommendation from average to above average group: p < .001; OR=14.14
5. Treatment status, PCL-R, Sexual Sadism, Pedophilic Disorder = ns

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Bias Mitigation Strategies

- Ineffective strategies:
    - Advanced training and certification in forensic psychology
    - Introspection
    - Being aware of what biases exist
- Potentially effective strategies:
    - Structured scales and methodology (less room for ambiguity)
    - Standardized approaches: Use of similar or same scales and methodology between evaluators
    - Formal training on risk scales but also on methodology
    - Updated training on a regular basis
    - Demonstration of good calibration with risk developer or trainer

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Bias Mitigation Strategies

- Potentially effective strategies (cont.)
    - Diligent note taking so as not to rely on memory
    - Use of tables that include evidence for and evidence against ideas or risk tool items (i.e., active hypothesis testing)
    - Consider strengths/protective factors to avoid only focusing on risk issues without attending to strengths or treatment gains
    - Cite the sources of data in report and when scoring risk tools
    - Differentiate between verified and unverified data
    - Cross-validate data (records, self-report, collateral contacts)

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Bias Mitigation Strategies

- Potentially effective strategies (cont.)
  - Participating in consensus scoring
  - Consultation with other professionals/supervision
  - Managing inner thoughts and emotions: A study on economic risk and decision-making showed that an active process of challenging self-thoughts regarding seeing details as negative was more effective than trying to remain detached/distant observer (Grecucci et al., 2020)
  - Increased variety in referral sources

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SVP Report Writing

Best practices and how to prevent bad habits

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Best Practices for SVP Report Writing
Obvious? Not always

- Be transparent!!!!!
    - This is not about winning
    - Show your work
- Do your own work – you will get caught for plagiarism at worse or errors someone else did at best
- Proofread, proofread, proofread. Then have someone else proofread.
- The individual being evaluated is a "respondent" not "defendant"
- Avoid jargon. The reader is a layperson.
- Avoid pejorative or emotional terms. Use person-first language or neutral terms.
- Language matters. You will be held accountable for every word, sentence, etc.

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Best Practices for SVP Report Writing

- Necessary report sections
    - Identifying Information
    - Sources of Information
        - Some description of records is necessary but don't have to list every single record
        - Indicate if an interview was done, when, where or how (Zoom), and for how long
    - Collateral contacts
        - Who they are/relationship to respondent; include title when appropriate
    - Limits of confidentiality
        - Purpose of evaluation, limits of confidentiality, & voluntary nature of respondent's participation
        - Important – collateral contacts need this warning, too

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Best Practices for SVP Report Writing

- Necessary sections (cont.)
    - Purpose of evaluation
        - Helpful to include relevant statutory wording
    - Relevant history
        - Is it relevant?
        - Should be enough to cover early history (e.g., any trauma hx; early conduct problems), education, work, medical history, substance use; psychiatric history if relevant, criminal history, sexual history including treatment history
        - Helps to have criminal history summarized in a table
        - Self-report from clinical interview can either be in a separate section or interwoven in history section
    - Mental status and behavioral observations (if clinical interv obtained)

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Best Practices for SVP Report Writing

- Necessary sections (cont.)
    - Diagnosis of Mental Disorder
        - Use data from previous sections to support opinion for diagnosis
        - Indicate whether it is predisposing and why or why not
    - Risk Assessment
        - In 99% of cases, this should include a static and dynamic risk measure
        - Be careful of unnecessary template info – the court does not need multiple pages on the history of the Static-99R or a summary of every research study that has ever been done on X topic
        - Keep summaries of risk assessment tools concise and relevant. Include strengths and limitations.

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Best Practices for SVP Report Writing

- Risk Assessment (cont.)
  - Description of risk assessment results (be prepared to be asked for coding sheets)
  - The only risk estimates that should appear in your report are the ones from which you are basing your final conclusions
  - Random information that is not relevant to the final conclusions is confusing to the court
  - The report is not the place to be writing an opinion paper about the nature of risk assessment, base rates, etc.

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Best Practices for SVP Report Writing

- Risk Assessment (cont.)
  - Considering protective factors is ideal
  - Things to know: SAPROF-SO new measure, norms limited to 3 samples and 5-year risk estimates
  - There is a way to statistically integrate the Static-99R with the SAPROF-SO
  - The "norms paper" has yet to be published
  - It is not yet known whether the SAPROF-SO is incrementally predictive above and beyond a static + dynamic measure (currently being tested)
  - The SAPROF-SO does predict conditional release outcome in an SVP sample (Carr et al., 2024: in press)

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Best Practices for SVP Report Writing

- Risk Assessment (cont.)
  - Touch on other factors empirically associated with sexual reoffense and not already included in risk assessment measures: Time free, life expectancy
  - Address any statutory risk issues/questions not already covered

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Best Practices for SVP Report Writing

- Final conclusions sections
  - This is where we draw from all the data/information we gathered to generate final opinions about the 3 prongs
  - Risk assessment is about determining someone's risk probability <u>NOT</u> whether he will or will not reoffend
  - Opinions need to be with a "reasonable degree of professional certainty" but this is not defined numerically
  - Your job is to answer the statutory question and <u>NOT</u> the ultimate opinion.

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Last thoughts

- Your final report will reflect your credibility
  - Don't be lazy but don't write a novel
  - Cite when necessary – use original documentation
  - Identify conflicting facts
  - Use facts to support opinions
  - Focus on education and not winning

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The SVP Evaluator in Court

Communicating with attorneys and tips for testimony

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Communicating with attorneys

- Remain neutral during the referral process (see bias section) and don't promise any outcomes until you have completed the evaluation.
- Attorneys are not your friends. Maintain a respectful and professional relationship. Be mindful what you share.
- Attorneys are not your enemies either – they are doing their job. Maintain respectful relationships with attorneys on both sides.
- Nothing is off the record – includes emails and texts.
- Words matter.

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Court

- Judges and juries begin judging a witness' credibility the moment the witness walks into the courtroom
- ABSOLUTE MUSTS:
  - Wear a suit and closed toe shoes. Applies even when just observing testimony.
  - Suits should be conservative colors: Black, charcoal, navy blue, or dark burgundy
  - Avoid colors: brown, tan, light gray, and unconventional colors
  - Conservative hairstyle and minimal jewelry (This is not a fashion show)

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Before testimony

- Meet with the attorney who will be calling you (direct)
  - What areas will they be covering?
  - Any particular research topics you should know?
  - Will they be asking about the opposing expert's methodology or conclusions?
  - What are likely issues on cross?

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Before testimony

- It's helpful to know research but it's vital to know the case you're testifying about
  - Memorize as much details about the case as possible
  - Court/juries find witnesses more competent when they don't have to repeatedly refer to their notes or reports
- Memorize the statutory wording for predisposing mental disorder and know the statutory criteria for all 3 prongs
- Memorize the DSM-5-TR criteria for the relevant diagnoses

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Before testimony

- Should have general knowledge about, and prepared to speak about, the following:
  - Strengths and limitations of the risk tools you used
  - Basic stats about the norms
  - Some understand of basic stats: what is a confidence interval and why is it important; what is an AUC and how is that different than a measure of calibration
  - Good experts can talk about logistic regression (comes up when there are questions about where the absolute risk estimates come from)
  - Basic research on topics relevant to your case (diagnostic issues; treatment)

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Tips for testimony

- Turn off your cell phone
- Speak clearly and not too fast
- Try and remember to spell things for the court reporter (e.g., plethysmograph) when it's obvious they won't know
- Don't take unnecessary notes with you – may be taken away
- If you do have to refer to your report or notes, first ask permission since attorneys can technically object
- Be very careful with humor
- Define jargon or avoid it's use

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Tips for testimony

- Maintain conversational eye contact with jury (jury trial) or judge (bench trial)
- Answer the question posed to you (clarification can be ok)
- Remember our job is about teaching and not doing the attorney's job
- Do not ramble
- Use anecdotes and metaphors when helpful and appropriate

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Tips for testimony

- Use the same speaking voice/pleasantries during direct and cross
- Be accepting of data that does and does not support your opinion
- Maintain your cool
  - Do not get argumentative or demonstrate arrogance
  - Take a breath before answering; sip of water
  - Listen and correct thoughts; Use reassuring thoughts
  - Do not personalize it
- We all make mistakes at times. Learn from it and let it go.

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After testimony

- May be helpful to ask for feedback from attorney or other witnesses
- Consider whether knowing the outcome is really that important
- Address the knowledge deficits before the next trial
- Debrief with colleagues
- Self-care

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Testimony Scenarios and Examples

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