the Legal Pad

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"Civil commitment as an SDP is essentially a life sentence with little hope of release." – In re Civ. Commitment of Lingl, 2012 Minn. App. Unpub. Lexis 1014 (Oct. 24, 2012).

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- ✓ Junk Science Psych/Actuarial Tests Courts Fail to Bar
- ✓ Myth Busted: Guessed Sex Crimes

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Prescott Tells Us About –

Our Deeply Flawed Civil Commitment System

David S. Prescott, "Our Deeply Flawed Civil Commitment System," https://cato-unbound.org/2015/06/03/ david-prescott/our deeply-flawed-civil-commitment-system/ (June. 3, 2015).

Text Excerpts: "...As currently practiced, ... civil commitment rarely delivers on erstwhile promises of either public safety or rehabilitation.

...Karl Hanson and his colleagues [found] that the known rate of sexual re-offense decreased to 4.2% for those high risk offenders who remained in the community for 10 years. In other words, a key approach to balancing the rights of the individual and community safety may actually lie in helping society's most feared members to live safely in the community.

...[T]he science of risk assessment remains controversial for adults who have sexually abused, [and] there are no scientifically supported means for accurately assessing the lifetime risk of adolescents. This leaves judges and juries having to make life-altering decisions based on invalid factors, such as personal judgments. ...The shopworn axiom that 'once a sex offender, always a sex offender' [is] unsupported by research....

[I]t is time to confront some grim realities. The number of releases from many institutions is unacceptably low for laws that purport to be rehabilitative in nature. ...[S]tates such as Texas and Kansas have recently been in the media spotlight for having no one complete treatment after many years in existence. ...[I]t is certainly the case that many residents frequently behave in extreme defiance of program rules, including perpetrating violence against others. At the same time, however, it can be easy to forget that the nature of institutional living can also set the stage for much of the problematic behavior observed. This fact received attention from the expert panel ...in the ...Minnesota case [*Karsjens v. Piper*]. Ultimately, I am aware of no form of psychological treatment that takes a minimum of 15 years to complete; clearly, other factors are impinging on the purported goal of rehabilitation.

...Ultimately, a key problem in attaining the highest quality of rehabilitative standards lies in the complexities of providing treatment in an environment where hopelessness is the norm. If there is any lesson to learn from civil commitment it is the effect of providing no release date. Civil commitment becomes a paradox when residents in treatment are told that their participation in treatment will determine much of the length of their stay, even as they are aware that they have little influence on administrative decisions and the legal proceedings that will determine their release in those states where people have completed the program.

Ironically, virtually all of the research on how and why human beings change their lives points to a simple fact: People are most likely to change when the decision to do so is made of their own free will."

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Prescott on Polygraph Usage on Sex Offenders

David S. Prescott, LICSW, "Sexual Abuse: Five Questions Regarding the Polygraph," , http://sajrt.blogspot.com (Aug. 7, 2015).

"Introduction

...[Treatment] participants who live in areas of the US where the polygraph is used most extensively have come to question its use....

The backdrop: Where does the polygraph fit into the treatment of traumatized and otherwise vulnerable clients?

...James Reavis, Jan Looman, and their colleagues published a ...paper, asking the important question, 'How long must we live before we possess our own lives?'

What are we trying to change in treatment?

...Is it possible that in some cases our programs, by coercing confessions, are modeling the same dynamics of power and control that we are seeking to change in our clients? ...[C]ompelling disclosure is not necessarily the same as building the capacity for honesty.

...[Some clinicans] state quite clearly that their clients in treatment are honest enough that they are able to make acceptable changes in their lives such that sexual abuse becomes unnecessary and undesirable to them at all times.....

How are we trying to change our clients?

...Karen Parhar and her colleagues noted that the more coercive the treatment experience (and there are gradations of coercion), the less likely treatment is to be effective.

So how do people change, anyway?

...As the field sorts through these issues, perhaps we can all consider whether we have adopted an as-yet empirically unsupported paradigm regarding the importance of complete confession, and whether we are having trouble separating our values from our knowledge about what actually works. Those who provide treatment without the polygraph often come to view disclosure as an ongoing process and not necessarily an event.

Ultimately, by adopting a full-disclosure paradigm based more on values than research, and despite the myriad problems of confession, false confession, and memory problems, even when our clients themselves can be highly vulnerable, one has to wonder, have we created mindsets from which we cannot escape?

Conclusion

...[I]t seems worth exploring whether holding back people in treatment who really do want to build better lives for themselves because they can't pass a polygraph exam is really worth the financial and other human costs. Whose needs are we ultimately meeting? What goals are we trying to achieve ?And what steps can we take to ensure that our interventions do not themselves cause harm?"

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Caselaw Digest Excerpts – Freedom of Expression - newest relevant cases as of 2025

[Excerpts from Compilation of Caselaw Digests:] *Government Discrimination: Equal Protection Law and Litigation* – Nov. 2025 Update, Ch.11: Fundamental Rights: ... Sec. 11:8 *Freedom of Expression – Speech*

"Freedom of speech has long been considered fundamental, enjoying explicit First Amendment protection[1], and the Constitution prohibits discrimination based on what one says,[2] the identity of the speaker, what organization one belongs to, or one's political activities. Discrimination based on the message one sends violates the First Amendment, and the equal protection clause, which would require a compelling state interest[3] and absence of a less restrictive alternative....

The First Amendment protects an individual's right to speak his or her mind regardless whether the government considers his or her speech sensible and well-intentioned or deeply misguided, and likely to cause anguish or incalculable grief. ...[A]n individual does not forfeit constitutional protection simply by combining multifarious voices in a single communication. Therefore, in *303 Creative LLC v. Elenis*,11 the wedding websites created by the plaintiff qualified as pure speech protected by the First Amendment.

Notes:

303 Creative LLC v. Elenis, 600 U.S. 570, 143 S. Ct. 2298, 216 L. Ed. 2d 1131 (2023)....

Mahanoy Area School Dist. v . B.L. by and through Levy, 141 S. Ct. 2038, 210 L. Ed. 2d 403, 391 Ed. Law Rep.19 (2021) [use of profanity in social media post by high school cheerleader off-campus & on a Saturday, violated 1st Amendment. However, where such off-campus speech would have a disruptive effect on the school environment, the school may regulate such off-campus speech. But the school's interest in preventing disruption was not factually borne out in *303 Creative LLC*: the only claim to such was the administration-felt need to pause an algebra class for five minutes to hold a dialog about the speech.]

U.S. v. Alvarez, 567 U.S. 709, 132 S. Ct. 2537, 183 L. Ed. 2d 574, 40 Media L. Rep.

(Continued on page 2)

(BNA) 1953 (2012) (The Stolen Valor Act, making it a crime to lie about receiving a military medal violates 1st Amendment. Justice Kennedy's opinion for the plurality ruled that the content-based statute failed to fit within a permitted speech exception such as defamation, fraud, or some other legally cognizable harm and declined to recognized a general exception for other false statements and thus applied strict scrutiny. A 2-Justice concurrence thought the statement should be judged by whether the speaker intended to falsify facts, but said that even if so, the law failed the intermediate level of 1st Amendment scrutiny due to chilling effect on speakers who might be intimidated to speak truth lest they have to prove its truth post hoc without certainty of being able to do so.)....

8. *Brown v. Entertainment Merchants Ass'n*, 564 U.S. 786, 131 S. Ct. 2729, 180 L. Ed. 2d 708 (2011) (invalidating California law restricting sales and rentals of violent video games to minors violates the 1st Amdmt. California failed to satisfy burden of showing either that the law was justified by compelling government interest or that law, which was both over- and under-inclusive, was narrowly drawn to serve that interest; while there are limited exceptions to prohibition against content-based governmental restrictions on expression, for obscenity, incitement, and fighting words, new categories of unprotected speech may not be added).

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Sexual Offenders on Parole – Internet Bans

Kristen M. Renberg & Angela Sbano, "The Air We All Breathe: Internet Bans in Probation Conditions – *Dalton v. State*," 38(1) *Alaska L. Rev.* 171 (June 2021)

Abstract: "In today's world, the internet is synonymous with opportunity. Recently, the Supreme Court has even recognized a First Amendment right to access the internet. However, it is still common practice to assign the special conditions of internet bans or restrictions for individuals on parole or supervised release. Courts have split on how to strike a balance between the goal of deterrence and protection of an individual's rights. The Court of Appeals of Alaska weighed into this ongoing debate in *Dalton v. State*, by holding that a restriction requiring prior approval from a parole officer before any and all internet use was unconstitutionally broad. This decision marked a departure from precedent, and a general recognition that the internet has become an indispensable part of living in, and importantly, successfully re-entering society today."

Text excerpts: [pp. 171-72:] "Now more than ever, internet access is a lifeline – not a luxury. In *Dalton v. State*, the Court of Appeals of Alaska held that a special condition of release requiring parole officer approval before the parolee may access the internet was unconstitutional under the First Amendment.[1] This Comment addresses a growing disagreement among jurisdictions, with some identifying total internet bans as a justified condition for parole or probation. A the crux of this disagreement are tens of thousands of supervised individuals who seek reintegration into society. This Comment argues that, in this modern era, banning a parolee from the internet suffocates their ability to integrate back into society, essentially taking away the air that we all breathe.[2]

[pp. 172-73:] **II. Background**

Today, roughly four million people in the United States live under some form of parole, supervised release[3], probation, or community supervision program, including one in sixty-six Alaskan citizens.[4] For tens of thousands of these people, one of the special conditions of release from imprisonment is some kind of restriction of their use of the internet or social media.[5] The review of these conditions requires a balancing act by the courts. On the one hand, there is the desire to deter the kind of activity that led to the crime, and on the other, there is a need to protect the defendant's constitutional rights, particularly to free speech and due process. This balance is especially difficult in light of the goals of probation and supervised release programs: rehabilitation and reintegration. While the purpose of incarceration can include both rehabilitation and punishment, probation and parole are intended to focus primarily on rehabilitation and deterrence.[6] These goals may conflict in the context of internet restrictions as special conditions of release, As technology becomes increasingly necessary for political engagement, commerce, employment, and social connection, and internet restriction designed to prevent recidivism may also prevent the alternative goal of societal reentry.[7]

Restrictions on the use of computers and access to the internet as a condition of supervised release or parole began in the first half of the 1990s.[8] While internet restrictions are not tied exclusively to sexually based offenses,[9] internet and social media restrictions have most commonly been applied to this category of offenses in recent years.[10]

As courts began using internet restrictions as special conditions for parole and probation, they also began to develop jurisprudence to assess these conditions' constitutionality. Restrictions on internet access have been reviewed in a manner similar to other special conditions for parole and supervised release. This review centers around: (1) the relatedness of the restriction to the offense and (2) whether the condition is more restrictive than necessary for the state's legitimate interest in ensuring deterrence and facilitating rehabilitation.[11]

[pp. 173-74:] The balance of tailoring internet restrictions has changed over the last twenty years, reflecting the internet's ever-growing importance to everyday life. The United States Supreme Court formally recognized this shift in *Packingham v. North Carolina*.[12] The Court considered a North Carolina statute making it a felony for registered sex offenders to engage on social media platforms that allowed minors to make accounts on that website.[13] The statute was held to be in violation of the First Amendment.[14] While the Court recognized the valid government interest in protecting children and sexual assault victims from further abuse, it found the statute was still too broad to survive even intermediate scrutiny.[15] It held that the statute placed a broader burden on speech than was necessary to meet its legitimate policy goals.[16] The Court reasoned that the statute prohibiting all presence on any social media would forbid otherwise protected kinds of speech.[17] Importantly, the Court's holding established a constitutional right to an online presence, noting that although 'in the past there may have been difficulty in identifying the most important places (in a spatial sense) for the exchange of views, today the answer is clear. It is cyberspace ...and social media in particlar.'[18] This part of the Court's holding reflects the reality that access to the internet has become as indispensable to free speech as air is to breathing.

Courts have interpreted *Packingham*'s impact differently in the few years since its publication, particularly as to whether it extends to special conditions for parole or supervised release.[19] However, it is clear that there is an established constitutional protection over the ability to engage online. While it is uncontested that individuals on probation, supervised release, or parole may have their rights limited to a degree, the extent to which a restriction maintains constitutionality was the subject of *Dalton*.

[pp. 174-76:] [This article next examined in detail the case of *Dalton v. State*, 477 P.3d 650 (Alaska Ct. App. 2020). In the underlying criminal case, the defendant was convicted of sexually assaulting his minor stepdaughter. In the police investigation of that accusation, police searched his iPad. They discovered multiple visits to a pornography website in the three days just before the alleged act of sexual abuse. At least some of that pornographic content concerned sex acts between stepfathers and stepdaughters. The trial court imposed a 20 -year sentence on the defendant, but suspended ten years of that sentence and placed the defendant on probation for the other ten years. One of the conditions of his probation was a prohibition on internet Access without prior approval from his probation officer.

Dalton appealed that internet -prior-approval requirement. The prosecution countered by citing two earlier cases on the subject, *Dunder v. State*, 2009 WL 1607917 (Alaska Ct. App. 2009); and *Direc v, State*, 295 P.3d 409 (Alaska Ct. App. 2013). Dunder's offenses involved internet use to commit serious sexual offenses against minors and to distribute child pornography. Diorec's offenses included impersonating a teenage boy to contact teenage girls, including Diorec's 14-year-old stepdaughter.

In Dalton, the appellate court noted that the role of the internet in society had grown substantially in the 11 years since Dunder and 7 years since Diorec. The court also cited recent decisions in other jurisdictions indicating that at least those states were no longer receptive to total internet and electronic bans as probation or parole conditions (*Dalton*, 477 P.3d at 655) (see, e.g., *United States v. Holena*, 906 F.3d 288 (3d Cir. 2018). In *Holena*, that court had acknowledged the role the internet had played in the defendant's offenses, but concluded the internet restriction was overbroad and unduly restrictive, partly due to the lack of any judicial guidance in advance given to the probation officer as to internet uses that should be approved.

On the First Amendment considerations, the *Dalton* opinion discusses the burdens that internet bans place on probationers trying to reintegrate lawfully into society, noting increasing societal dependence on the internet in conduct of everyone's daily life. This now posed an almost total impediment on reintegration and would totally block the probationer from meaningful participation in public discourse. Based on this, the *Dalton* case was remanded to the trial court with direction to narrowly tailor any restrictions on Dalton's internet access. (*id.* at 656).

[pp. 177-78:] This article briefly examines the "circuit split" in the federal judicial system on the First Amendment issue involving such internet bans/restrictions on (mostly sexual) criminals under probation or parole conditions. In addition to the Third Circuit's position, illustrated in *Holena*, wherein the court described internet bans and severe restrictions as "draconian" (*Id.* at 292), the article cites *United States v. Blair*, 933 F.3d 1271, 1278 (10th Cir. 2019) as rejecting a parole agent's total discretion over internet access. Both of these circuits pose monitoring programs and other alternatives as potentially less restrictive conditions. (*Blair* at 1278; *Holena* at 292).

On the other hand, the 11th Circuit held in *United States v. Bobal*, 981 971, 978 (11th Cir. 2020) that the connection of internet use to the original crime justified such presumptive discretionary restriction and the need for discretionary permission. But other cases examined in this article are less clear on this issue. The Second, Fourth, Eighth, and Ninth Circuits side with a general rule supporting internet bans or restrictions when such internet-use/crime connection is present, but the article interprets this corpus of cases as leaving the role of *Packingham* in parole/probation cases "blurry." (See: *United States v. Bolin*,976 F.3d 202, 216 (2d Cir. 2020; *United States v. Mixell*, 806 F. App'x 180, 187 (4th Cir. 20-20); *United States v.Perrin*, 926 F.3d 1044, 1050 (8th Cir. 2019); *United States v. Peterson*, 776 F. App'x 533, 534 (9th Cir. 2019); *United States v. Halverson*, 897 F.3d 657-58 (5th Cir. 2018).)]

[pp. 179-80:] *c. Collateral Consequences of Internet Limitations and Reintegration*

...[T]he importance of the internet, and the barriers to reentry posed by the denial of access, cannot be ignored by courts. In 2019, 90 percent of American adults had internet service.[66] In that same year, almost three quarters of adults used some kind of social media, making these websites important places of personal conection.[67]

Social media can also serve as a source of news and political activism , particularly for marginalized communities.[68] The internet is even increasingly central to one's physical health. Internet access enables people, wherever they live, 'to communicate freely with their physicians, to access electronic medical records, to research health conditions and treatment, or find resources for healthy behaviors and lifestyle changes.'[69] The realities of the COVID-19 pandemic have only reinforced the necessity to be able to connect remotely. The internet is thus a necessary tool for accessing the information one needs to maintain relationships, be an informed citizen, and even stay healthy.

The internet is also central for one of the most important aspects of reentry: seeking employment. In 2015, 90% of recent job seekers looked for employment online, and 84% applied to jobs through online applications.[70] Many people also use social media to gain informal employment tips and information about employers.[71] For people operating their own businesses, online advertising and networking are important tools and may be attractive to people whose access to certain job markets are restricted due to their criminal history.[72] Computer access, and access to social media, are thus undeniably critical for meaningful participation in the present-day world. While there are fair concerns of deterring future crimes committed on computers, the idea that people can effectively reenter society after incarceration without access to the internet is an increasingly untenable position.

V. Conclusion

Access to the internet is a right, not a privilege. As trial courts continue to allow internet restrictions as conditions of parole or probation, many jurisdictions across the United States are left grappling with how to strike a balance between the goal of deterrence and the protection of individual rights. The Court of Appeals of Alaska weighted into this ongoing debate in *Dalton v. State*, holding that a total internet ban that requires prior approval from a parole officer before any and all internet use is unconstitutionally broad. This decision broke from established precedent, and acknowledged that the internet has become indispensable to living in and successfully reentering society today...."

Notes:

1 *Dalton v. State*, 477 P.3d 650 (Alaska Ct. App. 2020).

2 *Id.* at 56.

3 *Jacob Hutt*, "Offline: Challenging Internet and Social Media Bans for Individuals on Supervision for Sex Offenses," 43 *N.Y.U. L. & Soc. Change* 663, 668 (2019).

4 *Danielle Kaeble & Mariel Alper*, U.S. Dept. Justice, Probation and Parole in the United States, 2017-2018 (2020); *:Pew Charitable Trusts*, Probation and Parole Systems Marked by High Stakes, Missed Opportunities 6 (2018).

5 *Hutt, supra* note 3, at 665.

6 *Id.*, at 672-73.

7 *Id.* at 665-66.

8 *United States v. Riggs*, 967 F.2d 561 (11th Cir. 1992); *State v. Riley*, 846 P.2d 1365 (Wash. 1993) (en banc).

9 *United States v. Keller*, 366 F. App'x 362 (3d Cir. 2010) (banning a defendant's use of internet to create business websites for three years after conviction of ten counts of mail fraud); *United States v, Stanfield*, 360 F.3d 1346 (D.C. Cir, 2004) (regarding internet restrictions in relation to identity theft and drug trafficking).

10 *Hutt, supra* note 3, at 665, 670 noting that the majority of internet and social media bans are tied to sex offenses, and that these types of restrictions "have proliferated over the last few years, often outpacing " legislative regulation).

11 *United States v. Hamilton*, 986 F.3d 413, 417 (4th Cir. 2021); *United States v. Crandon*, 173 F.3d 122, 127 (3d Cir. 1999).

12 137 S.Ct. 1730 (2017).

13 *Id.* at 1733.

14 *Id.* at 1736.

15 *Id.* at 1736-37.

16 *Id.* at 1736.

17 *Id.* at 1738.

18 *Id.* at 1735.

19 See *infra* Part IV for discussion on the current circuit split and where the *Dalton* decision fits within that disagreement.

66 Internet/Broadband Fact Sheet, *Pew Res. Ctr.* (June 12, 2019), https://www.pewresearch.org/internet/fact-sheet/internt-broadband/#internet-use-over-time/.

67 Social Media Fact Sheet, *Pew Res. Ctr.* (June 12, 2019), https://www.pewresearch.org/internet/fact-sheet/social-media/.

68 *Brooke Auxier*, Social Media Continue to be Important Political Outlets for Black Americans, *Pew Res. Ctr.* (December 11, 2020), https://www.pewresearch.org/fact-tank/2020/12/11/social-media-continue-to-be-important-political-outlets-for-black-americans/ (citing data that Black Americans use social media to engage with political issues and find like-minded individuals at higher rates than White Americans).

69 *Carmen Guerra et al.*, "Why Internet Access is a 'Super' Determinant of Health," *Phila, Inquirer* (July 7, 2020), https://www.inquirer.com/health/expert-opinions/internet-access-telemedicine-determinants-of-health-low-income-20200707.html.

70 *Aaron Smith*, *Searching for Work in the Digital Era* 9 (2015).

71 *Id.* at 7.

72 *Hutt, supra* note 3, at 684-85.

[p. 38:] Gender :

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CREEPER Act Redux – Prostasia Foundation Voices Adamant Opposition

Prostasia Foundation, "Does Congress Care More About Dolls Than Real Children?," https://prost.org/wp-content/.

[Text]: "Never before has the United States Congress specifically banned a sex toy. But for the first time, the CREEPER Act (reintroduced for 2021) will do exactly that. Because the law is said to be targeted at sex dolls 'with features that resemble those of a minor,' it swept through the House of Representatives in 2019 on a voice vote, from members disgusted at those who would import such dolls for their own use. But there are two reasons for caution before allowing our government to ban such sex toys.

First and most important, this bill could inadvertently harm children. In debate on the original bill, House Judiciary Committee Chairman Bob Goodlatte claimed 'Science has shown that dolls normalize pedophilia behavior rather than discourage pedophiles from acting out on their urges or aggression.' But Dr. Craig Harper, an Advisor to the Prostasia Foundation, has described this as speculation, saying that it is 'unsupported by any psychological research evidence.'

Dr. Harper is just one of a growing number of scientists who believe more research is needed into whether such dolls could actually act as a harmless outlet for those who have a sexual interest in minors, which could steer them away from committing child sexual abuse (CSA). Prostasia Foundation was recently formed to promote an evidence-based approach to CSA prevention, and, funding this sort of impartial, academic research is part of the Foundation's mission.

But a secondary reason to be cautious about the CREEPER Act, even apart from the possible positive effect of sex dolls may have in reducing CSA, is the risk that by allowing Congress to tell how they are allowed to masturbate in private, this will open the door to the regulation of other private and consensual sexual behaviors. In Australia, the official censor has banned adult movies that feature adult women with small breasts. Will small-breasted sex dolls be counted as having features that 'resemble those of a minor' under CREEPER?

Consider also that there are adults who engage in a type of consensual sex play called ageplay in which one party (or both) role plays as a minor. For most ageplayers, this kind of sex game does not correspond with any actual sexual interest in children – yet how can we criminalize the use of a sex doll in the role of a child, without opening the door to criminalizing the use of a consenting adult human being in exactly the same role?

The last time that such issues were considered was in the case of *Reliable Consultants, Inc. v. Earle*, in which the U.S. Federal Circuit court for the 5th circuit struck down a Texas law that banned sex toys; a law that the government had sought to justify on the ground that the ban was for the protection of minors. The court gave short shrift to this argument, saying, 'the State's generalized concern for children does not justify such a heavy-handed restriction on the exercise of a constitutionally protected individual right.'

The court concluded by referring to *Lawrence and Garner v. Texas*, the U.S. Supreme Court decision that struck down bans on consensual gay sex:

'The case is not about public sex. It is not about controlling commerce in sex. It is about controlling what people do in the privacy of their own homes because the State is morally opposed to a certain type of consensual private intimate conduct. This is an insufficient justification for the statute after *Lawrence*.... Whatever one might think or believe about the use of these devices, government interference with their personal and private use violates the Constitution.'

If this was the only reason to oppose the CREEPER Act, we should oppose it. But given the fact that leading scientists sincerely believe that the availability of sex dolls or robots may also prevent some real children from coming to harm, it would be even more morally abhorrent for us to pass a law banning such devices until more evidence of their possible therapeutic effects becomes known."

Jeremy Malcolm, Executive Director of the Prostasia Foundation, wrote a protest letter to the Chairman of the House Judiciary Committee against the bill prematurely called the "CREEPER Act," expounding on the opposition to the bill as follows:

"...[T]he bill's Congressional Findings – which assert that the devices typically referred to as 'sex dolls' 'lead to rape' or that they 'cause the exploitation, objectification, abuse, and rape of minors' – are contradicted by the world's leading researchers on this topic, whom we work with, and who assure us that there is absolutely no evidence to support these assertions.[1] In fact, we are currently working with scientists from the State University of New York to investigate whether the *opposite* may be true: that for users of such devices who live with a ... sexual interest in children, the device could be an essential tool in the management of that condition, preventing them from acting out against a real child."

Footnote 1: "They include Dr. James Cantor (Director of the Toronto Sexuality Centre), Dr. Michael Seto (editor in chief of Sexual Abuse: A Journal of Research and Treatment and author of Pedophilia and Sexual Offending Against Children), Dr. Craig Harper (Senior Lecturer at the Department of Psychology, based at Nottingham Trent University), and Dr. Richard Siegel (Director of Modern Sex Therapy Institutes). Dr. Harper presented with us in November 2019 at the conference of the Association for the Treatment of Sexual Abusers on the topic of 'Exploring and Understanding the Experiences of People Who Own Sex Dolls.'"

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Two More Experts, Citing Support by Many Others, Urge Use of Child-Like Robots to Avert Sexual Abuse of Children.

Jeanne C. Desbuleux & Johannes Fuss, "Child-Like Sex Dolls: Legal, Empirical, and Ethical Perspectives," 36 *UIR: Your Sexual*

(Continued on page 4)

Medicine Journal 722-727(2024), www.nature.com/ijir; https://doi.org/10.1038/s41443-024-00979-3 .

Text excerpts [p. 722]: "**Overview and Definition**

For clarity, we shortly define key terms relevant to this paper: *Sex dolls* are defined as highly realistic, anatomically accurate figures, mainly used for sexual stimulation or satisfaction [2], while *sex robots* are additionally equipped with artificial intelligence or technical extras (e.g., they can turn their heads or speak simple sentences). Dolls or robots differ from other sex toys in their complete replica of a human body... [T]oday's dolls are tailored to customer preferences, raising debates about their classification as mere sex toys or as non-human partners.

In addition to sexual purposes, dolls and robots also serve a number of non-sexual needs, such as the 'physical' presence of a person, for cuddling or simply as a model that can be dressed according to the user's wishes [3-5]. While high-quality adult dolls are easily accessible online and customizable, sex robots are still in nascent stages of development. The costs for these dolls, with or without artificial intelligence, range from $1,000 to $10,000, varying based on factors like body structure, additional features such as human hair, and materials like silicone or thermoplastic elastomers.

Child-like sex dolls specifically mimic the shape and size of real children's bodies. They differ from so-called *reborn dolls* in that they have body openings that can be used for sexually penetrative acts. By definition, reborn dolls are more seen as a work of art that represents the perfect replication of a human newborn or toddler.

...It is crucial to distinguish between pedophilia and child sexual abuse, as the public often conflates these terms. As academics repeatedly emphasize, having a pedophilic sexual interest is neither a prerequisite nor a guarantee for committing sexual offenses against children. [9].

[p. 723:] **Balancing Moral Concerns and Potential Benefits**

The use of child-like sex dolls is discussed as a potentially 'safe outlet' (see, for example, Michael Seto, quoted in a newspaper article; [20], fitting into the view that dolls could be a *protective mechanism* [10]. Thus, dolls could be used by people with, e.g., a pedophilic sexual interest, to experience sexual satisfaction, thereby even reducing the risk of children becoming victims of sexual violence [10]. This idea might be supported by findings related to pornography consumption, where increased availability has correlated with decreased sexual violence at the population level in some Western countries ([3, 21, 22]... Similarly, the decrease in reported cases of child sexual abuse was associated with the legalization and accessibility of pornography in the Czech Republic [24].

Others [25] draw parallels between the use of robots or dolls and the use of computer-generated sexual depictions of children. Both involve fictional representations without a legal or moral victim, suggesting that they could offer an alternative for individuals with pedophilic sexual interests to live out their sexual fantasies without harming children.

Cantor [26] points out that masturbation is sometimes the only sexual outlet for people who have no opportunity for a romantic or sexual relationship. He considers the emotional consequences of such a limited sexuality. Especially for people with certain paraphilias, such as an exclusive pedophilic interest, access to lifelike dolls, to which Cantor refers as a 'piece of latex' [13], could satisfy both sexual and emotional (e.g., emotional intimacy or companionship [54, 27] needs. Others also emphasize the possible positive effects that dolls could have, e.g., on lonely or traumatized people or on satisfaction and fulfillment in the general population [28, 29].

Lastly, ...they can be seen as a *functional tool* to enhance users' life satisfaction by substituting for human interaction in various contexts[10]. They can act as partners for individuals who struggle to find a partner due to unrealistic expectations or limited social contacts [10]. Additionally, dolls provide a masturbation and for those who cannot act out their fantasies with others. These functional uses of dolls address specific needs and can improve mental well-being, demonstrating their potential to fulfill important emotional and psychological roles.

Moral Considerations in Philosophical Debates

Another approach is offered by philosophical and sociological considerations, which, although not empirical, aim to establish a framework for the moral evaluation of right and wrong. Danaher [30, 31) advocates for an experimental approach to new technologies, emphasizing open exploration rather than immediate prohibition, particularly when empirical data are lacking....

Harper and Lievesley [32] ...emphasize that, despite the lack of empirical data, some scientists may overestimate potential risks and underestimate potential therapeutic benefits when discussing the issue through a moral lens.

[p. 724] **Empirical Data**

...[I]n empirical surveys, roughly half of the doll users indicate that they view their doll as a partner, while the rest see it purely as a sex toy [4, 39]. Those in a partnership with their doll report emotional attachment and improved mental health through doll use, some even preferring dolls over human partners.

An online survey showed that both teleiophilic and pedo-hebephilic users reported reduced sexual behaviors (like masturbation and pornography consumption) since using dolls, with the latter group no5ting as greater reduction in compulsive sexual behaviors [39]. Pedo-hebephilic users primarily turned to dolls due to un-fulfillable atypical sexual interests with humans, occasionally stating a decrease in their sexual interest in real children after using dolls.

Harper and Lievesley [3] studied psychological and risk factors associated with the possession of child-like sex dolls. They found that individuals with pedo-hebephilic interests had a significantly stronger desire (79.2%) for doll ownership compared to teleiophilic participants (20-40%). In a further comparison between pedo-hebephilic people with and without dolls, the tendency or arousal towards hypothetical child sexual abuse was found to be lower in doll owners. This was true even after adjustment for higher self-reported sexual attraction to children and objectifying behavior. ...The study also showed that doll owners tended to exhibit more schizotypal and less antisocial personality traits with schizotypal traits associated with social withdrawal and creativity [29, 40], and antisocial traits associated with disinhibition and distance in interpersonal relationships [41-43].

In a qualitative study [6] in which users of child-like sex dolls were asked about the effects of the ban of such dolls (most participants being affected by the German law), many reported stigmatization and negative psychological effects. The ban was seen as restricting their ability to fulfill their sexual and emotional needs. The lack of clarity on the definition of *sex doll* led to uncertainty as to whether their doll falls under the ban. Only a few stated that they had given up their doll. A minority also stated that their risk for sexual offenses toward children had increased since the new law had come into effect because they lost an alternative sexual outlet.

In conclusion, current data do not indicate that virtual partnership and sexuality with child-like sex dolls increase a risk for real-life child sexual abuse. However, these are cross-sectional findings, and long-term studies, particularly in therapeutic contexts are needed to assess causal effects. The users of such dolls, in contrast, indicate that it is a safe outlet for their sexual arousal pattern that does not produce a victim in contrast to the use of sexual abuse images or videos or child sexual abuse.

The Complexity of Sexualized Dolls on Abuse Prevention

[p. 725:] The premise that pedophilic sexual interest is unchangeable leads to considerations of successful treatment with the aim to protect children while allowing individuals with a pedophilic sexual interest to lead fulfilling lives (implying sexual satisfaction). There are often references to existing effective therapies for people with pedophilic disorder, for example, Danaher refers to the German Darkfield Project as 'best practice' [30]. This approach focuses on assisting individuals to appropriately recognize and assess their sexual desires and needs, to help them identify and manage situations that pose a risk to others, and to acquire strategies for preventing sexual offenses [48]. However, these therapy methods also lack convincing evidence and are criticized both regarding the therapy methods offered and their scientific evaluation [49]. Konig [49] refers to a study by Nentzl and Scherner [50] that followed a group that received the treatment for six years following therapy. The results were not as promising as expected: 85.7% of the participants stated that they had committed new or additional sexual offenses after therapy. Of these, 4.2% admitted to sexual abuse of children, while 95.8% used images of sexual abuse. Furthermore, Konig's interpretation of the data suggests that all of the men who had previously admitted to sexual offenses continued this behavior after treatment. In addition, 11.1% of participants who had not previously offended became first-time users of child sexual abuse images. In conclusion, similar as for other studies on the effects of sexual offender treatment, there is a lack of comprehensive prospective control group studies to validate their crime prevention efficacy or exclude potential harm [49, 51] Without claiming that the use of dolls can be safe or useful, these findings at least suggest that it would make sense to be open to the development of alternative treatment methods for prevention to ultimately protect children and women from (sexual) violence.

Exploring the use of dolls appears to be a worthwhile endeavor. As mentioned by some researchers, one potential approach to safely study the use of highly realistic sex dolls would be to embed them as a therapeutic tool within existing treatment programs like Dunkelfeld or the Healthy Sex Programme in the UK, similar to other forms of fictional sexual materials such as written stories [52, 53]. Following the authors, this would allow for a controlled environment to test for potential positive or negative effects on sexual thoughts or behaviors [52]. This aligns with harm reduction principles, as seen in drug addiction treatment, which aims to minimize harm when eradication isn't feasible [53-55]. Societal moral disgust often obstructs such approaches, prompting the question of whether legislation should be based on disgust. The key issue is whether current laws focus on societal repulsion towards pedophilic fantasies or genuinely aim to protect children. However, implementing such an approach would necessitate rigorous supervision and monitoring of participants, as well as extensive multidimensional research. Furthermore, significant legal challenges would need to be addressed, including securing a special license for the possession of these dolls.

The situation of individuals with pedophilic sexual interests or disorders should not be overlooked, even if it may seem less important to some people compared to the consequences of child sexual abuse. Still, ignoring the situation is problematic for two main reasons: firstly, from a human rights perspective, and secondly, because stigmatization can lead to increased social isolation, which in turn can limit the ability to control behavior [56]. Additionally, people with pedo-hebephilia are often confronted with aggression and rejection [49, 56, 57]. This may be partly due to the frequent incorrect equation of pedophilia and child sexual abuse.

Limitations and Conclusion

A limiting factor is that whenever scientists discuss the topic of child-like sex dolls and refer to empirical data on the one hand and demand empirical data on the other, they are dealing with self-reported data. These have advantages, such as providing direct insight into users' perceptions, ease of

implementation, and addressing a broad range of topics. However, it also has significant disadvantages, particularly in collecting data on the possession of child-like dolls, a criminal offense in many countries, leading to potential reporting bias to avoid legal consequences. Users may also bias responses due to social desirability or to avoid stereotypes. Larger clinical studies with various methods and long-term studies could enrich current knowledge.

It is likely that the demand for highly realistic dolls and robots will continue to rise. Not only because of technological progress but also because social acceptance of the use of humanoid robots is likely to increase as they become more common. As seen, the expected effects of the use of (child-like) sex dolls are often presented as immense and underpinned with drastic examples and wording. Many professionals [3, 10, 13, 14, 26] with different backgrounds have already weighed these arguments, whereby no common understanding is expected due to missing empirical research. Unlike other forms of sexually stimulating material, child-like dolls are inherently fictional. They are not sexualized objects by default; instead, their sexual nature emerges from the user's imagination and actions. These dolls can be seen as fantasies brought to life, making them visible and potentially morally offensive to the public. It seems the bans against dolls are not just about protecting children, but also about the desire for moral control, in which complete abstinence from any sexual behavior seems to be the only legitimate way of dealing with a pedophilic interest.

As Frommel [58] observed, current prevention strategies appear to rely predominantly on criminal law. She argues that this marks a new phase in anti-liberal criminal policy, where the distinction between law and morality is increasingly being eroded. This shift, she contends, essentially seeks to elevate the threat of punishment as an expression of state-imposed moral policy."

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Keeping Support Groups for Pedophiles Online Helps Prevent Child Molestation.

Artur Debat, "Online Support Groups Can Keep Pedophiles from Offending but They Keep Getting Shut Down," GettyImages-578691729.jpg.

Text Excerpts: "Ender was 14 when he realized something was up.

He'd known he liked boys from a young age. This was in the '80s, before homosexuality was widely accepted in society, and Ender grew up in a Catholic family. The prospect of being gay was dangerous enough. But the problem wasn't just that Ender was gay, it was that as he got older, the boys he found himself attracted to stayed the same age.

Ender is a prominent member of the online 'virtuous pedophile' community (or, as Dan Savage has called them, 'gold star pedophiles'), a network of both adults and youth who are attracted to children but are committed to never, ever acting on those attractions. They are pedophiles, but they aren't child molesters. While his attractions have made his life difficult in plenty of ways (society doesn't generally look well upon pedophiles, whether they have ever touched a child or not), contrary to the popular belief that pedophiles have uncontrollable urges, Ender says that's not actually true in his case. And it's not true for many other virtuous pedophiles either.

...But not acting on the attractions doesn't mean they go away, and there are few outlets for Ender and other non-offending pedophiles to find support. In the U.S., therapists are obligated to report their clients to authorities if they think there is a chance the client will abuse a child. But even if there's no chance that a child is in harm's way, just disclosing the attraction can be a risk: 'Therapists are human beings and are affected by social stigma as much as the general population,' Ender told me. 'Some believe we're monsters that are going to inevitably abuse a child.'

In 2014, the public radio show *This American Life* aired an episode about Adam, a teenage pedophile who, after much struggle with his attraction, sought out a therapist. After Adam disclosed his attraction, the therapist reacted how you might expect: She was appalled and immediately told the boy's mother.

Adam got lucky. His mother, though upset, didn't disavow her son or kick him out of the house, and, like Ender, Adam found solace and support online, one of the few places pedophiles can anonymously discuss their problems. These forums aren't places to trade kiddie porn or solicit sex (there are strict rules against this); they are places where pedophiles can talk honestly about how to deal with their attractions and exist in a society that views them as subhuman. But these online communities don't always last. Message boards and forums have been targeted and shut down by hackers, and this week, an online community run by Ender with over 400 members was shut down by Discord, the company that hosted their server.

...[M]uch of society may assume that pedophilia is the result of childhood trauma or a moral failing. ...While acting on an attraction to children may be a choice, the attraction itself is no more a choice than being straight or gay.

...[S]ociety hasn't exactly embraced pedophiles as victims themselves. A well-rounded fear of what would happen if they were ever found out keeps pedophiles in the closet, and before Ender found online support groups, he thought he'd take his secret to his grave. Through talking with other pedophiles, however, he came to see that some people are able to successfully come out to loved ones. And so, after ten years of marriage, he wrote a letter to his wife, telling someone he loved, for the first time, the truth.

She was shocked, understandably, but also understood that her husband had never and would never harm a child (including their own children). She accepted him for who he is. (Ender says that while

(Continued on page 6)

his sexual attraction is exclusively toward boys between the ages of 8 and 12, he loves his wife and they have a companionate marriage.) Later, he came out to both his priest and a therapist, both of whom have been supportive as well, but it's the peer support group on which he leans the hardest. And support groups aren't only god for pedophiles themselves. They also help protect children – both sex researchers and pedophiles say that the pedophile with no support is more likely to become a child molester than the one who can talk about his or her feelings.

After Ender appealed to Discord, the company responded, and it wasn't what he wanted to hear: The community was still banned, and banned permanently. They will rebuild (they've found a temporary server on another service), but, still, Ender worries for fellow pedophiles. He's known several community members who have attempted suicide, and when an active member of the community disappears, he always wonders if they've take their own lives.

'It's important for people to realize that literally anyone can be a pedophile and that there are literally children every day discovering that they have these kinds of feelings,' Ender says. 'When these kids start discovering this about themselves, they go out on the internet to learn about what's happening to them, and are terrified to discover that everyone thinks they're worthless, scum, subhuman, and that they deserve to die a terrible death or be physically castrated and dismembered in a public square.'

But pedophiles aren't monsters. They're people – people with an affliction no one would choose. 'I'm a grown man with a thick skin but young boys and girls are incredibly vulnerable to these societal messages and often fall into deep bouts of depression, have suicidal feelings and very often actually attempt (and often succeed) to kill themselves,' Ender says. He wants to prevent these unnecessary deaths and the harm that radiates out from them. But every time their support groups get shut down, saving virtuous pedophiles gets harder and less likely to happen."

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Static-99R – 2016 Coding Revisions Create Confusion & Defy Science

Amy Phenix, Yolanda Fernandez et al., "Static-99R Coding Rules, Revised -- 2016," Research Report 2017-R012, Research Division, Public Safety Canada, 2017)

Text excerpts: [p. 10:] "The original Static-99 was created by amalgamating two risk assessment instruments (r=the RRASOR and SCCJ-Min). The RRASOR (Rapid Risk Assessment of Sex Offender Recidivism), developed by Hanson, consisted of four items: 1) having prior sex offenses, 2) having a male victim, 3) having an unrelated victim, and 4) being between the ages of 18 and 25 years old....The SACJ-Min consisted of nine items: 1) having a current sex offense, 2) prior sex offenses, 3) a current conviction for non-sexual violence, 4) a prior conviction for non-sexual violence, 5) having four or more previous sentencing dates on the criminal record, 6) being single, 7) having non-contact sex offenses, 8) having stranger victims, and 9) having male victims. These two instruments were merged to create Static-99, a ten-item prediction scale.

In 2009 a revised version of Static-99, called Static-99R, was released for use (Hanson, Phenix, & Helmus, 2009; Helmus, 2009; Helmus, Thornton, Hanson, & Babchishin, 2012). This revision was completed to better account for the relationship between age at release and sexual recidivism, and to provide updated norms for the scale on more contemporary samples.

[p. 11:] Statis-99R ...has a number of weaknesses. On average it demonstrates only moderate predictive accuracy (AUC = .69 to .70 depending on how the analyses are conducted, Helmus et al., 2012). ... Absolute recidivism rates associated with specific risk scores have also been found to vary across samples (Helmus, Hanson et al., 2012) in a way that has made estimation of absolute levels of recidivism risk more complex....

Static-99R does not address all relevant risk factors for sex offenders ...such as dynamic or changeable risk factors.... Additional factors in an individual case may also affect risk. ...Adding additional factors t Static-99R, or adding 'over-rides,' distances Static-99R estimates from their empirical base and substantially reduces their predictive accuracy.

Missing items

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

Recidivism Criteria

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

[p. 29:] Certain sexual behaviors may be illegal in some jurisdictions and legal in others (e.g., prostitution). ..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 offense would not count. But if he moved to California and was supervised there, then it would count.

[p. 42:] Charges

...The following count as equivalent to a charge:

...Charges not resulting in convictions (e.g., where there is an acquittal, or charges are withdrawn, dismissed, or stayed)....

Convictions subsequently overturned appeal.

Acquittals

Acquittals count as charges....

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal are considered a charge.

Dismissals

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

Not Guilty

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

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Static-99R & 2002R – 2021 Revised Evaluator's Workbook – by SAARNA

L. Maike Helmus, et al., "Static-99R & Static-2002R Evaluators' Workbook," (SAARNA, 2021)

Cover Precis excerpts: "This version updates and replaces the October 19, 2016 Static-99R & Static-2002R Evaluators' Workbook and all other previous versions. From the 2016 version, new 10-year sexual recidivism rate norms for Static-99R with routine/complete samples have been added and their 5-year norms have been updated. For all recidivism estimates tables, 20-year projections have been added. ...All other normative data (e.g., 5-year estimates for Static-2002R, risk ratios for Static-99R and Static-2002R, percentiles for Static-99R and Static-2002R) remain unchanged from the 2016 version."

[Editor's Note: This implies by omission that the Static-99R 5-year estimates have been changed. Overall, this implies more broadly that part of the goal in the changes made is to support the risk ratios and percentiles brought forward from the 2016 workbook that were substantially questioned as apparently unsupported by the observed data at that earlier time. Effectively, this means that these prediction editors cherry-picked new samples to gain that seeming support. This is reverse from proper scientific procedure.. Hence, it strongly questions whether these new samples are representative of average recidivism observations. This appears to present a sizable problem, since all recidivism observations in recent years have reported substantial reductions in sex-crime recidivism (see, e.g.: *Patrick Lussier, Evan McCuish, & Elizabeth L. Jeglic*, "Against All Odds: The Unexplained Sexual Recidivism Drop in the United States and Canada," 52 *Crime and Justice* [Galley proof pages used here] (2023), https://doi.org/10.1086/727028; *Richard Wollert*, "Low Base Rates Limit Expert Certainty When Current Actuarials Are Used to Identify Sexually Violent Predators," 12 *Psychology, Public Policy and Law*, 56 [February 2006], but the normative data reported here appears to find that such recidivism rates have been substantially rising. Fundamental scientific dishonesty may need to be examined.]

Text excerpts:

[p. 3:] [Editor's Note: The authors explain here that "Karl Hanson and David Thornton have retired from their government positions where they developed the STATIC scales and where they had access to certain resources (e.g., funding for research assistants)." Effectively, without government contract, Helmus et al. have formed a non-government association: "Society for the Advancement of Actuarial Risk Needs Assessment" (SAARNA) and have acquired/appropriated the Static rights. As part of this restructuring, they have closed the previous website (www.static99.org) and placed the current instruments of the Static series in their own new website, www.saarna.org.

While continuing (for now) the past practice of allowing free access to the Static instruments by forensic practitioners, SAARNA now offers what it calls "the option of becoming affiliates and accessing additional resources, training and knowledge dissemination, administrative support [etc.]." It would seem that this includes litigation support services for practitioners who will serve as expert witnesses in sex offender commitment proceedings and those entities (mostly prosecution offices) that contract for such services. For this, fees and other charges can be expected to be substantial. Hence, it would appear that in serving such official clients, SAARNA now has a significant tilt toward findings sought by such entities to confine sex offenders under such commitments.]

"Updated 5-Year and New 10-Year Normative Data for Static-99R with Routine/Complete Samples"

Previous normative data for routine/complete correctional samples included only 5-year data as there was insufficient numbers of recidivists for credible 10-year estimates. Lee and Hanson (2021) have updated the samples, allowing for the creation of 10-year routine recidivism norms, and an update to the 5-year norms."

[Editor's Note: These statements, taken together, imply that "updating the samples" was, in essence, a search for more recidivists by 'cherry-picking' samples and broadening inclusion criteria for what constitutes recidivism via coding rules changes. Many of these changes to coding rules as to what constitutes countable recidivistic sex crimes were already accomplished by the 2016 changes to Static coding rules. At page 4, Helmus et al. state that two large sample sets were obtained from California and New Jersey, both of which states have large SOCC systems which, except for uncommitted detainees gaining judicial dismissals of their commitment petitions, have not released many of those committed by judicial judgment.

Page 4 also contains this new practice: "The recidivism norms also include 20-year projections.... The method used to derive these estimates differs from our previous norms and will be briefly discussed. ...Hanson, Morton, and Harris(2003) ...used survival analysis to estimate sexual recidivism rates over 5-, 10-, 15- and 20-year follow-ups. The 20-year rate was about twice the five-year rate and about 1.35 times the 10-year rate." Properly understood, this 20-years should run from the

(Continued on page 7)

time of the index offense.

Further, after a long prison sentence, 20 further years often extends into old age, seriously reducing recidivism odds. At that point, many studies have confirmed that recidivism from age 60 up is no higher than 2% and rapidly falls to effectively 0% by or even before age 70. (See: *Prentky, R.A., Janus, E.S., Barbaree, H.E., Schwartz, B.K. & Kafka, M.P.* (2006). "Sexually Violent Predators in the Courtroom: Science on Trial." *Psychology, Public Policy and Law*, 12, 357-393., describing the Hanson (2005) study of the validity of the Static-99 with older sex offenders, concluding that recidivism was a mere 2% for offenders age 60 or older. Statisticians studying that data could not find any instances of sex-crime recidivism past age 69.) This shows the failure involved in attempting to apply survival analysis to a dropping statistic like recidivism that during one's 20s might be in the teen percents, but which R.K. Hanson himself estimated drops by about 2 percent per year of increasing age. (*R. Karl Hanson*, "Recidivism and Age: Follow-Up Data from 4,673 Sexual Offenders," 17 *J. Interpersonal Violence* 1046, 1053 [2002]).)

Helmus et al. concede that, in addition to new crimes, their survival analysis approach includes "late reporting of offenses." However, the key question is when were these late-reported offenses actually committed? Was it in the first five years of the survival period, the second five years, or somewhere between the ten-to-twenty years anniversary – or even before the index offense itself? Obviously, any such offense preceding the prison term served for the index offense is not recidivistic as to the index offense at all, and hence has no place in estimating odds of such vastly later recidivism.

The authors further concede that "As Wollert and Cramer (2012) noted, the use of a constant multiplier overestimates the observed, long-term estimates for individuals placed in the high risk levels." In the case of a 2009 study by Doren that the authors of the 2021 Workbook mention, the five year rate was only doubled to derive a "lifetime" recidivism forecasting (which these authors equate to a 20-year projection. In fact, they use a double the five-year figure to estimate recidivism by 20 years (without indicating whether the 20 years would start in one's 20s or his 40s or 50s – which obviously would come to huge disparities for these differing starting ages, given that recidivism odds start high in youth, but diminish markedly over later years and decades of age.

Finally, Helmus et al. misapply "log units," suggesting that the survival rate for each year from one to 20 can simply be added to get a total recidivism prediction. For researchers claiming expertise and long experience in the field, this is a stunning gaffe. Survival analysis, as its name implies, can only derive a recidivism probability for someone having not re-offended in any year before the year under examination.

Moreover, even if their approach would be valid otherwise, in this application, it still completely ignores that the actual observed odds of recidivism decrease year-upon-year, such that such rates halve within sets of advancing years of age that grow shorter and shorter between higher age ranges, precipitously in one's 60s. In hazard terms, the hazard rate diminishes greatly over the 20 years these authors would project. Actually, per the very-large sample-size, 10-year study by California's correctional authority (CDCR), , including those released from prison in their 20s, sexual recidivism was found to be negligible after five years, not 20. See: *[Editor]*, "Let the Figures Speak for Themselves: Extremely Low — & Shrinking(!) — Recidivism of Paroled CA Sex Offenders over 10 Years Belies the Myth." 2(6) *the Legal Pad* 13-14 (June 2018).

Effectively, the error these authors engage in is in applying a 'time-free' analysis to what they start out with: a projection of recidivism odds. The unanswered question is: why not calculate the 20-year projection from one's index offense itself? Not doing so has the effect upon prison release of delaying the reducing impact of age upon recidivism even though recidivism probabilities are not dependent upon time-in-freedom; recidivism likelihood always diminishes year-by-year with age. It is just a function of age and the time since one's latest sex crime. In fact, measuring recidivism projection only from prison release improperly ignores the length of that sentence altogether.

Further, the projection attempted by these authors also stops the clock on the passage of time for interruptions in freedom such as technical parole violations and even for crimes of a non-sexual nature (such as petty crime necessitated by poverty). None of this has anything to do with sex crimes at all, much less anything to do with a recidivism prediction calculation. This 'stopping the clock' approach would seek to 'turn back the clock' on one's age for such incarcerative interruptions. But these do not mean that one's odds of recidivism 'rewind' to a higher rate just because of one's confined location. Time continues marching along, regardless where you are, and you don't get younger on account of location — ever.

Moving on, Helmus et al. advocate use of "percentiles" to express likelihood of recidivism. However, percentiles simply pit the commitment candidate against all other sex offenders in a way that makes him look much more likely to reoffend than he is. This is sheer manipulation to confuse fact-finders having poor math skills or those who are just 'looking for an excuse' to commit.

For instance, among U.S. sex offenders a raw score of 3 on the Static-99R equates by the instrument's creators to an observed recidivism probability of 6%. Yet those test creators say that this is more likely to recidivate than nearly two-thirds of all sex offenders. The true way to reconcile these two seemingly inconsistent figures is to realize that the true meaning of that percentile figure is to state instead that two-thirds of all sex offenders are less than 6% likely to reoffend. This is not bad news, it is good news, and it bears that good news for our hypothetical offender as well: he is not a slavish out-of-control recidivist, he is just about as unlikely to reoffend as those two-thirds cited in that percentile scale."

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Static-99R Criticisms More Recently - with Bayes Materials

R.K. Hanson, A.J.R. Harris, L. Helmus & D. Thornton "High Risk Sex Offenders May Not Be High Risk Forever," 29 Jour. of Interpersonal Violence 2792-2813, doi: 10.1177/0886260514526062 (2014).

An Important Follow-up: Nothing Is Static

— So Say the Static-99's Creators

In 2014, the creators of the Static series of actuarial risk assessment instruments (ARAIs) announced their finding that sex offenders can and do change, such that offense history information decreases in relevance as it fades into the individual's past. (R.K. Hanson, A.J.R. Harris, L. Helmus & D. Thornton, "High Risk Sex Offenders May Not Be High Risk Forever," 29 Jour. of Interpersonal Violence 2792-2813, doi: 10.1177/0886260514526062 (2014).

In other words, even the most "static" risk indicators are actually time-dependent (that is, "dynamic") indicators. The significance of this announcement is greatly magnified by the fact that all Static-series ARAIs are (or at least have been) regarded as "static" in nature.

That is, the ten factors considered in the Static-99R, for instance, are not deemed subject to change. This is because they involve historical facts that occurred in the past, and thus cannot be changed, or, alternatively, because they involve traits that are not regarded as subject to change over a lifetime.

Given this announcement, one would expect that developers of the Static-series of ARAIs would follow through by announcing at least some significant scoring adjustment to each of their factors to account for the 'decay' in impact of a given factor over years or decades. Yet to date (over three years later), no announcement has yet been made by the Static creators to that effect. This leaves the current meaning and effect of each Static recidivism predictive score in doubt.

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What Are The Chances?

Ignore Bayes' Theorem at Your Own Risk. Judging Personal Risk by Group Is Just a Guess.

Richard W. Elwood, "Defining Probability in Sex Offender Risk Assessment," 60(16) *Int'l Jour. Of Offender Therapy & Comparative Criminology*, pp. 1928-1941 (December 2016), DOI: 10.1177/0306024X15587912.

Abstract (p. 1928): "Risk is the probability of an adverse event or outcome. In a previous article, I compared the Bayesian and Frequentist models of defining probability. Both approaches are widely used in the biomedical and behavioral sciences even though they yield different results. No consensus has emerged as to which is more appropriate. The choice between them remains controversial. There is ongoing debate and confusion over using actuarial scales to predict individuals' risk of sexual recidivism. Much of the debate comes from not distinguishing Frequentist from Bayesian definitions of probability. Much of the confusion comes from applying Frequentist probability to individuals' risk. By definition, only Bayesian probability can be applied to the single case. ...Although Bayesian probability is well accepted in risk assessment generally, it has not been widely used to assess the risk of sex offenders. This article concludes that the Bayesian model provides a viable alternative to logistic regression and may be more useful in quantifying the absolute recidivism risk of individual sex offenders. It shows how evaluators can easily calculate Bayesian probabilities and their associated credible intervals from an actuarial data set. Last, the article proposes a forensic practice guideline that evaluators do not conclude that an offender meets an absolute risk threshold unless the subject's risk exceeds the threshold by a credible margin of error. I ...show how the Bayesian view alone provides a coherent scheme to conceptualize individuals' risk of sexual recidivism."

Text Excerpts:

Probability

"I define risk by the probability of an adverse event or outcome. Probability can be defined in either Frequentist or Bayesian terms.1 While they may yield the same numerical value, they differ in what probability means. Frequentist probabilities are defined by relative frequencies, how frequently an event or outcome occurs over a series of repeated trials. ...A heads means that heads will come up half the time. 'The Frequentist position is not simply that the notions of probability and frequency are intimately connected, but that they are actually identical' (Appleby, 2005, p. 3). However, a single trial has **no** relative frequency. A single coin toss must result in either heads or tails. There is no series of trials or ratio of heads to tosses. Therefore, Frequentist probability cannot be meaningfully applied to a single event. However, sexual recidivism **is** a single event. Thus, by definition, the concept of Frequentist probability cannot be applied to an offender's risk of sexual recidivism.

...Bayesian probability is now widely accepted as a proper format for predicting risk in actuarial science (Dudley, 2006; Makov, 2001), epidemiology (Dunson, 2001), and throughout the biomedical and behavioral sciences (e.g., Altman & Royston, 2000; Ashby & Smith, 2000; Aven & Eidesen, 2007; Christian, Croghan, & Maxfield, 2013; Cook, 2008; Elwood, 1993; Gigerenzer Gaissmaier, Kurz-Milcke, Schwartz & Woloshin, 2008; McCormick, Rudin, & Madigan, 2012)...

Some readers may object to my equating risk assessment with risk prediction, agreeing with Doren (2006) that prediction is forecasting whether or not an event will occur. Doren argued that Bayesian proba-

bility applies only to prediction, risk assessment is not prediction, and therefore, Bayesian probability does not apply to risk assessment. However, Kruschke (2011) pointed out that statistically 'prediction simply means inferring the values of some missing data based on some other included data' (p. 13). In that sense, risk assessment and risk prediction are the same; both are probabilistic. Moreover, the prediction of violence is well established (Monahan et al., 2005; Skeem & Monahan, 2011), and recidivism is routinely predicted in the sex offender literature (Hanson & Morton-Bourgon, 2004; Harris, Phenix, Hanson & Thornton, 2003; Thornton, 2006; Wollert, 2006). Indeed, Bayesian probability applies to risk assessment precisely because risk is probabilistic.

...Baldessarini, Finklestein, and Arana (1983) introduced [Bayesian probability] to American psychiatry, coining the terms positive predictive power (PPP) and negative predictive power (NPP) for posterior probabilities. Janus and Meehl (1997) introduced Bayesian probability to sex offender risk assessment. PPP has since been applied to the Static-99 (Beauregard & Mieczkowski, 2009; Bengtson & Langstrom, 2008; Wollert, 2006) and Static-99R (Campbell & DeClue, 2010; Fazel, Singh, Doll, & Grann, 2012; Neller & Frederick, 2013). Frederick and Bowden (2009) devised the Test Validation Summary, an interactive, graphic computer program to adjust positive predictive values (PPV, equivalent to PPP) for various recidivism base rates.

...In Bayesian terms, an individual's probability of sexual recidivism is the PPP of recidivism (however defined). Absolute risk probabilities are critical in the United States, where they may be used to commit offenders as sexually violent persons (SVPs). The PPP is derived from recidivism rates found in longitudinal studies of sex offenders. Actuarial scales like the Static-99R provide those rates. The confusion in sex offender risk assessment arises from not recognizing or distinguishing Frequentist from Bayesian probability. Nowhere is that confusion more evident than in the debate over using actuarial data to assess an individual's risk.

Group Versus Individual Risk

Harris and Hanson's (2004) assumption that an individual's risk is the same as the group recidivism rate contradicts their own Static-99 coding rules: 'The recidivism estimates provided by the Static-99 are group estimates [that] do not directly correspond to the recidivism risk of an individual offender.' (Harris et al., 2003, p. 81). The report format in the Static-99R and Static-2002R Evaluators' Handbook (Phenix, Helmus, & Hanson, 2012) likewise only cites the recidivism rate of a group, without reference to the risk of an individual.

Given the conflicting advice, many forensic evaluators disavow any individual prediction and offer instead something like 'Mr. Smith's score places him in a group of sexual offenders, 55% of whom were charged with another sex offense within 10 years after release.' At least one evaluator has struggled to answer an attorney's question, 'So doctor, is Mr. Smith in the 55% group or in the 45% group?' The attorney asked whether Mr. Smith is in the recidivist group. Of course, in the Bayesian scheme, Mr. Smith and everyone else has a 55% probability of being in the 55% group that recidivates. Both the question and the difficulty the evaluator had in answering it reflect the confusion over 'placing' individuals in groups, rather than assigning a probability to the individual.

Some U.S. state courts have accepted experts' testimony that the Static-99 'is simply a statement about how groups of people perform.' 'So you really can't come up with an individual prediction' (State v. Morales, 2003), and the Static-99 'has no predictive value for an individual' New York v. Rosado, 2009). However, Bayesian probabilities reflect what we know. If all we know is that everyone in a group shares the same Static-99R score, we know the same thing about each of them and assign the same probability to all of them. Moreover, courts require that evaluators testify to the risk of an individual and not to the recidivism rate in a group of similar individuals. Evaluators cannot coherently disavow any individual risk prediction and then render an opinion on an individuals' risk.

A colleague wrote to me, arguing,

'An individual's re-offense probability cannot be 40% or 63% or 1%. That is a group probability. Think about the two segments of that group – the ones who did reoffend and the ones who didn't. How can you say their individual probability was equal? One was 0% and one was 100%.'

However, Bayesian probabilities are not validated by individual outcomes. 'Probability statements are not about what is in fact the case, but about what one can reasonably expect to be the case' (Appleby, 2005, p. 448). For example,

'Alice buys one ticket in a lottery having 106 tickets, and her ticket wins. Even after it is known that Alice did win the lottery, we would still say that Alice was very unlikely to win. And we would be right to say it: because the statement, that Alice is unlikely to win, is not, primarily, a statement about the actual outcome. Rather, it is a statement about what Alice and [we], could reasonably expect regarding the outcome. The fact, that Alice did win, does not alter the fact that she could not reasonably have expected to win' (Appleby, 2005, p. 458).

In a post to an online forum, an evaluator used the example of 'people whose true risk was 45%.' A colleague responded, 'How can a person's true risk be 45%[?] I either do or do not reoffend, I don't do it 45%.' The concept of a true risk reflects the Frequentist view of probability, which, of course, cannot be applied to a single person. In the Bayesian view, there is no true probability. Probability depends on the information we have....

Summary

"...The distinction between Frequentist and Bayesian concepts of probability has important practical consequences in sex offender risk assessment. Foremost, Frequentist probability by definition applies to series, not to single events like sexual recidivism. Much of the confusion and debate in sex offender risk assessment comes from trying to apply Frequentist probability to single events or individuals. The advantage of using the Bayesian scheme is that probability can be coherently applied to a single event. Because sexual recidivism is a single act, that advantage is decisive...."

Note:

1. Probability can also be defined in Propensity terms. Popper (1959) introduced the propensity theory of probability to accommodate single-event probabilities in quantum physics. In this scheme, probability reflects a physical disposition or tendency of an event to yield a single outcome or a relative frequency (Hájek, 2012). Propensity theories are still debated by philosophers (Belnap, 2007; Eagle, 2004; Gillies, 2000), but they have not been embraced by scientists, who view them as more metaphysical than scientific (Galavotti, 2014; Settle, 1972).

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News You Can Use

Static Pulls Its "Treatment-Preselected" and "High Risk/Need" Recidivism Probability Tables & Tells All Evaluators to Use Only Their "Routine" Tables from Now on.

Article: R. K. Hanson et al., "What Sexual Recidivism Rates Are Associated with Static -99R and Static 2002R Scores?," 28(3) Sexual Abuse: A Jour. Of Res. & Treatment 218-252 (2016)

Abstract Excerpt: "...The differences between routine/complete and high-risk/high-need samples, however, were only consistently observed for offenders with low or moderate scores; for offenders with high STATIC scores, the 5-year sexual recidivism rates for these two groups were not meaningfully different. There was only limited evidence to support treatment samples as a distinct type; consequently, the use of separate normative tables for treatment samples is not recommended. The current results reinforce the value of regularly updating the norms for empirical actuarial risk tools."

Text Excerpts:

(p. 239:) "...The most common design for sexual offender outcome studies are cohort and incidental; assignment designs, which crucially depend on the assumption that the expected recidivism rates are stable across samples and settings...."

(p. 240:) "When Static 99R or Static-2002R is used as a stand-alone measure, our general recommendation is to report only the recidivism rates for routine/complete samples."

(p. 241:) "Contrary to previous user guidance (Phenix et al., 2012), we recommend against using recidivism rate estimates based on samples preselected for treatment."

(p. 242:) "Given the instability of absolute recidivism rates, evaluators should also consider whether it is necessary to report absolute recidivism rates at all."

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The Dubious Recidivism Predictions of the Static-99R & 2002R

Excerpts & Observations from: - *Amy Phenix, L. Maaike Helmus, & R. Karl Hanson, STATIC-99R & STATIC-2002R: Evaluators' Workbook* (October 19, 2016)

pp. 8-11: Observation: In the tables on these pages relating, respectively, to (a) "Static-99R Routine Sample, Estimated 5-year sexual recidivism rates"; (b) "Static-99R High Risk/Need Group, Estimated 5-year and 10-year sexual recidivism rates"; (c) "Static-2002R Recidivism Estimates Routine Sample, Estimated 5-year sexual recidivism rates"; and (d) "Static-2002R High Risk/Need Group, Estimated 5-year sexual recidivism rates," each sets forth only "Logistic Regression Estimates" of recidivism in a column headed "Predicted Recidivism Rate."

pp. 45-49: Observation: In an appendix (pp. 45-49), this publication reprints tables appearing in the article: *Hanson, R.K., Thornton, D., Helmus, L.M., & Babchishin, K.M.*, "What Sexual Recidivism Rates Are Associated with Static-99R and Static-2002R Scores?", 28 *Sexual Abuse: A Jour. Of Research & Treatment* 218-252. For the respective possible scores in each of these instruments, each table is divided into groups of columns for "Fixed Follow-up" and matched "Logistic Regression Estimates." The first column-group has columns for the number of "Recidivists/Total" and "Observed Recidivism Rate (%)." The second column-group has these columns: "Predicted Recidivism Rate" and "95% CI" sub-columns for upper CI & lower CI). The following row-excerpts for certain common scores are revealing.

Further Observations: First, the overall sample sizes in these scores are too low for statistic reliability/replicable results.

Second, note the highlights added here to show statistical anomalies. In the tables on pages 46, 47 and 49 (all addressing High Risk/Need samples), the lower score yielded a significantly (sometimes shockingly) higher observed recidivism rate than the higher score. Pages 47 and 49 are especially idiosyncratic – with observed recidivism over three times as high for the lower score than for the higher score.

Another kind of anomaly depicted in these table excerpts is the unexpected divergence between "observed" and "predicted" rates. Since the latter are based on the former, one would expect the figures to be identical or very nearly so, yet the figures show otherwise. For instance, in the page 45 table, the divergence from observed to predicted rates is a full 2.0% at Score 2 (reflecting prediction 155% more than reality), but only 0.8% at Score 3. Whichever of the two divergences is greater between the two scores, each table shows this substantial divergence. Particularly startling are such divergences in tables on page 47 (score 2: 36.4% observed, 19.1% predicted; score 3: 10.5% observed, 22.9% predicted) and page 49 (score 2: 17.9% observed, 11.0% predicted; score 3: 5.8% observed, 13.3% predicted). This implies a higher risk

(Continued on page 10)

p. 45: "Observed and estimated 5-year sexual recidivism rates for Static-99R: Routine Sample"

	Fixed Follow-up		Logistic Regression Estimates	
Score	Recidivists/ Total	Observed Recidivism Rate (%)	Predicted Recidivism Rate	95% CI
2	24/661	3.6	5.6	4.8 6.5
3	48/675	7.1	7.9	7.0 8.8

p. 46: "Observed and estimated 5-year sexual recidivism rates for Static-99R: High Risk/Need Sample"

	Fixed Follow-up		Logistic Regression Estimates	
Score	Recidivists/ Total	Observed Recidivism Rate (%)	Predicted Recidivism Rate	95% CI
2	11/63	17.5	11.3	8.6 14.6
3	10/103	9.7	14.0	11.3 17.2

p. 47: "Observed and estimated 10-year sexual recidivism rates for Static-99R: High Risk/Need Sample"

	Fixed Follow-up		Logistic Regression Estimates	
Score	Recidivists/ Total	Observed Recidivism Rate (%)	Predicted Recidivism Rate	95% CI
2	8/22	36.4	19.1	14.1 25.4
3	14/38	10.5	22.9	18.2 28.5

p. 48: "Observed and estimated 5-year sexual recidivism rates for Static-2002R: Routine Sample"

	Fixed Follow-up		Logistic Regression Estimates	
Score	Recidivists/ Total	Observed Recidivism Rate (%)	Predicted Recidivism Rate	95% CI
2	7/245	2.9	4.6	3.6 6.0
3	18/306	5.9	6.8	5.5 8.2

p. 49: "Observed and estimated 5-year sexual recidivism rates for Static-2002R: High Risk/Need Sample"

	Fixed Follow-up		Logistic Regression	
Score	Recidivists/ Total	Observed Recidivism Rate (%)	Predicted Recidivism Rate	95% CI
2	7/39	17.9	11.0	9.8 17.7
3	3/52	5.8	13.3	12.6 20.0

at the lower score of 2 that at the higher score of three, suggesting some actor at work outside of the test factors to account for this reversal of expectations. This should have altered the predicted recidivism levels at these two scores. However, those predicted percentages continue to escalate in the larger pattern of scores 1 through 4, as if this anomaly had not been found. This is exceptionally troubling and suggests deliberate ignoring of a serious problem in that allegedly high-risk test. Most intriguingly, except only the figures for Score 3 in the tables on pages 45 and 48, none of the observed (actual) recidivism rates are even within the 95% confidence ranges predicted. This observation, and indeed most of the other observations stated here, concern the so-called "High Risk/Need" group. This spotlights the failure of the statistics drawn from that set of samples to encompass an aggregate grouping of those far more likely to recidivate without accidental inclusion of many who, based on the statistical results, clearly should not be grouped thus. Yet these results quite clearly show that there are no known discriminating aspects that can be used reliably to draw a different aggregation of samples that would accurately and reliably draw that distinction. As I have stated before, this is yet another reason to discard the Static "High-Risk/Need" probabilities table altogether.

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Static-99R Field Validity Rates Bad in Texas-Wide Study

Marcus T. Boccaccini, et al., "Field Validity of Static-99/R Scores in a Statewide Sample of 34,687 Convicted Sexual Offenders," 29(6) *Psychological Assessment* 611-623 (2017), DOI: http://dx.doi.org/10.1037/pas0000377

[Abstract Excerpts:]

p. 611: "The Static-99 (and revision, the Static-99R) reflect the most researched and widely used approach to sex offender risk assessment. Because the measure is so widely applied in jurisdictions beyond those on which it was developed, it becomes crucial to examine its field validity and the degree to which published norms and recidivism rates apply to other jurisdictions. We present a new and greatly expanded field study of the predictive validity (M = 5.23 years follow-up) of the Static-99 as applied system-wide in Texas (N = 34-687). ...[C]alibration analyses revealed that the Static-99R routine sample norms led to a significant overestimation of risk in Texas, especially for offenders with scores ranging from 1 to 5...."

[Text Excerpts:]

pp. 611-12: "In 2009, we published the first field validity study of Static-99 scores in the United States (Boccaccini, Murrie, Caperton & Hawes, 2009). It was also the first study of a jurisdiction-wide implementation of the Static-99 for real-world decision making. The 1,928 [see below] offenders in the study had been released from custody after they were scored on the Static-99 as part of Texas's screening process for identifying offenders who might meet criteria for civil commitment as sexually violent predators (SVPs). The Static-99 scores had been assigned by correctional staff, including master's level mental health clinicians and parole officers. Overall, Static-99 scores were much weaker predictors of future sexual offending than expected. The 2009 meta-analysis of Static-99 scores reported a median predictive effect of d = .74 (M = .67, 95% CI [.62, .72]) across 63 studies (*Hanson & Morton-Bourgon*, 2009), suggesting that we should have found a predictive effect in this moderate to large effect-size range. But the predictive effect for Static-99 scores in the Texas field study was only d = .36 (AUC = .60), well outside the 95% confidence interval from the meta-analysis. The predictive effect was somewhat stronger among offenders who had been discharged than among those released under mandatory supervision, but even this effect (d =- .49, AUC = .63) was outside the meta-analytic confidence interval.

...[T]he Texas norms were based on observed sexual recidivism rates, included only **30** recidivists,...." [Compare to the 1,928 offenders in that earlier Static-99 field study. Ergo, the base rate was about 4% even back then (2009).]"

References:

Boccaccini, M.T., Murrie, D.C., Caperton, J.D. & Hawes, S.W. (2009). Field Validity of the Static-99 and MnSOST-R among sex offenders evaluated for civil commitment as sexually violent predators. *Psychology, Public Policy, & Law* 15, 278-314

Hanson, R.K. & Morton-Bourgon, K.E. (2009). The accuracy of recidivism risk assessments for sex offenders: A meta-analysis of 118 prediction studies. *Psychological Assessment*, 21, 1-21.

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Static-99R Revisited: 2 Crucial Observations

(1) Static-99R Is Misused When Evaluators Attempt to Apply It to Volitional Control by Sex Offenders.

Mara Howard-Williams, "Sexual Abuse and Statistic Misuse: An Analysis of the Static-99R," 98 *N.C. L. Rev.* 933 (May 2020)

Text excerpts:

p. 963-4: D. *The 'Serious Difficulty Refraining' Issue and Static-99R*

Some opinions have grappled with the issue by simply concluding that, because the actuarial instruments 'by their own terms' have classified someone as high risk for reoffending, the respondent 'may be presumed to have the most difficulty refraining from sexual reoffending.'[226] This conclusory language is highly flawed in a scientific application. Simply because someone has conducted an act many times in the past does not definitively determine whether or not they would have *serious difficulty refraining* from that activity in the future. When considering the liberty interest at stake, since civil commitment is indefinite, it is vitally important that courts do not assume scientific truths just because the evidence would be easier to understand that way.

Courts have said that the crux of the difficulty in resolving the third prong is that 'there is no crystal ball that an examining expert or court might consult to predict conclusively whether a past offender will recidivate.'[227] Though this statement is undoubtedly true, the court's logic is flawed. The statute requires a finding that an individual would have serious *difficulty* refraining from reoffending, not whether a past offender will or is likely to recidivate. But there are many things that an individual may be *likely* to do at some point in their life that he or she would not have *serious difficulty* refraining from doing. Here is an innocuous example: someone with a sweet tooth might be very likely to purchase and eat a doughnut later in life. That does not indicate that they would have serious difficulty refraining from purchasing and eating a doughnut if they were forbidden from doing so. The issues faced by sexual offenders and those with mental illness are much more complex, but the premise that *control* is not synonymous with *likelihood* spans the analogy."

(2) Did the Static-99 Creators 'Cherry Pick' Samples to Make Extreme Recidivism Seem to Be a Tendency of All Sex Offenders?

[Another excerpt from same article, supra]:

p. 950: "II. Scientific Considerations of Sexual Offender Assessment Methods

D. Accuracy and Sample Population

...Metrics for an AUC range from 0.5 to 1.0, with 1.0 representing a perfect classification system that can always classify who is in the 'in' group correctly and who is in the 'out' group correctly.136 An output of 0.5 indicates that the instrument is no better at predicting who falls in what group than random guessing.137. [See underlined portion of next article's Abstract.]

pp. 951-52: Though rarely discussed in the literature, the sample population used to develop and validate the Static-99R presents problems for its use in a United States population. Of the 23 studies, only 21% of the individuals studied were from the United States (n = 1811).144 Though it is beneficial to assess the Static-99R's applicability across different countries and cultures, the Static-99R developers did not include a variable for how the law in different countries might have an effect on the accuracy of the instrument.145 Instead, the creators only looked at the time between release and the next charge or conviction if there was one. Although these two categories were evenly split in the study overall (charges n = 10, convictions n = 11), only one of the five studies from the United States used conviction data; the other four used only charges.146 While many of the countries generally agree on crimes that constitute sexual offenses, there are important differences as well.

For example, in Canada, which comprises 33% of the population studied (n = 2865),147 the Solicitor General's High Risk Offenders Working Group concluded that civil commitment processes would 'not meet the constraints posed by Canada's Charter of Human Rights and Freedoms,' which led to the government's decision not to create a civil commitment scheme in the country.148 Studies have noted that although there are 'myriad similarities between the United States and Canada ...correctional philosophies and practices can be quite different, with criminal sentences in the United States tending to be longer and more frequently employed in managing risk posed by offenders.'149 The study also notes that sexual offenders in Canada 'receive determinate sentences and return to the community at the end of those sentences,' in direct contrast to the United States where many states and the federal government permit civil commitment.150 Though a small-scale study suggests that civil commitment has no effect on recidivism rate,151 it remains unknown whether the Static-99R is equally accurate in the United States and Canada.

pp. 952-53: In Sweden, which accounts for 15% of the study population (n = 1278)152, the Ministry of Foreign Affairs recognizes that the increase in sexual offenses within the past decade is due, in large part, to changes in Swedish legislation, such as expanding the definition of rape.153 The Ministry specifically acknowledges that 'it is difficult to compare the figure [of sexual offense rates] over time.'154 Furthermore, the Ministry adds that '[i]t is also difficult to make international comparisons based on crime statistics, as many acts that are considered rape under Swedish law are no considered rape in many other countries.'155 Though the Swedish government does not delineate specifically what countries record and charge crimes differently, the government highlights 'three important factors to remember' that differentiate Swedish criminal statistics from other countries: (1) all reported events are recorded as crimes, even if some of these events are later found not to constitute criminal offenses; (2) every offense that occurs at the same time is counted separately, even though many countries may record 'offenses of the same kind against a single victim' as one crime; and (3) attempted offenses are 'counted together with completed crimes.'156 As a result, Sweden may be calculating higher recidivism rates than those in the United States, particularly as it relates to charged but not convicted offenses, thereby skewing the applicability of the Static-99R's dataset to a United States population.

[Notes appear in next segment, next edition.]

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