

PULLING THE WOOL OVER THE FACT FINDER'S EYES: ESTABLISHING SEXUAL DANGEROUSNESS IN SVP RISK ASSESSMENTS

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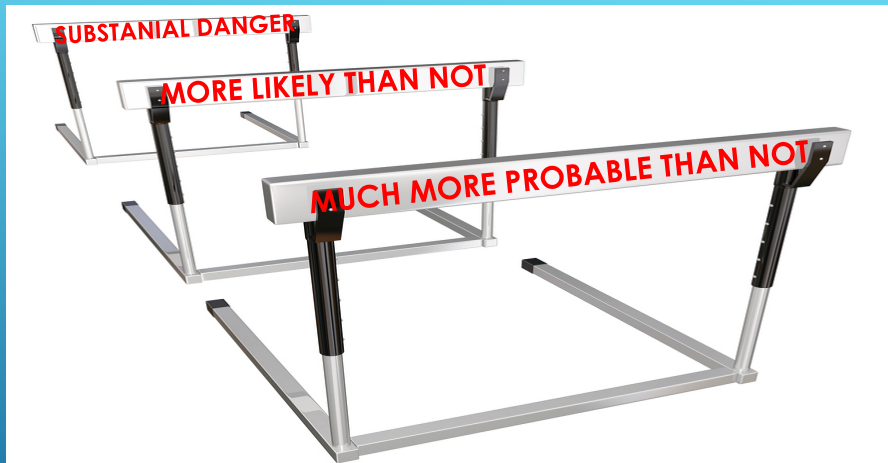
San Diego, CA

Email me at brian@dr-abbott.net for link to articles.

ACCESS TO ARTICLES CITED

1. Qualifying sexual crime(s)
2. Mental condition that results in serious difficulty controlling sexual behavior (“SVP mental disorder)
3. **SVP mental disorders makes the individual likely to engage in dangerous sexual behavior**

SVP COMMITMENT CRITERIA



WHAT DOES “LIKELY” MEAN

- ▶ Mr. B was 56 years old at time of civil confinement trial in 2017
- ▶ Physically, sexually, and emotionally abused during childhood
- ▶ Long history of drug dependence; primarily methamphetamine
- ▶ Marginal adjustment socially during his adult life due to drug dependence
- ▶ Criminal history starts at age 15; drug/alcohol, nonsexual violent; sexual; and property crimes
- ▶ Sexual crimes in 1984, 1998, 2001 (October)
- ▶ Suffers serious medical crisis in 2002 where he nearly dies
- ▶ Failure to register as sexual offender in 2007 was only criminal offense between 11/2001 and 8/2011
- ▶ By 2004 stopped all substance use; improved social and psychological functioning
- ▶ Arrested in 2011 for 10/2001 sex offense
- ▶ Petitioned for SVP before his 2017 parole date

MR. BROWN (IOWA) CASE FACTS

- ▶ **Legal standard:** More likely than not to engage in predatory acts constituting sexually violent offenses
- ▶ **Risk Assessment Results by Dr. Hack**
 - ▶ Static-99R total score of 6; Relative risk ratio = 3.77; Percentile = 94.2
 - ▶ Static-2002R total score of 6; Relative risk ratio = 2.63; Percentile = 88.3
 - ▶ Considered 12 "empirical" risk factors; claimed each factor present increased risk more
 - ▶ Considered 3 protective factors; none found present
 - ▶ Mr. Brown completed sex offender treatment in prison but Dr. Hack claims otherwise based on 6 reasons
 - ▶ Claimed actuarial measures under-estimate risk potential because of unreported sexual crimes
 - ▶ Did not consider current medical condition or nearly 10 years in community sex offense free
- ▶ **Dr. Hack's Conclusion:** Mr. Brown is more likely than not
- ▶ **Verdict by Judge:** Not SVP

RISK ASSESSMENT OF MR. BROWN BY STATE PSYCHOLOGIST

- ▶ Currently 65 years old; SVP trial scheduled for May 2018
- ▶ Prodromal psychotic symptoms start in middle teens; by early 20's displaying mood disturbance and thought disorder; diagnosed with schizoaffective disorder, bipolar type
- ▶ Self reported peeping between ages 17 & 18 (1970-1971); sexual preoccupation evident most of his adult life related to mania and thought disorder
- ▶ Assault with intent to commit rape in 1972 and 1979; MDSO for each conviction
- ▶ Between May 1985 and August 2005 (20 years) lived in community without known sexual offenses; living in board and care homes; treated for SMI the whole time
- ▶ 2005: Ejected from board and care home after he pulled up dress of prepubescent female visitor and looked at her. No police report filed
- ▶ Relocates to home of brother and sister-in-law; September 2006 molested male relative child who visited at his home.
- ▶ Sent to prison in 2006 and SVP petition filed in 2009
- ▶ Flagrantly psychotic and manic in prison and state hospital; 2009-2010 demonstrates persistent sexual preoccupation, exposing himself, and openly masturbating; involuntary med order obtained; later he takes medicine voluntarily
- ▶ Stable mental condition since 2012; no further sexual preoccupation or sexual acting out
- ▶ Making minimal progress in sexual offender treatment

CASE FACTS FOR MR. GREEN (CALIFORNIA)

Procedure	Dr. X	Dr. Y
Static-99R total score	4	4
Risk category	above average	above average
Percentile	80	DNR
RRR	1.94	1.94
Reference group	RC	PHRN
Selection method	SRA-FA	SRA-FV
5-yr/10-yr	DNR (11%)	17%/27%
Static-2002R	Did not administer	Yes
SRA-FV	3.0	4.6
Protective factors	<ol style="list-style-type: none"> 1. Successful community release 2. Medical problems 3. Advanced age 4. Completed SOTP 	<ol style="list-style-type: none"> 1. Sex offense free in the community 2. Age & health issue 3. Very advanced age (70+) 4. Completed SOTP

STATE EVALUATORS' RISK ASSESSMENT OF MR. GREEN

Procedure	Dr. X	Dr. Y
Undetected sex crimes	Considered	Did not consider
Clinical over-rides	<ol style="list-style-type: none"> 1. Age 56 at last sex offense causes increase in risk potential 2. May not take psychotropic meds if released 	<ol style="list-style-type: none"> 1. Treatment progress does not mitigate risk 2. Deviant sexual interests

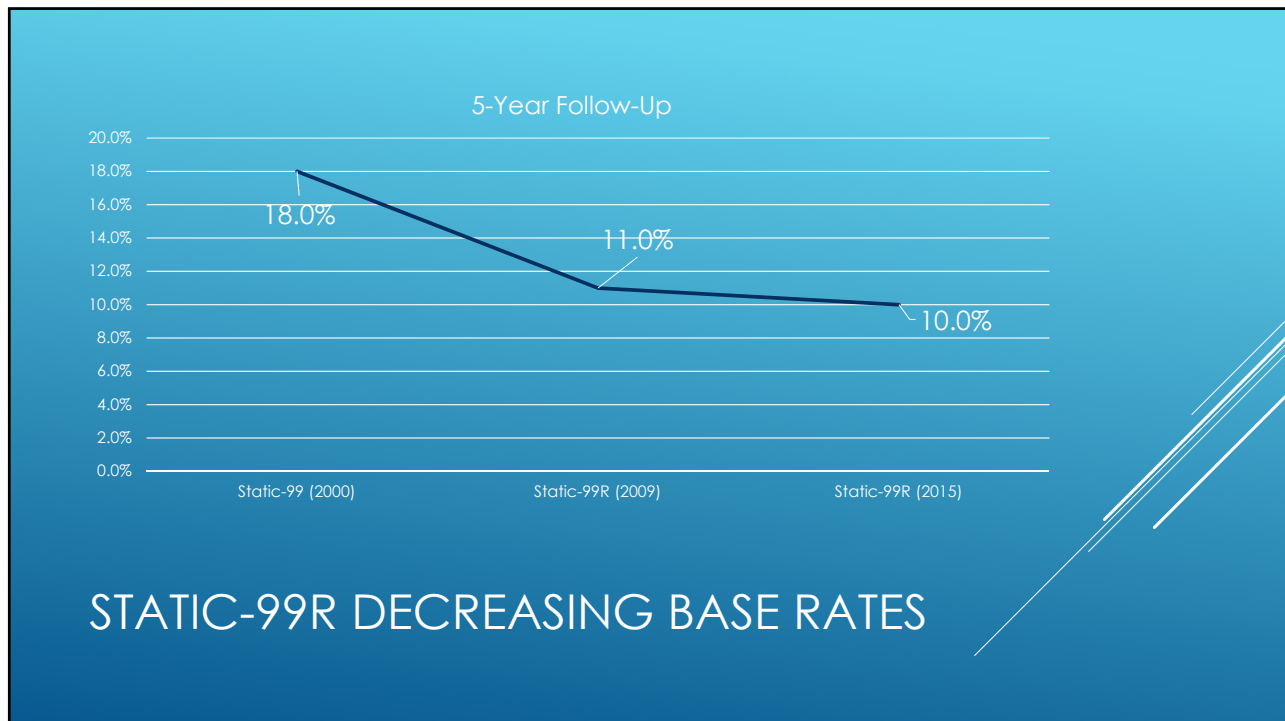
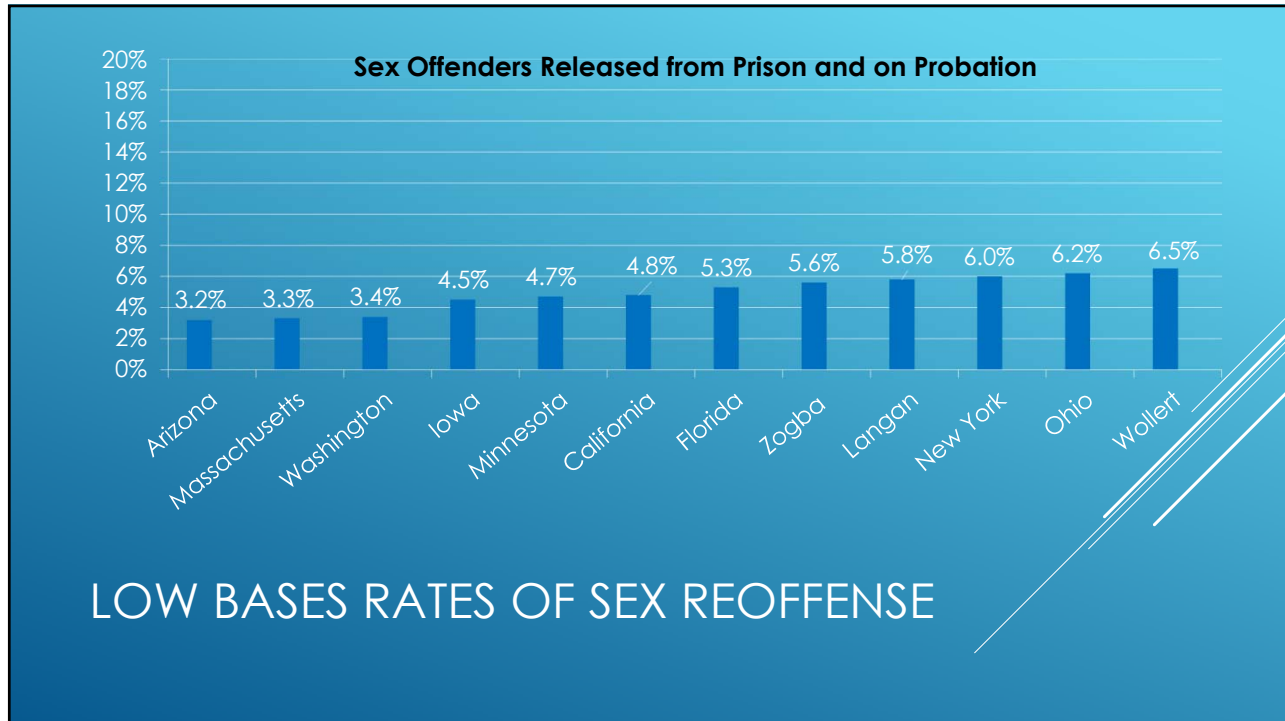
Legal Standard: Substantial danger that is a serious and well-founded risk to engage in sexually violent, predatory acts; high and much more than a mere possibility

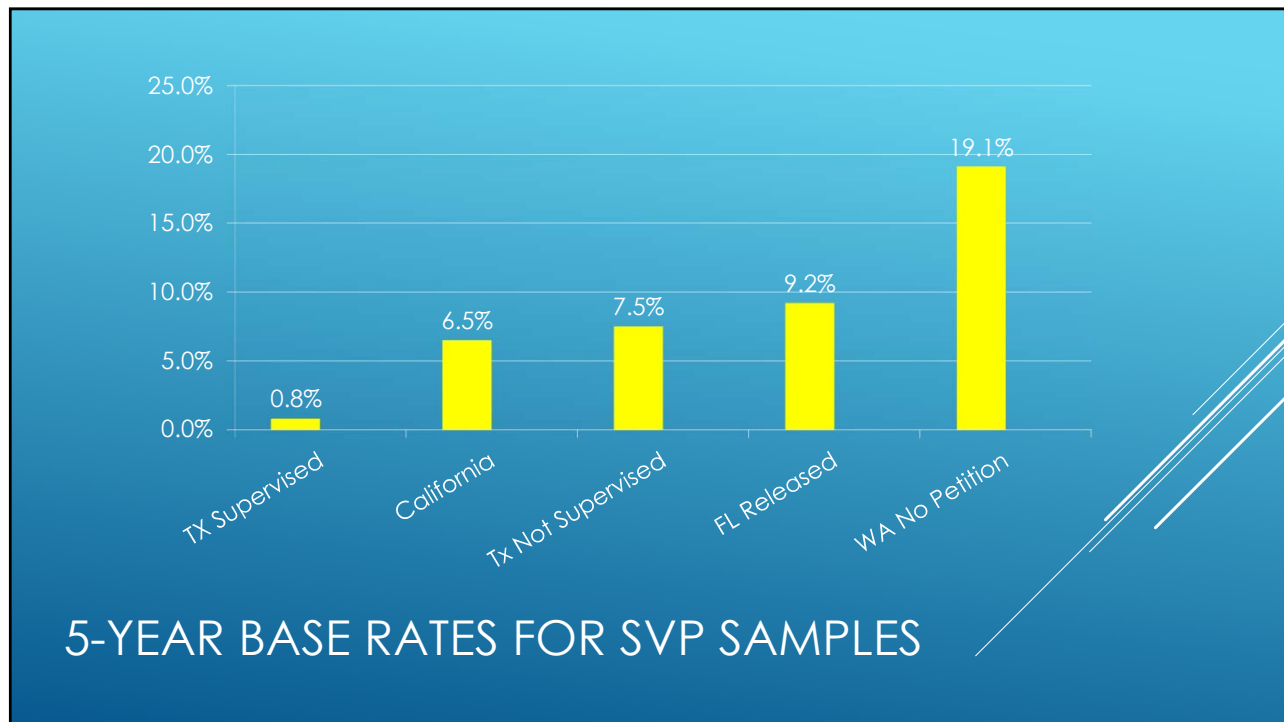
Conclusions by Drs. X and Y: Green is a substantial danger that is a serious and well founded risk to engage in sexual violent, predatory acts.

STATE EVALUATORS' RISK ASSESSMENT (CONTINUED)

ASSESSING THE
LIKELY THRESHOLD
USING THE CAAA

- ▶ Sexual recidivism actuarial instrument(s)
- ▶ Consideration of other psychological risk factors
- ▶ Protective factors
- ▶ Clinical over-rides





- ▶ Static-99R Introduces Multiple Reference Groups in 2008
 - ▶ Cohort matching approach (2008-2015)
 - ▶ Density of other psychologically meaningful risk factors ("PMRF;" 2012-current)
 - ▶ Hanson et al. (2015: 24)
 - ▶ Conceded cohort matching not valid and deems it obsolete.
 - ▶ Advised Routine Corrections reference group as default selection (2015-current)
 - ▶ Suggested continued use of PMRF to select high risk reference group but concedes no valid method to do so
- ▶ SRA-FV not valid procedure by which to select reference groups (Abbott, 2013)
- ▶ Routine corrections reference group appropriate to compare individuals undergoing SVP evaluations (Abbott, 2013; DeClue & Zavodny, 2013; 2014)

SELECTING STATIC-99R REFERENCE GROUPS: Fitting a square peg into a round hole

Static-99R Total Score	Percentile
0	18.7
1	31.7
2	48.3
3	65.7
4	79.6
5	88.7
6	94.2
7	97.2
8	99.1
9	99.9
10+	99.99

- ▶ Relative standing of individual's Static-99R total score in comparison to routine corrections group of sexual offenders.
- ▶ Hanson et al. (2012: 3)- "[T]he fundamental attribute indexed by risk measures must be some form of relative risk ("this offender is riskier than that offender"), not absolute risk ("this offender has a 30% chance of reoffending").
- ▶ Does not inform about likelihood (absolute risk) of sex recidivism (Hanson et al., 2012: 3) and absolute risk is the appropriate metric to rely upon in SVP risk assessments (Hanson et al., 2012: 3 & 20; Helmus et al., 2012: 67)

STATIC-99R PERCENTILE RANKS

	R ⁺	R ⁻
Atypical- All Other Scores	a (30)	b (92)
Typical- Static-99R Score = 2	c (5)	d (61)

$$\text{▶ } RRR = \frac{a/(a+b)}{c/(c+d)}$$

$$\text{▶ } 5.1 = \frac{30/(30+92)}{5/(5+61)}$$

STATIC-99R RELATIVE RISK RATIO ("RRR")

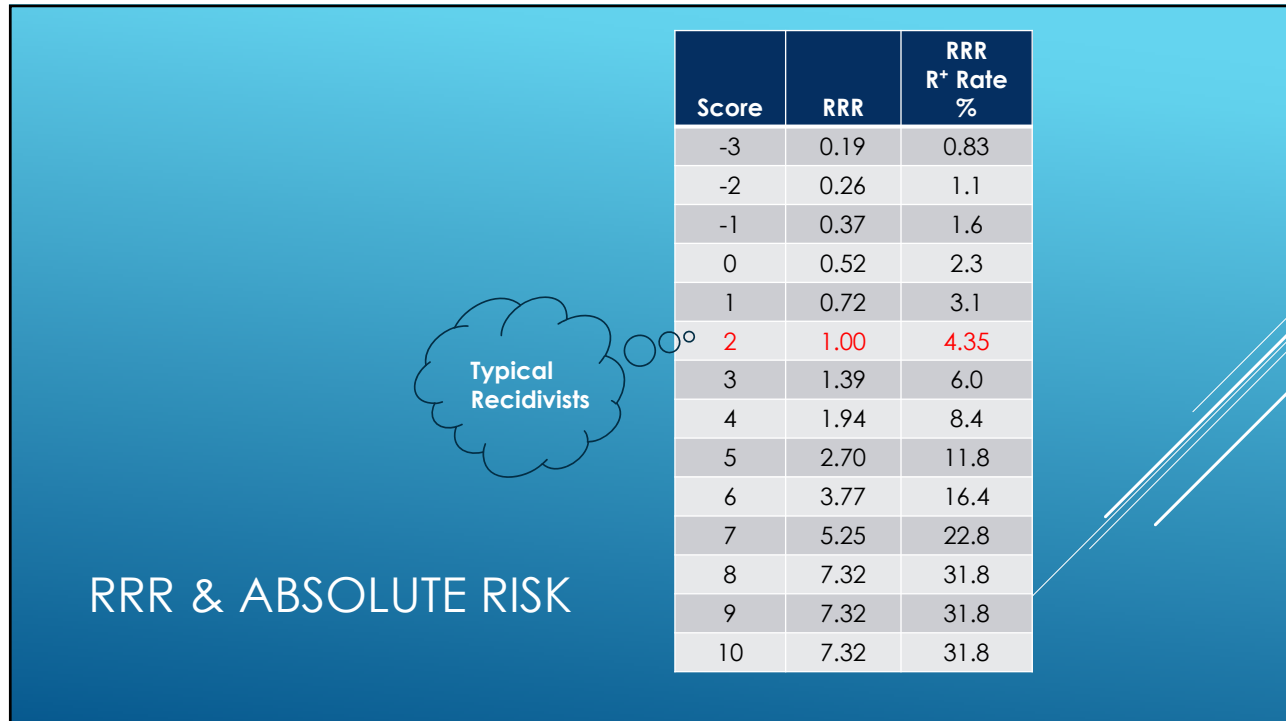


Table 7 from Babchishin et al. (2012)

Measure	N	r	Exp(B)	95% CI LL	95% CI UL	Wald
Static-99R	2,606	.925	1.14	1.04	1.25	8.22**
Static-2002R			1.12	1.03	1.23	6.62*

r = Correlation

*p < .05

**p < .01

REPORTING STATIC-99R & STATIC-2002R

Static-99R Risk Level	N at Start of Follow Up	Initial 5-Year Recidivism Rate (Years 1-5)		Relative Rate- 5 Years Sex Offense Free (Years 6-10)		Relative Rate- 10 years Sex Offense Free (Years 11-15)	
		%	N	Risk Ratio	N	Risk Ratio	N
-3 to -1	890	2.2	601	.44	234	.78	88
0 to 4	4,858	6.7	3,081	.59	1,175	.36	496
≥ 5	1,992	22.0	1,063	.39	438	.19	171

Multiply risk ratio by the corresponding initial five year rate

1.0 less the risk ratio = the proportion of decline in sexual recidivism

**HIGH RISK SEX OFFENDERS ARE NOT HIGH
RISK FOREVER (HANSON ET AL., 2014)**

- ▶ Measures changeable risk factors evident during the year prior to the evaluation
- ▶ Consists of 13 items (child molesters) or 12 items (rapists)
- ▶ Each item scored on corresponding standardized rating criteria
- ▶ Items scored 0, 1, or 2
- ▶ Items scores summed for total score (0-24 or 26)
 - ▶ 1-3 = Low
 - ▶ 4-11 = Moderate
 - ▶ ≥ 12 = High

STABLE-2007

RTC CANADA (ABBOTT, 2016 a)

Static-99R Bin	R+/N	Risk Estimate	Stable-2007 Score Group	Priority Category	Risk Estimate*	R+	N
Low (-3 to +1)	4/165	2.4%	Low & Moderate	Low	2.5%	4	163
			High	Mod-Low	0.0%	0	2
Moderate-Low (2-3)	3/65	4.6%	Low	Low	0.0%	0	10
			Moderate	Mod-Low	4.7%	2	43
			High	Mod-High	8.3%	1	12
Moderate-High (4-5)	1 /60	1.7%	Low	Mod-Low	0.0%	0	36
			Moderate	Mod-High	4.3%	1	23
			High	High	0.0%	0	1
High (≥ 6)	7/60	11.0%	High	High	0.0%	0	26
			Very High	Very High	20.6%	0	34

* All results nonsignificant

DSP (ABBOTT, 2016 b) ALL RATERS: 5-YEAR FOLLOW UP

Static-99R Bin	R+ /N	Risk Estimate	Stable-2007 Score Group	Priority Category	Risk Estimate*	R+	N
Low (-3 to +1)	12/182	6.6%	Low & Moderate	Low	6.6%	11	165
			High	Mod-Low	5.9%	1	17
Moderate-Low (2-3)	10/171	5.8%	Low	Low	0.0%	0	38
			Moderate	Mod-Low	7.1%	7	99
			High	Mod-High	8.8%	3	34
Moderate-High (4-5)	17/102	16.7%	Low	Mod-Low	20.0%	1	5
			Moderate	Mod-High	13.3%	8	60
			High	High	21.6%	8	37
High (≥ 6)	21/58	36.2%	High	High	32.0%	8	25
			Very High	Very High	36.4%	13	33

* All results nonsignificant

Select	Assess	Conclude
Risk factors from Table 2 of Mann, Hanson, and Thornton (2012)	Whether risk factors are present or absent	Likelihood of risk greater than predicted by actuarial

OTHER PSYCHOLOGICAL RISK FACTORS

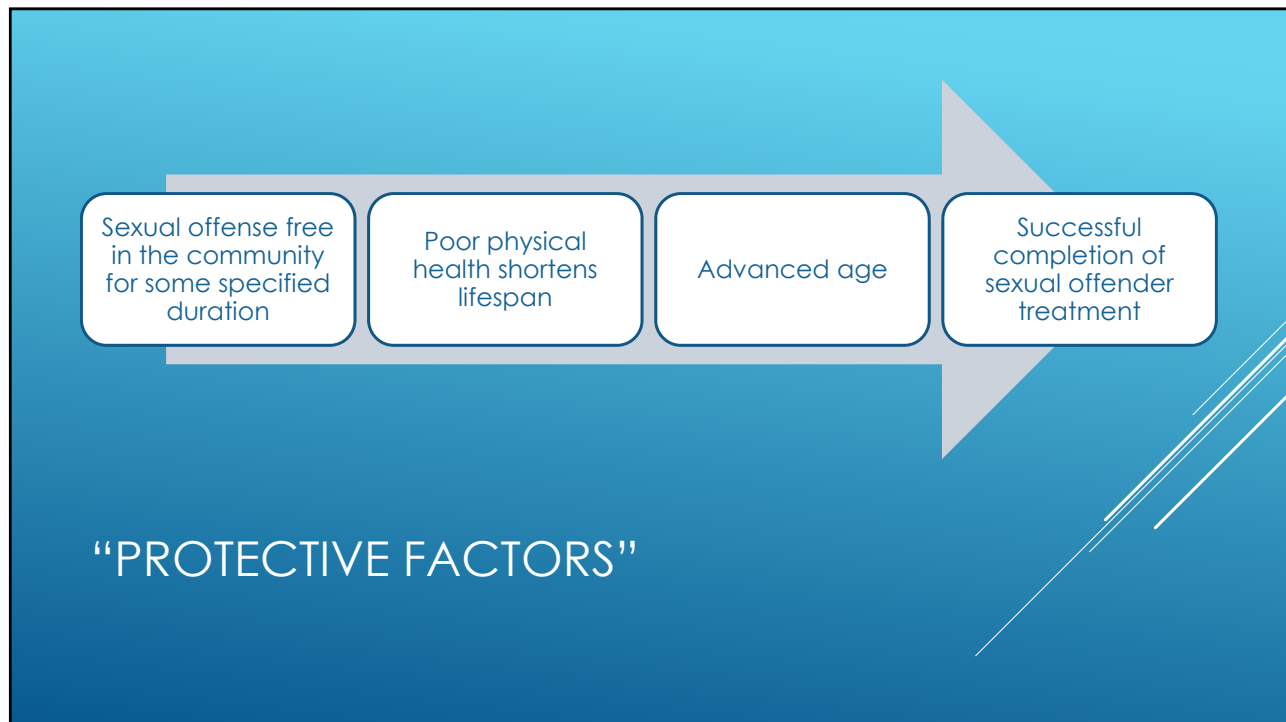
- ▶ Established criteria to define and measure items and to quantify extent to which factors are present
 - ▶ Each risk factor present predestines individual to reoffend sexually
 - ▶ Dynamic risk factors have cumulative effect of increasing likelihood of sexual recidivism
 - ▶ Dynamic risk factors + static factors = likelihood of risk greater than that predicted by the actuarial measure
- UNSUPPORTED ASSUMPTIONS (PRETEXT)

- ▶ Risk factors are likely redundant (“highly correlated”)
- ▶ Cannot make strong statements about the relative importance of the various risk factors because study examined univariate relationship.
- ▶ Univariate relationship prevents assessing unique or incremental contribution to recidivism prediction

CAUTION FROM MANN ET AL. (2012: 197-8)

Other PMRF (Mann et al., 2010)	R ⁺	R ⁻
Any deviant sexual interest	.58	.42
Sexualized violence	.55	.45
Emotional congruence with children	.62	.38
Impulsivity, recklessness	.57	.43
Noncompliance with supervision	.67	.33
Grievance/hostility	.55	.45
Negative social influences	.57	.43

WHICH GROUP FITS THE INDIVIDUAL?



- ▶ Psychological or personality feature of the individual whose manifestations are observable and lowers sexual recidivism risk (de Vries Robbe et al., 2014: 3).

Factor	Meets Definition?
Sex offense free in community	No
Shorted life span due to ill health	No
Advanced age	No
Successful completion of SOTP	No

WHAT IS A PROTECTIVE FACTOR

Capacity for self-control

Motivation for treatment

Stable intimate relationship of good quality

EXAMPLES OF PROTECTIVE FACTORS

Study	K	N	Q	I ² (%)	Sex Recidivism (%)	
					TG	CG
Schmucker & Losel (2015)- High Quality Studies	28	10,387	52.05*	48.1	10.1	17.1
Losel & Schmucker (2005)	80	22,181	237.14**	66.7	11.1	17.5

* $p < .01$, ** $p < .001$

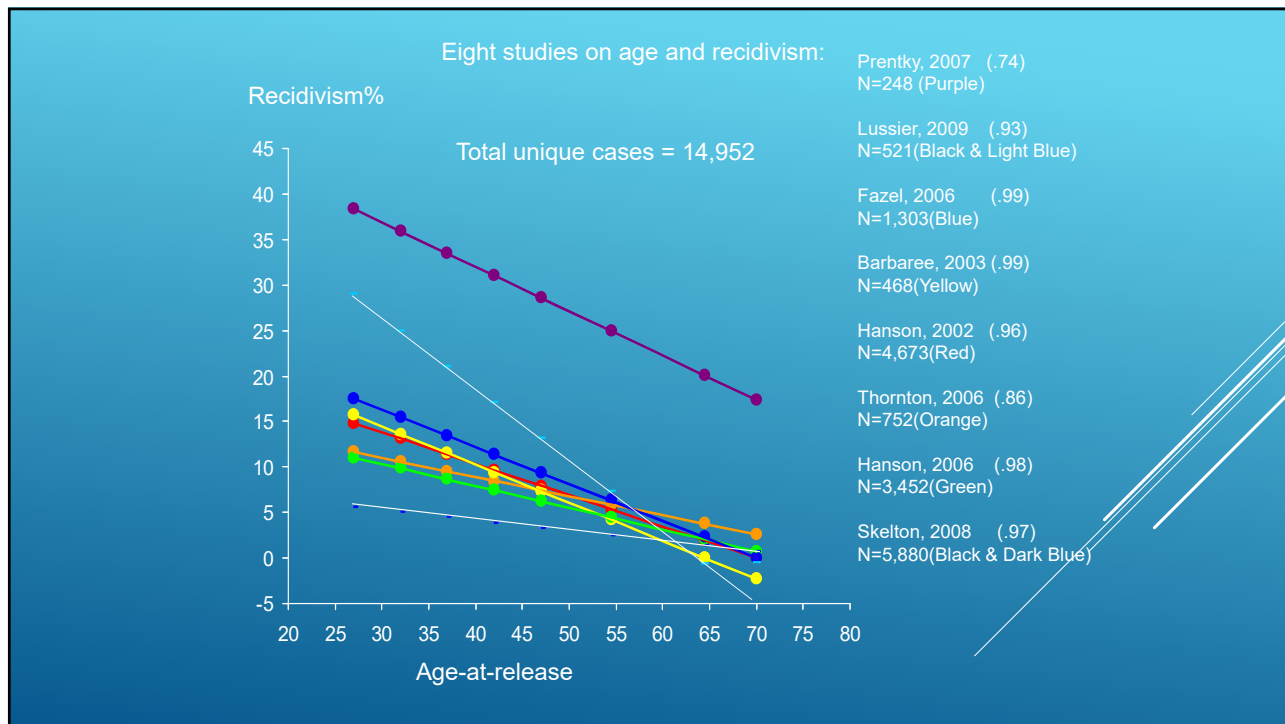
META-ANALYTIC STUDIES OF SEX OFFENDER TREATMENT

- ▶ Argument: Sexual recidivism actuarial results under-estimate risk potential because the data fails to capture unreported sex crimes.
- ▶ Rebuttal:
 - ▶ Victim studies conflate offenses with offenders
 - ▶ 95% of sexual crimes committed by previously undetected offenders (Sandler et al., 2008)
 - ▶ No way to quantify the effect of unreported sexual crimes committed by detected sex offenders so any testimony is speculative
 - ▶ Langevin & Curnoe (2012) show decreasing rate of unreported sex crimes

OTHER CONSIDERATION: UNREPORTED SEX CRIMES

Decade	% Undetected Sex Crimes
1960	78.3
1970	65.7
1980	32.7
1990	8.9
2000	7.8

LANGEVIN & CURNOE (2012)



Static-99R Risk Category	Age Unadjusted	Age Adjusted 5-Year Sex Reoffense Rates*				
	5-year Sex Reoffense (%)	30-39.9 (%)	40-49.9 (%)	50-59.9 (%)	60-69.9 (%)	≥70 (%)
-3 to +1	4.1	5.5	3.6	3.3	1.9	1.5
2, 3	8.3	7.5	5.6	5.9	3.1	6.7
4, 5	14.7	18.4	9.8	12.9	7.9	1.0
6 to 11	26.5	28.8	23.6	20.1	10.9	5.6

From Helmus et al. (2012) Table 3

STATIC-99R SEX RECIDIVISM ESTIMATES:
Age unadjusted to age adjusted

Entire Sample

Age at Last Sex Offense	5-yr Follow-Up		
	Age \geq 60 at Release		
	N	Exp.	Obs.
50-59.9	92	3%	1%
\geq 60	235	3%	4%

Differences not significant

Static score > 3

Age at Last Sex Offense	5-yr Follow-Up		
	Age \geq 60 at Release		
	N	Exp.	Obs.
50-59.9	41	2%	6%
\geq 60	64	7%	9%

Differences not significant

THORNTON (2017): Does sex reoffense late in life alter the downward trajectory in risk potential associated with age?

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