Court has power to reject recommendation of probation officer. People v. Henderson (App. 3 Dist. 1964) 37 Cal.Rptr. 883, 226 Cal.App.2d 160. Sentencing And Punishment 1886

Where defendant objected to consideration of probation reports because alleged letter written by defendant to probation officer did not appear in record, it was error for trial judge to overrule objection and then proceed to sentence defendant without considering probation report. People v. Oppenheimer (App. 2 Dist. 1963) 29 Cal.Rptr. 474, 214 Cal.App.2d 366, certiorari denied 84 S.Ct. 163, 375 U.S. 887, 11 L.Ed.2d 116, rehearing denied 84 S.Ct. 336, 375 U.S. 936, 11 L.Ed.2d 269. Sentencing And Punishment 299

A probation report is not evidence, and may contain extrajudicial material. People v. Overton (App. 2 Dist. 1961) 11 Cal.Rptr. 885, 190 Cal.App.2d 369. Sentencing And Punishment 282

A defendant was not entitled to have any portion of probation officer's report stricken since such report is for information of court and to aid it in determining whether or not probation should be granted, and if report contained information not proper to be considered by court appellate court would assume that trial court was not influenced by irrelevant matters. People v. Warren (App. 1959) 175 Cal.App.2d 233, 346 P.2d 64. Sentencing And Punishment 299; Criminal Law 1144.17

Trial court granting defendant's application for probation was authorized fully to consider probation officer's report reviewing facts and history of case and recommending action taken. People v. Marin (App. 1957) 147 Cal.App.2d 625, 305 P.2d 659. Sentencing And Punishment 1886

Court, which expressed criticism of probation reports in regard to improper statements and arguments contained in the reports, would not be held to have been improperly influenced by such statements and arguments. People v. Fenton (App. 1956) 141 Cal.App.2d 357, 296 P.2d 829. Sentencing And Punishment 275

The fact that an accused has previously been arrested on various criminal charges may be properly included in the probation officer's report, to be considered by the court in its determination of application for probation. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 288

Report of probation officer relative to a defendant convicted of grand theft was not improper as going beyond duty required under this section of probation officer. People v. Dandy (App. 1951) 106 Cal.App.2d 19, 234 P.2d 61.

35. ---- Supplementation, reports

Trial court was not required to obtain supplemental probation report before resentencing defendant on remand, and such a report was instead discretionary, where defendant was ineligible for probation due to prior strike. People v. Johnson (App. 4 Dist. 1999) 83 Cal.Rptr.2d 423, 70 Cal.App.4th 1429. Sentencing And Punishment 2288

Trial court must order and consider supplemental probation report on remand for resentencing. People v. Oseguera (App. 1 Dist. 1993) 24 Cal.Rptr.2d 534, 20 Cal.App.4th 290, review denied. Criminal Law 1192

Trial court should not have sentenced defendant, who had failed to appear for sentencing for three years, without supplemental probation report; although defendant had caused delay, his unlawful action did not deprive him of statutory right to current probation report. People v. Mercant (App. 5 Dist. 1989) 265 Cal.Rptr. 315, 216 Cal.App.3d 1192. Sentencing And Punishment 290

Proceeding on previous probation report, rather than ordering on its own motion supplemental probation report, was

not abuse of trial court discretion in resentencing defendant, who was ineligible for probation, even though six years had passed since imposition of original sentence; defendant had previously received life sentence consecutive to term of years and there was no showing of any matter that could have been subject of further probation officer investigation. People v. Grimble (App. 2 Dist. 1987) 242 Cal.Rptr. 382, 196 Cal.App.3d 1058, review denied. Sentencing And Punishment 290

Probation officer different from officer submitting original probation report, who filed supplemental probation report recommending consecutive rather than concurrent sentencing, did not abandon her objectivity and thus deny defendant due process by assuming status of arm of district attorney's office, notwithstanding her express reference in supplemental report to conversation with deputy district attorney, where, after independent review, probation officer altered original recommendation in open manner by expressly advising court of its change in recommendation dictated by "callousness" of commission of crimes and defendant's "acknowledgement the crime was mostly his idea," and reference to conversation with deputy district attorney was merely additional material in support of recommendation. People v. Server (App. 4 Dist. 1981) 178 Cal.Rptr. 206, 125 Cal.App.3d 721. Constitutional Law 4706

Alleged error in allowing probation officer to make an oral in place of a written supplementary report was waived where no one objected either to form of the report or to failure to observe the two-day notice provision. People v. Girard (App. 2 Dist. 1971) 93 Cal.Rptr. 676, 15 Cal.App.3d 1005. Sentencing And Punishment 282

36. ---- Consideration, reports

Court's failure to read probation report prior to imposing sentence required resentencing. People v. Simon (App. 2 Dist. 1989) 256 Cal.Rptr. 373, 208 Cal.App.3d 841. Sentencing And Punishment 291

Trial court could properly consider probation report in determining amount of restitution required as condition of probation, where defendant had ample opportunity to review probation report and was afforded full, extensive fair hearing on issue of restitution, at which she cross-examined probation officer with respect to basis of officer's conclusions and recommendations, and where business records, checks or copies of those items, which provided informational basis of probation report restitution recommendation, were introduced into evidence. People v. Baumann (App. 4 Dist. 1985) 222 Cal.Rptr. 32, 176 Cal.App.3d 67, review denied. Sentencing And Punishment 300; Sentencing And Punishment 299

Responsibility of sentencing courts to order preparation of probation reports and attest to having read and considered contents of such reports, provided in this section, carries with it responsibility, albeit a discretionary one, to consider thoughtfully and seriously a grant of probation if judge determines that there exist circumstances in mitigation of punishment prescribed by law or that ends of justice would be subserved. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1830

Although trial judge did not say, in so many words, that he had read and considered the probation report, the record, including reference to remark by the trial judge about what probation officer had to say in the matter, established that the trial judge did in fact take into consideration the contents of the probation report. People v. Fabela (App. 2 Dist. 1969) 77 Cal.Rptr. 183, 272 Cal.App.2d 122. Sentencing And Punishment 300

Fact that, at probation hearing held three weeks after trial, judge stated that he had read, rather than read and considered, report was not prejudicial to defendant in view of other showing that judge had considered contents of report. People v. Valenzuela (App. 2 Dist. 1968) 66 Cal.Rptr. 825, 259 Cal.App.2d 826, rehearing denied 67 Cal.Rptr. 691, 259 Cal.App.2d 826, certiorari denied 89 S.Ct. 311, 393 U.S. 943, 21 L.Ed.2d 280. Criminal Law 1177

Endorsements by trial court on probation reports concerning defendant, convicted of forgery and prior felony conviction, that court had considered reports when sentencing defendant complied with this section requiring court to consider such reports and make statement that reports were, considered, although in pronouncing judgment trial judge did not state orally that reports were considered. People v. Burkett (App. 2 Dist. 1966) 48 Cal.Rptr. 900, 239 Cal.App.2d 456. Sentencing And Punishment 276; Sentencing And Punishment 300

Requirement of this section that an application for probation be considered in light of current probation report is mandatory on trial court. People v. Causey (App. 2 Dist. 1964) 41 Cal.Rptr. 116, 230 Cal.App.2d 576. Sentencing And Punishment 276

Signing by court of statement that report of probation officer had been considered and that such statement was filed with the clerk, was sufficient compliance with requirement of this section that after hearing and determining an application for probation, the court, in connection therewith must consider any report of the probation officer, and must make a statement that it has considered such report which must be filed with the clerk, and it was not required that court orally state that it had considered the probation officer's report. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 1911

In prosecution for assault, trial court's failure to comply with this section providing that at time of hearing on application for probation judge was to consider the probation report and order a statement so showing filed with the clerk of court, was not prejudicial, where defendants were not eligible for probation because in the perpetration of the crime they had inflicted great bodily injury on the prosecuting witness. People v. Young (App. 1 Dist. 1948) 88 Cal.App.2d 129, 198 P.2d 384. Criminal Law 1186.4(11); Assault And Battery 100

37. ---- Binding effect, reports

Courts are not bound to accept recommendations in probation report. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 300

Trial judge considering defendant's application for probation is not bound by reasons advanced in report of probation officer recommending against probation. People v. Sullivan (App. 4 Dist. 1952) 110 Cal.App.2d 4, 242 P.2d 348, certiorari denied 73 S.Ct. 936, 345 U.S. 955, 97 L.Ed. 1376. Sentencing And Punishment 1886

Report of probation officer is not binding upon court in granting or denying application for probation. People v. Johnson (App. 1951) 106 Cal.App.2d 815, 236 P.2d 190. Sentencing And Punishment 300

The report of probation officer is not evidence and is not binding on the court. People v. Wahrmund (App. 1949) 91 Cal.App.2d 258, 206 P.2d 56. Sentencing And Punishment 300

A denial of motion for probation of an accused who was convicted of lewd conduct with a child, and whose motion for new trial had been denied, was not error, notwithstanding probation officer recommended probation, although solely upon the ground that he entertained doubt as to accused's guilt, since guilt of accused was not for probation officer and, even if his recommendation had been made upon other grounds, it would not have been binding upon trial court. People v. Ralls (App. 1937) 21 Cal.App.2d 674, 70 P.2d 265. Sentencing And Punishment 1862; Sentencing And Punishment 1886

38. ---- Certification, reports

Sentencing court's failure to state on the record that it had considered the supplemental probation report (RPO) did not necessitate remand even though nothing in the record established that court did in fact read the report, where

defense counsel's remarks at sentencing fairly summarized the findings and recommendations of the report, which was quite brief and contained little new information. People v. Gorley (App. 5 Dist. 1988) 250 Cal.Rptr. 15, 203 Cal.App.3d 498. Criminal Law 1181.5(8)

Where the court fails to state on the record that it considered the probation report (RPO), the purpose of certification is sufficiently served and remand is not required if the record otherwise clearly shows that the court has read the report or has considered the information provided in it. People v. Gorley (App. 5 Dist. 1988) 250 Cal.Rptr. 15, 203 Cal.App.3d 498. Criminal Law 1181.5(8)

It was error for the court to fail to state on the record that it had considered the supplemental probation report (RPO) filed in the defendant's case. People v. Gorley (App. 5 Dist. 1988) 250 Cal.Rptr. 15, 203 Cal.App.3d 498. Sentencing And Punishment 300

39. ---- Inspection, reports

Probation report which was submitted to court at time of sentencing was or should have been supplied to defense counsel and to defendant at such time and thus could not be classified as confidential by department of corrections and thus unavailable for inspection by defendant; thus, refusal to conduct in camera hearing requested by department for purposes of ascertaining confidentiality of such report was not an abuse of discretion. In re Muszalski (App. 4 Dist. 1975) 125 Cal.Rptr. 281, 52 Cal.App.3d 475. Records 32

The report of the probation officer under this section, filed with the clerk of court is a record in the case and open to inspection by anyone including defendant and his attorney but while the clerk or probation officer is not required to deliver to defendant or his attorney a copy of the report they are not prohibited from doing so. 3 Op.Atty.Gen. 391.

40. ---- Interpreters, reports

In order for presentence interview of non-English speaking defendant by probation officer to be meaningful, someone must be available to interpret for defendant, but this "someone" is not required to be sworn or certified. People v. Gutierrez (App. 5 Dist. 1986) 222 Cal.Rptr. 699, 177 Cal.App.3d 92, review denied. Courts 56; Criminal Law 642

41. ---- Statements in aggravation, reports

A statement in aggravation submitted by the district attorney at the sentencing phase of a misdemeanor case may contain references to matters outside the record of the case and may contain evidence other than by way of testimony. West's Ann.Cal.Penal Code §§ 1170, 1203, 1204. 74 Op.Atty.Gen. 32 (1991).

At the discretion of the trial court, the district attorney may submit a statement in aggravation at the sentencing phase of a misdemeanor case, provided that the statement consists of information which could have been included in a probation report. West's Ann.Cal.Penal Code §§ 1170, 1203, 1204. 74 Op.Atty.Gen. 32 (1991).

42. ---- Hearsay, reports

Hearsay matter in a probation officer's report is acceptable and consideration thereof is contemplated by this section. People v. Lockwood (1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75; People v. Ross (1962) 24 Cal.Rptr. 1, 206 Cal.App.2d 542.

This section contemplates inclusion of hearsay matter in probation report; however, if report contains hearsay

information which defendant contends is unfair and untrue, defendant should be given opportunity to refute such information. People v. Barajas (App. 4 Dist. 1972) 103 Cal.Rptr. 405, 26 Cal.App.3d 932. Sentencing And Punishment 284; Sentencing And Punishment 299

Fact that letters from police department and district attorney's office made part of formal report filed by probation department were necessarily founded on hearsay did not render them inadmissible on question of defendant's eligibility for probation and denial of probation to defendant who did not introduce evidence to contradict, explain or mitigate matters set forth in letters from government agencies and who was already on probation at time of offense was not an abuse of discretion. People v. Gelfuso (App. 2 Dist. 1971) 94 Cal.Rptr. 535, 16 Cal.App.3d 966. Sentencing And Punishment 284

Provisions of this section contemplate the inclusion of hearsay matter in the probation officer's report. People v. Lockwood (App. 3 Dist. 1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75.

Inclusion of hearsay matter in probation report was not improper. People v. Cross (App. 2 Dist. 1963) 28 Cal.Rptr. 918, 213 Cal.App.2d 678. Sentencing And Punishment 284

Provision of this section that probation officer must make investigation of circumstances surrounding and prior history and record of defendant and make written report to court of such facts with his written recommendations, contemplates the inclusion of hearsay matter in the probation officer's report and inclusion of hearsay therein was not error. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 284

In prosecution for violation of § 337a respecting pool selling and bookmaking, record failed to disclose that court's denial of probation to defendant was by reason of any conjectural and hearsay statements in probation report filed by probation officer. People v. Wooten (App. 2 Dist. 1960) 5 Cal.Rptr. 433, 181 Cal.App.2d 462. Sentencing And Punishment 284

43. ---- Objections, reports

Neither Sixth Amendment nor the Penal Code requires that defendant be permitted to cross-examine person who, pursuant to statutory mandate, prepares a probation report. People v. Smith (1985) 216 Cal.Rptr. 98, 38 Cal.3d 945, 702 P.2d 180. Criminal Law 662.40

44. ---- Liability, reports

Any actions taken by probation officer pursuant to his state statutory duty to provide a presentencing report were covered by judicial immunity doctrine. Demoran v. Witt, C.A.9 (Cal.)1985, 781 F.2d 155. Courts 55

Probation officer and adult probation investigator did not abandon their quasi-judicial role in participating in preparation of probation report and thus were immune from liability under Federal Civil Rights Act (42 U.S.C.A. § 1981 et seq). Friedman v. Younger, C.D.Cal.1968, 282 F.Supp. 710. Civil Rights 1376(8)

45. ---- Waiver, reports

Defendant did not waive his right to complain on appeal about the lack of a supplemental probation report before sentencing by not requesting such a report at trial, where the prosecuting and defense attorneys entered no written stipulation of waiver of a written report, and no such stipulation was made orally in open court as required by statute for a valid waiver. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Criminal Law

1042

Statute which provides that preparation of probation report may be waived only by written stipulation filed with court or oral stipulation entered in minutes applies only to defendants who are eligible for probation. People v. Llamas (App. 4 Dist. 1998) 78 Cal.Rptr.2d 759, 67 Cal.App.4th 35, rehearing denied , review denied. Sentencing And Punishment 278

Defendant waived requirement of supplemental probation report on remand for resentencing, where he made no request for report and no objection to second sentencing proceeding on that ground, and there was no indication from either the defendant or his counsel at hearing that they were unready to proceed. People v. Oseguera (App. 1 Dist. 1993) 24 Cal.Rptr.2d 534, 20 Cal.App.4th 290, review denied. Criminal Law 1192

Trial court's failure to order and consider supplemental probation report on remand for resentencing can be waived by failure to object. People v. Oseguera (App. 1 Dist. 1993) 24 Cal.Rptr.2d 534, 20 Cal.App.4th 290, review denied. Criminal Law 1192

Defendant, who was originally convicted of commercial burglary and assault on a police officer, waived right to probation report before he was resentenced on commercial burglary conviction following reversal of his assault conviction, by failing to request current probation report and failing to object to court's resentencing in absence of report. People v. Begnaud (App. 4 Dist. 1991) 1 Cal.Rptr.2d 507, 235 Cal.App.3d 1548. Sentencing And Punishment 291

Where defendant filed no statement in mitigation, he failed to comply with proper procedure for challenging contents of probation report; in addition, where defendant made no objection at sentencing to probation report when court made record of material it had considered, he expressly waived his right to have probation report filed at least nine days before sentencing. People v. Evans (App. 4 Dist. 1983) 190 Cal.Rptr. 633, 141 Cal.App.3d 1019. Sentencing And Punishment 294; Sentencing And Punishment 299

Record established that both defendant and public defender waived referral to probation department and, hence, that defendant was not entitled to relief on ground that trial court sentenced him without a prior referral to probation officer and without a waiver of such referral. People v. Santos (App. 5 Dist. 1976) 131 Cal.Rptr. 426, 60 Cal.App.3d 372. Sentencing And Punishment 278

Where defendant upon his conviction of burglary in the first degree withdrew his plea of not guilty by reason of insanity, waived a reference to the probation officer and requested immediate sentence, the waiver should not have been accepted since no previous convictions were alleged in the information and, under the circumstances, the requirement of a report by the probation officer was absolutely called for, but error in accepting waiver did not require reversal. People v. Oakley (App. 5 Dist. 1967) 59 Cal.Rptr. 478, 251 Cal.App.2d 520. Sentencing And Punishment 278; Criminal Law 1177

Defendant waived right to have case submitted to probation officer either for report as to probation or report as to sentence where defense counsel admitted that defendant was ineligible for probation, not only did defendant not object to being sentenced without the matters being referred to probation officer but he in effect consented to such sentencing, his counsel on three separate occasions stated there was no legal cause why he should not be then sentenced, and defendant said he was ready for sentence. People v. Tempelis (App. 1 Dist. 1964) 41 Cal.Rptr. 253, 230 Cal.App.2d 596. Sentencing And Punishment 278

Where report of probation officer on application for probation after pleas of guilty to forgery and burglary recommended that matter be continued for further information pending the outcome of a separate and distinct

robbery charge placed against defendant, and defendant proceeded with hearing on the probation application as filed, without objection, or suggestion that a supplementary report be filed, there was a waiver of any right defendant may have had to an express recommendation of probation. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 278

46. Misdemeanors

Trial court's ex parte inspection of defendant's apartment buildings, with respect to which defendant had been ordered to correct deficiencies, did not comply with spirit of subdivision (d) of this section, which envisions that defendant will be given opportunity to controvert in some manner information relied on by court in sentencing. People v. Avol (Super. 1987) 238 Cal.Rptr. 45, 192 Cal.App.3d Supp. 1. Sentencing And Punishment 362

Defendant must have opportunity to challenge information relied upon by court in sentencing defendant in misdemeanor case, and court may not rely on information obtained ex parte, although subdivision (d) of this section provides that if misdemeanor case is not referred to probation officer, court may consider in sentencing any information which could have been included in probation report. People v. Avol (Super. 1987) 238 Cal.Rptr. 45, 192 Cal.App.3d Supp. 1. Sentencing And Punishment 308

47. Deadly weapons--In general

Defendant, as merely an aider and abettor who did not personally use the knife with which victim was wounded, was not presumptively ineligible for probation for his convictions for assault with deadly weapon and battery with serious bodily injury, under statutory provision that "any person" who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he has been convicted is eligible for probation only in unusual cases where the interests of justice would best be served by probation. People v. Alvarez (App. 5 Dist. 2002) 115 Cal.Rptr.2d 515, 95 Cal.App.4th 403. Sentencing And Punishment 1843

Personal use of a deadly weapon by the defendant is required, under statute providing that "any person" who used, or attempted to use, a deadly weapon upon a human being in connection with the perpetration of the crime of which he has been convicted is eligible for probation only in unusual cases where the interests of justice would best be served by probation. People v. Alvarez (App. 5 Dist. 2002) 115 Cal.Rptr.2d 515, 95 Cal.App.4th 403. Sentencing And Punishment 1840

Both defendant and state had important incentive to contest designation of defendant's 1966 first-degree robbery conviction as being based on use of "deadly weapon," rather than on alternate basis, and allegation in information of use of deadly weapon would not be considered superfluous, for purposes of determining whether 1966 first-degree robbery conviction would support habitual offender determination; at time of conviction, probation was within discretion of court only where weapon was "dangerous," and was not available when defendant had been convicted of robbery armed with "deadly" weapon. People v. Skeirik (App. 3 Dist. 1991) 280 Cal.Rptr. 175, 229 Cal.App.3d 444, rehearing denied , review denied. Sentencing And Punishment 1259

Defendant's firing of weapon in crowded dance hall, which was intended to scare others, was "use" of weapon for purposes of determining whether unusual circumstances were required for trial court to grant probation. People v. Cazares (App. 5 Dist. 1987) 235 Cal.Rptr. 604, 190 Cal.App.3d 833, review denied. Sentencing And Punishment 1840

Where defendant used deadly weapon in perpetrating manslaughter of which he was convicted, this section expressly proscribed grant of probation unless unusual circumstances militated otherwise; as trial court's statement, when it denied probation, was responsive to grounds urged by probation report, which recommended court to find defendant's case an exceptional one, court's stated reasons for denying probation were adequate. People v. Langevin

(App. 3 Dist. 1984) 202 Cal.Rptr. 234, 155 Cal.App.3d 520. Sentencing And Punishment 1853; Sentencing And Punishment 1840; Sentencing And Punishment 1911

Where, though defendant was charged with armed robbery, there was no separate "armed" allegation as provided by § 969c, §§ 3024, 12022 with respect to minimum and additional terms for armed offenders were inapplicable, but defendant was personally armed within meaning of this section. People v. Hernandez (App. 4 Dist. 1970) 89 Cal.Rptr. 766, 11 Cal.App.3d 481. Sentencing And Punishment 1861; Robbery 30

Judgment of conviction for robbery while armed with deadly weapons would be modified to provide that §§ 3024 (repealed), 12022, providing for minimum sentence for person convicted of offense while armed with deadly weapon and for increased punishment for use of certain weapons in commission of felony were inapplicable, but that defendants were armed within meaning of this section denying probation to defendants previously convicted of felony while armed with deadly weapon he did not have lawful right to carry. People v. Peters (App. 2 Dist. 1970) 86 Cal.Rptr. 521, 7 Cal.App.3d 154. Criminal Law 1184(2)

Judgment reciting that as to robbery counts, defendant "was armed as alleged" would be modified to provide that at time of commission of offense, §§ 3024 (repealed) and 12022 were inapplicable, but that defendant was armed within meaning of this section and to specify nature of weapon involved. People v. Smyers (App. 2 Dist. 1969) 83 Cal.Rptr. 3, 2 Cal.App.3d 666. Criminal Law 1184(2)

It was duty of trial court to make express determination whether defendant who was convicted of first-degree robbery and first-degree burglary was armed with deadly weapon within meaning of this section. People v. Savala (App. 3 Dist. 1969) 82 Cal.Rptr. 647, 2 Cal.App.3d 415. Sentencing And Punishment 1840

Recitals in judgment of conviction of defendant for burglary, robbery, grand theft and automobile theft that defendant was armed with deadly weapon would be modified to provide that at time of commission of offense §§ 3024 (repealed), 12022 providing for minimum terms of sentence and for additional punishment for persons armed with deadly weapons were inapplicable but that defendant was armed within meaning of this section providing that such persons are ineligible for probation. People v. Bauer (1969) 82 Cal.Rptr. 357, 1 Cal.3d 368, 461 P.2d 637, certiorari denied 91 S.Ct. 190, 400 U.S. 927, 27 L.Ed.2d 187. Criminal Law 1184(2)

Where defendant was found guilty of first-degree robbery and there was separate finding that he was armed with deadly weapon, judgment would be modified to provide that §§ 3024 (repealed) and 12022 imposing minimum or increased penalties for carrying a deadly weapon in the commission of offenses generally were not applicable, but that defendant was armed with a deadly weapon within meaning of this section regarding probation. People v. Jarvis (App. 1 Dist. 1969) 80 Cal.Rptr. 832, 276 Cal.App.2d 446. Criminal Law 1184(2)

Where judgment convicting defendant of robbery and assault with deadly weapon improperly contained recitation that he was armed with deadly weapon at time of commission of offense, judgment would be modified to provide that §§ 3024 (repealed) and 12022 fixing minimum and additional terms for commission of offenses while armed would not apply but this section stating effect thereof on probation would apply, and further judgment should specify nature of the weapon. People v. Vessell (App. 2 Dist. 1969) 80 Cal.Rptr. 617, 275 Cal.App.2d 1012. Criminal Law 1184(4.1)

Judgment of conviction for armed robbery should be modified to indicate that defendant, who was not armed when he participated in robbery with codefendant who was armed at time of crime, was not armed within meaning of §§ 3024 (repealed) and 12022.5 establishing minimum and additional sentences for armed felons but was armed within meaning of this section denying probation to armed felons. People v. Lee (App. 2 Dist. 1969) 80 Cal.Rptr. 491, 275 Cal.App.2d 827. Criminal Law 996(1)

Judgment of conviction of first-degree robbery stating that defendant was armed with deadly weapon should be modified to provide that, at time of commission of offense, § 3024 (repealed) providing minimum sentence for persons convicted of committing offenses while armed and § 12022 providing extra punishment for offenses committed with certain weapons were inapplicable but that defendant was armed within this section prohibiting granting probation to persons convicted of offenses while armed and judgment should specify nature of weapon. People v. Hogan (1969) 80 Cal.Rptr. 28, 71 Cal.2d 888, 457 P.2d 868. Criminal Law 1184(2)

Recitals in judgment of conviction of robbery in first degree that defendant was armed with deadly weapon should be modified to provide that, at time of commission of offense § 3024 (repealed) providing for minimum sentence for persons convicted of felony while armed and § 12022 providing for extra sentence for persons committing offenses while armed with certain weapons were inapplicable, but that defendant was armed within this section prohibiting granting probation to person who has previously been convicted of offense while armed. People v. King (1969) 80 Cal.Rptr. 26, 71 Cal.2d 885, 457 P.2d 866. Criminal Law 1184(2)

Gun or knife is not a "deadly weapon", as a matter of law, within this section when used defensively, negligently or accidentally and death results. People v. Jackson (App. 2 Dist. 1964) 41 Cal.Rptr. 113, 230 Cal.App.2d 485.

Surgical instruments and drugs used by defendant in performance of illegal abortion which resulted in death were not "deadly weapons" within this section. People v. Jackson (App. 2 Dist. 1964) 41 Cal.Rptr. 113, 230 Cal.App.2d 485.

In the field of misdemeanors, provision of this section permitting grant of probation to defendant convicted of misdemeanor controls provisions prohibiting grant of probation in cases when deadly weapon is used in connection with the crime. People v. Alotis (1964) 36 Cal.Rptr. 443, 60 Cal.2d 698, 388 P.2d 675. Sentencing And Punishment 1827

Person who has been convicted of murder and who at time of perpetration of crime or at time of arrest was armed with deadly weapon, may not be granted probation. People v. Orrante (App. 1 Dist. 1962) 20 Cal.Rptr. 480, 201 Cal.App.2d 553. Sentencing And Punishment 1853

If weapon found on defendant convicted of armed robbery in the first degree at the time of his arrest is only dangerous and not "deadly," probation is within the discretion of the trial court. People v. Sheeley (App. 1958) 159 Cal.App.2d 578, 324 P.2d 65. Sentencing And Punishment 1861

If weapon which defendant had in pocket during robbery was a "deadly" weapon, trial court did not have power to grant defendant probation, and, if it be assumed that under such circumstances the weapon was not "deadly" but only "dangerous," matter of granting of probation was within trial court's discretion. People v. Rainey (App. 1 Dist. 1954) 125 Cal.App.2d 739, 271 P.2d 144. Sentencing And Punishment 1861

That fatal wound was inflicted by a deadly weapon did not compel conclusion, as a matter of law, that defendant was using the weapon and was therefore ineligible for probation. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Sentencing And Punishment 1840

Defendant's use or attempt to use a deadly weapon in connection with the perpetration of crime, as bearing on court's power to grant probation, is a question of fact. People v. Harshaw (App. 1 Dist. 1945) 71 Cal.App.2d 146, 161 P.2d 978. Sentencing And Punishment 1903

48. ---- Firearms, deadly weapons

A defendant who used a firearm in the commission of a crime was presumptively ineligible for probation. People v. Superior Court (Du) (App. 2 Dist. 1992) 7 Cal.Rptr.2d 177, 5 Cal.App.4th 822, rehearing denied and modified , review denied. Sentencing And Punishment 1840

Statute providing that person who has been convicted of murder and who was armed with deadly weapon at time he committed crime or at time of his arrest is presumptively ineligible for probation would be construed to require that defendant personally, and not another involved in offense, be armed with weapon. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Sentencing And Punishment 1853

Where information charged that assault had been made "with a deadly weapon, to wit: a gun" defendant's plea of guilty to that count constituted an admission of all facts alleged in it and judgment might be modified to provide that defendant was armed within meaning of this section pertaining to probation. People v. Waters (App. 3 Dist. 1973) 106 Cal.Rptr. 293, 30 Cal.App.3d 354. Criminal Law 273.3; Criminal Law 1184(2)

A negligent or involuntary act in discharging a firearm not otherwise being used on a human being does not constitute a use within meaning of this section. People v. Chambers (1972) 102 Cal.Rptr. 776, 7 Cal.3d 666, 498 P.2d 1024.

Where defendant was found by jury to have committed robbery while armed with a dangerous weapon, judgment should have recited that defendant had been found guilty of, and was convicted of, robbery in the first degree and that, at time of commission of such offense, he was armed with a deadly weapon, to-wit, a revolver. People v. Doran (App. 2 Dist. 1972) 100 Cal.Rptr. 886, 24 Cal.App.3d 316, modified 111 Cal.Rptr. 793, 36 Cal.App.3d 592. Criminal Law 995(3)

Where conviction of attempted first-degree robbery was based on commission of offense while armed with gun, court's judgment containing recital that defendant was found to have been armed with "deadly" weapon should be modified to show that §§ 3024 (repealed), 12022 prescribing minimum terms for armed offenders and additional punishment for commission of felony while armed were not applicable, and, where supported by record, recital could be substituted that defendant was armed within meaning of this section that probation would not be granted to a defendant who at time of perpetration of crime or at arrest was armed with deadly weapon. People v. Harrison (App. 3 Dist. 1970) 85 Cal.Rptr. 302, 5 Cal.App.3d 602. Criminal Law 996(1)

Where defendant was convicted of first-degree robbery, it was proper to include in judgment finding that defendant was armed with gun at time of commission of robbery for purpose of this section relating to probation, but judgment should have specified that relating to enhancement of punishment were inapplicable, inasmuch as possession of deadly weapon required by §§ 3024 (repealed), 12022 was prerequisite to conviction. People v. Ortega (App. 2 Dist. 1969) 83 Cal.Rptr. 260, 2 Cal.App.3d 884. Criminal Law 995(2)

Term "deadly weapon" as found in § 3024 (repealed) does not generically control meaning given to term in this section, but since a pistol may be a "deadly weapon" under definition of either section, recitation in abstract of judgment that defendant was armed with a deadly weapon at time of commission of each of robberies within meaning of §§ 969c and 3024 was an immaterial variance. People v. Diaz (App. 5 Dist. 1969) 81 Cal.Rptr. 16, 276 Cal.App.2d 547. Criminal Law 995(8)

Gun with which defendant involuntarily and non-volitionally shot victim five times after victim began to struggle with defendant was not "used as deadly weapon" within this section. People v. Alotis (1964) 36 Cal.Rptr. 443, 60 Cal.2d 698, 388 P.2d 675. Sentencing And Punishment 1840

A 22-caliber rifle which defendant carried when committing a robbery, and which contained cartridges in the magazine which could be chambered and fired almost instantly, was a "deadly weapon" within this section prohibiting granting of probation to a defendant who used or attempted to use a deadly weapon upon a human being in connection with perpetration of robbery. People v. Young (App. 1951) 105 Cal.App.2d 612, 233 P.2d 155. Sentencing And Punishment 1861

Where jury in prosecution of two defendants charged with robbery while armed with a deadly weapon made specific finding that defendants were armed with a deadly weapon, and no appeal was taken, motion in the nature of a petition for writ of error coram nobis alleging that trial court made mistake of fact in that weapon used was in fact a toy pistol was properly denied, and defendants were properly refused probation. People v. Carmody (App. 2 Dist. 1949) 95 Cal.App.2d 368, 212 P.2d 627. Sentencing And Punishment 1861; Criminal Law 1429(2)

Proof that defendants were armed with sawed-off .22-caliber rifle established as matter of law that defendants were armed with a "dangerous weapon" which would support conviction of robbery of first degree, but did not establish that they were armed with a "deadly weapon" within this section. People v. Raner (App. 1 Dist. 1948) 86 Cal.App.2d 107, 194 P.2d 37. Sentencing And Punishment 1861; Robbery 11

Accused, who waited outside tearoom in automobile while accomplice committed robbery with loaded revolver, and who later drove accomplice away pursuant to agreement, was guilty of robbery with deadly weapon in first degree, and hence court lacked jurisdiction to grant him probation. People v. Lewis (App. 1934) 140 Cal.App. 475, 35 P.2d 561. Sentencing And Punishment 1861

Defendants pleading guilty to grand theft of bovine animal were not entitled to probation where they used rifle and shotgun in killing stolen steer. People v. Andrich (App. 1933) 135 Cal.App. 274, 26 P.2d 902. Sentencing And Punishment 1856

Defendants armed with revolver at time of arrest were not entitled to probation, notwithstanding verdict found they were not so armed at time of prior attempted burglary. People v. Costa (App. 1 Dist. 1930) 108 Cal.App. 90, 290 P. 891. Sentencing And Punishment 1844

49. ---- Knives, deadly weapons

Where defendant was convicted of first-degree robbery in connection with robberies committed with a knife, he was armed with a "deadly weapon" at the time of the commission of the offenses for purposes of this section, but § 3024 (repealed) prescribing increased minimum terms where offense is committed while armed was not applicable. People v. Conrad (App. 2 Dist. 1973) 107 Cal.Rptr. 421, 31 Cal.App.3d 308. Sentencing And Punishment 1861; Sentencing And Punishment 78

If defendant voluntarily used a knife thirteen inches long in killing her husband, she was not eligible for probation. People v. Doyle (App. 1958) 162 Cal.App.2d 158, 328 P.2d 7. Sentencing And Punishment 1853

Where no facts surrounding homicide charge against defendant were presented, and trial court made no finding as to whether charge to which defendant pleaded guilty was voluntary or involuntary manslaughter, and court was without knowledge as to whether defendant used a knife in his possession upon the deceased, or, merely held the knife without due caution, it was error for trial court to refuse to permit the filing of or to consider an application for probation. People v. Johnson (App. 1956) 140 Cal.App.2d 613, 295 P.2d 493. Sentencing And Punishment 1891

A knife is not inherently a dangerous or deadly weapon as a matter of law though it may assume such characteristics

depending upon the manner in which it is used. People v. Johnson (App. 1956) 140 Cal.App.2d 613, 295 P.2d 493. Homicide 567

50. ---- Accomplices, deadly weapons

The prohibition against probation for a person who commits a carjacking while armed with a deadly weapon other than a firearm does not apply if it was not the defendant, but an accomplice, who was armed; in short, for purposes of probation ineligibility, one could not be derivatively or vicariously armed. In re Travis W. (App. 1 Dist. 2003) 132 Cal.Rptr.2d 135, 107 Cal.App.4th 368, review denied , certiorari denied 124 S.Ct. 548, 540 U.S. 1010, 157 L.Ed.2d 420. Sentencing And Punishment 1864

Defendant convicted of second-degree murder was not presumptively ineligible for probation by reason of her accomplice's being armed with weapon at time of murder, where defendant was not herself armed. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Sentencing And Punishment 1853

Judgment of conviction for robbery erroneously included finding that defendant was armed where, although accomplice was armed, defendant himself was not armed, and judgment would be modified by striking such finding. People v. Snyder (App. 2 Dist. 1969) 80 Cal.Rptr. 822, 276 Cal.App.2d 520. Criminal Law 1184(2)

Although the fact that accused's accomplice was armed with a deadly weapon at the time of the robbery made accused guilty of first-degree robbery, it did not affect his eligibility for probation since he was not "himself" so armed. In re Hernandez (1966) 51 Cal.Rptr. 915, 64 Cal.2d 850, 415 P.2d 803. Sentencing And Punishment 1861

The legislature in amending this section prohibiting probation of one convicted of robbery while armed with deadly weapon by inserting word "himself" before "armed," is presumed to have known of previous judicial construction of this section as forbidding probation of one acting with companion armed with deadly weapon in commission of robbery, though not personally armed with such a weapon, and to have intended to change law so as to forbid probation only of one convicted of robbery while himself armed with deadly weapon. People v. Perkins (1951) 37 Cal.2d 62, 230 P.2d 353. Sentencing And Punishment 1824

Where defendant participated in robbery with another who was armed with deadly weapon, refusing permission to make application for probation was not error. People v. Gillstarr (App. 2 Dist. 1933) 132 Cal.App. 267, 22 P.2d 549. Sentencing And Punishment 1861

51. ---- Time, deadly weapons

In view of this section, finding that defendant was armed at time of commission of robbery or at time of arrest is proper in first-degree robbery cases. People v. Floyd (1969) 80 Cal.Rptr. 22, 71 Cal.2d 879, 457 P.2d 862.

Where defendant was armed at time of commission of rapes, he was not eligible for probation. People v. Curtis (App. 2 Dist. 1965) 47 Cal.Rptr. 123, 237 Cal.App.2d 599. Sentencing And Punishment 1862

52. ---- Evidence, deadly weapons

Since court's remarks indicated that it considered defendant ineligible for probation because of his use of a deadly weapon in a commission of voluntary manslaughter of which he had been convicted, and since conclusion was sustained by evidence, defendant, who claimed that record failed to show denial of probation was predicated on fact of his ineligibility under this section was entitled to no relief. People v. Wynn (App. 1 Dist. 1968) 65 Cal.Rptr. 210,

257 Cal.App.2d 664. Sentencing And Punishment 1922

Conflicting evidence as to whether defendant used or attempted to use loaded gun upon victim of homicide or merely held gun without due caution presented a question of fact as to whether manslaughter of which defendant was convicted involved the use of a deadly weapon upon victim, and hence refusal to consider application for probation on ground that defendant must have been convicted of voluntary manslaughter and hence was not eligible for probation, was error. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Sentencing And Punishment 1903

Evidence in prosecution for assault with intent to commit rape justified denial of probation on ground that defendant used or attempted to use a deadly weapon in connection with the crime. People v. Harshaw (App. 1 Dist. 1945) 71 Cal.App.2d 146, 161 P.2d 978. Sentencing And Punishment 1862

53. ---- Findings, deadly weapons

Where defendant was found guilty of first-degree robbery on basis of the fact that he was armed, §§ 3024 (repealed), 12022, providing for minimum term of sentence and for additional punishment in certain cases where defendant was armed with a deadly weapon were inapplicable, but defendant was armed for purposes of § 12022.5 generally precluding probation for one who commits robbery while armed. People v. Najera (1972) 105 Cal.Rptr. 345, 8 Cal.3d 504, 503 P.2d 1353. Sentencing And Punishment 1861; Sentencing And Punishment 77; Sentencing And Punishment 139

Finding that defendants claiming they were eligible for probation were armed with dangerous weapons while perpetrating robbery was not equivalent to determination that they used deadly weapon; the finding fixed the degree of the offense of robbery but did not determine eligibility for probation. People v. Fisher (App. 3 Dist. 1965) 44 Cal.Rptr. 302, 234 Cal.App.2d 189. Sentencing And Punishment 1861

Trial court's acceptance of defendant's plea of guilty to robbery in the second degree did not bind the court to find for the purposes of probation that he was not armed with a deadly weapon at the time of the commission of the offense or at the time of his arrest. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Sentencing And Punishment 1887

Finding of jury in respect to whether defendant was armed during perpetration of offense in prosecution for robbery is only for the purpose of determining degree of offense set forth in § 211a which does not distinguish between "dangerous" and "deadly" weapons, and is not binding on the court for purpose of determining eligibility for probation under this section forbidding probation to any defendant convicted of armed robbery who at time of perpetration thereof was armed with a deadly weapon. People v. Sheeley (App. 1958) 159 Cal.App.2d 578, 324 P.2d 65. Sentencing And Punishment 1861

54. Great bodily injury or torture

Only if trial court finds that defendant convicted of assaulting a child with force likely to produce great bodily injury resulting in death, intended to inflict great bodily injury on child would he be presumptively ineligible for probation under statute precluding granting of probation to those who willfully inflicted great bodily injury or torture in the perpetration of the crime. People v. Lewis (App. 4 Dist. 2004) 15 Cal.Rptr.3d 891, 120 Cal.App.4th 837, rehearing denied, review denied, appeal after new sentencing hearing 2006 WL 401308, unpublished. Sentencing And Punishment 1898

Statute precluding granting of probation to those who willfully inflicted great bodily injury or torture in the

perpetration of the crime, contains no requirement the circumstances causing a restriction on probation be pleaded or decided by the trier of fact; the trial court may make the factual determination necessary for application of the restriction. People v. Lewis (App. 4 Dist. 2004) 15 Cal.Rptr.3d 891, 120 Cal.App.4th 837, rehearing denied, review denied, appeal after new sentencing hearing 2006 WL 401308, unpublished. Sentencing And Punishment 2022

The word "willfully" in statute precluding granting of probation to those who willfully inflicted great bodily injury or torture in the perpetration of the crime refers merely to a result, i.e., the infliction of great bodily injury, and thus requires the defendant's intent to cause great bodily injury or torture, not merely that the crime resulted in great bodily injury or torture. People v. Lewis (App. 4 Dist. 2004) 15 Cal.Rptr.3d 891, 120 Cal.App.4th 837, rehearing denied, review denied, appeal after new sentencing hearing 2006 WL 401308, unpublished. Sentencing And Punishment 1836

Case in which defendant was convicted of "non-statutory" voluntary manslaughter was within provision of this section prohibiting probation to one who, in the perpetration of the crime of which he was convicted, willfully inflicted great bodily injury. People v. Clay (App. 4 Dist. 1971) 96 Cal.Rptr. 213, 18 Cal.App.3d 964. Sentencing And Punishment 1853

Under this section providing that probation shall not be granted to any person convicted of rape with force or violence who in perpetration of crime willfully inflicted great bodily injury or torture, conduct beyond that necessarily required to commit forcible rape must appear before defendant is by law rendered ineligible for probation. People v. Beasley (App. 1 Dist. 1970) 85 Cal.Rptr. 501, 5 Cal.App.3d 617. Sentencing And Punishment 1862

Defendant who pleaded guilty to rape with force and violence was not ineligible for probation where victim was not subjected to great bodily injury other than the rape itself. People v. Beasley (App. 1 Dist. 1970) 85 Cal.Rptr. 501, 5 Cal.App.3d 617. Sentencing And Punishment 1862

Although defendant had intended to procure miscarriage illegally, where there was no showing that defendant intended that death result, defendant did not "willfully inflict great bodily injury," within this section providing that probation shall not be granted to person who in perpetration of crime, willfully inflicted great bodily injury. People v. Jackson (App. 2 Dist. 1964) 41 Cal.Rptr. 113, 230 Cal.App.2d 485. Sentencing And Punishment 1865

Whether one convicted of forcible rape willfully inflicted great bodily injury or torture on prosecutrix in perpetration of crime, so as to preclude granting of probation, was fact question for trial court. People v. Merrill (App. 1951) 104 Cal.App.2d 257, 231 P.2d 573. Criminal Law 1158(1)

In prosecution for rape, prosecutrix' testimony that defendant struck her, placed his thumb in her eye, and threatened to push her eyes out unless she yielded, established sufficient torture to bring case within this section prohibiting probation of one convicted of crime in perpetration of which he willfully inflicted great bodily injury or torture. People v. Merrill (App. 1951) 104 Cal.App.2d 257, 231 P.2d 573. Sentencing And Punishment 1862

In prosecution for assault, where evidence disclosed that in the commission of the crime defendants inflicted great bodily injury on the prosecuting witness, the trial court was without discretion to grant probation and properly denied defendant's application. People v. Young (App. 1 Dist. 1948) 88 Cal.App.2d 129, 198 P.2d 384. Sentencing And Punishment 1843; Assault And Battery 100

55. Prior convictions--In general

California prisoner whose adjudication as habitual criminal resulted in his ineligibility criminal resulted in his

ineligibility for probation was entitled, on federal habeas corpus, to attack validity of prior conviction on federal constitutional grounds, even though prior conviction did not operate to extend term of sentence. Arketa v. Wilson, C.A.9 (Cal.)1967, 373 F.2d 582. Habeas Corpus 509(2)

Drug offender who had been previously convicted of three felonies was presumptively ineligible for probation on sentencing following violation of non-drug-related condition of probation. People v. Dixon (App. 3 Dist. 2003) 5 Cal.Rptr.3d 917, 113 Cal.App.4th 146. Sentencing And Punishment 2039

Neither due process nor statutory construction requires implied pleading and proof requirement for application of statute precluding probation for defendant who had twice been convicted of felony. People v. Dorsch (App. 1 Dist. 1992) 5 Cal.Rptr.2d 327, 3 Cal.App.4th 1346, review denied. Constitutional Law 4731; Sentencing And Punishment 1891

In context of discretionary decision to grant or deny probation, prior felony convictions are sentencing facts for the court to assess, regardless of whether the convictions were pleaded. People v. Dorsch (App. 1 Dist. 1992) 5 Cal.Rptr.2d 327, 3 Cal.App.4th 1346, review denied. Sentencing And Punishment 1872(1)

Sentencing court can consider unpleaded prior felony convictions when determining eligibility for probation under statute precluding probation for defendant who has twice been convicted of felony. People v. Dorsch (App. 1 Dist. 1992) 5 Cal.Rptr.2d 327, 3 Cal.App.4th 1346, review denied. Sentencing And Punishment 1872(1)

Under subd. (d) of this section denying probation to any person "who has been previously convicted twice in this state of a felony," legislature did not intend to restrict ineligibility only to those persons whose convictions arose out of separate transactions as distinguished from a single transaction, and thus, even if a single transaction were involved, defendant, in view of record disclosing at least three prior convictions, was properly denied probation following conviction of second-degree burglary. People v. Collier (App. 1 Dist. 1979) 153 Cal.Rptr. 664, 90 Cal.App.3d 658. Sentencing And Punishment 1872(2)

Where it was defendant's prior conviction of a felony which made his possession of a concealable firearm criminal, whereas such possession would not have been criminal had it been by one who was not a felon, minimum sentence imposed upon defendant could not be increased on basis of the prior conviction which was indispensable to the possession conviction, but the single prior felony conviction could be considered by the trial court as to the grant or denial of probation. People v. Perry (App. 4 Dist. 1974) 116 Cal.Rptr. 853, 42 Cal.App.3d 451. Sentencing And Punishment 1872(1); Weapons 17(8)

Trial court did not abuse its discretion in denying probation on consideration of defendant's prior felony record, although some prior convictions were found constitutionally infirm. People v. Bryan (App. 2 Dist. 1970) 83 Cal.Rptr. 291, 3 Cal.App.3d 327. Sentencing And Punishment 1872(2)

Where at time of petitioner's conviction this section absolutely precluded granting probation if a defendant suffered two prior felony convictions, upon later finding that one of petitioner's two prior convictions was invalid, petitioner was entitled to have case transferred to sentencing court for completely new and unbiased evaluation of his application for probation based upon all of facts in case, including fact of single prior felony conviction. In re Huddleston (1969) 80 Cal.Rptr. 595, 71 Cal.2d 1031, 458 P.2d 507. Sentencing And Punishment 1923

On question of probation, court has authority to consider prior record of defendant. People v. Plummer (App. 4 Dist. 1963) 35 Cal.Rptr. 53, 222 Cal.App.2d 280. Sentencing And Punishment 1872(1)

Refusal to grant request for probation officer's report by defendant who had been convicted of four prior felonies

was not an abuse of discretion, where judge indicated that reason for denial was the number of prior convictions. People v. Barboza (App. 2 Dist. 1963) 28 Cal.Rptr. 805, 213 Cal.App.2d 441. Sentencing And Punishment 277

Conviction, for which defendant was under commitment to state prison when he escaped, was a "previous conviction" within this section providing that probation shall not be granted to any defendant who has been convicted of escape from a state prison, unless court shall be satisfied that defendant has not been previously convicted of a felony. People v. Brown (App. 1959) 172 Cal.App.2d 30, 342 P.2d 410. Sentencing And Punishment 1872(2)

Where defendant had a prior felony conviction and the probate report disclosed a record of other offenses, probation was properly denied on his conviction of forgery. People v. Duke (App. 1958) 164 Cal.App.2d 197, 330 P.2d 239. Sentencing And Punishment 1872(2)

Where defendant convicted of grand larceny had two prior felony convictions so that court could not grant probation, and state prison term was called for and once having determined upon the state prison sentence, trial court had no voice in fixing the term, precise sentence being fixed by adult authority under § 3020 (repealed), trial court did not abuse its discretion in making state prison sentence commence at termination of county jail sentence for vagrancy notwithstanding court's statement that in passing sentence, court would take into consideration fact that in court's opinion defendant committed willful perjury on the stand. People v. Mims (App. 1958) 160 Cal.App.2d 589, 325 P.2d 234. Sentencing And Punishment 630

It is not necessary that prior convictions be charged in indictment or information in order that court may consider them in applying provisions of this section rendering defendant ineligible for probation if he has been previously convicted of a felony. People v. Tell (App. 1 Dist. 1954) 126 Cal.App.2d 208, 271 P.2d 568. Sentencing And Punishment 1872(2)

Under this section, defendant pleading guilty to charge of escape from a prison forestry camp was erroneously placed on probation. People v. Superior Court in and for Marin County (App. 1 Dist. 1953) 118 Cal.App.2d 700, 258 P.2d 1087.

Judgment of municipal court sentencing defendant for 90 days for a misdemeanor followed by order suspending sentence and placing defendant on probation upon condition that she spend first 30 days in county jail did not constitute a judgment and sentence, nor the serving of 30 days thereunder constitute the serving of term in a penal institution so as to justify imposition of increased penalty on subsequent conviction for misdemeanor on ground that defendant had suffered a prior conviction. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1251; Sentencing And Punishment 1324

Accused, who pleaded guilty to petit larceny and to charge that prior to date on which petit larceny was committed he had been convicted of a felony and served term therefor in penal institution was ineligible for probation. People v. Superior Court in and for Los Angeles County (App. 2 Dist. 1934) 136 Cal.App. 541, 28 P.2d 1076. Sentencing And Punishment 1856; Sentencing And Punishment 1872(2)

"Conviction" of felony which prevents granting of probation in subsequent case is legal proceeding of record which ascertains guilt of party upon which sentence or judgment is founded and includes plea of guilty. People v. Acosta (App. 1931) 115 Cal.App. 103, 1 P.2d 43. Sentencing And Punishment 1872(2)

56. ---- Admissions of accused, prior convictions

Use of defendant's statements to his probation officer which were contained in probation department report to

establish that defendant had been convicted of prior residential burglary for purpose of sentence enhancement did not violate defendant's privilege against self-incrimination and did not violate due process, absent evidence that probation officer threatened defendant with unfavorable recommendation if he refused to discuss facts of offense or that defendant's attached handwritten note was demanded by probation officer, and in light of opportunities to dispute statements. People v. Goodner (App. 6 Dist. 1992) 9 Cal.Rptr.2d 543, 7 Cal.App.4th 1324, review denied. Constitutional Law 4706; Criminal Law 393(1); Sentencing And Punishment 1379(1)

Before accepting admission of prior convictions, court is not required to advise defendant as to the effect of the priors upon eligibility for probation. People v. James (App. 3 Dist. 1978) 151 Cal.Rptr. 354, 88 Cal.App.3d 150. Sentencing And Punishment 1372

Defendant who pled guilty to assault with deadly weapon and admitted three prior felony convictions and who was unconditionally denied probation by trial judge was not entitled to probation under any construction of this section which requires concurrence of district attorney in decision to grant probation and was not entitled to challenge constitutionality of this section. People v. Williams (App. 4 Dist. 1966) 55 Cal.Rptr. 434, 247 Cal.App.2d 169. Constitutional Law 700

Two prior felony convictions admitted by defendant rendered him ineligible for probation thereby excluding him from operation of mentally disordered sex offended law, even though trial court ordered a probation report. People v. Failla (1966) 51 Cal.Rptr. 103, 64 Cal.2d 560, 414 P.2d 39. Sentencing And Punishment 1872(2); Mental Health 454

In view of fact that defendant had continuous record of violation of law dating back 20 years, and court found to be true by defendant's own admission the four prior convictions which had been alleged against him, refusal to grant probation was not improper. People v. Johnson (App. 2 Dist. 1965) 45 Cal.Rptr. 619, 236 Cal.App.2d 62, certiorari denied 87 S.Ct. 147, 385 U.S. 873, 17 L.Ed.2d 101. Sentencing And Punishment 1872(1)

Failure of trial court to rule on motion for probation of defendant who had admitted two prior felony convictions did not deprive defendant of a substantial right, where defendant's admission of two prior felony convictions established his ineligibility for parole. People v. Perry (App. 1 Dist. 1964) 40 Cal.Rptr. 829, 230 Cal.App.2d 258. Sentencing And Punishment 1872(1)

Admissions of defendant of truth of allegations of prior convictions will support judgment that he is a habitual criminal, and necessarily establish truth of facts alleged which are relevant to eligibility for probation. People v. Suggs (App. 1956) 142 Cal.App.2d 142, 297 P.2d 1039. Sentencing And Punishment 1873

Where defendant was convicted of issuing a check with intent to defraud, and admitted three prior convictions, probation was properly denied. People v. Middleworth (App. 1951) 104 Cal.App.2d 782, 232 P.2d 549. Sentencing And Punishment 1851; Sentencing And Punishment 1872(2)

57. ---- Armed offenses, prior convictions

Under this section prohibiting probation for defendant previously convicted of felony, if at time of prior offense or at time of arrest for prior offense he was armed with deadly weapon, unless at time he had lawful right to carry it, judgment of conviction for robbery in first degree would be modified to provide that defendant was armed within meaning of this section, and to specify nature of weapon. People v. Morrow (App. 2 Dist. 1969) 81 Cal.Rptr. 201, 276 Cal.App.2d 700. Criminal Law 1184(2)

Finding contained in judgment for robbery and assault with intent to murder that defendant was armed as alleged

should be modified to provide that, at time of commission of crimes, §§ 3024 (repealed) and 12022 providing for minimum sentence for person armed with deadly weapon and for additional punishment for person armed with firearm capable of being concealed were inapplicable, but judgment should recite that defendant was armed within this section prohibiting probation if defendant previously convicted of felony was armed at time of prior offense. People v. Levine (App. 2 Dist. 1969) 80 Cal.Rptr. 731, 276 Cal.App.2d 206. Criminal Law 1184(2)

Court could not grant probation to defendant, who pleaded guilty to charge of grand theft, when defendant had previously been convicted of robbery in the first degree while armed with a deadly weapon. People v. Alberts (App. 4 Dist. 1961) 17 Cal.Rptr. 48, 197 Cal.App.2d 108. Sentencing And Punishment 1872(3)

Defendant who had been found guilty by jury of having been armed at the time he committed a robbery was not entitled to a probation hearing. People v. Branch (App. 1954) 127 Cal.App.2d 438, 274 P.2d 31. Sentencing And Punishment 1861

58. ---- Foreign jurisdictions, prior convictions

Prior Texas conviction of theft of property having value of $50 and over could not be considered as prior felony under this section foreclosing probation except on finding of unusual circumstances and consent of district attorney. People v. Fry (App. 4 Dist. 1969) 76 Cal.Rptr. 718, 271 Cal.App.2d 350. Sentencing And Punishment 1872(3)

Provision of this section prohibiting probation where defendant has been twice convicted of a felony is not to be extended to include conviction of offenses in other jurisdictions which do not include all the elements of some felony known to California law. People v. Christenbery (App. 1959) 167 Cal.App.2d 751, 334 P.2d 978. Sentencing And Punishment 1872(2)

Where defendant had been convicted of grand theft and at trial thereof had admitted previous conviction of felony in California and had testified that he had been convicted in a federal court of interstate transportation of stolen securities, crime of interstate transportation of stolen securities would not have been a felony if committed in California and was not an offense similar to crime of receiving property knowing it to be stolen and transporting it into California and therefore defendant had not been convicted of two previous felonies and was entitled to probation. People v. Christenbery (App. 1959) 167 Cal.App.2d 751, 334 P.2d 978. Sentencing And Punishment 1872(3)

Where no evidence showed that defendant was offered any inducement to plead guilty of issuing a check without sufficient funds, trial court did not abuse its discretion in refusing to set aside plea although defendant mistakenly believed he would be eligible for probation where he had been pardoned after prior conviction in Wisconsin. People v. Dutton (App. 2 Dist. 1938) 27 Cal.App.2d 364, 80 P.2d 1003. Criminal Law 274(4)

A defendant who had been pardoned after conviction of a felony in Wisconsin, had sustained a "prior conviction" within statutes requiring the imposition on a defendant who has sustained a prior conviction of a punishment heavier than that prescribed for a first offender and rendering such defendant ineligible for probation. People v. Dutton (1937) 9 Cal.2d 505, 71 P.2d 218, appeal dismissed 58 S.Ct. 365, 302 U.S. 656, 82 L.Ed. 508. Sentencing And Punishment 1342

A defendant whose punishment was increased because of a prior conviction of a felony in Wisconsin notwithstanding defendant had been pardoned for Wisconsin offense was not denied equal protection of the laws. People v. Dutton (1937) 9 Cal.2d 505, 71 P.2d 218, appeal dismissed 58 S.Ct. 365, 302 U.S. 656, 82 L.Ed. 508. Constitutional Law 3820; Constitutional Law 3808

59. ---- Time, prior convictions

Under this section which relates to probation and which requires that persons seeking probation have not "been previously convicted of a felony", quoted phrase refers to time of commission of offense on which probation is sought, not time when court is passing upon application for probation. In re Pfeiffer (App. 1 Dist. 1968) 70 Cal.Rptr. 831, 264 Cal.App.2d 470. Sentencing And Punishment 1872(2)

Court could grant probation on manslaughter charge, although after commission thereof defendant was convicted of another offense committed prior to manslaughter. People v. Superior Court of Imperial County (1930) 208 Cal. 688, 284 P. 449. Sentencing And Punishment 1872(1)

60. ---- Correction of record, prior convictions

The erroneous finding of prior felony conviction of accused whom trial court found guilty of robbery in first degree because an accomplice was armed with deadly weapon brought accused within limitation of this section on granting of probation and might have influenced trial court to deny his application for probation, and habeas corpus was a proper remedy to secure reconsideration of application for probation upon a corrected record. In re Hernandez (1966) 51 Cal.Rptr. 915, 64 Cal.2d 850, 415 P.2d 803. Habeas Corpus 506

Where case case was sent back for reconsideration of probation and sentence, a new probation report would be required, and if the new report disclosed that any error had been made in the finding relative to the allegation of prior convictions, the trial court would have the power, on proper application, to correct it at the new hearing. People v. Williams (App. 2 Dist. 1963) 35 Cal.Rptr. 805, 223 Cal.App.2d 676. Criminal Law 1181.5(9)

61. ---- Dismissal, prior convictions

Prior convictions, if proved, would render defendant ineligible for probation, though they had been dismissed from information. People v. Tempelis (App. 1 Dist. 1964) 41 Cal.Rptr. 253, 230 Cal.App.2d 596. Sentencing And Punishment 1872(1)

Defendant's conviction for a violation of § 288, punished by two months in county jail, and subsequently set aside with the information dismissed and defendant released from all penalties and disabilities, was nevertheless a prior felony within this section prohibiting probation to anyone guilty of violation of § 288 who has previously been convicted of a felony, and § 17 defining felonies and misdemeanors was not applicable. People v. Walters (App. 1 Dist. 1961) 11 Cal.Rptr. 597, 190 Cal.App.2d 98. Sentencing And Punishment 1872(3)

The vacation of an order admitting a defendant to probation was proper where, although defendant was not charged with a prior conviction of a felony, trial court, in passing on application for probation, had before it the record of defendant's prior conviction for burglary showing that defendant had been placed on probation, probation had terminated, and proceedings had been dismissed. People v. Leach (App. 2 Dist. 1937) 22 Cal.App.2d 525, 71 P.2d 594. Sentencing And Punishment 2005

Where defendant pleaded guilty to violation of vehicle act and was granted probation, and later action was dismissed, he could not be granted probation after subsequent conviction for possession still. People v. Acosta (App. 1931) 115 Cal.App. 103, 1 P.2d 43. Sentencing And Punishment 1872(3)

Withdrawal of defendant's plea of guilty and dismissal of charge after conviction of felony, if shown by defendant's probation, did not prevent consideration of conviction in subsequent prosecution. People v. Rosencrantz (App. 1 Dist. 1928) 95 Cal.App. 92, 272 P. 786. Sentencing And Punishment 1344

62. ---- Pardons, prior convictions

That a defendant who had been pardoned for commission of a felony had urged his innocence of the crime charged as ground for pardon in his application therefor did not establish his innocence as to prior conviction. People v. Dutton (1937) 9 Cal.2d 505, 71 P.2d 218, appeal dismissed 58 S.Ct. 365, 302 U.S. 656, 82 L.Ed. 508. Sentencing And Punishment 1342

63. Character of crime

Shocking character of defendant's crime is factor which court may consider in either considering probation or youth authority reference. People v. Hutson (App. 3 Dist. 1963) 34 Cal.Rptr. 790, 221 Cal.App.2d 751. Sentencing And Punishment 1938; Infants 69(7)

64. Minors

A juvenile court enjoys broad discretion to fashion conditions of probation for the purpose of rehabilitation and may even impose a condition of probation that would be unconstitutional or otherwise improper so long as it is tailored to specifically meet the needs of the juvenile. In re Pedro M. (App. 2 Dist. 2000) 96 Cal.Rptr.2d 839, 81 Cal.App.4th 550, rehearing denied , review denied. Infants 225

Even though court struck juvenile references from probation officer's report it was not required to do so and its action in striking references could only rebound to benefit of defendant, who in talking to probation officer confirmed that he had been placed on probation for juvenile arrest and also gave circumstances of the incident, and such could not be used to predicate error in sentencing, i.e., that probation report referred to a juvenile arrest for which disposition was unknown. People v. Jourdain (App. 2 Dist. 1980) 168 Cal.Rptr. 702, 111 Cal.App.3d 396. Sentencing And Punishment 298

Superior Court, acting as juvenile court, had no jurisdiction to grant probation in case where minor made assault on another. In re Hulbert (App. 3 Dist. 1932) 123 Cal.App. 362, 11 P.2d 50. Infants 225

No authority is invested in juvenile court to place minor on probation. In re Hulbert (App. 3 Dist. 1932) 123 Cal.App. 362, 11 P.2d 50. Infants 225

Where prisoner on application for probation stated for first time that he was 17 years old, superior court had jurisdiction to deny probation and enter the judgment of imprisonment in state prison, and St.1911, p. 658, providing for the certifying of cases against parties under the age of 18 years to the juvenile court, did not require any other course than that pursued. Ex parte Tom (App. 1911) 17 Cal.App. 678, 121 P. 294.

65. Public officials

Defendant's respected career in law enforcement could not be used as basis to avoid presumptive ineligibility for probation. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1888

Defendant could not claim statutory ambiguity in his use of public funds as sheriff to overcome limitation on probation for embezzlement offense, where jury rejected his claims of proper use or confusion. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1856

In prosecution for embezzlement by public officer, trial court's instruction that it was authorized to mitigate punishment in its discretion if defendant had voluntarily and actually restored or tendered restoration of the property embezzled even though such fact was not a ground of defense, was error but the giving of such instruction did not result in a miscarriage of justice in view of conclusive evidence against defendant. People v. Marquis (App. 1957) 153 Cal.App.2d 553, 315 P.2d 57. Criminal Law 796; Criminal Law 1172.1(2)

Clerk of the Roseville Judicial District Court was a "public official" within this section. Bennett v. Superior Court of Placer County (App. 1955) 131 Cal.App.2d 841, 281 P.2d 285.

Even though public official had been charged only with crime of falsification of public records, if it appeared in fact that she had also embezzled public funds, she was thereby precluded from obtaining probation, in view of this section. Bennett v. Superior Court of Placer County (App. 1955) 131 Cal.App.2d 841, 281 P.2d 285. Sentencing And Punishment 1856

Auditor in charge of district audit office of department of employment, whose position was created by director of department under general power delegated to him by legislature and was subordinate to four other positions in department and whose duties were limited to routine investigations, audits and clerical matters, except as to filing criminal complaints against employers, which must first be approved by central office, was not required or authorized to exercise a part of sovereign power of the state and he was an "employee" and not a "public official" within meaning of this section. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1856

Auditor in charge of district audit office of department of employment, being an employee and not a public official, was eligible for probation, though he had pleaded guilty to charge of embezzlement of public money, and he was entitled to have his application for probation determined upon its merits. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1856

In absence of controlling statutory or other adequate definition of the term "public official" as used in this section providing that probation should not be granted to any such official who embezzles public money, an interpretation should be adopted in doubtful cases, which will accord defendant the right to apply for probation. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1827

Whether a defendant is a public official within meaning of this section depends upon the circumstances of each particular case, particularly the circumstances with reference to the manner in which the position was created, the power granted and exercised, and the duties and functions performed. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Sentencing And Punishment 1856

Where trial judge denied defendant state employees' probation after their convictions on charge of conspiracy to embezzle public monies because of their conviction of the substantive offense of embezzlement of public funds and not because of conspiracy conviction, whether this section prohibited granting of probation to governmental employees convicted of a conspiracy charge was immaterial. People v. Hess (App. 1951) 104 Cal.App.2d 642, 234 P.2d 65, appeal dismissed 72 S.Ct. 177, 342 U.S. 880, 96 L.Ed. 661. Sentencing And Punishment 1845

66. Sex offenders

In sentencing hearing following defendant's return from state hospital where he spent approximately 20 months under commitment as mentally disordered sex offender, trial court did not abuse its discretion in finding that it was

not an unusual case in which interests of justice would best have been served by granting probation. People v. Cruz (App. 4 Dist. 1985) 211 Cal.Rptr. 512, 165 Cal.App.3d 648, review denied. Sentencing And Punishment 1877

In order for court to make finding that defendant is "ineligible" rather than "unsuitable" for treatment as mentally disordered sex offender, prior felony must be pled and proved; defendant's commitment to state prison was therefore required to be set aside where his prior felony offense, relied on by trial court in its conclusion that defendant was ineligible for MDSO treatment, was never alleged by prosecution but came out in defendant's own testimony. People v. Huffman (App. 4 Dist. 1977) 139 Cal.Rptr. 264, 71 Cal.App.3d 63. Mental Health 457

Where commitment hearing on question of whether defendant was probable mentally disordered sex offender was fatally defective, order granting probation would be reversed, and cause would be remanded with directions to reconsider matter of probation and, as to term of any probation granted, to allow defendant full credit for time served by him under invalid commitment orders, and thereafter to issue an order in conformity with its determination. People v. Harvath (App. 2 Dist. 1969) 82 Cal.Rptr. 48, 1 Cal.App.3d 521. Criminal Law 1181.5(8); Sentencing And Punishment 1163

Where defendant charged with having committed lewd and lascivious acts upon a child admitted to three prior convictions and was, therefore, ineligible for probation unless trial judge and District Attorney took affirmative action to grant probation and no such action was taken, trial court did not commit error by not instituting proceedings under Mentally Disordered Sex Offender Act (Welfare & Institutions Code former § 6300 et seq). People v. Cox (App. 2 Dist. 1968) 66 Cal.Rptr. 576, 259 Cal.App.2d 653. Mental Health 455

When trial court must decide whether to invoke special exception to this section providing that Mentally Disordered Sex Offender Act is not applicable to one ineligible for probation, trial court may invoke § 288.1 providing for psychiatric examination of any person convicted of committing any lewd or lascivious act upon a child under age of 14 years. People v. Cox (App. 2 Dist. 1968) 66 Cal.Rptr. 576, 259 Cal.App.2d 653. Mental Health 434

Though probation officer had already made report for proceeding to determine whether defendant, on trial for violations of §§ 288, 288a was mentally disordered sex offender who would not respond to care and treatment in hospital and declined at proceeding for probation to make any additions to report, the officer in his report for probation proceeding was required to make recommendation as to whether probation should be granted or denied, trial judge had duty to read it, and the former report was not sufficient on defendant's application for probation if defendant was not ineligible for probation. People v. McGill (App. 4 Dist. 1968) 65 Cal.Rptr. 482, 257 Cal.App.2d 759. Sentencing And Punishment 290

Court lacked authority to conduct mentally disordered sex offender proceedings for defendant charged with having committed lewd and lascivious acts upon a child where defendant admitted on cross-examination that he had previously been convicted of the felony of assault with a deadly weapon, and probation report also stated that he was convicted of that offense and was committed to prison. People v. Foster (1967) 63 Cal.Rptr. 288, 67 Cal.2d 604, 432 P.2d 976. Mental Health 455

Where there was issue of whether defendant who had been convicted of lewd and lascivious acts was subject to mental examination under Welf. & Inst.C. § 5500 et seq. (repealed) because of prior conviction in which defendant was not represented by counsel, judgment of conviction would be vacated and cause remanded for determination of whether defendant had intelligently waived counsel in trial that resulted in prior conviction. People v. Garn (App. 2 Dist. 1966) 54 Cal.Rptr. 867, 246 Cal.App.2d 482. Criminal Law 1181.5(9)

In prosecution for committing lewd and lascivious acts on bodies of two females under age of fourteen years wherein two doctors were appointed to examine defendant and one of doctors reported that defendant was not only a sexual psychopath but a menace to health and safety of others, trial court did not abuse its discretion in denying

defendant's application for probation. People v. Roberson (App. 1959) 167 Cal.App.2d 542, 334 P.2d 578. Sentencing And Punishment 1877

Where defendant, who pleaded guilty to misconduct with a five-year-old girl, was adjudged a sexual psychopath and was committed to state hospital, and after a year and a half in the hospital, he was returned to court and was granted probation, and thereafter defendant again misconducted himself with children, court had right to terminate probation and to pronounce judgment, and was not required to commit defendant again to a mental hospital under the sexual psychopathy law. People v. Wells (App. 2 Dist. 1952) 112 Cal.App.2d 672, 246 P.2d 1023. Mental Health 466

67. Moral turpitude

The trial court's action in setting aside verdict of conviction and dismissing prosecution after discharging convict from probation mitigates his punishment by restoring certain rights and removing certain disabilities, but does not obliterate the fact that he was finally adjudged guilty of crime, so that state board of medical examiners is not precluded from suspending license of physician convicted of crime involving moral turpitude and discharged from probation, with such accompanying statutory relief, whether before or after such disciplinary order. Meyer v. Board of Medical Examiners (1949) 34 Cal.2d 62, 206 P.2d 1085. Criminal Law 1664; Health 207

Attorney, convicted of felony involving moral turpitude, but placed on probation, should be suspended pending further action in criminal case. In re Jacobsen (1927) 202 Cal. 289, 260 P. 294. Attorney And Client 39

68. Narcotics, generally

In considering defendant's application for probation, trial court's reliance on statements in probation report concerning street value of marijuana found in defendant's possession which statements were not supported by any testimony or other evidence, did not constitute abuse of trial court's discretion, in absence of challenge to such statement by defendant. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment 283

In exercising its discretion with respect to probation of defendant convicted of narcotics violation, court should consider all attendant facts and circumstances as disclosed by evidence and probation officer's report; this includes defendant's prior record, his attitude toward narcotics, and whether he has been deceitful with probation officer. People v. Podesto (App. 5 Dist. 1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708. Sentencing And Punishment 1870

Where defendant's conviction for possession of heroin for sale could not be sustained and was required to be modified to conviction for simple possession and court, in denying probation, had relied significantly upon fact that defendant stood before bench convicted of possession "for sale," defendant was entitled to a new probation hearing wherein court could make new judgment relative to his fitness for probation in light of crime for which he stood convicted. People v. Ruiz (1975) 120 Cal.Rptr. 872, 14 Cal.3d 163, 534 P.2d 712. Sentencing And Punishment 1923

Unauthorized imposition of county jail sentence for possession of marijuana where sentence to state prison was required did not have effect of reducing offense to that of misdemeanor and conviction was a "felony offense" rendering defendant ineligible for probation upon subsequent conviction for possession of marijuana. People v. Sproul (App. 2 Dist. 1969) 83 Cal.Rptr. 55, 3 Cal.App.3d 154. Sentencing And Punishment 1872(3)

Record showing defendant's police record, her attitude towards narcotics and narcotic users and her general attitude justified, even compelled, that she neither be given probation nor be committed under narcotics addict rehabilitation

program. People v. Lockwood (App. 3 Dist. 1967) 61 Cal.Rptr. 131, 253 Cal.App.2d 75. Chemical Dependents 12

Persons previously convicted of any narcotics offense are not entitled to probation upon subsequent conviction but granting of probation on first narcotics offense is discretionary with court. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1871; Sentencing And Punishment 1872(3)

Simultaneous conviction of sale of narcotics in two proceedings did not constitute "previous conviction" within Health & S.C. § 11715.6 (repealed; see, now, Health & S.C. § 11370) denying probation to persons previously convicted of any narcotics offense, and where offenses of which defendant was convicted were his first narcotic offenses, court had authority to grant probation. People v. Atwood (App. 1 Dist. 1963) 34 Cal.Rptr. 361, 221 Cal.App.2d 216. Sentencing And Punishment 1872(3); Sentencing And Punishment 1871

Defendant who had pleaded guilty to charge of possession of marijuana was not entitled to probation report limited to facts of particular offense to which plea had been entered, and report properly brought out narcotic activities of codefendant in whose house defendant had lived for some months. People v. Overton (App. 2 Dist. 1961) 11 Cal.Rptr. 885, 190 Cal.App.2d 369. Sentencing And Punishment 288

Where probation officer's report reflected that defendant had been unemployed for 11 years and had been receiving state aid during that time, and that defendant had no other source of income, fact that trial court advised counsel for defendant that "he didn't have much regard for people who used state money to buy narcotics" did not support defendant's contention that in deciding to deny probation upon conviction of sale of heroin, court considered and was influenced by information concerning defendant obtained from sources other than probation officer's report. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 1897

Under this section prohibiting the granting of probation by trial court to any person convicted of violating certain named sections of the narcotic laws or committing any offense referred to in those sections on a second or subsequent conviction of section enlarging punishment for prior offenders, phrase in this section prohibiting the granting of probation under the named section "or on a second or subsequent conviction of [Health & S.C.] section 11712 [repealed; see, now, Health & S.C. §§ 11350, 11357]" was intended to read "or on a second or subsequent conviction of any crimes mentioned in section 11712 [repealed] or of committing any offense referred to in such section" and under such construction court is authorized to deny probation to person convicted for first time of having had possession of a narcotic. People v. Villegas (App. 2 Dist. 1952) 110 Cal.App.2d 354, 242 P.2d 657. Sentencing And Punishment 1827

69. Petit theft

Petit theft is offense conferring discretion on trial court as to extent of punishment within probation statute. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1856

70. Unusual cases

Previous course of good conduct and good standing in community is not reasonably related to decision of whether offense is unusual case where interests of justice would be best served by granting probation. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Sentencing And Punishment 1888

Trial court's express finding that defendant's case was not unusual and that he was, for that reason, not entitled to probation was only finding required before trial court could deny probation to defendant, who had been found guilty of involuntary manslaughter as result of firing weapon in crowded dance hall. People v. Cazares (App. 5 Dist. 1987) 235 Cal.Rptr. 604, 190 Cal.App.3d 833, review denied. Sentencing And Punishment 1911

Trial court was not required to set forth reasons for complying with this section requiring that defendant, who used deadly weapon in perpetrating crime and inflicted great bodily injury on his victim, be incarcerated, rather than be granted probation, where court was unable to find unusual circumstances which would militate court's grant of probation. People v. Lesnick (App. 1 Dist. 1987) 234 Cal.Rptr. 491, 189 Cal.App.3d 637, review denied. Sentencing And Punishment 372

Where sentencing court, after considering all of circumstances, statutory requirements and probation criteria detailed by court rules, could reasonably conclude that granting probation to defendant would unduly deprecate seriousness of offenses as to seven victims held hostage for four and one-quarter hours, that confinement was necessary to protect public, and that defendant could best be rehabilitated through imprisonment, defendant had not met his burden of showing abuse of discretion in denial of his request for probation on kidnapping for robbery conviction as an "unusual" case under subd. (e) of this section, notwithstanding that defendant's parents, friends and neighbors, in person and by numerous letters, asked sentencing court to grant probation and defense psychiatrist opined that it was "very unlikely" that defendant would ever repeat serious criminal behavior. People v. Axtell (App. 1 Dist. 1981) 173 Cal.Rptr. 360, 118 Cal.App.3d 246. Sentencing And Punishment 1855

Where discretion to grant probation was limited in case by provisions of this section then in effect that except in unusual cases, probation was not to be granted to any person who had been previously convicted of a felony, and where defendant had not only suffered a previous conviction for a felony, but had failed to challenge accuracy of any of the factual matters contained in his criminal record, interests of justice did not require that trial court depart from mandates of this section nor warrant conclusion that trial court abused its discretion in denying application for probation. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Sentencing And Punishment 1872(2)

Defendant, who was convicted of murder in the first degree, with finding that he was armed during commission thereof, and who made no showing or argument that his case was "unusual," was not eligible for probation. People v. Chi Ko Wong (1976) 135 Cal.Rptr. 392, 18 Cal.3d 698, 557 P.2d 976. Sentencing And Punishment 1853

Ruling that case of defendant was not an unusual one which in the interests of justice required that probation be granted did not constitute an abuse of discretion, where marriage of defendant, who pleaded guilty to child molesting, had failed to modify his previous criminal behavior since he committed the instant offense after he was married, and where defendant had previously been committed to state hospital and had not cooperated with physicians there. People v. Wilson (App. 2 Dist. 1973) 110 Cal.Rptr. 104, 34 Cal.App.3d 524. Sentencing And Punishment 1885; Sentencing And Punishment 1888

Where deputy district attorney advised court that his office would not consent to probation even if referral for diagnostic study would result in favorable recommendation and court stated that under the circumstances such a referral was useless but those proceedings took place prior to Supreme Court decision [People v. Tenorio (1971) 89 Cal.Rptr. 249, 473 P.2d 993, 3 Cal.3d 89] which was interpreted as nullifying necessity of district attorney's concurrence in "unusual" cases and that rule was fully retroactive case would be remanded for court to exercise its independent judicial discretion as to defendant's eligibility for probation. People v. Traylor (App. 2 Dist. 1972) 100 Cal.Rptr. 116, 23 Cal.App.3d 323. Criminal Law 1181.5(8)

Record showing that trial court was made aware by defense counsel, before court pronounced judgment, of this section allowing court, in unusual cases, to grant probation with concurrence of district attorney in matters in which

probation would otherwise be unavailable refuted contention that trial court's remarks prior to sentencing demonstrated that trial court erroneously believed he was without power to grant probation and therefore failed to exercise judicial discretion in sentencing defendant. People v. Nero (App. 4 Dist. 1971) 97 Cal.Rptr. 145, 19 Cal.App.3d 904. Sentencing And Punishment 1890

Defendant convicted of robbery with deadly weapon was not eligible for probation, absent showing that case was of such unusual character that interests of justice demanded departure from declared policy of legislature. People v. Bryan (App. 2 Dist. 1970) 83 Cal.Rptr. 291, 3 Cal.App.3d 327. Sentencing And Punishment 1861

Where trial judge's refusal to grant probation to defendant convicted of robbery was based on his determination that case was not an "unusual one," within this section requiring that robbery case be found to be unusual to grant probation and was not based on judge's erroneous view that concurrence of district attorney was necessary to grant probation, error was harmless. People v. Hogan (1969) 80 Cal.Rptr. 28, 71 Cal.2d 888, 457 P.2d 868. Criminal Law 1177

Defendant who had twice previously been convicted of felony was ineligible for probation unless judge affirmatively found that defendant's case was unusual one in which interests of justice would best be served by probation, and unless district attorney concurred. People v. Brown (App. 2 Dist. 1968) 67 Cal.Rptr. 238, 260 Cal.App.2d 434. Sentencing And Punishment 1872(2); Sentencing And Punishment 1886

Paragraph of this section which specifies criminal offenders to whom probation cannot be granted under any circumstances is not affected by subsequently enacted paragraph which permits granting of probation to specified offenders in unusual cases. People v. Perry (App. 1 Dist. 1964) 40 Cal.Rptr. 829, 230 Cal.App.2d 258. Sentencing And Punishment 1827

Court had no discretion to award probation to defendant convicted of robbery while armed, where after having considered probation report, transcript of testimony of the preliminary hearing, and having considered defendant's past record, court determined that defendant's case was not unusual, and fact that after court impliedly found defendant's case was not "unusual" within meaning of this section, pertaining to probation, judge stated he had not read where defendant could be sent to county jail, did not establish that court based denial of probation on an erroneous view of the probation law. People v. Jones (App. 2 Dist. 1962) 21 Cal.Rptr. 290, 203 Cal.App.2d 228. Sentencing And Punishment 1861

Under provision of this section, expressing legislative policy that judge shall not grant probation to persons convicted of enumerated crimes except in unusual cases, court is permitted to grant probation in exercise of its discretion. People v. Orrante (App. 1 Dist. 1962) 20 Cal.Rptr. 480, 201 Cal.App.2d 553. Sentencing And Punishment 1823

Where trial court erroneously believed that denial of probation was mandatory to defendant pleading guilty to second degree robbery on ground that defendant was armed with a deadly weapon, but if it were an "unusual" case in which the interest of justice demanded departure from general policy, court had duty to entertain the defendant's application and discretionary power to grant probation, the judgment would be reversed with directions to rearraign the defendant for judgment and sentence him in accordance with law, and to determine on its merits the defendant's application for probation. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Criminal Law 1188

71. Multiple counts

On conviction under information charging only single offense of conspiracy, though in two counts, court could not grant probation and at same time sentence defendant to imprisonment. People v. Marks (1927) 257 P. 92, 83

Cal.App. 370; Ex parte Nichols (1927) 255 P. 244, 82 Cal.App. 73.

Where court, after conviction under two counts charging only single offense, granted probation, and at same time sentenced defendant, result was as though no judgment had been rendered. People v. Marks (1927) 257 P. 92, 83 Cal.App. 370; Ex parte Nichols (1927) 255 P. 244, 82 Cal.App. 73.

Where defendant charged with three counts of robbery pled guilty to first count, which alleged only robbery, as result of plea bargain, both People and defendant stipulated that offense pled guilty to was second-degree robbery, and counts two and three, alleging defendant was armed with deadly weapon at time he committed robberies, were dismissed upon motion of the People pursuant to the plea bargain, express finding in judgment of conviction that defendant was armed with a firearm at time of offense was improper and should have been stricken from judgment. People v. Rebeles (App. 4 Dist. 1971) 94 Cal.Rptr. 463, 16 Cal.App.3d 952. Criminal Law 995(2)

Where court, on conviction of what was single charge of conspiracy in two counts, granted probation to defendant and at same time sentenced her to term of imprisonment in state prison, defendant was not entitled to be released because of error. In re Nichols (App. 2 Dist. 1927) 82 Cal.App. 73, 255 P. 244.

72. Different judges

Where different judge presides at sentencing following acceptance of plea bargain, motion to disqualify judge for bias or prejudice may be timely since, although ordinarily sentencing is not a separate proceeding but is merely continuation of original action, there may be conflict of fact possibilities. Lyons v. Superior Court of Fresno County (App. 5 Dist. 1977) 140 Cal.Rptr. 826, 73 Cal.App.3d 625. Judges 51(2)

The fact that the same judge who presided at trial did not hear defendant's application for probation is not ground for reversal. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112. Criminal Law 1177

Application for probation was not necessarily required to be heard by same judge presiding in department at time plea of guilty was entered. People v. Martino (App. 4 Dist. 1931) 113 Cal.App. 661, 299 P. 86. Sentencing And Punishment 1905

73. Concurrence of district attorney

Concurrence of district attorney was not required before granting probation to defendant. People v. McManis (App. 4 Dist. 1972) 102 Cal.Rptr. 889, 26 Cal.App.3d 608. Sentencing And Punishment 1886

Where record left no doubt that court felt that concurrence of district attorney was necessary to granting of probation following conviction for rape, sentence must be reversed for purpose of resentencing, as defendant was entitled to have application for probation considered by court aware of fact that if it granted probation district attorney had no veto power. People v. Armenta (App. 2 Dist. 1972) 99 Cal.Rptr. 736, 22 Cal.App.3d 823. Criminal Law 1181.5(8)

Consent of district attorney to granting probation is only required where case falls within this section reciting numerous crimes other than robbery for commission of which no probation shall be granted and does not apply to robbery. People v. Hogan (1969) 80 Cal.Rptr. 28, 71 Cal.2d 888, 457 P.2d 868. Sentencing And Punishment 1886

Where this section permitted granting of probation to defendant convicted of violating §§ 288, 288a only in unusual cases with concurrence of district attorney, judge could not base his finding of defendant's ineligibility for probation

on fact that district attorney expressed opposition but rather had to make independent determination that the case was not an unusual one within meaning of this section. People v. McGill (App. 4 Dist. 1968) 65 Cal.Rptr. 482, 257 Cal.App.2d 759. Sentencing And Punishment 1886

Trial judge was justified in refusing to consider probation and in refusing to order report from probation department in second-degree murder conviction where district attorney was strongly opposed to probation for defendant and trial judge, who was familiar with evidence of case and details of the crime, felt that no probation should be granted. People v. Ford (App. 2 Dist. 1967) 61 Cal.Rptr. 329, 253 Cal.App.2d 390. Sentencing And Punishment 1886; Sentencing And Punishment 1853

74. Time of judgment or sentence--In general

See, also, Notes of Decisions under Penal Code §§ 1191, 1202.

A probationary proceeding is not "disposed of" within meaning of § 1191 extending time for pronouncement of judgment and sentence until probationary proceeding has been disposed of until defendant has satisfied conditions of probation and been discharged or has had his probation revoked and sentence pronounced against him. Ex parte Martin (1947) 185 P.2d 645, 82 Cal.App.2d 16; People v. Williams (1944) 151 P.2d 244, 24 Cal.2d 848.

Where, at time of pronouncement of judgment, defendant was placed on probation but the order granting probation was stayed pending appeal, upon affirmance on appeal on action of the trial court is necessary to carry the probation order into execution; the probation order automatically goes into effect as of the date the remittitur is filed. Application of Stallings (App. 2 Dist. 1970) 85 Cal.Rptr. 96, 5 Cal.App.3d 322. Criminal Law 1182

Where a convicted defendant was subject to imprisonment for not less than one year nor more than 20 years, and imposition of sentence was suspended and defendant was placed on probation for ten years, and probation was revoked and bench warrant issued because defendant violated condition of probation, trial court did not lose jurisdiction to sentence defendant upon expiration of term of probation and court could sentence defendant 14 years and five months after revocation of probation. People v. Brown (App. 1952) 111 Cal.App.2d 406, 244 P.2d 702. Sentencing And Punishment 2010

One who pleaded guilty to charge of driving a vehicle while under influence of intoxicating liquor and admitted prior conviction of receiving stolen goods was ineligible to probation, but consequent invalidity of order of probation did not render void for lack of jurisdiction subsequent sentence to prison upon revocation of probation for violation of terms thereof. Ex parte Martin (App. 3 Dist. 1947) 82 Cal.App.2d 16, 185 P.2d 645. Sentencing And Punishment 1872(3); Sentencing And Punishment 2003

Judgment pronounced during probationary period revoking probation for violation of terms thereof and sentencing probationer to imprisonment in county jail was pronounced in proper time, though period of time during which she could originally have been imprisoned for the offense had expired. People v. Schwartz (App. 2 Dist. 1947) 80 Cal.App.2d 801, 183 P.2d 59. Sentencing And Punishment 2010

Where probation is revoked there can be no final disposition of the case within § 1191 extending time for pronouncement of sentence until any probationary proceeding has been disposed of until judgment is pronounced or probationer is relieved from all penalties and disabilities under provisions of probation law. People v. Williams (1944) 24 Cal.2d 848, 151 P.2d 244. Sentencing And Punishment 377

Where court inquired after verdict of guilty whether accused desired to make application for probation, and, at time of hearing, probation was refused and sentence imposed, accused was not entitled to new trial because of delay in

imposing sentence. People v. Tufano (App. 2 Dist. 1935) 7 Cal.App.2d 561, 46 P.2d 192. Criminal Law 913(1)

Suspension of pronouncement of sentence from time to time until information could be obtained regarding prior conviction, not having been made under law providing for probation, was nullity, and subsequent imposition of sentence was not erroneous. People v. Harvey (App. 1934) 137 Cal.App. 22, 29 P.2d 787. Sentencing And Punishment 1355

Superior court had jurisdiction to sentence one pleading guilty of violating Corporate Securities Act to two years in jail after revoking his probation within five-year term thereof. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Sentencing And Punishment 2032

Pronouncement of sentence within 20 days of verdict allowed for considering question of probation was timely, although court was considering such question of its own motion. People v. Wilson (App. 2 Dist. 1929) 101 Cal.App. 376, 281 P. 700. Sentencing And Punishment 377

Defendant cannot complain because court pronounced judgment after defendant's application for probation and then stayed execution pending hearing on application. People v. Anderson (App. 2 Dist. 1929) 98 Cal.App. 40, 276 P. 401. Sentencing And Punishment 478

75. ---- Waiver, time of judgment or sentence

See, also, Notes of Decisions under Penal Code §§ 1191, 1202.

Accused waived pronouncement of judgment by making application for probation. People v. Neel (1933) 24 P.2d 230, 133 Cal.App. 332; People v. Von Eckartsberg (1933) 23 P.2d 819, 133 Cal.App. 1; People v. Noone (1933) 22 P.2d 284, 132 Cal.App. 89.

Defendant, whose attorney stated that they would waive time for sentence on conviction by court, which set date five days later for judgment and sentence and, on such date, ordered continuance at such attorney's request, until one week later, for argument on defendant's motion for new trial and application for probation, which were then denied and judgment pronounced, expressly waived benefits of § 1202 entitling defendant to new trial if judgment is not pronounced within thirty days after conviction. People v. Tenedor (App. 2 Dist. 1951) 107 Cal.App.2d 581, 237 P.2d 679. Criminal Law 913(1)

Accused by applying for probation waived right to have judgment pronounced before probation order. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P. 874. Sentencing And Punishment 1891

76. Orders--In general

When court grants probation and thereafter grants a stay of execution of the probation order, the court has the authority, upon the filing of remittitur, to vacate its previous order granting probation upon a showing that defendant's conduct while the matter was on appeal demonstrates that he is not a suitable candidate for probation supervision. Application of Stallings (App. 2 Dist. 1970) 85 Cal.Rptr. 96, 5 Cal.App.3d 322. Criminal Law 1192

It is implicit in every order granting probation that defendant refrain from associating with improper persons or engaging in criminal practices. People v. Cortez (App. 2 Dist. 1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839. Sentencing And Punishment 1966(1); Sentencing And Punishment 1971(1)

An order granting probation without imposing incarceration as a term thereof frees from jail a defendant who has been unable to post bail. People v. Doe (Super. 1959) 172 Cal.App.2d Supp. 812, 342 P.2d 533. Sentencing And Punishment 1930

An order placing defendant on probation is not a judgment and sentence, even though it includes period of detention, in county jail as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 1913

An order for probation is not final and imposes no penalties, but is an act of clemency. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 1811

Order granting probation is not a judgment. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Sentencing And Punishment 1914

77. ---- Propriety, orders

Bench warrants noting that they were to be effective in California only and following order revoking probation did not constitute a subterfuge to impose sentence of banishment and to extend period of probation beyond maximum provided by law, where one of the conditions of the defendant's probation had been that he not cross the international border and apparently court did not feel that case, at time warrants were issued, was of such nature as to require extradition in event defendant was outside state. People v. Gish (App. 4 Dist. 1964) 41 Cal.Rptr. 155, 230 Cal.App.2d 544. Sentencing And Punishment 2012

Where alien was placed on probation, pending deportation hearing, on condition that he serve one year sentence, and if not deported, that he leave United States never to return, subsequent arrest of alien for violation of probation following deportation and subsequent illegal entry, and order placing prior sentence into effect, were valid, even though the banishment was void. People v. Cortez (App. 2 Dist. 1962) 19 Cal.Rptr. 50, 199 Cal.App.2d 839. Sentencing And Punishment 2034

Provisions of § 1203 et seq. regarding probation and conditions or terms of the probation do not render an order of probation omitting conditions or terms provided for by such sections invalid or illegal because of such omission. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1920; Sentencing And Punishment 1918

Where defendant on hearing on his application for probation on burglary charge admitted two prior convictions but court nevertheless granted probation, neither the order granting nor the order revoking on violation nor subsequent judgment of conviction was void. People v. Scranton (App. 1 Dist. 1942) 50 Cal.App.2d 492, 123 P.2d 132.

Alleged "orders of probation" which consisted merely in suspension of only two days of each 180 days sentence, which were made in attempt to deprive county board of parole commissioners of authority vested to grant parole, and which were made without reference to and report from probation officer, were required to be set aside. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Sentencing And Punishment 1913

Order of municipal court granting probation of sentence was not invalid because it was inartificial in form, since no formal order was required for granting of probation. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1913

Where order erroneously discharging petitioner from county road camp was sought for and procured on theory that petitioner's detention was unlawful, order could not be sustained on theory that it was a modification of terms of

petitioner's probation. In re Tantlinger (App. 2 Dist. 1935) 8 Cal.App.2d 157, 47 P.2d 301. Habeas Corpus 791

Court's failure to direct that one whose sentence is suspended be placed under probation officer's control and supervision does not invalidate order suspending sentence. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1804

Order relating to defendant's application for probation after conviction, though not made before passing of judgment or sentence, was not improper. People v. Forbragd (App. 1932) 127 Cal.App. 768, 16 P.2d 755. Sentencing And Punishment 1891

Where probation order was combined with void order directing defendant to remain in sheriff's custody, such order was severable, making probation order valid. People v. Ramos (App. 2 Dist. 1926) 80 Cal.App. 528, 251 P. 941. Sentencing And Punishment 1913

Neither judgment of commitment nor order suspending sentence are void for failure to direct formally that prisoner be placed under supervision of probation officer. In re Young (App. 1932) 121 Cal.App. 711, 10 P.2d 154. Sentencing And Punishment 1804

78. ---- Construction, orders

An order which prohibits a probationer from carrying weapons does not subject him to patdown search for weapons by police officer at any time, and where probationer was not subject to search as condition of his probation, and officer had no basis to believe that he was, but conducted patdown because probationer told him that his probation order prohibited him from carrying weapons, patdown was illegal. People v. Grace (App. 4 Dist. 1973) 108 Cal.Rptr. 66, 32 Cal.App.3d 447. Sentencing And Punishment 1995

Probation orders are to be construed favorably to the defendants. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1913

Order of justice court suspending five months of petitioner's six months sentence for battery subject to good behavior had effect of placing petitioner on probation. Ex parte Torres (App. 1 Dist. 1948) 86 Cal.App.2d 178, 194 P.2d 593. Sentencing And Punishment 1809

Where, after verdict, judgment was pronounced that he "pay a fine in the sum of $100.00 and 90 days in the county jail and the jail sentence be suspended" and if fine was not timely paid he was to be imprisoned in county jail until fine was satisfied at two dollars per day, fine and imprisonment, notwithstanding language of order, were conditions of probation and were not judgment that defendant be imprisoned and that he pay fine and if unpaid that he serve equivalent of fine in jail, and petitioner was not entitled to release on habeas corpus. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47.

An order placing a defendant, who was convicted of a misdemeanor in police court, on probation, even though it included as a condition a period of detention in the county jail, was not a judgment and sentence, nor was the imposition of a fine as a condition of probation a judgment imposing a fine. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1931

A sentence providing for suspension thereof and placing of defendant under supervision of probation department on payment of specified sum to clerk of court had the legal effect of granting probation. Los Angeles County v. Emmie (App. 2 Dist. 1940) 42 Cal.App.2d 239, 108 P.2d 695. Sentencing And Punishment 1809

Municipal court order, suspending sentence for petit theft without time limitation, was equivalent of order granting probation for maximum period of punishment. In re Herron (1933) 217 Cal. 400, 19 P.2d 4. Sentencing And Punishment 1809

79. ---- Modification or extension, orders

See, also, Notes of Decisions under Penal Code § 1203.1.

Where defendant was serving his probation, proper remedy to correct any misunderstanding on part of trial court as to defendant's conduct at time of arrest and on which trial court relied in imposing more severe conditions of probation than for a codefendant was by motion to modify probation; trial court was under no duty to act favorably on such motion even if trial court was mistaken. People v. Carnesi (App. 2 Dist. 1971) 94 Cal.Rptr. 555, 16 Cal.App.3d 863. Sentencing And Punishment 1923

Modification of probation order entered on condition that defendant not engage in any bookmaking activities was proper where defendant, during probationary period, engaged in bookmaking activities for which he was charged and convicted. People v. Tereno (App. 2 Dist. 1962) 25 Cal.Rptr. 44, 208 Cal.App.2d 246. Sentencing And Punishment 1987

Trial court, during time of probation, upon proper showing, is authorized to modify original probation order. People v. Marin (App. 1957) 147 Cal.App.2d 625, 305 P.2d 659. Sentencing And Punishment 1923

Where court had placed persons convicted of grand theft and forgery on probation which required that they give persons defrauded "value received", later order of court requiring persons convicted to pay off civil judgments to persons they defrauded was not the imposition of additional condition of probation, but was a modification of the original conditions. People v. McClean (App. 2 Dist. 1955) 130 Cal.App.2d 439, 279 P.2d 87. Sentencing And Punishment 1987

A court, during the term of probation, may modify its original probation order. People v. McClean (App. 2 Dist. 1955) 130 Cal.App.2d 439, 279 P.2d 87. Sentencing And Punishment 1923

When probation is granted, there is no finality to the proceedings, and the judgment may be modified or set aside by court under statute. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1923

Power of court under this section to revoke or modify order of suspension of imposition or execution of sentence at any time during term of probation applies generally to order granting probation, and is not limited to term thereof. Ex parte Marcus (App. 4 Dist. 1936) 11 Cal.App.2d 359, 53 P.2d 1021. Sentencing And Punishment 2010

Order requiring defendant to spend one of three years of probation in county jail in lieu of and before expiration of jail term of 60 days imposed in original probation order was "modification" of original order within this section authorizing court to modify probation order, and hence within jurisdiction of court in absence of showing that change exceeded reasonable limits or was not warranted by circumstances. Ex parte Marcus (App. 4 Dist. 1936) 11 Cal.App.2d 359, 53 P.2d 1021. Sentencing And Punishment 1985

Under power of court to revoke or modify order of suspension of imposition or execution of sentence, conditions other than length of term of probation may be enlarged before such conditions have been fully complied with. Ex parte Marcus (App. 4 Dist. 1936) 11 Cal.App.2d 359, 53 P.2d 1021. Sentencing And Punishment 1985

Modification of probation order rests entirely within discretion of court. In re Tantlinger (App. 2 Dist. 1935) 8 Cal.App.2d 157, 47 P.2d 301. Sentencing And Punishment 1923

Where, as condition to granting probation, trial court imposed imprisonment in county jail for one and a half years, order made subsequent to expiration of original term imposing new term of imprisonment for additional five years was void. Ex parte Hazlett (App. 1934) 137 Cal.App. 734, 31 P.2d 448. Sentencing And Punishment 1987

Trial court has jurisdiction to extend term of probation during probation term. Ex parte Hazlett (App. 1934) 137 Cal.App. 734, 31 P.2d 448. Sentencing And Punishment 1950

Superior court's modified probation order requiring probationer, detained in girls' home for about 3 months under original order, to serve year in county jail, was not invalid as imposing additional punishment. People v. Roberts (App. 1934) 136 Cal.App. 709, 29 P.2d 432. Sentencing And Punishment 1987

Modification of probation order under which accused, who pleaded guilty of issuing checks without sufficient funds, had been placed in sanitarium, so as to serve year of probationary period at county road camp, was authorized. In re Glick (App. 1932) 126 Cal.App. 649, 14 P.2d 796. Sentencing And Punishment 1987

Trial court could modify terms of probation, within limits. In re Glick (App. 1932) 126 Cal.App. 649, 14 P.2d 796. Sentencing And Punishment 1985

Court has power to enlarge the probationary term at any time before it expires. Ex parte Sizelove (1910) 158 Cal. 493, 111 P. 527.

80. Confinement

One sentenced to pay fine of $2,500 or in default thereof to serve 500 days in county jail for violation of automobile code was entitled to discharge after one year's service, since § 19a providing that in no case shall any person sentenced to county jail for misdemeanor or as a condition of probation or for any reason be committed for more than a year, included sentences to jail for felonies. Ex parte Marquez (1935) 45 P.2d 342, 3 Cal.2d 625; Ex parte Rasmussen (1935) 41 P.2d 181, 4 Cal.App.2d 263.

Where court suspended sentence and granted probation subject to 60-day jail term, subsequent orders continuing probation on condition prisoner serve year in county jail were void. Wilson v. Carr, 1930, 41 F.2d 704. Sentencing And Punishment 1950

Alien was not subject to deportation, where sentence for petit larceny was suspended and probation granted subject to 60 days' confinement, notwithstanding subsequent orders continuing probation on condition of year jail sentence. Wilson v. Carr, 1930, 41 F.2d 704. Aliens, Immigration, And Citizenship 282(3)

Consent of prisoner to 60-day jail term did not confer jurisdiction on court to require additional confinement during probation. Wilson v. Carr, 1930, 41 F.2d 704. Sentencing And Punishment 1935

Section 19a limiting to one year the period of commitment to county jail on conviction of misdemeanor or as a condition of probation did not preclude commitment to county jail for one year upon revocation of probation, though defendant had previously been confined in county jail for more than six months as a condition of probation. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 2038

Section 19a, limiting to one year the period of commitment to county jail on conviction of misdemeanor or as a

condition of probation, must be interpreted in connection with this section and § 1203.1, authorizing the granting of probation and, as a condition thereof, imprisoning defendant in county jail. Ex parte Hays (App. 1 Dist. 1953) 120 Cal.App.2d 308, 260 P.2d 1030. Sentencing And Punishment 2038

Section 19a which prohibits commitment in county jail for more than one year, of a person sentenced to confinement in county jail on conviction of misdemeanor, or as a condition of probation, or for any reason, did not preclude placing a defendant convicted of felony of rape on probation on condition that defendant serve two years in county jail. Ex parte Webber (1949) Ex parte Webber (App. 1 Dist. 1949) 95 Cal.App.2d 183, 212 P.2d 540. Sentencing And Punishment 1976(2)

Superior court, granting probation to one pleading guilty of rape, a felony, had power to impose condition that he serve any portion of probationary period up to maximum possible term of sentence in county road camp. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Sentencing And Punishment 1976(2)

Section 19a prohibiting commitment of person, sentenced to confinement in jail on conviction of misdemeanor or as condition of probation, for period exceeding one year, but providing for commitment to county penal farm for such period as court may order within statutory limits for offense, must be read and construed as whole in harmony with other statutes relating to same general subject. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Prisons 13.3

Order of superior court admitting defendant to probation for three years after plea of guilty to statute penalizing driving while intoxicated, and providing as condition of such probation that defendant serve at county road camp during first two years of period, was authorized. In re Brown (App. 2 Dist. 1935) 5 Cal.App.2d 218, 42 P.2d 680. Sentencing And Punishment 1976(2)

Under California Vehicle Act, § 112 (Stats.1923, p. 553, as amended by Stats.1927, p. 1436), providing that court shall have no authority to impose sentence greater than that recommended by jury, court is without authority to imprison defendant for longer time than period fixed by jury, either by direct judgment of sentence, or under guise of a probation order, under this section. In re Montague (App. 2 Dist. 1929) 99 Cal.App. 576, 278 P. 1061.

Under this section, defendant, while on probation and conforming to terms thereof, shall be at large and not in confinement. Ex parte Fink (App. 2 Dist. 1926) 79 Cal.App. 659, 250 P. 714. Sentencing And Punishment 1934

On suspension of sentence for felony under subd. (a) of this section, defendant was entitled to be at large, and court had no authority to remand him to sheriff's custody to work at county road camp and imprisonment was unlawful. People v. Clark (App. 2 Dist. 1924) 69 Cal.App. 520, 231 P. 590. Sentencing And Punishment 1809

Accused, having waived right to pronouncement of judgment before order granting probation, could not assert she was deprived of liberty without due process by probation order, conditioned that first eighteen months of probationary period be spent in jail. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P. 874. Constitutional Law 947

81. Term of probation

See, also, Notes of Decisions under Penal Code § 1203.1.

There is no "window" during probation term which allows probationer to be free from terms and conditions originally imposed or later modified, nor during period between hearing on probation violation and sentencing for that violation; trial court has power over defendant at all times during term of probation until defendant is

discharged from probation or court loses jurisdiction upon defendant being sentenced to prison. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1961; Sentencing And Punishment 1960

Terms and conditions imposed upon defendant placed on probation may be enforced at any time during term of probation, and procedures utilized to enforce terms and conditions of probation do not toll or suspend for any period of time terms and conditions of probation grant; defendant is not free of those restrictions until probation period has terminated or he or she has been discharged by law from probationary term. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1960

Termination of probation or discharge from probation following completion of probation term formally ends conditions of probation; when probation is terminated for violation of probation conditions, judgment must be pronounced if no sentence was imposed at time probation was granted. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1948; Sentencing And Punishment 2032; Sentencing And Punishment 1953

Terms and conditions of defendant's probation continued in full effect during period between hearing on probation violation and sentencing for that violation, and thus state prison commitment could be imposed for criminal offense committed by defendant during that period in violation of terms and conditions of probation. People v. Lewis (App. 4 Dist. 1992) 10 Cal.Rptr.2d 376, 7 Cal.App.4th 1949. Sentencing And Punishment 1960; Sentencing And Punishment 2006; Sentencing And Punishment 2004

Probation is not form of punishment but is act of clemency in discretion of trial court, and thus defendant, who was convicted on charges reinstated following vacation of plea bargain at defendant's behest, was properly sentenced to new three-year period of probation, and trial court was not limited to setting of probationary period equivalent to balance of original three-year period of probation. People v. Morrison (App. 2 Dist. 1980) 167 Cal.Rptr. 276, 109 Cal.App.3d 378. Sentencing And Punishment 1811; Sentencing And Punishment 1945

Court had power to grant probation for five years to one who pleaded guilty to first degree burglary, since punishment for burglary in the first degree is imprisonment in the penitentiary for not less than five years and a trial court has power to grant probation for any term not longer than maximum time for which defendant could have been sentenced. People v. Petitt (App. 1946) 76 Cal.App.2d 243, 172 P.2d 713. Sentencing And Punishment 1945

Where accused was convicted of converting employee's cash bond, and amount in information on which conviction was had exceeded $200, placing accused on probation for two years was not abuse of discretion. People v. Bentson (App. 2 Dist. 1933) 132 Cal.App. 295, 22 P.2d 734. Sentencing And Punishment 1856

82. Rejection of probation

See, also, Notes of Decisions under Penal Code § 1203.1.

A defendant has the right to refuse probation. Ex parte Hays (1953) 260 P.2d 1030, 120 Cal.App.2d 308; People v. Walker (1950) 208 P.2d 724, 93 Cal.App.2d 54.

Where upon trial court's finding defendant guilty of second-degree burglary and two prior felony convictions trial court set date for hearing of defendant's application for probation, and defendant's counsel stated defendant did not wish to apply for probation, defendant had waived right to be considered for probation. People v. Jones (App. 4 Dist. 1966) 52 Cal.Rptr. 924, 244 Cal.App.2d 378. Sentencing And Punishment 1891

Defendant has right to refuse probation. People v. Fisherman (App. 2 Dist. 1965) 47 Cal.Rptr. 33, 237 Cal.App.2d 356. Sentencing And Punishment 1821

Even when granted probation, a defendant may not be compelled to accept it, and may elect to refuse it. Application of Oxidean (App. 2 Dist. 1961) 16 Cal.Rptr. 193, 195 Cal.App.2d 814. Sentencing And Punishment 1821

Petitioners' right to reject probation after conviction was not defeated on the ground that their failure to request a stay of execution of the probation orders evidenced an irrevocable acceptance of conditions of such orders, where such failure was based on petitioners' mistaken belief that their appeal and release on bail affected a stay. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1922

Where under terms of probation order the first installment of fines did not become due until 60 days after the defendants' release from custody and the defendants had been free on bail during most of the time since the entry of the probation orders, so that installments of their probationary fines had not become due, failure of defendants to file the affidavits referred to in the probation orders that payment on the fines should come from their own funds and not the union moneys did not evidence a rejection of probation. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1974(3)

The defendant has a right to refuse probation where its conditions may appear to defendant more onerous than the sentence which might be imposed. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1821

Where union officials were placed on probation after conviction of an offense and one of conditions of probation was that the defendants should not hold any position or receive any remuneration from any union, defendants did not manifest an acceptance of conditions of probation where they immediately appealed from probation orders and obtained release on bail by order of Supreme Court and attacked terms of the probation as unreasonable and beyond the power of trial court and promptly after denial of certiorari asserted in the trial court their rights to reject probation notwithstanding they did not comply with the trial court's direction when it announced the conditions that the defendants tell the court whether they wanted to accept probation. In re Osslo (1958) 51 Cal.2d 371, 334 P.2d 1. Sentencing And Punishment 1922

The right of a defendant to refuse probation is a necessary safeguard against the possibility that the conditions of probation may be more onerous than the sentence. People v. Frank (App. 2 Dist. 1949) 94 Cal.App.2d 740, 211 P.2d 350. Sentencing And Punishment 1821

An applicant for probation, pardon, or parole can decline the offer when he deems the terms in excess of the court's jurisdiction or too onerous. Lee v. Superior Court in and for Contra Costa County (App. 1 Dist. 1949) 89 Cal.App.2d 716, 201 P.2d 882. Sentencing And Punishment 1821; Pardon And Parole 65

Trial court did not abuse discretion in denying request of accused, found guilty of grand theft, to withdraw application for probation. People v. De Voe (App. 2 Dist. 1932) 123 Cal.App. 233, 11 P.2d 26. Sentencing And Punishment 1891

Where leave to withdraw accused's application for probation was denied, probation subsequently granted must be considered to have been granted on accused's application. People v. De Voe (App. 2 Dist. 1932) 123 Cal.App. 233, 11 P.2d 26. Sentencing And Punishment 1891

Whether accused should be permitted to withdraw application for probation eight days after leave to apply therefor was granted was within trial court's sound discretion. In re De Voe (App. 2 Dist. 1931) 114 Cal.App. 730, 300 P.

874. Sentencing And Punishment 1891

83. Indictment and information

Drug defendant's ineligibility for mandatory probation and treatment by reason of his prior criminal record was not required to be alleged in charging document, where defendant's prior conviction did not absolutely deny him any opportunity for probation, but merely rendered him unfit for probation under particular provision; ineligibility for mandatory probation and treatment was not equivalent of increase in penalty. In re Varnell (2003) 135 Cal.Rptr.2d 619, 30 Cal.4th 1132, 70 P.3d 1037. Indictment And Information 113

84. Jurisdiction

Trial court generally loses jurisdiction to reconsider denial of probation once it has relinquished control of defendant and execution of sentence has begun. People v. Calhoun (App. 2 Dist. 1977) 140 Cal.Rptr. 225, 72 Cal.App.3d 494. Sentencing And Punishment 1923

Probationer's delay in filing habeas corpus petition asserting that proceedings leading to prior probation revocation proceedings violated procedural guarantees did not estop him from asserting that court lacked jurisdiction to revoke probation due to expiration of term of probation. People v. Amsbary (App. 2 Dist. 1975) 125 Cal.Rptr. 546, 51 Cal.App.3d 75. Sentencing And Punishment 2010

Where civil commitment proceedings were instituted by district attorney on court's order, and physicians filed report stating that defendant was addict and, due to physicians' further recommendation against commitment because of lack of defendant's motivation, no hearing was held in civil commitment proceedings and such proceedings were never properly terminated, court was without jurisdiction to issue probation order in connection with defendant's conviction on burglary charged. People v. Leonard (App. 4 Dist. 1972) 102 Cal.Rptr. 435, 25 Cal.App.3d 1131. Sentencing And Punishment 1906

Trial court has jurisdiction over the person of defendant to grant an application for probation upon the filing of remittitur, if the judgment of the court that the defendant be imprisoned in the state prison, after a denial of probation, has not been carried into effect because of a stay of execution pending determination of the appeal. Application of Stallings (App. 2 Dist. 1970) 85 Cal.Rptr. 96, 5 Cal.App.3d 322. Criminal Law 1192

Trial court has power to entertain application for probation at any time prior to execution of sentence, and as long as trial court retains in itself actual or constructive custody of defendant and execution of sentence has not begun it retains jurisdiction over defendant and rest of action and possesses power to entertain and act on application for probation even after affirmance of judgment of conviction on appeal and going down of remittitur. In re Black (1967) 59 Cal.Rptr. 429, 66 Cal.2d 881, 428 P.2d 293. Sentencing And Punishment 1890; Sentencing And Punishment 1894

If court lacked jurisdiction there could be no valid order of probation. People v. Carter (App. 4 Dist. 1965) 43 Cal.Rptr. 440, 233 Cal.App.2d 260. Sentencing And Punishment 1913

As long as execution of sentence has not begun, trial court retains jurisdiction over defendant and has power to receive and act on application for probation, even after affirmance on appeal. People v. Causey (App. 2 Dist. 1964) 41 Cal.Rptr. 116, 230 Cal.App.2d 576. Criminal Law 1083

Order granting probation to one convicted of first degree murder on guilty plea was in excess of superior court's jurisdiction and was void. People v. Superior Court In and For Los Angeles County (Guerrero) (App. 2 Dist. 1962)

18 Cal.Rptr. 557, 199 Cal.App.2d 303. Sentencing And Punishment 1853

A defendant who is put on probation is within the jurisdiction of the court. People v. Banks (1959) 1 Cal.Rptr. 669, 53 Cal.2d 370, 348 P.2d 102. Sentencing And Punishment 1961

Question as to whether justice court exceeded its jurisdiction in modifying probation order was one of law, and superior court, determining such question in prohibition proceeding, was not required to make findings of fact. Wadler v. Justice's Court of Merced Judicial Dist. (App. 1956) 144 Cal.App.2d 739, 301 P.2d 907. Prohibition 29

When there is an appeal from a judgment of conviction, the whole matter properly leaves the jurisdiction of the trial court and rests in the hands of the appellate court until it has seen fit to remit it once again to the trial court, and during such period the trial court has and should have no power to act with respect to such pending matters, but when the matter has once again been sent back to the jurisdiction of the trial court, then even if the appellate court affirms the judgment of conviction, the trial court has power to rehear the defendant's request for probation. People v. Hall (App. 2 Dist. 1952) 115 Cal.App.2d 144, 251 P.2d 979. Criminal Law 1083; Criminal Law 1192

The legislature being clothed with power to prescribe penalties for violations of criminal statutes, legislative branch of government has power to declare that in certain cases probation may not be granted and exercise of such power in no way impinges on jurisdiction of judicial branch of government and does not impair, restrict or enlarge on jurisdiction of courts. People v. Hess (App. 1951) 104 Cal.App.2d 642, 234 P.2d 65, appeal dismissed 72 S.Ct. 177, 342 U.S. 880, 96 L.Ed. 661. Constitutional Law 2371

Where probation was revoked during probationary period, court had jurisdiction even after expiration of such period to pronounce judgment. People v. Williams (1944) 24 Cal.2d 848, 151 P.2d 244. Criminal Law 977(3)

The court's power regarding probation is strictly statutory. Ex parte Acosta (App. 2 Dist. 1944) 65 Cal.App.2d 63, 149 P.2d 757. Sentencing And Punishment 1801

Defendant having pleaded guilty of assault with deadly weapon, superior court was without jurisdiction under this section to grant probation. In re Sheffield (App. 2 Dist. 1936) 18 Cal.App.2d 177, 63 P.2d 829. Sentencing And Punishment 1843

Court's jurisdiction over probationer is not exhausted by its original probation order, but it may exercise control over him throughout probationary period. People v. Roberts (App. 1934) 136 Cal.App. 709, 29 P.2d 432. Sentencing And Punishment 1930

Circumstances of crime and defendant's character do not affect court's jurisdiction to hear and determine application for probation on its merits. People v. Freithofer (App. 2 Dist. 1930) 103 Cal.App. 165, 284 P. 484. Sentencing And Punishment 1836; Sentencing And Punishment 1870

85. Plea bargains

Even if plea agreement conditioned on defendant's banishment from state in lieu of sentencing was permissible, agreement at issue was ambiguous as to when defendant would be allowed to return to California without threat of sentencing hanging over him, and such uncertainty as to length of the banishment rendered plea invalid. Alhusainy v. Superior Court (App. 4 Dist. 2006) 48 Cal.Rptr.3d 914, 143 Cal.App.4th 385. Criminal Law 273.1(2)

Defendant's acquiescence in improper plea agreement, which banished defendant from state in lieu of sentencing as

condition of agreement, could not render such agreement valid. Alhusainy v. Superior Court (App. 4 Dist. 2006) 48 Cal.Rptr.3d 914, 143 Cal.App.4th 385. Criminal Law 273.1(2)

Banishment from state in lieu of sentencing, as condition of plea agreement by which defendant pled guilty to making a criminal threat and felony child abuse, was impermissible, invalidating defendant's guilty plea; condition was constitutionally improper and against public policy, and required defendant to commit another felony, i.e., flee the jurisdiction to avoid sentencing. Alhusainy v. Superior Court (App. 4 Dist. 2006) 48 Cal.Rptr.3d 914, 143 Cal.App.4th 385. Criminal Law 273.1(2)

Harvey rule, prohibiting consideration of dismissed count when sentencing pursuant to plea bargain, applies to conditions of probation, since condition adding restriction on defendant's conduct is an "adverse sentencing consequence." People v. Beagle (App. 5 Dist. 2004) 22 Cal.Rptr.3d 757, 125 Cal.App.4th 415. Sentencing And Punishment 1916

Plea agreement by defendant, which included a "*Harvey* waiver," to allow sentencing court to consider prior convictions did not avoid mandate of this section that the people both plead and prove a defendant's prior felony convictions beyond a reasonable doubt when establishing probation ineligibility, that defendant be advised that such direct penal consequence would follow, and that there be a clear waiver of applicable rights. People v. Myers (App. 4 Dist. 1984) 204 Cal.Rptr. 91, 157 Cal.App.3d 1162. Sentencing And Punishment 1887; Sentencing And Punishment 1901

Where record showed that plea bargain climate was one of real anticipation on part of defendants and counsel that probation was likely, but, in fact, nature of defendant's offenses was such that probation was disfavored option, and defendants were not so advised, trial court abused its discretion in not allowing defendants to withdraw their pleas of guilty. People v. Spears (App. 5 Dist. 1984) 199 Cal.Rptr. 922, 153 Cal.App.3d 79. Criminal Law 274(4)

Deputy district attorney's remarks at probation hearing indicating that defendant who had been found guilty of possession of narcotics had been dealing in heroin and had firearms in his home at time of his arrest violated deputy district attorney's agreement to remain silent at time of sentencing in return for plea of guilty; however, defendant was not entitled to relief because of violation of agreement absent motion to set aside plea of guilty in trial court. People v. Barajas (App. 4 Dist. 1972) 103 Cal.Rptr. 405, 26 Cal.App.3d 932. Criminal Law 1044.1(2)

86. Withdrawal of plea

A defendant who admitted his guilt of felony upon hearing of motion to vacate conviction was not entitled to withdraw his pleas of guilt, so as to be in a position to receive probation, on ground of alleged fraud practiced upon him in obtaining the plea, since fact that defendant would be in position to receive probation if his guilty plea to certain offense was set aside and that he entered his plea solely on the advice of his counsel did not indicate fraud. People v. Gottlieb (App. 2 Dist. 1938) 25 Cal.App.2d 411, 77 P.2d 489. Criminal Law 274(4)

87. Evidence--In general

Where evidence presents a question of fact as to whether manslaughter of which defendant has been convicted involved use of a gun upon victim, trial court, in passing on application for probation, must first determine such question of fact, and if it is determined in the affirmative, probation must be denied, but if it is determined that defendant did not use gun upon victim, probation may be granted or denied as may appear proper under all the circumstances. People v. Southack (1952) 39 Cal.2d 578, 248 P.2d 12. Sentencing And Punishment 1853; Sentencing And Punishment 1903

In prosecution for attempted burglary, where defendant testifying in his own defense had denied a prior conviction for a felony, asking him whether he had been convicted of automobile theft in 1925 was not error. People v. O'Brand (App. 1949) 92 Cal.App.2d 752, 207 P.2d 1083. Witnesses 350

Report of probation officer is not evidence. People v. Wahrmund (App. 1949) 91 Cal.App.2d 258, 206 P.2d 56. Sentencing And Punishment 300

This section providing for taking of evidence by probation officer and its inclusion in his report to court creates a statutory exception to accused's fundamental right to be confronted by witnesses against him, but trial court is not authorized in disregard of such right to listen out of court to witnesses whispering against accused. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Criminal Law 662.8

Where judge in determining sentence to be imposed upon one convicted of battery permitted himself to be influenced by accusations made out of court which accused had no opportunity to refute, sentence to six months' imprisonment in county jail would be reversed with directions to rearraign accused for sentence after proper proceedings to ascertain circumstances in aggravation and mitigation of punishment. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Criminal Law 1188

In determining sentence to be imposed on one convicted of battery, such facts as were not supplied by probation officer's report and by record of trial should have been obtained from witnesses called in open court in the presence of accused. People v. Giles (Super. 1945) 70 Cal.App.2d Supp. 872, 161 P.2d 623. Criminal Law 662.8

88. ---- Admissibility, evidence

Evidence in addition to probation officer's report and recommendation may be introduced at hearing on suitability of probation. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1897

Evidence previously suppressed on grounds of illegal search or seizure may not be used to modify probation. People v. Zimmerman (App. 1 Dist. 1979) 161 Cal.Rptr. 188, 100 Cal.App.3d 673. Sentencing And Punishment 1900

Upon conviction, evidence which would be inadmissible on the issue of guilt may be received for the purpose of determining whether and upon what conditions to grant probation, provided the proceedings remain fundamentally fair; and for this purpose, the court may properly consider not only current arrests of the defendant giving rise to charges still pending, but also prior arrests which did not result in conviction. Loder v. Municipal Court for San Diego Judicial Dist. of San Diego County (1976) 132 Cal.Rptr. 464, 17 Cal.3d 859, 553 P.2d 624, certiorari denied 97 S.Ct. 1143, 429 U.S. 1109, 51 L.Ed.2d 562. Sentencing And Punishment 1872(1); Sentencing And Punishment 1900

Admissions made to probation officer in hope that such candor will persuade probation officer to make favorable report to court are not admissible either as substantive evidence or for impeachment purposes in any retrial on the same issues. People v. Harrington (1970) 88 Cal.Rptr. 161, 2 Cal.3d 991, 471 P.2d 961, certiorari denied 91 S.Ct. 1384, 402 U.S. 923, 28 L.Ed.2d 662. Criminal Law 406(2); Witnesses 390.1

Accused was not denied due process of law by reason of admission of evidence of his prior conviction which was not proved, where accused waived jury trial and was tried before a judge, who was presumably able to weigh the evidence without being prejudiced by a charge of prior felony conviction. In re Hernandez (1966) 51 Cal.Rptr. 915, 64 Cal.2d 850, 415 P.2d 803. Constitutional Law 4669; Constitutional Law 4693

Testimony of probation officer concerning statements relating to possession of marijuana made to him by defendant at hearing following plea of guilty to charge was admissible, at trial following change of plea, as defendant was required to look to counsel who represented him at hearing and not probation officer for advice as to what his legal rights were and what he should say upon being interrogated. People v. Brooks (App. 1 Dist. 1965) 44 Cal.Rptr. 661, 234 Cal.App.2d 662. Criminal Law 412.1(2)

Even if admission of defendant regarding possession of weapon at time of his arrest should not have been received, defendant, who was not eligible for probation in view of prior conviction and nature and manner of commission of the charged crime, was not entitled to have plea of guilty to first degree robbery while armed with deadly weapon set aside. People v. Mullane (App. 2 Dist. 1963) 34 Cal.Rptr. 33, 220 Cal.App.2d 637. Criminal Law 1177

A defendant has the right to present evidence in mitigation of his punishment or to assist the court in determination of his application for probation, and if he believes probation officer's report to be insufficient or inadequate he can present witnesses to counteract or correct any portion of the report. People v. Valdivia (App. 1 Dist. 1960) 5 Cal.Rptr. 832, 182 Cal.App.2d 145. Sentencing And Punishment 299; Sentencing And Punishment 1897

That court subsequent to trial was guided by unsworn and hearsay evidence of defendant's fraud in determining degree of guilt and punishment was not ground for reversal. People v. Claggett (App. 2 Dist. 1933) 130 Cal.App. 141, 19 P.2d 805. Sentencing And Punishment 1900

In the case of People v. McKay (1898) 122 Cal. 628, 55 P. 594, the court said: "It is discretionary with the court whether it will hear evidence in mitigation of the punishment."

89. ---- Weight and sufficiency, evidence

Reliability of information related by police officer at probation hearing, to effect that four days before probation hearing he had arrested man leaving defendant's residence and that man stated he had made regular purchases of heroin from defendant, was sufficiently demonstrated, and defendant was not denied due process by denial of order for removal of such man from the county jail to appear as a witness and for a continuance sufficient to allow such appearance, where court received verbatim statements of such man through reading of transcript of interview between such man and defense counsel, and heard other extensive testimony contradicting that given by the police officer. People v. Peterson (1973) 108 Cal.Rptr. 835, 9 Cal.3d 717, 511 P.2d 1187. Constitutional Law 4733(2); Sentencing And Punishment 1902

The trial judge in passing on motion to reduce conviction of voluntary manslaughter to involuntary manslaughter and for probation had power to reweigh the evidence. People v. Doyle (App. 1958) 162 Cal.App.2d 158, 328 P.2d 7. Sentencing And Punishment 1902; Criminal Law 996(3)

In proceeding wherein defendant was charged with presenting false claims to county welfare department and pleaded guilty under § 532a making it misdemeanor to obtain money under false pretenses, evidence before trial court on defendant's application for probation warranted imposing order of restitution of $544 or in such amount as probation officer would determine. People v. Marin (App. 1957) 147 Cal.App.2d 625, 305 P.2d 659. Sentencing And Punishment 1973(2)

90. Presumptions, generally

Denial of probation would be reversed and case remanded for resentencing, where probation officer who recommended denial of probation was under erroneous impression that defendant was presumptively ineligible for probation because her accomplice had been armed with weapon at time of murder and no unusual circumstances

were present, and trial court relied exclusively on that report in denying probation, so it appeared that trial court was under same erroneous impression regarding defendant's legal status. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Criminal Law 1177; Criminal Law 1181.5(8)

Person who has been convicted of murder and who was armed with deadly weapon at time he committed crime or at time of his arrest is presumptively ineligible for probation except when deadly weapon is not firearm and person had lawful right to carry it. People v. Manriquez (App. 4 Dist. 1991) 1 Cal.Rptr.2d 600, 235 Cal.App.3d 1614. Sentencing And Punishment 1853

Where report was filed by probation officer in connection with the revocation of defendant's probation, and was read and considered by the court, the report carried with it the presumption that it was made in accordance with this section, and that the officer made an investigation of the circumstances surrounding the crime and of the prior record of the defendant. People v. Yarter (App. 2 Dist. 1956) 138 Cal.App.2d 803, 292 P.2d 649. Sentencing And Punishment 2017

Record in criminal case was not required affirmatively to show that trial court had read and considered report of probation officer to whom matter had been referred, and, in absence of information, it was presumed that trial court had discharged its duty. People v. Montgomery (App. 1955) 135 Cal.App.2d 507, 287 P.2d 520. Criminal Law 1144.17

Probation report filed by probation officer was presumably made in accordance with provisions of this section, and therefore officer would be deemed to have made an investigation of circumstances surrounding crime and prior record and history of defendant as required by this section, since it is presumed that the law has been obeyed and that official duty has been performed. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Criminal Law 322

Where defendant saw probation officer but refused to discuss offense, which defendant had committed, and thereafter defendant's attorney instructed defendant to tell probation officer everything, but defendant was unable to contact probation officer, and there as no evidence to overcome presumption that probation officer made an investigation of circumstances surrounding the offense and prior record of history of defendant, court did not abuse its discretion in denying defendant a continuance so that he might see probation officer. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Sentencing And Punishment 293

Under §§ 1191, 1202 and this section, where a court pronounced judgment seven days after a verdict of guilty, on a defendant who had applied for probation, it will be presumed, in support of the regularity of the judgment, that the matter was referred to the probation officer for report, if such report were necessary. People v. Polich (App. 2 Dist. 1914) 25 Cal.App. 464, 143 P. 1065. Criminal Law 1144.17

91. Continuance

Even though defendant was presumptively ineligible for probation on most of the counts of which he was convicted, his counsel was entitled by statute to the five-day continuance to read, consider and respond to probation report, which he unequivocally requested, however unlikely it was that he would be able to convince the court that probation should be granted. People v. Bohannon (App. 2 Dist. 2000) 98 Cal.Rptr.2d 488, 82 Cal.App.4th 798, review denied. Sentencing And Punishment 339

Trial court's refusal to continue sentencing hearing on ground that defense counsel did not receive probation report until day of hearing did deny due process to defendant, who was convicted of first-degree murder for hire and therefore was ineligible for probation; since defendant was ineligible for probation, judge had discretion to order report and defendant did not establish prejudice. People v. Middleton (App. 1 Dist. 1997) 60 Cal.Rptr.2d 366, 52

Cal.App.4th 19, as modified , review denied. Constitutional Law 4718; Sentencing And Punishment 339

Once probation report is ordered, better practice would be for judge to grant requested continuance when it is based on untimely receipt of probation report; in event judge refuses to continue sentencing hearing, no error exists unless defendant can establish prejudice. People v. Middleton (App. 1 Dist. 1997) 60 Cal.Rptr.2d 366, 52 Cal.App.4th 19, as modified , review denied. Sentencing And Punishment 339

Trial court's failure to grant request for continuance due to defense counsel's receipt of probation report only one day before sentencing hearing rendered that hearing fundamentally unfair. People v. Leffel (App. 5 Dist. 1987) 242 Cal.Rptr. 456, 196 Cal.App.3d 1310. Sentencing And Punishment 339

Failure of defense counsel to seek continuance even though probation report had not been delivered to him two days prior to sentencing hearing was not improper where defense counsel had been informed more than two days prior to the hearing of what probation officer's recommendation would be and concluded that continuance would not be in best interest of accused and defense counsel's argument at hearing demonstrated a thorough understanding of probation report and of other material which was before the court for consideration. People v. Kraus (App. 2 Dist. 1975) 121 Cal.Rptr. 11, 47 Cal.App.3d 568. Criminal Law 641.13(2.1)

Where date on which verdict was returned, court referred case to probation officer and on date of hearing defendant's counsel requested court for a continuance in order to file an application for probation and defendant personally joined therein, defendant could not claim that there was an improper delay in his sentencing after conviction. People v. Gillette (App. 1959) 171 Cal.App.2d 497, 341 P.2d 398, certiorari denied 80 S.Ct. 1619, 363 U.S. 846, 4 L.Ed.2d 1729. Criminal Law 1137(2)

The trial court's failure to pronounce judgment on conviction of crime within period of 30 days because of continuance of hearing on defendant's motion for new trial and application for probation until week after date set for judgment and sentence, as requested by defendant's attorney, was not reversible error, as defendant suffered no prejudice by extension of time and no miscarriage of justice resulted from delay in pronouncing judgment. People v. Tenedor (App. 2 Dist. 1951) 107 Cal.App.2d 581, 237 P.2d 679. Criminal Law 1177

The trial court did not lose jurisdiction to sentence defendant on his plea of guilty of crimes charged, including prior felony convictions, by granting his requests for continuances of hearing on his application for probation and of pronouncement of judgment and sentence, and surety on defendant's bail bound was obligated to produce defendant at time ordered by court, though defendant was not entitled to probation. People v. Kersten (App. 2 Dist. 1943) 60 Cal.App.2d 624, 141 P.2d 512. Bail 75

Where continuances of hearing on defendant's application for probation and of pronouncement of judgment and sentence on his plea of guilty of crimes charged, including prior felony convictions, were granted at his request, and his bail bond was filed long after expiration of five days following such plea, arguments that court lost jurisdiction to sentence defendant and that surety on bond was not obligated to guarantee defendant's presence in court thereafter were not available to defendant and surety on appeal from order denying their motions to set aside order forfeiting bond. People v. Kersten (App. 2 Dist. 1943) 60 Cal.App.2d 624, 141 P.2d 512. Bail 79(1)

Proceeding, in which trial court denied defendant's request for continuance to secure another attorney and pronounced sentence on date set for hearing of probation application two weeks after verdict of conviction was returned, was not too late. People v. Mangus (App. 2 Dist. 1935) 5 Cal.App.2d 353, 42 P.2d 681. Sentencing And Punishment 381

92. Sentence and punishment

The standard practice of requiring a defendant to waive custody time credit in order to obtain certain conditions of probation is not allowed where the trial court fails to exercise any sentencing discretion regarding such a waiver. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Sentencing And Punishment 1157

Factors and reasons expressed by sentencing judge in support of a midterm sentence with an additional year for defendant's conviction of robbery involving a knife and imposition of an additional consecutive year as a result of defendant's conviction for a second robbery involving a knife supported the sentencing decision, where the court specifically found that circumstances in mitigation did not outweigh circumstances in aggravation and there was no dual use of facts to support the consecutive sentence. People v. Hernandez (App. 5 Dist. 1984) 206 Cal.Rptr. 843, 160 Cal.App.3d 725. Sentencing And Punishment 373

93. Sentencing hearing

A prisoner is entitled to a new sentencing hearing only where he shows that (1) material false information was (2) relied upon by the sentencing judge and (3) defendant had no opportunity at the time of sentencing to correct such false information. In re Beal (App. 2 Dist. 1975) 120 Cal.Rptr. 11, 46 Cal.App.3d 94. Sentencing And Punishment 2305

94. Resentencing--In general

Trial court in sentencing defendant following revocation of his probation did not act arbitrarily in determining that several aggravating factors outweighed single mitigating factor and in selecting upper term of imprisonment. People v. Griffith (App. 5 Dist. 1984) 200 Cal.Rptr. 647, 153 Cal.App.3d 796. Sentencing And Punishment 2033

Effect of court of appeal's reversal of defendant's sentence was to restore him to his original position as if he had never been sentenced, and thus, upon resentencing, defendant was entitled to all normal procedures and rights available at time judgment is pronounced, including right to current probation report and any other information, including evidence of defendant's care and treatment in prison since the time of the original sentence. Van Velzer v. Superior Court, San Diego County. (App. 4 Dist. 1984) 199 Cal.Rptr. 695, 152 Cal.App.3d 742. Criminal Law 1192

95. ---- Remand, resentencing

Trial court has discretion to decide whether probation report should be provided for probation-ineligible defendant, and, since report is not required for such defendants upon original sentencing, report is also not required for resentencing after remand, assuming defendant remains ineligible for probation; abrogating *People v. Brady*, 162 Cal.App.3d 1, 208 Cal.Rptr. 21. West's Ann.Cal.Penal Code § 1203(g). People v. Bullock (App. 5 Dist. 1994) 31 Cal.Rptr.2d 850, 26 Cal.App.4th 985, rehearing denied. Sentencing And Punishment 276; Criminal Law 1192; Sentencing And Punishment 291

Although probation report is not required for resentencing of probation-ineligible defendant after remand, there should be sound reason for departing from preferred practice of making referral to probation officer, and trial court is in best position to evaluate need for updated report, with input of counsel. People v. Bullock (App. 5 Dist. 1994) 31 Cal.Rptr.2d 850, 26 Cal.App.4th 985, rehearing denied. Criminal Law 1192

Trial court was within its discretion in not ordering updated probation report when resentencing probation-ineligible defendant on remand from Court of Appeal, where defendant did not request updated report, and there was no

evidence that trial court acted on incomplete information or that there was information which defendant wished to have considered that was not, nor any indication that trial court incorrectly believed it could not order probation report had it wanted to do so. People v. Bullock (App. 5 Dist. 1994) 31 Cal.Rptr.2d 850, 26 Cal.App.4th 985, rehearing denied. Criminal Law 1192

Appropriate remedy after Court of Appeal determined that trial court improperly struck gun use enhancement when sentencing defendant who pled guilty to robbery was to allow defendant to withdraw his plea and proceed to trial on original charges; however, if defendant has already served his prison term, trial court would have to consider principle set forth in Supreme Court's *Tanner* decision regarding defendant's possible return to prison. People v. Lopez (App. 4 Dist. 1993) 27 Cal.Rptr.2d 25, 21 Cal.App.4th 225, as modified, modified on denial of rehearing , review denied. Criminal Law 274(3.1); Criminal Law 1192

After defendant's conviction for commercial burglary was affirmed and his conviction for assaulting a police officer was reversed on appeal, trial court that resentenced defendant on commercial burglary was required to obtain current probation report, where defendant was statutorily ineligible for probation at original sentencing hearing because of assault conviction. People v. Begnaud (App. 4 Dist. 1991) 1 Cal.Rptr.2d 507, 235 Cal.App.3d 1548. Sentencing And Punishment 291

Defendant should not be allowed to stand silent when court proceeds to resentence defendant without supplemental probation report, gamble that trial court will impose lesser term of imprisonment and then urge reversal for failure to obtain report without being required to make some showing that he or she was prejudiced thereby. People v. Begnaud (App. 4 Dist. 1991) 1 Cal.Rptr.2d 507, 235 Cal.App.3d 1548. Criminal Law 1137(1)

Defendant is deprived of his due process right to have trial court exercise informed sentencing discretion if trial court denies defendant's request for current probation report on remand for resentencing based only on trial court's subjective desire to avoid information which might require consideration of something other than maximum sentence. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Constitutional Law 4725; Sentencing And Punishment 291; Criminal Law 1192

Sentencing court abused its discretion in denying defendant's request for current probation report on remand for resentencing, where sole reason given for denying request was that defendant was ineligible for probation, and sentencing judge's statement, that she did not intend to change her mind and sentence any differently than she had originally, suggested that judge was not open to possibility that there might be new mitigating factors to be weighed in the balance. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

Trial court must have some substantial basis for denying defendant's request for current probation report on remand for resentencing; there must be far more than subjective desire to avoid information which might require consideration of something other than maximum sentence. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

When defendant has requested current probation report on remand for resentencing, and trial court originally had ordered and considered probation report, good countervailing reason will be required for denying request. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

Whether trial court should order current probation report on remand for resentencing clearly is discretionary rather than mandatory matter. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of

habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

While trial court has discretion to deviate from preferred practice of ordering current probation report on remand for resentencing, it must have sound reason for doing so. People v. Tatlis (App. 2 Dist. 1991) 282 Cal.Rptr. 55, 230 Cal.App.3d 1266, denial of habeas corpus affirmed in part , reversed in part 21 F.3d 1116. Sentencing And Punishment 291; Criminal Law 1192

On remand for resentencing, trial court had no duty to obtain current or supplemental probation report where defendant was ineligible; disavowing *People v. Brady*, 162 Cal.App.3d 1, 208 Cal.Rptr. 21 (5 Dist.); *People v. Smith*, 166 Cal.App.3d 1003, 212 Cal.Rptr. 737 (5 Dist.); *People v. Foley*, 170 Cal.App.3d 1039, 216 Cal.Rptr. 865 (3 Dist.). People v. McClure (App. 1 Dist. 1987) 237 Cal.Rptr. 90, 191 Cal.App.3d 1303. Criminal Law 1192

Referral to probation officer and preparation of supplemental probation report on defendant who was ineligible for probation after remand from Court of Appeals were not mandatory, but were committed to sound discretion of sentencing court; disagreeing with *People v. Brady*, 162 Cal.App.3d 1, 208 Cal.Rptr. 21 (5 Dist.). People v. Webb (App. 3 Dist. 1986) 230 Cal.Rptr. 755, 186 Cal.App.3d 401, review denied.

Determination of whether a case is an unusual one where the interests of justice would best be served if the person is granted probation is a matter in which the trial court exercises its discretion and a decision will not be disturbed on appeal unless a clear abuse of discretion is shown; however, when the trial court is either misinformed or misunderstands its discretionary powers, the appellate court must remand the matter to the trial court for resentencing, with trial court directed to consider the applicable rule of court. People v. McClintock (Super. 1984) 205 Cal.Rptr. 639, 159 Cal.App.3d Supp. 1. Sentencing And Punishment 1802; Criminal Law 1147

Where defendant in prosecution for burglary had lengthy juvenile and adult criminal record, latter of which included two prior burglary convictions and three misdemeanor convictions since 1978, and it was thus not reasonably probable that different result would have occurred had court articulated reasons for its choice of imprisonment, trial court's failure to satisfy requirement of statement of reasons for imprisonment as its sentencing choice did not require remand for resentencing. People v. Mobley (App. 1 Dist. 1983) 188 Cal.Rptr. 583, 139 Cal.App.3d 320. Criminal Law 1181.5(8)

96. Enforcing judgment

Trial court was not required to state reasons for electing middle term of imprisonment after it revoked probation in case in which imposition of sentence had originally been suspended; trial court's giving of reason for not extending probation was sufficient, since reasons for denying probation were reasons for selecting state prison sentence; court was not required to state those reasons twice. People v. Jones (App. 6 Dist. 1990) 274 Cal.Rptr. 527, 224 Cal.App.3d 1309, modified. Sentencing And Punishment 2030

Trial court's implicit determination that defendant, who had previously received stay of imposition of sentence, was no longer suitable candidate for probation because of her failure to satisfactorily complete probation, constituted sufficient reason for refusing to reinstate probation after probation was revoked. People v. Jones (App. 6 Dist. 1990) 274 Cal.Rptr. 527, 224 Cal.App.3d 1309, modified. Sentencing And Punishment 2039

Where the court suspended sentence as authorized by this section, it could not after the expiration of the maximum possible term of sentence enforce the original judgment against accused who had complied with the conditions of his probation. Ex parte Slattery (1912) 163 Cal. 176, 124 P. 856. Sentencing And Punishment 2010

Defendant having been placed on probation before execution of judgment and not having violated terms thereof was not subject to arrest under same judgment. In re Maguth (App. 2 Dist. 1930) 103 Cal.App. 572, 284 P. 940. Sentencing And Punishment 1914

97. Contempt

The publication of a newspaper editorial denouncing two members of a labor union who had been found guilty of assaulting nonunion truck drivers, published about a month before day which judge had set for passing on members' application for probation and for pronouncing sentence, and closing with observation that judge would make a serious mistake if he granted probation, did not warrant the Superior Court of Los Angeles County in adjudging publisher and its managing editor guilty of "contempt" on ground that editorial had an inherent tendency to interfere with the orderly administration of justice in a pending action, in view of newspaper's long-continued militancy in the field of labor controversies, since editorial only threatened future adverse criticism reasonably to be expected in event of a lenient disposition of the case. Bridges v. State of Cal., U.S.Cal.1941, 62 S.Ct. 190, 314 U.S. 252, 86 L.Ed. 192. Contempt 9

98. Final judgment

Where court adjudged that attorney be imprisoned in city jail for term of 180 days, that execution be suspended for two years and that defendant be placed on probation on condition he serve 175 days in city jail, court rendered its judgment of conviction and then suspended its execution, and where defendant thereafter appealed and judgment was affirmed, judgment was "final judgment of conviction" sufficient to sustain an order of disbarment. In re Phillips (1941) 17 Cal.2d 55, 109 P.2d 344. Attorney And Client 39

99. Judicial immunity

Judge's decision to place accused on probation was immune from civil liability. J. A. Meyers & Co. v. Los Angeles County Probation Dept. (App. 2 Dist. 1978) 144 Cal.Rptr. 186, 78 Cal.App.3d 309. Judges 36

100. Adequacy of counsel

Defense counsel's failure to request dismissal of defendant's prior strike in the interest of justice so as to make defendant eligible for "regular" probation did not constitute ineffective assistance; trial court had found defendant's prior performance on probation was unsatisfactory, trial court had found defendant's prior strike indicated that she posed a serious danger to society, and defendant had expressed willingness to stipulate to prison term imposed. People v. Johnson (App. 4 Dist. 2003) 7 Cal.Rptr.3d 492, 114 Cal.App.4th 284, modified on denial of rehearing , review denied. Criminal Law 641.13(7)

Because counsel in effect argued against his client, client was not required to point to any evidence or argument which could or should have been made on his behalf in order to establish inadequacy of counsel. People v. Cropper (App. 2 Dist. 1979) 152 Cal.Rptr. 555, 89 Cal.App.3d 716. Criminal Law 641.13(2.1)

Defendant was deprived of his constitutional rights to effective assistance of counsel at probation and sentence hearing, where defense counsel declined to make any argument in favor of defendant, in effect, counsel argued against defendant by stating that he agreed with probation report and counsel did not effectively induce court to sentence defendant to minimum sentence. People v. Cropper (App. 2 Dist. 1979) 152 Cal.Rptr. 555, 89 Cal.App.3d 716. Criminal Law 641.13(7)

Where defendant who was charged with unlawful sexual intercourse and assault by means of force likely to produce

great bodily injury had been previously convicted of felony of interstate transportation of stolen vehicles and had wilfully inflicted great bodily injury upon assault victim, defendant was ineligible for probation and ineligible for commitment as mentally disordered sex offender; thus, defense counsel's failure to urge that defendant be committed as sex offender could not serve as basis for reversing conviction on ground of incompetency of counsel. People v. Chapman (App. 3 Dist. 1975) 121 Cal.Rptr. 315, 47 Cal.App.3d 597. Sentencing And Punishment 1872(3); Criminal Law 1166.10(1); Mental Health 454; Sentencing And Punishment 1862

Notwithstanding defendant's claims that public defender provided at sentencing was totally unfamiliar with many of facts of case because he was not trial counsel and that public defender permitted inflammatory statements to be made by deputy district attorney at sentencing proceeding, defendant was not denied effective assistance of counsel, where there was no showing that defense counsel was guilty of any acts or omissions resulting in a deprivation of a crucial right to sentencing process or sentencing decision, the court, counsel and defendant were clearly aware of sentencing alternatives, and district attorney's statement that defendant had stated that it was his practice to make knives appeared to have been made in good faith and not with deliberate intent to bring in evidence outside the record. People v. Vatelli (App. 1 Dist. 1971) 92 Cal.Rptr. 763, 15 Cal.App.3d 54. Criminal Law 641.13(7)

101. New trial

In absence of facts warranting present denial of probation, defendant who was granted probation on conviction which was set aside could not be denied probation on conviction pursuant to retrial. People v. Thornton (App. 1 Dist. 1971) 92 Cal.Rptr. 327, 14 Cal.App.3d 324. Sentencing And Punishment 1888

Where order granting probation has been made but subsequently set aside, court may entertain and grant a motion for new trial as though no order granting probation had been made. People v. McGill (App. 4 Dist. 1970) 86 Cal.Rptr. 283, 6 Cal.App.3d 953. Criminal Law 905

102. Review--In general

See also, Notes of Decisions under Penal Code § 1203.1.

A reviewing court may not invalidate any condition of probation, including restitution, unless the condition (1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Rugamas (App. 3 Dist. 2001) 113 Cal.Rptr.2d 271, 93 Cal.App.4th 518. Criminal Law 1177

Judgment of sentencing court on matter of probation is appealable and a complete record of proceedings is provided for appellate review. People v. Edwards (1976) 135 Cal.Rptr. 411, 18 Cal.3d 796, 557 P.2d 995. Criminal Law 1023(16)

Revocation of probation on evidence reasonably showing that probationer was unworthy of probation will not be disturbed on appeal. People v. Fields (App. 2 Dist. 1933) 131 Cal.App. 56, 20 P.2d 988. Criminal Law 1158(1)

That application for probation was denied defendant affords no ground for reversal of conviction of grand theft. People v. Anderson (App. 2 Dist. 1929) 98 Cal.App. 40, 276 P. 401. Criminal Law 1177

103. ---- Appealable orders, review

Even though, upon defendant's conviction of dispensing dangerous drugs without good faith prior examination and medical indication therefor, no express terms of probation were stated by court and where defendant had been found

guilty by jury and had not been acquitted of charges but docket simply read "Imposition of sentence is suspended," order could only be regarded as informal grant of summary probation whose maximum term was three years, so that suspension of sentence was an implied order granting probation and was thus appealable. People v. Berkowitz (Super. 1977) 137 Cal.Rptr. 313, 68 Cal.App.3d Supp. 9. Sentencing And Punishment 1914; Criminal Law 1023(16)

There is no appeal from order denying probation, but where denial is for lack of jurisdiction, or because court failed to follow statutory requirements pertaining to probation or there is clear showing of abuse of discretion, such denial may be reviewed on appeal from judgment. People v. Ingram (App. 2 Dist. 1969) 77 Cal.Rptr. 423, 272 Cal.App.2d 435, certiorari denied 90 S.Ct. 399, 396 U.S. 116, 24 L.Ed.2d 311. Criminal Law 1023(16); Criminal Law 1134(10)

An order denying probation is not an order from which an appeal may be taken, but is an order before judgment reviewable on appeal from the judgment, and attempted appeal from such order would be dismissed. People v. Walters (App. 1 Dist. 1961) 11 Cal.Rptr. 597, 190 Cal.App.2d 98. Criminal Law 1023(16)

Generally an order denying probation on the merits is not reviewable on appeal. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Criminal Law 1147

Where denial of probation is based upon an erroneous view of the probation law upon the court's opinion that it is without power or jurisdiction in the matter, the order of denial, though not appealable, may be reviewed on appeal from judgment. People v. Hollis (App. 2 Dist. 1959) 1 Cal.Rptr. 293, 176 Cal.App.2d 92. Criminal Law 1134(10)

Attempted appeal from order denying probation would be dismissed. People v. Bass (App. 1959) 175 Cal.App.2d 383, 346 P.2d 216. Criminal Law 1023(16)

An order denying probation is not an appealable order, although such an order may be reviewed on appeal from a judgment of conviction. People v. Newlan (App. 1959) 173 Cal.App.2d 579, 343 P.2d 618. Criminal Law 1023(16)

As to offenders who are ineligible for probation, court has no discretion but to sentence them to an appropriate institution for punishment or treatment provided by law, and such judgment is appealable, and its finality must await results of the appeal. Stephens v. Toomey (1959) 51 Cal.2d 864, 338 P.2d 182. Sentencing And Punishment 1870; Criminal Law 1023(1)

Where defendant was found guilty and probation was granted, and defendant's motion for new trial was denied, even though no judgment was entered, order granting probation was an appealable order and appeal was proper both as to order granting probation and an order denying motion for new trial. People v. D'Allesandro (App. 1958) 163 Cal.App.2d 559, 329 P.2d 616. Criminal Law 1023(13); Criminal Law 1023(16)

Where trial court found defendant guilty and summarily granted probation, among the terms of which were a fine and requirement that defendant serve first ten days of probationary period in jail, there was no sentence imposed upon verdict and no judgment from which to appeal. People v. McShane (Super. 1954) 126 Cal.App.2d Supp. 845, 272 P.2d 571. Criminal Law 1023(10)

An order denying probation is not appealable, but where such denial is for lack of jurisdiction, the order will be reviewed on appeal from judgment. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Criminal Law 1023(10); Criminal Law 1134(10)

Where judgment requiring defendant to be imprisoned became final, and defendant applied for probation and was subsequently adjudged a sexual psychopath, and trial judge failed to rule upon application for probation made after defendant's return from hospital to which he was committed, a second judgment sentencing defendant to prison was an order made after judgment affecting substantial rights of defendant and was an appealable order. People v. Neal (App. 2 Dist. 1951) 108 Cal.App.2d 491, 239 P.2d 38.

An order granting probation is not a judgment and no appeal lies therefrom. People v. D'Elia (App. 1946) 73 Cal.App.2d 764, 167 P.2d 253. Criminal Law 1023(16)

Where defendant on hearing on his application for probation on burglary charge admitted two prior convictions but court nevertheless entered order granting probation and thereafter revoked the order for violation of probation and entered judgment of conviction, defendant should have sought his remedy by appeal from the judgment and could not appeal from order denying motion to vacate the judgment. People v. Scranton (App. 1 Dist. 1942) 50 Cal.App.2d 492, 123 P.2d 132. Criminal Law 1023(12)

Order denying probation is not appealable. People v. Bartley (App. 1910) 12 Cal.App. 773, 108 P. 868.

104. ---- Scope, review

For purposes of appeal, defendant who was convicted of possession of child pornography did not waive his objection to the constitutionality of probation condition precluding Internet access, where defendant argued at a previous hearing that his profession as a digital technician required him to have access to the Internet. People v. Harrisson (App. 3 Dist. 2005) 36 Cal.Rptr.3d 264, 134 Cal.App.4th 637, modified on denial of rehearing , review denied. Criminal Law 1042

Where superior court's order following habeas corpus that judgment and sentence be set aside and petitioner be resentenced to ten years' probation referred to judgment imposing imprisonment, not to actual judgment of conviction, scope of appeal from such order was limited to questions in habeas corpus and resentencing proceeding and petitioner's claims of inadequate representation of counsel on initial appeal from conviction and prejudice due to the mention of invalid prior conviction at trial could not be considered. People v. Dyer (App. 1 Dist. 1969) 74 Cal.Rptr. 764, 269 Cal.App.2d 209. Criminal Law 1134(8)

Where defendant, in forgery prosecution, admitted prior federal court felony convictions upon advice of court-appointed counsel, and such federal judgments were examined in court by counsel but were not offered in evidence, defendant was precluded by admissions from claiming on appeal that federal judgments were for misdemeanor, rather than felony, offenses. People v. Suggs (App. 1956) 142 Cal.App.2d 142, 297 P.2d 1039. Criminal Law 1137(5)

Where assistant district attorney denied under oath on motion by defendant to set aside judgment of conviction, the making of alleged promise of probation if defendant would plead guilty, the district court of appeal could not on appeal from order denying the motion interfere with determination of trial court that such promise was not made. People v. O'Brien (App. 1 Dist. 1950) 97 Cal.App.2d 391, 217 P.2d 678. Criminal Law 1158(1)

If trial court desired to avoid referring matter to probation officer and thereafter having to consider his report before granting probation, there was an error of procedure in disregarding mandatory provisions of this section which error occurred before judgment and hence was reviewable on appeal from the judgment. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Criminal Law 1134(10)

The trial court's granting or denying of probation is not ordinarily reviewable on appeal. People v. Ralls (App. 1937) 21 Cal.App.2d 674, 70 P.2d 265. Criminal Law 1147

Exercise of power to deny probation is not reviewable by district court of appeal. People v. Kirwin (App. 2 Dist. 1927) 87 Cal.App. 783, 262 P. 803. Criminal Law 1147

Order refusing leave to apply for probation after conviction solely for failing to plead guilty was reviewable on appeal from judgment. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Criminal Law 1134(10)

Denial of leave to file application for probation cannot be reviewed by appellate court. People v. Laborwits (App. 2 Dist. 1925) 74 Cal.App. 401, 240 P. 802.

The refusal of probation under this section can never be reviewed. People v. Dunlop (App. 1915) 27 Cal.App. 460, 150 P. 389. Criminal Law 1147

105. ---- Discretion, review

Probation is not a right but an act of clemency to be exercised in court's discretion, and its order in that regard will not be disturbed on appeal in the absence of showing of abuse of discretion. People v. Paul (1978) 144 Cal.Rptr. 431, 78 Cal.App.3d 22; People v. Ozene (1972) 104 Cal.Rptr. 170, 27 Cal.App.3d 905; People v. Keller (1966) 54 Cal.Rptr. 154, 245 Cal.App.2d 711; People v. Henderson (1964) 37 Cal.Rptr. 883, 226 Cal.App.2d 160.

Record on appeal affords a reviewing court an adequate basis for determining the merits of a claim that an order denying a recommendation of probation constitutes a prejudicial abuse of judicial discretion. People v. Prater (1977) 139 Cal.Rptr. 566, 71 Cal.App.3d 695; People v. Edwards (1976) 135 Cal.Rptr. 411, 557 P.2d 995, 18 Cal.3d 796.

Probation is not a right but a matter of judicial clemency within sentencing judge's sole discretion; thus, order denying probation will not be reversed in absence of clear abuse of that discretion. People v. Podesto (1976) 133 Cal.Rptr. 409, 62 Cal.App.3d 708; People v. Ingram (1969) 77 Cal.Rptr. 423, 272 Cal.App.2d 435, certiorari denied , 90 S.Ct. 399, 396 U.S. 116, 24 L.Ed.2d 311; People v. Herd (1963) 34 Cal.Rptr. 141, 220 Cal.App.2d 847; People v. Hollis (1960) 1 Cal.Rptr. 293, 176 Cal.App.2d 92.

Order denying probation will not be reviewed on appeal unless it be shown that there was an abuse of that discretion. People v. Cooper (1954) 266 P.2d 566, 123 Cal.App.2d 353; People v. Adams (1951) 224 P.2d 873, 100 Cal.App.2d 841; People v. Jackson (1949) 200 P.2d 204, 89 Cal.App.2d 181; People v. Wiley (1939) 91 P.2d 907, 33 Cal.App.2d 424.

A ruling prescribing conditions of probation that was otherwise within trial court's power will be set aside where it appears from record that court actually failed to exercise the discretion vested in it by law. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Criminal Law 1147

A sentencing determination predicated on the judicial repudiation of legislative policy constitutes an abuse of discretion. People v. Juarez (App. 1 Dist. 2004) 8 Cal.Rptr.3d 238, 114 Cal.App.4th 1095. Sentencing And Punishment 31

A ruling otherwise within the trial court's power will nonetheless be set aside where it appears from the record that in issuing the ruling the court failed to exercise the discretion vested in it by law. Fletcher v. Superior Court (App. 1 Dist. 2002) 123 Cal.Rptr.2d 99, 100 Cal.App.4th 386, review denied. Criminal Law 1147

Failure to exercise a discretion conferred and compelled by law constitutes a denial of a fair hearing and a deprivation of fundamental procedural rights, and thus requires reversal. Fletcher v. Superior Court (App. 1 Dist. 2002) 123 Cal.Rptr.2d 99, 100 Cal.App.4th 386, review denied. Criminal Law 1147

A denial or a grant of probation generally rests within the broad discretion of the trial court and will not be disturbed on appeal except on a showing that the court exercised its discretion in an arbitrary or capricious manner. People v. Downey (App. 2 Dist. 2000) 98 Cal.Rptr.2d 627, 82 Cal.App.4th 899, rehearing denied , review denied. Criminal Law 1147; Sentencing And Punishment 1802

Court of Appeal will not interfere with the trial court's exercise of discretion when trial court has considered all facts bearing on the offense and the defendant to be sentenced. People v. Downey (App. 2 Dist. 2000) 98 Cal.Rptr.2d 627, 82 Cal.App.4th 899, rehearing denied , review denied. Criminal Law 1147

In reviewing grant of probation, Court of Appeal generally applies abuse of discretion standard. People v. Superior Court (Dorsey) (App. 4 Dist. 1996) 58 Cal.Rptr.2d 165, 50 Cal.App.4th 1216, review denied. Criminal Law 1147

Standard for reviewing trial court's finding that case is or is not unusual, for purposes of determination of whether to grant probation when defendant has used a firearm, is abuse of discretion. People v. Superior Court (Du) (App. 2 Dist. 1992) 7 Cal.Rptr.2d 177, 5 Cal.App.4th 822, rehearing denied and modified , review denied. Criminal Law 1147

Where it appeared that trial court exercised its discretion when it revoked defendant's probation after defendant was convicted of robbery, reversal of order revoking probation was not required when robbery conviction was set aside on appeal. People v. McNeal (App. 1 Dist. 1979) 153 Cal.Rptr. 706, 90 Cal.App.3d 830. Criminal Law 1186.1

Probation rests in discretion of trial judge, and heavy burden is imposed upon a defendant to show abuse of discretion in denial of his request for probation. People v. Brown (App. 2 Dist. 1969) 76 Cal.Rptr. 568, 271 Cal.App.2d 391. Sentencing And Punishment 1802

Judge's discretion in granting or denying probation is not disturbed on appeal unless there is a clear showing of abuse. People v. Troyn (App. 5 Dist. 1964) 39 Cal.Rptr. 924, 229 Cal.App.2d 181. Criminal Law 1147

Granting or denying probation is committed to sound discretion of trial court and will not be disturbed on appeal, in absence of showing of abuse of discretion. People v. Privitier (App. 2 Dist. 1962) 19 Cal.Rptr. 640, 200 Cal.App.2d 725. Sentencing And Punishment 1802; Criminal Law 1147

An order denying probation will not be disturbed upon appeal unless it be shown that there was a manifest abuse of discretion. People v. Bartges (App. 1 Dist. 1954) 126 Cal.App.2d 763, 273 P.2d 49, amended 128 Cal.App.2d 496, 275 P.2d 518. Criminal Law 1147

The granting or withholding of probation is discretionary with trial court and exercise of that discretion will not be interfered with on appeal in absence of a clear showing of an abuse thereof. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112.

Refusal of trial court to follow recommendation of probation officer that application for probation be granted under certain conditions was not an abuse of discretion where application was fully considered in open court, as against contention that trial judge acted under mistaken impression that he could not grant probation under the law. People

v. Miranda (App. 1939) 31 Cal.App.2d 370, 88 P.2d 181. Sentencing And Punishment 1886

Very strong showing of abuse of discretion on part of trial court is required to warrant interference in trial court's order denying an application for probation. People v. Hopper (App. 3 Dist. 1937) 20 Cal.App.2d 108, 66 P.2d 459. Criminal Law 1147

Denial of application for probation would not be disturbed on appeal, where probation officer to whom application was referred reported adversely thereon, in absence of strong showing of abuse of discretion. People v. Wooley (App. 3 Dist. 1936) 15 Cal.App.2d 669, 59 P.2d 1065. Criminal Law 1147

Very strong showing is required to justify reviewing court in setting aside trial court's order denying or revoking probation for abuse of discretion. People v. Lippner (1933) 219 Cal. 395, 26 P.2d 457. Criminal Law 1147

Refusal to entertain application for probation after conviction could not be reviewed on appeal, as such matter rests entirely in trial court's discretion. People v. Judson (App. 2 Dist. 1933) 128 Cal.App. 768, 18 P.2d 379. Criminal Law 1147

Action of trial court as to application for probation will not be disturbed unless capricious or arbitrary. People v. Bryant (App. 2 Dist. 1929) 101 Cal.App. 84, 281 P. 404. Criminal Law 1147

Trial court's action on question of probation will not be disturbed on appeal in absence of abuse of discretion. People v. Brahm (App. 2 Dist. 1929) 98 Cal.App. 733, 277 P. 896. Criminal Law 1147

Decision as to whether particular case or defendant is within probation law, if departing from correct rule, is abuse of discretion and reviewable. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Sentencing And Punishment 1823; Criminal Law 1147

Question of entertaining proceedings to end that one convicted of crime may be admitted to probation rests entirely within discretion of trial court and his refusal of probation can never be reviewed. People v. Dunlop (App. 1915) 27 Cal.App. 460, 150 P. 389.

106. ---- Presumptions, review

In reviewing the record it was to be presumed that probation officer fully and fairly performed duty imposed upon him by this section. People v. Rosenberg (App. 2 Dist. 1963) 28 Cal.Rptr. 214, 212 Cal.App.2d 773. Criminal Law 322

District court of appeal must assume in favor of verdict existence of every fact which trier of fact could have reasonably deduced from evidence and then determine whether or not guilt of defendant is deducible therefrom, and question for appellate court to pass upon is whether there was evidence in record justifying inference of guilt. People v. Privitier (App. 2 Dist. 1962) 19 Cal.Rptr. 640, 200 Cal.App.2d 725. Criminal Law 1144.13(5); Criminal Law 1159.2(1)

On appeal by defendant from judgment denying request of defendant for continuance of hearing on his application for probation, district court of appeal was required to presume that trial judge believed that probation officer had made a report sufficient to enable trial judge to pass fairly on application of defendant for probation. People v. Wilson (App. 1 Dist. 1954) 123 Cal.App.2d 673, 267 P.2d 27. Criminal Law 1144.17

Where court, when making determination on application of defendant for probation after pleas of guilty to burglary and forgery, was informed of another pending charge against defendant in another and separate information to which plea of not guilty had been entered, and court stated that it would assume that defendant was innocent until proven guilty of such charge, even if court was not entitled to consider the pending robbery charge in making its determination on the application, circumstances disclosed no consideration by court of the robbery accusation to the prejudice of defendant. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Sentencing And Punishment 1872(1)

Appellate court could not presume that trial court, when considering defendant's application for probation, accepted the finding of jury that defendant was armed with a deadly weapon rather than with a dangerous one within meaning of this section making one guilty of robbery while armed with a deadly weapon ineligible for probation where denial of probation was made without comment. People v. Connolly (App. 1951) 103 Cal.App.2d 245, 229 P.2d 112. Criminal Law 1144.17

The appellate court must assume that accused was guilty of offense charged in determining whether trial court committed error in denying a motion for probation. People v. Ralls (App. 1937) 21 Cal.App.2d 674, 70 P.2d 265. Criminal Law 1144.17

Record on appeal being silent as to grounds for denying probation application, presumption is that denial was founded upon consideration of merits. People v. Jones (App. 2 Dist. 1927) 87 Cal.App. 482, 262 P. 361. Criminal Law 1144.17

107. ---- Harmless error, review

Trial court's failure to prepare a supplemental probation report before sentencing defendant was harmless error; the original probation report apprised the trial court of defendant's background and other relevant information, and his record was such, including numerous parole violations and periods of incarceration, that there was little justification for a further grant of probation. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Criminal Law 1177

Trial court's failure to prepare a supplemental probation report before sentencing defendant did not require automatic reversal; there is no federal constitutional right to a supplemental probation report, and because the alleged error implicated only California statutory law, review is governed by the harmless-error standard, under which court will not reverse unless there is a reasonable probability of a result more favorable to defendant if not for the error. People v. Dobbins (App. 3 Dist. 2005) 24 Cal.Rptr.3d 882, 127 Cal.App.4th 176. Criminal Law 1177

Defendants could not obtain review of probation requirement that they pay marijuana eradication expenses, which requirement they did not object to at trial court, under unauthorized sentence exception to waiver doctrine; though prosecution failed to comply with statutory procedure for recovery of such expenses, trial court had authority to impose condition, error was only procedural, error was not easily correctable as matter would have to be remanded for further proceedings if defendants' claim was sustained, defendants' due process rights were satisfied as they had notice and opportunity to contest expenses, and right to jury trial on issue of expenses was statutory rather than constitutional. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

Court's citation of reasons for imposing upper base term cured any harm flowing from its omission to state reasons for denying probation. People v. Kellett (App. 5 Dist. 1982) 185 Cal.Rptr. 1, 134 Cal.App.3d 949. Sentencing And Punishment 373

Where defendant was ineligible for probation in that he had used and attempted to use a gun upon a human being in

perpetration of a robbery and in that case was not unusual one with interest of justice demanding departure from general policy, trial court which was familiar with probation report prepared immediately after trial did not commit prejudicial error in failing to obtain prior to pronouncing sentence a current probation report prepared after defendant's appeal. People v. Ware (App. 2 Dist. 1966) 50 Cal.Rptr. 252, 241 Cal.App.2d 143. Criminal Law 1177

Classification of defendants who had struck robbery victim three or four times with tire irons, once across nose and another time across the eye, so that he suffered cut eye, cut nose, and fractured skull as ineligible for probation was free of prejudicial error notwithstanding lack of express finding of deadly weapon use. People v. Fisher (App. 3 Dist. 1965) 44 Cal.Rptr. 302, 234 Cal.App.2d 189. Criminal Law 1186.4(1)

Where no motion was made at hearing on application of defendant for probation, to strike statement made by deputy district attorney referring to proof on another and separate pending charge of robbery by defendant, and defendant's counsel had previously commented on the inadequacy of proof on such charge, it would be assumed that the remarks of the deputy district attorney were invited by remarks of defendant's counsel, and that they did not, under the circumstances, prejudice defendant. People v. Escobar (App. 1 Dist. 1953) 122 Cal.App.2d 15, 264 P.2d 571. Criminal Law 1144.17

Trial court's announced conclusion that defendant was not eligible for probation because of provision of this section did not entitle defendant to a reversal even if shown that such provision was not applicable, where trial court also relied on other reasons in concluding that defendant was not eligible for probation. People v. Brigham (App. 1 Dist. 1945) 72 Cal.App.2d 1, 163 P.2d 891. Sentencing And Punishment 1870

Where defendant who had pleaded guilty to second-degree burglary on application for probation admitted two prior convictions of burglary and of attempt to commit burglary and court entered order granting probation which order was revoked for violation of the probation and thereafter court entered a judgment of conviction, alleged error in granting probation did not prejudice defendant though he served year in county jail as condition of probation. People v. Scranton (App. 1 Dist. 1942) 50 Cal.App.2d 492, 123 P.2d 132. Criminal Law 1177

108. ---- Prejudicial error, review

Failure of court to consider a defendant's application for probation deprives him of a substantial right, and requires a reversal of a judgment against him. People v. Blackman (App. 4 Dist. 1963) 35 Cal.Rptr. 761, 223 Cal.App.2d 303, certiorari denied 84 S.Ct. 1655, 377 U.S. 973, 12 L.Ed.2d 741. Sentencing And Punishment 1891; Criminal Law 1177

Where defendants pleaded guilty to joint charge of robbery and, upon being informed that if either was armed with deadly weapon at time of robbery, both were guilty of being armed, each admitted that he was armed although only one of them had expressly so stated to court, and they were thereupon found guilty of first-degree robbery, and sentenced accordingly, without being advised of their right to apply for probation and without presentence investigation, judgments were reversed with instructions to determine eligibility for probation and, if ineligible, to exercise discretion with respect to presentence investigation. People v. Gotto (App. 1955) 138 Cal.App.2d 165, 291 P.2d 41. Criminal Law 1192; Criminal Law 1177

Where trial court because of denial of applications for probation was unauthorized to suspend a part of the sentences but it appeared that court did not intend to require defendants to serve 180 days in jail, defendants were entitled to relief on appeal from effects of trial court's misapprehension as to its power. People v. Lopez (Super. 1941) 43 Cal.App.2d Supp. 854, 110 P.2d 140. Criminal Law 1134(10)

In prosecution for murder by use of knife, trial court's advice to jury that granting of probation, recommended by jury, would be discretionary with court and that jury's recommendation would be given great weight, was reversible error, where jury thereafter returned verdict for manslaughter with recommendation of probation. People v. Covey (App. 3 Dist. 1934) 137 Cal.App. 517, 30 P.2d 1010. Criminal Law 864

Instruction that restoration of property embezzled authorized mitigation of punishment was reversible error, where court, under circumstances, could not grant probation. People v. Smith (1929) 206 Cal. 235, 273 P. 789. Criminal Law 1172.9; Embezzlement 48(1)

109. ---- Waiver of objections, review

Legal error that resulted in an unauthorized sentence may be asserted in the first instance on appeal, even absent an objection in the trial court. People v. Corban (App. 1 Dist. 2006) 42 Cal.Rptr.3d 184, 138 Cal.App.4th 1111. Criminal Law 1042

Defendant waived any procedural irregularities in trial court's order that defendant pay preparation costs of presentence probation report, where defendant did not object to imposition of costs at trial. People v. Robinson (App. 3 Dist. 2002) 128 Cal.Rptr.2d 619, 104 Cal.App.4th 902. Criminal Law 1042

While a discretionary sentencing decision may not be challenged on appeal in the absence of objection below, an appeal from an "unauthorized sentence" is not subject to the same limitation. People v. Andrade (App. 1 Dist. 2002) 121 Cal.Rptr.2d 923, 100 Cal.App.4th 351, review denied. Criminal Law 1042

Defendant did not waive for review his claim that the trial court imposed an unauthorized parole revocation fine, even though defendant failed to object to the imposition of the fine at the time of sentencing; the defendant's claim involved an allegedly unauthorized sentence, and such a claim could be raised at any time. People v. Andrade (App. 1 Dist. 2002) 121 Cal.Rptr.2d 923, 100 Cal.App.4th 351, review denied. Criminal Law 1042

The waiver doctrine precludes appellate review in cases where a defendant fails to object to the reasonableness of a probation condition. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

Unauthorized sentence exception is a narrow exception to the waiver doctrine, which otherwise precludes appellate review of errors relating to a sentence when defendant fails raise the errors in the trial court, and exception normally applies where the sentence could not lawfully be imposed under any circumstance in the particular case, for example, where the court violates mandatory provisions governing the length of confinement. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

The class of nonwaivable claims under unauthorized sentence exception to the waiver doctrine, which otherwise precludes appellate review of errors relating to a sentence when defendant fails raise the errors in trial court, includes obvious legal errors at sentencing that are correctable without referring to factual findings in the record or remanding for further findings. People v. Brach (App. 3 Dist. 2002) 115 Cal.Rptr.2d 753, 95 Cal.App.4th 571, as modified. Criminal Law 1042

To preserve for appeal the issue of the reasonableness of a condition of probation, a juvenile offender must object to it in the juvenile court, unless some exception applies to excuse the failure to object; overruling *In re Tanya B.*, 50 Cal.Rptr.2d 576. In re Justin S. (App. 2 Dist. 2001) 113 Cal.Rptr.2d 466, 93 Cal.App.4th 811. Infants 243

Rule, that failure to timely challenge probation condition in trial court waives claim on appeal, would not be applied

to defendant or any other litigant whose probation conditions were considered at sentencing hearing held before instant decision would become final; existing law overwhelmingly said no such objection was required for preservation of claim on appeal. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Courts 100(1); Criminal Law 1042

Failure to object and make offer of proof at sentencing hearing concerning alleged errors or omissions in probation report waives claim on appeal. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Criminal Law 1042

Failure to timely challenge probation condition in trial court, on grounds that it is condition which regulates conduct not itself criminal and is not reasonably related to crime of which defendant was convicted or to future criminality, waives claim on appeal. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Criminal Law 1042

Absent an objection at trial level to contents of probation report, defendant was deemed to have waived that issue. People v. Wagoner (App. 5 Dist. 1979) 152 Cal.Rptr. 639, 89 Cal.App.3d 605. Criminal Law 1042

Unless record of probation and sentencing hearing shows objection to allegedly improper entries in probation report and an erroneous ruling thereon, such issue is not available on appeal; a trial court objection is a necessary predicate to appellate consideration of such issue. People v. Medina (App. 2 Dist. 1978) 144 Cal.Rptr. 581, 78 Cal.App.3d 1000. Criminal Law 1042

Defendant who failed to exercise right to reject terms of probation which were granted in accordance with his request and to demand that judgment be entered and sentence imposed, waived his objections thereto and was foreclosed from raising them on appeal. People v. Walker (App. 3 Dist. 1949) 93 Cal.App.2d 54, 208 P.2d 724. Criminal Law 1042

Defendant, having applied from, consented to and taken advantage of favorable terms of probation, though ineligible therefor due to prior conviction of felony, could not, after probation had been revoked for violation thereof, challenge for the first time on habeas corpus court's jurisdiction to pronounce sentence. Ex parte Martin (App. 3 Dist. 1947) 82 Cal.App.2d 16, 185 P.2d 645. Habeas Corpus 506

110. ---- Mandamus, review

Where superior court erroneously concluded that defendant, who had pleaded guilty to charge of embezzling public money, was a public official and therefore refused to entertain his application for probation on ground that he was not eligible therefor, petition for writ of prohibition to restrain superior court from pronouncing sentence until it had considered and acted upon application for probation would be regarded as a petition for writ of mandate and a peremptory writ of mandate would be issued commanding superior court to hear and determine application for probation upon its merits. Schaefer v. Superior Court in and for Santa Barbara County (App. 1952) 113 Cal.App.2d 428, 248 P.2d 450. Mandamus 1; Mandamus 31

Application for writ of mandate was proper remedy to require trial court to hear and determine probation application. Lloyd v. Superior Court of California, in and for Los Angeles County (1929) 208 Cal. 622, 283 P. 931. Mandamus 61

Where one guilty of robbery in second degree, who was possessed of loaded revolver at time of crime, moved for order placing him on probation, court then had power to hear application, but whether he would do so was entirely in discretion of court, which could not be controlled or reviewed by mandamus. Svoboda v. Purkitt (App. 1 Dist.

1925) 75 Cal.App. 148, 242 P. 81.

111. ---- Modification of judgment, review

Judgment in prosecution for assault with a deadly weapon on police officer would be modified by striking the "armed clause language," and would be modified to state that defendant was armed with a deadly weapon at time of the commission of the offense within meaning of this section but that § 3024 (repealed) relating to minimum terms for armed or prior offenders, and § 12022 relating to commission of a felony or attempt while armed, and providing for additional punishment, were not applicable. People v. Whalen (App. 5 Dist. 1973) 109 Cal.Rptr. 282, 33 Cal.App.3d 710. Criminal Law 1184(1)

Judgment upon conviction of attempted robbery and robbery would be modified by deleting the words "and that defendant was armed as alleged" and substituting therefor the words "and that, at the time of commission of each of said two offenses, defendant was armed with a pistol within the meaning of section 1203 of the Penal Code--sections 3024 and 12022 of the Penal Code not being applicable." People v. Lyons (App. 2 Dist. 1970) 84 Cal.Rptr. 535, 4 Cal.App.3d 662. Criminal Law 1184(2)

112. ---- Time, review

Where judgment of conviction was pronounced on December 18, 1951, but execution of sentence was suspended and defendant was granted conditional probation for a period of three years, and order granting probation was revoked on March 19, 1953, defendant's appeal, notice of which was signed March 30, 1953, if regarded as having been taken from the original judgment, came too late. People v. Foley (App. 1 Dist. 1953) 118 Cal.App.2d 291, 257 P.2d 452. Criminal Law 1069(1)

113. ---- Remand, review

Under this section, trial court, when resentencing defendant following remand by appellate court, must obtain current probation report before imposing sentence. People v. Cooper (App. 1 Dist. 1984) 200 Cal.Rptr. 317, 153 Cal.App.3d 480. Criminal Law 1192

Where trial judge's comments did not make it clear as to whether he entertained belief that he was required to sentence defendant to state prison because of finding that he possessed more than one-half ounce of heroin or whether he was entitled to strike the one-half ounce allegation and grant probation matter was to be remanded for resentencing. People v. Watkins (App. 2 Dist. 1979) 152 Cal.Rptr. 465, 89 Cal.App.3d 264, hearing granted , transferred to court of appeal, opinion on retransfer not for publication.

Ex parte statements by prosecution to supervising judge, after defendant had entered plea of guilty to one count of burglary and his case had been assigned to a new judge for sentencing, to effect that case was sensitive or very controversial one involving police officer were adverse to defendant, whose case was thereafter reassigned to supervising judge's department for sentencing, raising grave ethical issues and required that defendant, sentenced to imprisonment, be resentenced by a judge who had not been involved in proceedings. In re Hancock (App. 4 Dist. 1977) 136 Cal.Rptr. 901, 67 Cal.App.3d 943. Sentencing And Punishment 400

Where defendant, who was convicted of first-degree murder, was not personally armed with rifle used to fire fatal bullet either at time of offense or time of his arrest, and baseball bat used by him to smash automobile window through which codefendant fired fatal shot was not used to inflict physical injury on victim, defendant was not ineligible for probation as matter of law, but case would be remanded for determination of whether the bat was deadly weapon because of manner in which it was used by defendant. People v. McCullin (App. 2 Dist. 1971) 97

Cal.Rptr. 107, 19 Cal.App.3d 795. Sentencing And Punishment 1853; Criminal Law 1181.5(8)

Where determination of whether defendant was armed at time of robbery and attempted robbery was essential to determine crime committed and would serve a useful purpose in event of subsequent conviction, in view of this section prohibiting probation to defendant previously convicted of felony while armed with deadly weapon, efficient administration of justice required remand for express determination of whether defendant had been armed with deadly weapon within this section. People v. Floyd (1969) 80 Cal.Rptr. 22, 71 Cal.2d 879, 457 P.2d 862. Criminal Law 1189

Where defendant pleaded guilty to receiving stolen property, and probation officer's report indicated that defendant had four previous felony convictions in foreign state, and trial court stated its opinion that case did not call for imprisonment in state prison, but trial court did not consider whether offense was a misdemeanor and did not determine whether there was an unusual situation within meaning of this section judgment denying probation would be reversed and cause would be remanded. People v. Whelchel (App. 4 Dist. 1969) 74 Cal.Rptr. 858, 269 Cal.App.2d 379. Criminal Law 1189

Although striking of incorrect recitals which found defendant had been armed with deadly weapon in committing the first-degree robberies of which he had been convicted would mitigate severity of judgment, court was unable to say whether the special verdicts had influenced imposition of consecutive sentences on the three counts or the denial of probation, and under circumstances judgment would be reversed for the limited purpose of remanding case to trial court for rearraignment for judgment after first obtaining an updated supplemental probation report. People v. Smith (App. 2 Dist. 1968) 66 Cal.Rptr. 551, 259 Cal.App.2d 814. Criminal Law 1181.5(8)

Where supreme court remanded cause with specific directions to trial court to entertain application for probation of defendant who pleaded guilty to attempted robbery in first degree and murder in first degree, trial court did not abuse its discretion in reviewing probation without first determining whether requirements of this section for probation were present, that is, whether defendant had been armed with deadly weapon at time of commission of felony. People v. Miller (App. 1 Dist. 1960) 8 Cal.Rptr. 578, 186 Cal.App.2d 34. Criminal Law 1192

Where defendant was convicted of robbery in the first degree, reviewing court could not direct trial court to permit defendant to file an application for probation and to entertain and pass on the same. People v. Taylor (App. 1955) 135 Cal.App.2d 201, 286 P.2d 952. Criminal Law 1188

Where district court of appeal, on appeal from judgment of conviction of one count of grand theft and one count of forgery, which recited three previous convictions, modified judgment to recite only one previous conviction, right of petitioner to have trial court determine upon corrected record whether probation should be granted or denied and whether sentence should run cumulatively or concurrently was a substantial one and district court of appeal should have remanded cause to trial court to make such determination rather than affirming judgment as modified. Application of Bartges (1955) 44 Cal.2d 241, 282 P.2d 47. Criminal Law 1188

114. ---- Record, review

Where defendant contended that silence of district attorney at time of order granting probation constituted waiver and consent of people to probation, order allowing augmentation of record on appeal to include proceedings taken at time of order granting probation did not prejudice defendant and defendant's motion to strike order allowing augmentation would be denied. People v. Thatcher (App. 1 Dist. 1967) 63 Cal.Rptr. 492, 255 Cal.App.2d 830. Criminal Law 1110(1)

Examination of record did not disclose any injury to legal rights of defendant who was convicted of assault with deadly weapon and whose request for probation was denied. People v. Williams (App. 4 Dist. 1966) 55 Cal.Rptr.

434, 247 Cal.App.2d 169. Sentencing And Punishment 1843

Record failed to support contention that denial of probation after conviction of manslaughter was improperly based on this section prohibiting probation where great bodily injury is inflicted in the perpetration of a crime, and judgment sentencing defendant to prison for the term prescribed by law would be affirmed. People v. Shipman (App. 1 Dist. 1952) 110 Cal.App.2d 279, 242 P.2d 349. Sentencing And Punishment 1853

115. Res judicata

Matter of probation became res judicata by order denying defendant in forgery prosecution probation, so there was nothing for court's consideration on second application. People v. Payne (App. 4 Dist. 1930) 106 Cal.App. 609, 289 P. 909. Sentencing And Punishment 1914

West's Ann. Cal. Penal Code § 1203, CA PENAL § 1203

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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Effective: [See Text Amendments]

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ **§ 1203a. Probation; misdemeanor cases; maximum term**

In all counties and cities and counties the courts therein, having jurisdiction to impose punishment in misdemeanor cases, shall have the power to refer cases, demand reports and to do and require all things necessary to carry out the purposes of Section 1203 of this code insofar as they are in their nature applicable to misdemeanors. Any such court shall have power to suspend the imposing or the execution of the sentence, and to make and enforce the terms of probation for a period not to exceed three years; provided, that when the maximum sentence provided by law exceeds three years imprisonment, the period during which sentence may be suspended and terms of probation enforced may be for a longer period than three years, but in such instance, not to exceed the maximum time for which sentence of imprisonment might be pronounced.

CREDIT(S)

(Added by Stats.1933, c. 518, p. 1340, § 1. Amended by Stats.1949, c. 504, p. 863, § 2.)

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The 1949 amendment, in the second sentence, in three places, substituted "three years" for "two years".

CROSS REFERENCES

Jurisdiction, misdemeanors, see Cal. Const. Art. VI, § 10.
Misdemeanors defined, see Penal Code § 17.
Offenses to be punished as misdemeanor when no punishment prescribed, see Penal Code § 19.4.
Punishment for misdemeanor, see Penal Code § 19.

LAW REVIEW AND JOURNAL COMMENTARIES

Conditions of probation. Thomas F. McBride and George W. McClure (1954) 29 Cal.St.B.J. 44.

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Sentencing and Punishment 1801 to 1806, 1945.
Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1549 to 1550, 1552, 1555.
Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr. Appendix 13 et seq.

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107 ALR 634, Are Sentences on Different Counts to be Regarded as for a Single Term or for Separate Terms as Regards Pardon, Parole, Probation, Suspension, or Commutation?

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 341, Authority of Court in Misdemeanor and Infraction Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 344, Duration of Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 450, Setting Aside Order Revoking Probation.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 530, Election to Refer.

3 Witkin Cal. Crim. L. 3d Punishment § 543, (S 543) Misdemeanor Cases.

NOTES OF DECISIONS

1. In general

Under this section, multiple misdemeanor sentences ordered in one judgment to run consecutively must be regarded as a single sentence of imprisonment. Fayad v. Superior Court In and For Los Angeles County (App. 1957) 153

Cal.App.2d 79, 313 P.2d 669. Sentencing And Punishment 1129

2. Construction with other laws

Section 1203.2 which provides that "if an order setting aside judgment, the revocation of probation, or both is made after the expiration of the probationary period, the court may again place the person on probation for such period and with such terms and conditions as it could have done immediately following conviction" was inapplicable to action in which court initially placed misdemeanant on probation for period in excess of the statutory maximum and this section did not authorize such action. People v. Ottovich (App. 1 Dist. 1974) 116 Cal.Rptr. 120, 41 Cal.App.3d 532. Sentencing And Punishment 1946

This section should be construed consistently with the provisions of § 1203.1. Fayad v. Superior Court In and For Los Angeles County (App. 1957) 153 Cal.App.2d 79, 313 P.2d 669.

Provision of this section that any court having jurisdiction to impose punishment in misdemeanor cases shall have power to suspend the imposing or execution of sentence has not been repealed and remains as an exception to § 1203.1 generally providing for probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1826

This section was neither expressly nor impliedly repealed by enactment of § 1203.1. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353.

This section is one of the exceptions "hereinafter set forth" as provided in § 1203.1. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353.

3. Authority of courts

Justice's and police courts on conviction for misdemeanor may grant probation summarily. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1890

Municipal court on conviction for misdemeanor has power to effect suspension of sentence only by following method prescribed in this section and § 1203. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1804

4. Probation conditions

Rather than impose sentence of one year in the county jail with one day suspended, trial court should have granted probation upon condition that defendant serve one year in the county jail if that was its intention. In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1976(2)

Granting of summary probation in misdemeanor cases does not dispense with the reporting and supervision of probationer. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1988

Justice court had power to fine $100.00 and give 30-day jail sentence on each count and to suspend execution of jail sentence if accused paid within 48 hours the sums which it was charged accused had wilfully refused to pay as wages due and payable. Ex parte Trombley (1948) 31 Cal.2d 801, 193 P.2d 734.

Police court order placing a defendant, who was convicted of a misdemeanor in police court, on probation, even

though it included as a condition a period of detention in the county jail, was not a judgment and sentence, nor was the imposition of a fine as a condition of probation a judgment imposing a fine. Ex parte Goetz (App. 4 Dist. 1941) 46 Cal.App.2d 848, 117 P.2d 47. Sentencing And Punishment 1931

Section 19a, providing that no person sentenced to confinement in jail on conviction of misdemeanor or as condition of probation shall be committed for more than one year, relates solely to misdemeanor cases and cannot be invoked by one on probation under conviction of felony. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Prisons 13.3

Section 19a, prohibiting commitment of person, sentenced to confinement in jail on conviction of misdemeanor or as condition of probation, for period exceeding one year, but providing for commitment to county penal farm for such period as court may order within statutory limits for offense, must be read and construed as whole in harmony with other statutes relating to same general subject. In re Marquez (1935) 3 Cal.2d 625, 45 P.2d 342. Prisons 13.3

5. Period of probation

Municipal court had jurisdiction to impose sentence in misdemeanor cases some four and one-half years after original imposition of probationary sentence in one case and more than five years after such imposition in another case, following final revocation of probation after various revocations and reinstatements, even though the maximum period for which probation could initially have been imposed was three years. In re Hamm (App. 2 Dist. 1982) 183 Cal.Rptr. 626, 133 Cal.App.3d 60. Sentencing And Punishment 2032

Any failure of court to extend probation period constituted judicial rather than clerical error in absence of the order being incorrectly recorded. In re Daoud (1976) 129 Cal.Rptr. 673, 16 Cal.3d 879, 549 P.2d 145. Sentencing And Punishment 1913

Although court's order attempted to extend probation for as much as an additional 28 years, where court would clearly have preferred an extension of term to limit of three years under this section rather than no extension at all and probationer could not have objected had court extended term to this section's limits, limited effect would be granted to the order by extending the probation to this section's three-year limit; thus revocation within that period was effective. In re Daoud (1976) 129 Cal.Rptr. 673, 16 Cal.3d 879, 549 P.2d 145. Sentencing And Punishment 1953

Where prisoner who pleaded guilty to failure to support a child was sentenced on January 4, 1972 to one year in the county jail with one day suspended, period of probation commenced with confinement in jail as a condition of probation and under this section providing that court shall have power to suspend the imposing or the execution of sentence for period not to exceed three years, probationary period could not extend beyond January 4, 1975. In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1940

Trial court has authority only to make and enforce a term of probation not to exceed three years upon misdemeanant. People v. Ottovich (App. 1 Dist. 1974) 116 Cal.Rptr. 120, 41 Cal.App.3d 532. Sentencing And Punishment 1943

Imposition of sentence of probation for period in excess of three years upon misdemeanant was error. People v. Ottovich (App. 1 Dist. 1974) 116 Cal.Rptr. 120, 41 Cal.App.3d 532. Sentencing And Punishment 1943

Where portion of nonsupport statute (Pen.C. § 270) raising offense to a felony if nonsupporting father subject to court order remains absent from state for 10 days was ruled unconstitutional, and felony conviction was modified to conviction of a misdemeanor, 12-year period of probation was excessive. People v. Temple (App. 2 Dist. 1971) 97

Cal.Rptr. 794, 20 Cal.App.3d 540. Sentencing And Punishment 1943

Although it was possible to place defendant, after revocation of probation and imposition of suspended one-year county jail sentence, on probation up to three years, it was for a one-year period only since trial judge omitted expressly setting it for longer than one year. People v. Morga (App. 2 Dist. 1969) 78 Cal.Rptr. 120, 273 Cal.App.2d 200. Sentencing And Punishment 2034

Provision for three years' probation when maximum term of sentence was 90 days was not improper. People v. Heath (App. 2 Dist. 1968) 72 Cal.Rptr. 457, 266 Cal.App.2d 754. Sentencing And Punishment 1945

Where 60-day sentence was suspended and defendant was placed on probation for 2 years, commitment after expiration of maximum possible term for defendant's offense, which was 6 months, was within jurisdiction of justice's court as against contention that reenactment of § 1203.1, authorizing suspension of sentence for period not to exceed maximum possible term and providing exceptions, repealed this section under which commitment was had. In re Clausen (App. 1 Dist. 1936) 14 Cal.App.2d 246, 57 P.2d 1353. Sentencing And Punishment 1826

6. Sentence--In general

Where defendant pleaded guilty to four counts of contributing to delinquency of minor, a misdemeanor, and defendant was sentenced to imprisonment in county jail for one year on each count, the sentences to run consecutively, and probation was granted for period of two years on each count but not to exceed a total of five years, the judgment imposing county jail sentence of four years, i.e., one year on each of four counts to run consecutively, was proper, and the judgment, for probation purposes, must be interpreted as imposing upon the defendant a sentence of four years and a probationary term for at least a like period of time, and the attempt of the court to divide the probationary term into several periods was ineffective, and an order of revocation made within the four-year period was valid. People v. Blume (App. 4 Dist. 1960) 7 Cal.Rptr. 16, 183 Cal.App.2d 474. Sentencing And Punishment 2005; Sentencing And Punishment 1946

A judgment ordering misdemeanor sentences on several counts to run consecutively is a single "sentence of imprisonment" within this section. People v. Blume (App. 4 Dist. 1960) 7 Cal.Rptr. 16, 183 Cal.App.2d 474. Sentencing And Punishment 1946

7. ---- Suspension, sentence

Where court ordered that defendant be imprisoned in county jail for 180 days and ordered one day suspended and credit for time served, court in effect sentenced defendant and then summarily granted him probation and as condition thereof ordered him confined in county jail for 179 days, less time already spent in custody. People v. Victor (1965) 42 Cal.Rptr. 199, 62 Cal.2d 280, 398 P.2d 391. Sentencing And Punishment 1976(1)

Where defendant was sentenced to county jail for six months on each of seven counts of petty theft, a misdemeanor, and the sentences were directed to run consecutively, under this section suspension of execution of sentence was limited to maximum period for which the accused could be imprisoned, which was three and one-half years, and court's attempt to extend probation after expiration of three and a half years was a nullity. Fayad v. Superior Court In and For Los Angeles County (App. 1957) 153 Cal.App.2d 79, 313 P.2d 669. Sentencing And Punishment 1946

Where municipal court entered judgment of conviction against defendant for failure to grant a pedestrian the right of way at a cross-walk, which offense was a misdemeanor, and then ordered the sentence suspended, the effect of such order was to place the defendant on summary probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126. Sentencing And Punishment 1809

Granting of probation by suspending sentence was valid and free from fatal uncertainty even though judgment suspending sentence failed to set the term of the probationary period or impose conditions of the probation. People v. Rye (Super. 1956) 140 Cal.App.2d Supp. 962, 296 P.2d 126.

In an order granting probation, court may suspend execution of sentence, and may also direct that such suspension continue for not more than three years where maximum sentence fixed by law is three years or less, and in connection with granting probation, court may impose imprisonment in county jail. Oster v. Municipal Court of Los Angeles Judicial Dist., Los Angeles County (1955) 45 Cal.2d 134, 287 P.2d 755. Sentencing And Punishment 1945

Judgment of municipal court sentencing defendant for 90 days for a misdemeanor followed by order suspending sentence and placing defendant on probation upon condition that she spend first 30 days in county jail did not constitute a judgment and sentence, nor the serving of 30 days thereunder constitute the serving of term in a penal institution so as to justify imposition of increased penalty on subsequent conviction for misdemeanor on ground that defendant had suffered a prior conviction. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1251; Sentencing And Punishment 1324

8. ---- Stay of execution, sentence

Inasmuch as the municipal court could not stay a sentence that had been suspended, when municipal court stated that it proposed to give prisoner who was on probation with confinement in jail as a condition of probation another stay of execution, the court was, in effect, modifying the terms of probation from condition of confinement to a condition of nonconfinement and the three-year limitation on the period of probation did not cease to run at time of the "stay." In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1976(3)

9. Orders

Order of municipal court granting probation of sentence was not invalid because it was inartificial in form, since no formal order was required for granting of probation. People v. Wallach (App. 1935) 8 Cal.App.2d 129, 47 P.2d 1071. Sentencing And Punishment 1913

10. Estoppel

Fact that prisoner who had pleaded guilty to failure to support a child and who had been placed on probation accepted a "stay" beyond the three-year limitation on probationary period and did not seek mandamus to require the court to execute the sentence did not estop prisoner from relying on this section limiting period of probation to three years inasmuch as prisoner was apparently not aware of the consequence of his consent. In re Dupper (App. 1 Dist. 1976) 128 Cal.Rptr. 898, 57 Cal.App.3d 118. Sentencing And Punishment 1944

West's Ann. Cal. Penal Code § 1203a, CA PENAL § 1203a

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ § 1203b. Suspension of imposition or execution of sentence and grant of conditional sentence in misdemeanor or infraction cases; report to court; responsibility of probation officer

All courts shall have power to suspend the imposition or execution of a sentence and grant a conditional sentence in misdemeanor and infraction cases without referring such cases to the probation officer. Unless otherwise ordered by the court, persons granted a conditional sentence in the community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons.

CREDIT(S)

(Added by Stats.1941, c. 24, p. 445, § 1. Amended by Stats.1951, c. 502, p. 1655, § 1, eff. Sept. 22, 1951; Stats.1971, c. 70, p. 97, § 2; Stats.1972, c. 618, p. 1143, § 119; Stats.1981, c. 1142, § 7; Stats.1982, c. 247, § 2, eff. June 9, 1982.)

HISTORICAL AND STATUTORY NOTES

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As added in 1941, the section read:

"All courts having jurisdiction to impose punishment in misdemeanor cases shall have the power to grant probation summarily in misdemeanor cases without referring such cases to the probation officer."

Section 2 of the 1941 act, which added this section, declared the urgency of the addition, although no mention of urgency was made in the title. The 1941 enactment was effective Feb. 4, 1941.

The 1951 amendment rewrote the section to read substantially as it now appears.

This section was enacted as "section 1203b" in 1941. However, the 1951 amendment amended "section 1203(b)".

The 1971 amendment made the section applicable to infraction cases.

The 1972 amendment renumbered the section to be 1203b rather than 1203(b) and made no other changes.

The 1981 amendment substituted "to suspend sentence and grant conditional and revocable release in the

community" for "to grant probation summarily" following "shall have power"; and, in the proviso, following "persons granted" substituted "conditional and revocable release in the community" for "probation summarily".

The 1982 amendment rewrote the section which had read:

"All courts shall have power to suspend sentence and grant conditional and revocable release in the community in misdemeanor and infraction cases without referring such cases to the probation officer; provided, however, that unless otherwise ordered by the court, persons granted conditional and revocable release in the community shall report only to the court and the probation officer shall not be responsible in any way for supervising or accounting for such persons."

Section 3 of Stats.1982, c. 247, provided:

"It is the intent of the Legislature in creating the conditional sentence to clarify supervisory responsibilities over persons convicted of infractions and misdemeanors. It is not the intent of the Legislature to diminish in any way current powers of or sentencing options available to the courts. Statute and case law relating to probation summarily granted by the court without referral to the probation officer shall be construed to apply in the same manner to conditional sentences".

CROSS REFERENCES

"Conditional sentence" defined for purposes of this Code, see Penal Code § 1203.
Misdemeanors, definition and penalties, see Penal Code §§ 17, 19 and 19.2.
"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

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Summary granting of probation, work of 1941 legislature. 15 S.Cal.L.Rev. 33 (1941).

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C.J.S. Criminal Law §§ 1549 to 1550, 1552, 1555, 1559.
Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr.Appendix 13 et seq.

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CA Jur. 3d Criminal Law: Post-Trial Proceedings § 341, Authority of Court in Misdemeanor and Infraction Cases.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 504, (S 504) Supervision of Probationer.

3 Witkin Cal. Crim. L. 3d Punishment § 531, Conditional Sentence.

NOTES OF DECISIONS

1. In general

Where probation is summarily granted to person convicted of misdemeanor without other directions, probation papers including a written statement of terms and conditions of probation should be furnished by the judge. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1919

2. Amendment

Amendment adding clause "not amounting to a felony", without expressly omitting clause "if probation is not denied", from § 1203, providing that court may summarily deny probation or hear and determine in defendant's presence the matter of probation of defendant on conditions, if granted, and providing that court must immediately refer matter to probation officer for investigation if probation is not denied, did not repeal power granted to the court to summarily grant probation in misdemeanor cases without reference to probation officer. 16 Op.Atty.Gen. 72.

3. Reporting and supervision

"Conditional sentence" imposed on defendant for reckless driving in California state court constituted "criminal justice sentence" under federal sentencing guidelines, warranting addition of two points to criminal history computation upon conviction for tax evasion, even though probation office did not supervise defendant under state sentence, since defendant was supervised by being required to report directly to state court. U.S. v. Collins, N.D.Cal.1998, 28 F.Supp.2d 1114. Sentencing And Punishment 790

Where court in a misdemeanor case summarily granted probation without referring case to probation officer and without indicating place to report, court was place to which probationer should report, and such court had responsibility of supervision of probationer. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1988

Granting of summary probation in misdemeanor cases does not dispense with the reporting and supervision of probationer. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1988

4. Term of probation

Where judge granted person convicted of a misdemeanor summary probation with no statement as to the term, the term of probation must, of necessity be implied. People v. Municipal Court of Oxnard-Port Hueneme Judicial Dist., Ventura County (App. 1956) 145 Cal.App.2d 767, 303 P.2d 375. Sentencing And Punishment 1943

5. Revocation of probation

Where petitioner, after having been found guilty of manslaughter without gross negligence, a misdemeanor, was granted probation and released upon condition that he violate no laws, that he refrain from use of intoxicating liquors, and that he refrain from operating a motor vehicle during two-year term of probation, written notice to probation officer pursuant to § 1203.3 was not essential before court could revoke prior order granting probation and proceed to pronounce judgment. Ex parte Walden (App. 4 Dist. 1949) 92 Cal.App.2d 861, 208 P.2d 441. Sentencing And Punishment 2013

West's Ann. Cal. Penal Code § 1203b, CA PENAL § 1203b

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West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ **§ 1203c. Probation officer; reports to department**

(a)(1) Notwithstanding any other provisions of law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections and Rehabilitation, whether probation has been applied for or not, or granted and revoked, it shall be the duty of the probation officer of the county from which the person is committed to send to the Department of Corrections and Rehabilitation a report of the circumstances surrounding the offense and the prior record and history of the defendant, as may be required by the Secretary of the Department of Corrections and Rehabilitation.

(2) If the person is being committed to the jurisdiction of the department for a conviction of an offense that requires him or her to register as a sex offender pursuant to Section 290, the probation officer shall include in the report the results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO) administered pursuant to Sections 290.04 to 290.06, inclusive, if applicable.

(b) These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Corrections Standards Authority, except that if the defendant is ineligible for probation, a report of the circumstances surrounding the offense and the prior record and history of the defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet the requirements of paragraph (1) of subdivision (a).

(c) In order to allow the probation officer an opportunity to interview, for the purpose of preparation of these reports, the defendant shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Secretary of the Department of Corrections and Rehabilitation, unless the probation officer has indicated the need for a different period of time.

CREDIT(S)

(Added by Stats.1935, c. 491, p. 1564, § 1. Amended by Stats.1963, c. 1785, p. 3566, § 1; Stats.2006, c. 337 (S.B.1128), § 39, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 337, rewrote this section, which had read:

"Notwithstanding any other provisions of law, whenever a person is committed to an institution under the jurisdiction of the Department of Corrections, whether probation has been applied for or not, or granted and revoked, it shall be the duty of the probation officer of the county from which the person is committed to send to the Department of Corrections a report upon the circumstances surrounding the offense and the prior record and history of the defendant as may be required by the Administrator of the Youth and Adult Corrections Agency. These reports shall accompany the commitment papers. The reports shall be prepared in the form prescribed by the administrator following consultation with the Board of Corrections, except that in a case in which defendant is ineligible for probation, a report upon the circumstances surrounding the offense and the prior record and history of defendant, prepared by the probation officer on request of the court and filed with the court before sentence, shall be deemed to meet any such requirements of form. In order to allow the probation officer opportunity to interview, for the purpose of preparation of these reports, the prisoner shall be held in the county jail for 48 hours, excluding Saturdays, Sundays and holidays, subsequent to imposition of sentence and prior to delivery to the custody of the Director of Corrections, unless the probation officer shall have indicated need for a lesser period of time."

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

2004 Main Volume

The 1963 amendment conformed the terminology to present offices, officers, and institutions, specified the details governing reports, and added the last sentence.

CROSS REFERENCES

Department of corrections, generally, see Penal Code § 5000 et seq.
Narcotic addicts, commitment, mailing copies of probation officer's report to department of corrections, see Welfare and Institutions Code § 3008.
Presentence investigation reports, sentencing, rules for criminal cases in the Superior Court, see California Rules of Court, Rule 4.411.
"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

Juvenile court dispositional alternatives: Imposing a defense duty. John L. Roche, 27 Santa Clara L.Rev. 279 (1987).

LIBRARY REFERENCES

2004 Main Volume

Sentencing and Punishment 1886.
Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1552, 1554.
Sentencing standards for granting probation and/or committing to local correctional facilities, see Proceedings for the First Sentencing Institute of Superior Court Judges, 45 Cal.Rptr.Appendix 13 et seq.

RESEARCH REFERENCES

ALR Library

138 ALR 1230, Recommendation of Mercy in Criminal Case.

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 342, Referral to Probation Officer in Felony Cases.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 352, Reports to the Department of Corrections.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 503, (S 503) Probation Officers and Agencies.

West's Ann. Cal. Penal Code § 1203c, CA PENAL § 1203c

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

C

Effective:[See Text Amendments]

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
§ 1203d. Probation report; availability and consideration; filing; waiver; sentence recommendation

No court shall pronounce judgment upon any defendant, as to whom the court has requested a probation report pursuant to Section 1203.10, unless a copy of the probation report has been made available to the court, the prosecuting attorney, and the defendant or his or her attorney, at least two days or, upon the request of the defendant, five days prior to the time fixed by the court for consideration of the report with respect to pronouncement of judgment. The report shall be filed with the clerk of the court as a record in the case at the time the court considers the report.

If the defendant is not represented by an attorney, the court, upon ordering the probation report, shall also order the probation officer who prepares the report to discuss its contents with the defendant. Any waiver of the preparation of the report or the consideration of the report by the court shall be as provided in subdivision (b) of Section 1203, with respect to cases to which that subdivision applies.

The sentence recommendations of the report shall also be made available to the victim of the crime, or the victim's next of kin if the victim has died, through the district attorney's office. The victim or the victim's next of kin shall be informed of the availability of this information through the notice provided pursuant to Section 1191.1.

CREDIT(S)

(Added by Stats.1969, c. 522, p. 1137, § 3. Amended by Stats.1985, c. 984, § 1; Stats.1996, c. 123 (A.B.2376), § 2.)

HISTORICAL AND STATUTORY NOTES

2004 Main Volume

The 1985 amendment inserted "or her" in "his or her attorney" in the first sentence, and substituted "The report" for "Such report" in the second sentence of the first paragraph; and added the last paragraph.

The 1996 amendment, in the second paragraph, added the second sentence relating to waiver of preparation or consideration of the probation report.

Legislative intent respecting 1969 addition, see Historical and Statutory Notes under Penal Code § 1203.

LIBRARY REFERENCES

2004 Main Volume

Sentencing and Punishment 1902, 1912.
Westlaw Topic No. 350H.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 355, Availability Before Hearing.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 528, (S 528) Availability of Report.

3 Witkin Cal. Crim. L. 3d Punishment § 530, Election to Refer.

3 Witkin Cal. Crim. L. 3d Punishment § 553, (S 553) Defendant's Ability to Pay.

West's Ann. Cal. Penal Code § 1203d, CA PENAL § 1203d

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

C

Effective: September 20, 2006

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
§ 1203e. Facts of Offense Sheet for sex offenders required to register; contents; corrections; actions required of probation officer; transmission of sheet to specified parties

(a) Commencing June 1, 2010, the probation department shall compile a Facts of Offense Sheet for every person convicted of an offense that requires him or her to register as a sex offender pursuant to Section 290 who is referred to the department pursuant to Section 1203. The Facts of Offense Sheet shall contain the following information concerning the offender: name; CII number; criminal history, including all arrests and convictions for any registerable sex offenses or any violent offense; circumstances of the offense for which registration is required, including, but not limited to, weapons used and victim pattern; and results of the State-Authorized Risk Assessment Tool for Sex Offenders (SARATSO), as set forth in Section 290.04, if required. The Facts of Offense Sheet shall be included in the probation officer's report.

(b) The defendant may move the court to correct the Facts of Offense Sheet. Any corrections to that sheet shall be made consistent with procedures set forth in Section 1204.

(c) The probation officer shall send a copy of the Facts of Offense Sheet to the Department of Justice Sex Offender Tracking Program within 30 days of the person's sex offense conviction, and it shall be made part of the registered sex offender's file maintained by the Sex Offender Tracking Program. The Facts of Offense Sheet shall thereafter be made available to law enforcement by the Department of Justice, which shall post it with the offender's record on the Department of Justice Internet Web site maintained pursuant to Section 290.46, and shall be accessible only to law enforcement.

(d) If the registered sex offender is sentenced to a period of incarceration, at either the state prison or a county jail, the Facts of Offense Sheet shall be sent by the Department of Corrections and Rehabilitation or the county sheriff to the registering law enforcement agency in the jurisdiction where the registered sex offender will be paroled or will live on release, within three days of the person's release. If the registered sex offender is committed to the Department of Mental Health, the Facts of Offense Sheet shall be sent by the Department of Mental Health to the registering law enforcement agency in the jurisdiction where the person will live on release, within three days of release.

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 40, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

RESEARCH REFERENCES

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 503, (S 503) Probation Officers and Agencies.

West's Ann. Cal. Penal Code § 1203e, CA PENAL § 1203e

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

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C

Effective: September 20, 2006

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
➡ § 1203f. Probationers at high risk of committing sexual offenses; placement on intensive and specialized probation supervision

Every probation department shall ensure that all probationers under active supervision who are deemed to pose a high risk to the public of committing sex crimes, as determined by the State-Authorized Risk Assessment Tool for Sex Offenders, as set forth in Sections 290.04 to 290.06, inclusive, are placed on intensive and specialized probation supervision and are required to report frequently to designated probation officers. The probation department may place any other probationer convicted of an offense that requires him or her to register as a sex offender who is on active supervision to be placed on intensive and specialized supervision and require him or her to report frequently to designated probation officers.

CREDIT(S)

(Added by Stats.2006, c. 337 (S.B.1128), § 41, eff. Sept. 20, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

For short title of act, legislative findings and declarations, and appropriations, severability, cost reimbursement, and urgency effective provisions relating to Stats.2006, c. 337 (S.B.1128), see Historical and Statutory Notes under Government Code § 68152.

RESEARCH REFERENCES

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 504, (S 504) Supervision of Probationer.

West's Ann. Cal. Penal Code § 1203f, CA PENAL § 1203f

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

CALIFORNIA DEPARTMENT OF
Mental Health

State Authorized Risk Assessment Tool for Sex Offenders

(SARATSO)

Static-99
Train the Trainer

Amy Phenix, Ph.D.

STATIC-99

TRAIN THE TRAINER

Static-99 Power Point Presentation (Green)

Static-99 Coding Rules (Red)

Static-99 Coding Rules Quick Reference Guide (Blue)

Static-99 Coding Examples (Yellow)

Static-99 Coding Worksheets (Orange)

Static-99 Coding Examples w/answers (Pink)

Static-99 Examination (Purple)

Static-99 Journal Article (Goldenrod)

THE STATIC-99
Train the Trainer

Amy Phenix, Ph.D.

Sex Offender Risk Assessment

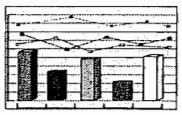
- Risk at Release from Institutions
- Level of Community Supervision
  - Probation and Parole
- Community Notification
- Civil Commitment

Approaches to Risk Assessment

- Unstructured clinical judgment
- Research guided clinical opinion (the list)
- Pure actuarial
- Clinically adjusted actuarial

Risk Factors for Sexual Offenders

- Compared to other sexual offenders, which individual characteristics increase or decrease their chances of recidivism over the long term?



Types of Risk Factors

- Static, historical
  - Prior sex offenses
  - Extrafamilial victims
  - Prior sentencing dates

Types of Risk Factors (cont.)

- Dynamic Risk factors
  - Stable
    - Intimacy Deficits
    - Sexual Self-regulation
    - Lack of Cooperation with Supervision
  - Acute
    - Anger
    - Intoxication

Predicting Relapse: A meta-analysis of sexual offender recidivism studies

(R. Karl Hanson & Monique Bussiere, 1998)

- Identified risk factors for sexual recidivism from 61 samples
- Examined
  - Demographic factors
  - General criminality
  - Sexual criminal history
  - Sexual deviancy
  - Clinical presentation and treatment history

Demographics

- 28,972 sex offenders
- 4-5 Year follow-up
- Countries:

U.S.	2 Australia
16 Canada	2 Denmark
10 England	1 Norway

Outcome Variables

- Sexual recidivism
- Nonsexual violent recidivism
- General (any) recidivism

Actuarial Risk Assessment

- Considers a number of variables
- Provides a specific statistical weight for each variable
- Gives a total risk score
- Gives an associated risk probability

Use of an Actuarial Risk Scale

- Levels of community notification
- Level of supervision
- Assigning GPS monitoring (and removal)
- More intensive mandated sex offender treatment
- Public notification on the Internet
- Duration of registration requirements.

Actuarial Instruments for Sexual Offender Recidivism

- **RRASOR** (Hanson)
- **SAC-J MIN** (Thorton)
- **Static-99** (Hanson & Thorton, 2000)

Development of RRASOR

Examined 7 risk factors from meta-analysis that could be easily scored by the records

Initial Pool of 7 Risk Factors (r = .11)

- Prior sex offenses
- Any prior non-sex offenses
- Male victims
- Stranger victims
- Unrelated victims
- Never married
- Age less than 25 years

RRASOR Sample

- 7 data sets from Canada and the USA
  - N=2592
  - Correctional and mental health hospitals
  - Follow-up 2-23 years

RRASOR Sample

■ Millbrook, Ontario (CM)	N=191	FU=23 yr
■ Institute Philippe Pinel	N=382	FU=4 yr
■ Oak Ridge (Penetang)	N=288	FU=10yr
■ Canadian Federal Releases 1983/84	N=316	FU=10 yrs

RRASOR Sample

■ Alberta Hospital Edmonton	■ N=363	FU=5 yrs
■ SOTEP (CA)	■ N=1138	FU=5 yrs
■ Canadian Federal releases 1991/94	■ N=241	Fu=2 yrs
■ Validation Sample: Her Majesty Prison Service (UK)	■ 303	FU=16

Definition of Recidivism on RRASOR

■ Millbrook, Ontario (CM)	Conv
■ Institute Philippe Pinel	Conv
■ Oak Ridge (Penetang)	Chg/readmissions
■ Canadian Federal Releases 1983/84	Conv
■ Alberta Hospital Edmonton	Chg
■ SOTEP (CA)	Chg
■ Canadian Federal releases 1991/94	Chg
■ HM Prison System	Conv

RRASOR

ITEMS		SCORE
1. Prior sex offenses		
Charges	Conv.	
None	none	0
1-2	1	1
3-5	2-3	2
6+	4+	3

RRASOR

ITEMS	SCORE
2. Any unrelated victims	0-1
3. Any male victims	0-1
4. Age less than 25	0-1

RRASOR

- **Estimated Recidivism Rates for Each Risk Scale Score**

RRASOR score	Sample size	5 YR	10 YR
0	527	4.4 %	6.5%
1	806	7.6%	11.2%
2	742	14.2%	21.1%
3	326	24.8%	36.9%
4	139	32.7%	48.6%
5	52	49.8%	73.1%
TOTAL	2592	13.2%	19.5%

Strengths of RRASOR

- Each factors strong empirical support link to sexual recidivism
- Rules are provided for translating the scores on various risk factors into probability estimates.
- Large cross validation
- Easy

Weaknesses of RRASOR

- Does not cover all relevant factors.
- Recidivism probabilities generated by the RRASOR are estimates.
- Because of only 4 items inconsequential changes may result in noticeable change in overall scores.
- Overall predictive accuracy moderate.

SACJ-Min

(Thorton, HM Prison Service)

- Predicts violent and sexual offending
- UK data sets
- Cross-validated on new sample (n=500) released 1979 followed for 16 years

SACJ-Min Stage Approach

Stage 1

- Any current sex offenses
- Prior sex offenses
- Any current nonsexual violent offenses
- Prior nonsexual violent offenses
- 4 or more sentencing occasions

Stage 2

Set A

- Stranger victim
- Any male victims
- Never married
- Conv. for non-contact sex offenses

Static-99 (Hanson & Thorton, 2000)

- RRASOR and SACJ-Min assessed related, but not identical constructs
- Only static items
- Work in progress

Static-99

- Setting secure psychiatric and prison
- 677 Canadian sex offenders
- Follow- up ranged 4-23 years
- Recidivism criteria-convictions

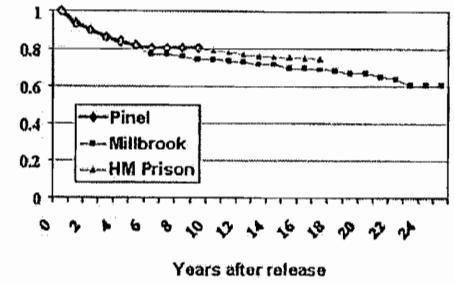
Static-99 Sample

Millbrook, Ontario (CM)	**N=191**	**FU=23 yr**
Institute Philippe Pinel	**N=344**	**FU=4 yr**
Oak Ridge (Penetang)	**N=142**	**FU=10yr**
Validation Sample: Her Majesty Prison Service (UK)	**N=531**	**FU=16yr**

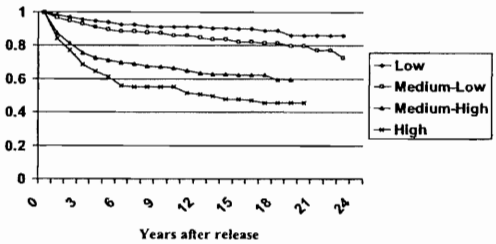
Definition of Recidivism on Static-99

Millbrook, Ontario (CM)	**Conv**
Institute Philippe Pinel	**Conv**
Oak Ridge (Penetang)	**Chg/readmissions**
HM Prison System	**Conv**

Sexual Reconviction Rates



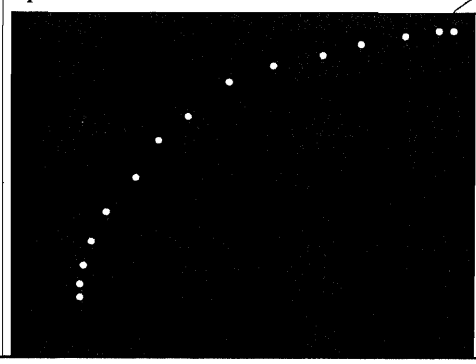
STATIC-99 Sexual Reconviction



95% C.I. for STATIC-99 15 year reconviction rates

Score	n	P	Low C.I.	Hi C.I
0	107	.13	.07	.19
1	150	.07	.03	.11
2	204	.16	.11	.21
3	206	.19	.14	.24
4	190	.36	.29	.45
5	100	.40	.30	.50
6+	129	.52	.43	.61

Measuring Predictive Accuracy: Receiver Operator Characteristic Curve



Static-99 Items

1. Young	0-1
2 Ever lived with a lover for two years	0-1
3. Index non-sexual violence-any convictions	0-1
4. Prior non-sexual violence-any convictions	0-1

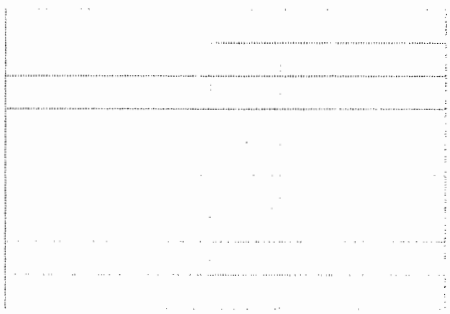
Static-99

ITEMS		SCORE
5. Prior sex offenses		
Charges	Conv.	
None	none	0
1-2	1	1
3-5	2-3	2
6+	4+	3

Static-99 Items (cont.)

8. Any Unrelated victims	0-1
9. Any Stranger victims	0-1
10. Male victims	0-1

Translating Static-99 Scores - Risk Categories



Strengths of the Static-99

- Published and peer reviewed
- Includes additional items
- Repeatedly cross validated on many samples
- More stable long term predictions than the RRASOR
- Widely used and accepted
- Usually easy to score from records

Weaknesses of the Static-99

- Modest predictive accuracy
- Still does not include all risk factors for sexual recidivism
- Few minorities

Predictive accuracy of Static-99

(n=1,208)

Instrument	r	ROC
Static-99	.33	.71
RRASOR	.28	.68
SACJ-Min	.23	.67

Similar predictive accuracy for CM and rapists

Predictive accuracy of Static-99

- Over 60 cross-validations of the Static-99 have been conducted
- 17 are listed in Appendix Nine of the Coding Rules
- N=4514 Mean ROC=72.4

Summary

- Combination of RRASOR and SACJ-Min more accurate then either alone.
- Does not include dynamic factors
- Accurate to the extent it considers all relevant risk factors

The Use of Static Risk Scales in the Community Management of Sex Offenders

- Provides initial base rate of risk once released to the community
- Provides a way to divide sex offenders into risk level
- Provides a scientific rational for management plans for sex offenders
- Is defensible in court

Is the Static-99 useful in predicting sexual recidivism?

- Static-99 **moderate** predictive accuracy for sexual recidivism (r=.33, ROC area=.71)

Static-99 Publication

- Hanson, R.K. & Thorton, D. (2000). Improving risk assessments for sex offenders: A comparison of three actuarial scales. Law and Human Behavior, 24, 119-136.

Coding Instructions

- Harris, A., Phenix, A., Hanson, R.K., & Thornton, D. (2000). Coding rules for the Static-99 [On-line]:

http://ww2.ps-sp.gc.ca/publications/corrections/pdf/Static-99-coding-Rules_e.pdf

CODING THE STATIC-99

Coding the STATIC-99-What You Need

- **Demographic**
  - Age at assessment/release; relationship history
- **Official criminal history**
  - Prior sex offences; index non-sexual violence; prior non-sexual violence; prior sentencing occasions; convictions for non-contact sex offences
- **Victim Information**
  - Use all credible information (except polygraph)
  - Any unrelated victims; any stranger victims; any male victims

Special Issues

- Missing Items-Ever Lived With a Lover for 2 Years
  - No Info score 0
  - As if offender HAS lived with Lover
- Recidivism Criteria-Reconviction
- Non-Contact Sex Offenses-the Static-99 sample contained both contact and non-contact offenders

Static-99 Sample

- Consider sample "untreated"
  - Treatment provided at the time was dated
  - Her Majesty's Prison Service was untreated

Static 99 sample was untreated
tx didn't work
- untreated group of offenders
- so we consider them untreated

Who can you use the Static-99 on?

- Adult Males
- Must have committed a sex offense
- Not for determining guilt
- Not for consenting sex with a similar age peer (stat. rape)
- For Not Guilty by Reason of Insanity

•any mental health

The Static-99 and Juvenile Offenders

- Some offenders in sample offended as juvenile and released after 18
- The older the juvenile offender the more applicable
- Type of crime
- Developmental, family and social issues impact juvenile offenders.
- Most juvenile offenders are antisocial and victimize peer mid teens
- If juvenile offender incarcerated many years not applicable

16 yrs old at age of offense. — age 18 at time assessment

only 15% of juvenile offend re-offend

J SORAT - to be used on 15 or less

Static-99 Sample

- Developmentally Delayed Offenders In Static-99 sample
- Minority Offenders
- Mental Health Issues

can be used but should be cautious

cognitive behavioral change.

Coding the Static-99

- 1 = Yes, problem
- 0 = No, O.K.
- except Prior Sex Offences (0, 1, 2, 3)
- Remember - 10 Questions Only !!!!!!!

Coding the Static-99

- Use with adult males convicted of at least one sex offense against child or non-consenting adult.
- Not for female offenders
- Not for offenders only convicted of the 4 P's.

4 P's

- Prostitution
- Pimping/pandering
- Public toileting
- Possession indecent materials (Child Porn)

Category B
- not valid offences to be scored
- use paragraph 8 if not eligible

Scoring Victim Item (Male) and Relationship items (Unrelated & Stranger)

- Official Records
- Collateral Sources (CPS Reports)
- Offender Self-Report
- Victims Reports
  - No polygraph information unless corroborated by additional sources

1. Young

- Offenders age at time of risk assessment
- Age (18 - 24.99 = 1) (25 or older = 0)
  - age when placed at risk
    - (current age/age at release)
  - when risk to be assessed-can project to future
- 1 point for being under the age of 25

2. Ever lived with a lover for at least two years

- Only item can omit or score both ways if no information
- Try to find collateral source
- Male or female for at least two years.
- Must be continuous
- Do not count legal marriages less than 2 years

2. Ever lived with a lover for at least two years

- Do not count male lovers in prison
- Do not count prison marriages without cohabitation
- Young offenders without opportunity to have relationship
- Relationships with adult victims do not count
- Extended absences not count (exceptions)
- One point for not having lived with lover for 2 years

Coding Non-Sexual Violence Convictions Items 3 & 4

- Convictions only
- Predicts behavior in next offense
- English data non-sexual violence predicted rape
- Other English data predicted any sex offense

Coding Non-Sexual Violence Convictions Items 3 & 4

- Juvenile and adult convictions (Juv. moved to secure residential placement)
- The same victims as the sex offense or different
- Must have intent to harm others
- Do not count convictions overturned on appeal

Included Offenses (p. 27 coding)

- Aggravated Assault
- Arson
- Assault (causing bodily harm)
- Assault Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (to impair victim)

Included Offenses (p. 27 coding)

- Grand Theft Person
- Juvenile Non-sexual Violence convictions count
- Kidnapping
- Murder
- Robbery
- Threatening
- Using/pointing a weapon/firearm during offense
- Violation Domestic Violence Order
- Wounding

Excluded Offenses (p. 28 coding)

- Arrests and Charges
- Convictions overturned on appeal
- Non-sexual violence after the index offense
- Institutional rules violations
- Driving accidents or convictions for negligence causing death or injury
- Resisting arrest
- Sexual offenses (sexual in name)

Military/ Murder Offenses for Nonsexual Violence

- Military
  - If "undesirable discharge" then is nonsexual violence offense and sentencing occasion. Must have received undesirable discharge and left military because of that offense.
- Murder
  - Sexual murder who gets convicted of murder gets point for non-sexual violence and a sex offense

Code as Non-Sexual Violence Convictions

- Murder / Manslaughter
- Kidnapping
- Forcible confinement
- Wounding
- Assault
- Arson
- Threatening with weapon
- Robbery

Non-Sexual Violence Convictions "Double Dipping Rule"

- If the behavior was sexual but the offender was convicted of non-sexual violence, the same conviction counts as both a sexual offense and non-sexual violence offense.

3. Index Non-Sexual Violence-Any Convictions

- Convictions for non-sexual violence at the same sentencing occasion as the index sex offense.
- Scoring No convictions=0, Any convictions=1,

4. Prior Non-Sexual Violence-Any Convictions

- Convictions for non-sexual violence prior to the index sex offense.
- Scoring No convictions=0, Any convictions=1

5. Prior Sex Offenses

- Definitions

Prior Sexual Offenses

As long ago as 1911 Thorndyke stated that the "best predictor of future behavior is past behavior."

Sexual Offense

- Officially recorded sexual behavior or intent
- Resulted in some form of criminal justice intervention or official sanction (Conviction, charge, arrest, supervision violation or institutional rules violation).
- If in custody must be serious enough they could be charged with new sex offense if not under legal sanction

Sexual Offense

- Criminal Justice Interventions / Official Sanction Include
  - Arrests
  - Charges
  - Convictions
  - Parole & Probation Violations
  - Institutional rules violations for sex offense
  - Community-based Justice Committee Agreements

Sexual Offense

- Official Sanctions Include
  - Imprisonment
  - Fines
  - Community supervision
  - Loss institutional time for sex offense
  - Alternative resolution agreements
  - Acquittals count

Sexual Offense (cont.)

- Count both juvenile and adult offenses
  - **Sexual offenses are scored only from official records-NO SELF REPORT**
    - **Exception: Immigrants and refuges**

Code Some Charges / Convictions-Not Sexual

- Rape and false imprisonment
- Rape and kidnap
- Rape and battery
- Murder
- Kidnap only
- Assault
- Theft (of underwear)

Category A Offenses
(children and non-consenting victims)

- Incest and non-incest child molest
- Annoy and molest children
- Rape
- Penetration foreign object
- Sodomy
- Oral Copulation

Category A Offenses (cont.)

- Sexual assault
- Sexual battery
- Sex with animals
- Sexual homicide
- Indecent exposure, exhibitionism

Category A Offenses (cont.)

- Voyeurism
- Invitation to sexual touching
- Unlawful sexual intercourse with minor
- Contributing to delinquency of minor **
- Sex with dead bodies
- Attempted sexual offenses

Category B Offenses

- Sexual behavior is illegal
- Parties are consenting
- No specific victim is involved

Category B Offenses (cont.)

- Child Pornography
- Pimping / pandering
- Offering, seeking, hiring Prostitutes
- Consenting sex in public places (gross indecency)
- Nudity associated with mental impairment
- Indecent behavior with a sexual motive (Urinating in public)

Prostitution

- Only count sexual behaviors if illegal in jurisdiction where the behavior takes place and the risk assessment takes place

Offenses that are NOT Coded

- Annoy children
- Consensual sexual activity in prison
- Failure to register as a sex offender
- Presence of children, loitering schools

Offenses that are NOT Coded (cont.)

- Possession of child lures, clothing
- Stalking (imminence)
- Reports to Child Protective Services without criminal charges
- Questioning by police not enough

Rules Violations

- Code if could be grounds for arrest or conviction for sex offense if not under legal sanction (See prior list.)
- Targeted vs. non-targeted activity (targets female officer)
- Code if reoffense imminent

Special Coding Cases

- Major mental illness
  - Informal hearings and sanctions – placement treatment facility, residential moves count as charge and conviction

Special Coding Cases

- Clergy and Military
  - Defrocking or transfer to treatment facility vs. new placement
- Juveniles
  - Never code sexual misbehavior of children 11 or under unless official charges
  - Sent to residential care counts as charge and conviction

5. Index Sex Offense

- Most recent sexual offense
  - Arrest, charge, conviction, rule violation
- INDEX CLUSTER
  - (spree of offending)
  - Multiple sentencing dates

5. Index Sex Offense (cont.)

- PSEUDO-RECIDIVISM
  - Historical offenses detected after conviction for more recent offense
  - Offenses overturned on appeal
  - Offense AFTER index offense

Historical Sex Offense

- Sexual or non-sexual institutional rules violation
- Probation, parole or conditional release violation(s)
- Arrest charges
- Convictions

Historical Sex Offense (cont.)

- Based on sexual misbehavior occurring PRIOR to the index offense.
- Includes juvenile and adult offenses

REMEMBER...

- To be a new offense the offender must have been detected, sanctioned and released AND then commit a NEW offense

Scoring Procedure

- Do not count index offense
- Count historical offenses
- Convert rules violations to 1 charge
- Tally total number of charges and convictions
- Final score based on total charges or convictions

REMEMBER...

- Use most recent charging document: Charges "pled out" or dropped
- Sex offense pled out to non-sex charge or conviction
- Acquittals count
- Number of victims irrelevant
- Charges or convictions may be on a single victim
- Arrest with no formal charges=1 charge

Sample Coding Historical Offense

CHARGES

- Count 1 PC 288(a) Lewd and Lascivious Acts W/Child
- Count 2 PC 288(a) Lewd and Lascivious Acts W/Child
- Count 3 PC 288(a) Lewd and Lascivious Acts W/Child
- Count 4 PC 286 Sodomy
- Count 5 PC 288a Oral Copulation
- Count 6 PC 459 Burglary

= 5 CHARGES

Sample Coding Historical Offense

CONVICTIONS

- Count 1 PC 288(A) Lewd and Lascivious Acts W/Child
- Count 4 PC 286 Sodomy
- Count 5 PC 288a Oral Copulation
- Count 6 PC 459 Burglary

= 3 CONVICTIONS

Determine Score for Prior Sex Offense

- Convert the total number of arrest charges and convictions (use the highest) to a score of 0,1, 2 or 3 according to the following guidelines for prior sex offenses.

None		0
1 Conviction	1-2 Charges	1
2-3 Convictions	3-5 Charges	2
4 or more Convictions	6 or more Charges	3

6. Prior Sentencing Dates (Excluding Index)

- No. distinct occasions sentenced for criminal offenses before index sex offense
- Exclude index sex offense
- Do not count charges, acquittals
- Do not count court appearances overturned on appeal
- Driving offenses not count unless serious penalties (DUI, reckless driving with injury)

6. Prior Sentencing Dates (cont.)

- Count if under supervised release and returned to prison for a new offense he could be charged with if not under legal sanction
- Do not count prison misconducts or parole violations
- Not criminally responsible (NGI) does count
- Juvenile offenses count

6. Prior Sentencing Dates (cont.)

- Minimum level of seriousness
- Do not count
  - Most driving offenses
  - Historical offenses that occurred after offender was in custody for a more recent offense
  - Scoring 3 or less=0, 4 or more=1

7. Any Convictions for Non-Contact Sex Offenses

- **Behavior-Not the name of the offense**
- **Convictions only**
  - Exhibitionism
  - Possessing child porn
  - Obscene telephone calls (Sexual harassment)
  - Voyeurism
  - Illicit sexual use on Internet (Similar to obscene phone call-even if attempt to meet is non-contact sex offense.)

7. Any Convictions for Non-Contact Sex Offenses

- Do not count attempts to contact (save for the internet)
- Do not count soliciting/prostitution
- Scoring No convictions =0, Any convictions=1

Items 8 -10

- 6. Unrelated victim
- 7. Stranger victim
- 8. Male victim

Victim characteristics

- Based on all available information
  - Acquitted or Found Not Guilty-likely standard
- Only apply if victims were children or non-consenting adults
- Accidental victims
- Do not score victim information for:
  - prostitution / pandering obscenity
  - possession of child pornography (exception real child)
  - public sex with consenting adults
  - animals

8. **Any** Unrelated Victims

- Relationship too close for marriage
- Step-relationships lasting less than two years are unrelated
- Wives are related
- Common-law more than 2 years related
- No Category "B" victims
- No accidental victims
- Scoring 1 point for unrelated victim

8. **Any** Unrelated Victims

- These are unrelated
  - Step-relations lasting less 2 years
  - Daughter or son of live-in girlfriend
  - Nephew's wife
  - Second cousins
  - Wife's aunt

9. Any Stranger Victims

- Victim knew the offender less than 24 hours
- No accidental victims
- Two for one rule
- Victims contacted on Internet are only strangers if less than 24 hours of contact
- Scoring 1 point for having a stranger victim

10. Any Male Victims

- Do not count
  - Possession of male child pornography
  - Exhibitionism to mixed group of children
  - Accidental victims
- Count attempt to contact male victims over Internet
- Scoring 1 point for having a male victim

STATIC-99
CASE EXAMPLES

Translating Static-99 Scores - Risk Categories

The use of the Static-99 in Risk Assessment

Overrides to the Static-99

- Are there exceptional circumstances that support an override of the STATIC-99?
  - Age (60 years or older move down a risk level
  - Health
  - Time free in the community with no sex offense
  - Sex offender treatment completion
- You will not need to use this very often

Override for time free

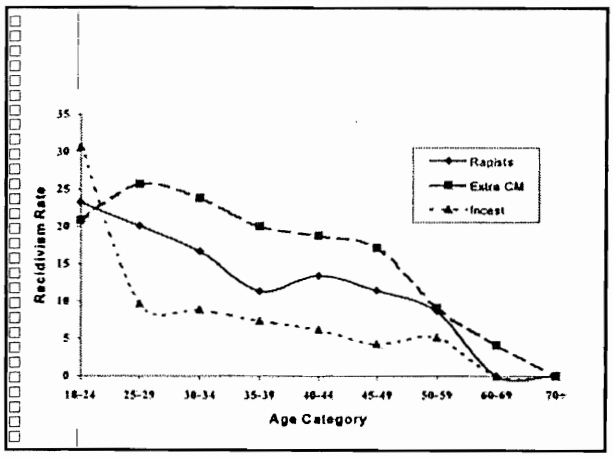
- See Appendix One – Pages 59 & 60
  - No new sexual or violent offence
  - Risk of sexual re-offence declines over time

Override for advanced age

- Hanson, R.K. (2001). Recidivism and Age: Follow-up data from 4,673 sexual offenders. Journal of Interpersonal Violence, Vol. 17, No. 10, October 2002

Hanson (2001)

- N=4,673
- 9 year follow-up
- 10 samples
  - Canada=7
  - US=2 (SOTEP, WA SSOSA)
  - UK=1 (Same as Static-99 cross-valid)



Hanson (2001)

- Results
  - Recid rate for rapists steadily decreased with age
  - Rapists younger than other sex offenders (45% <30 years)
  - Highest risk EF CM's between age 25-35
  - Recidivism rate for EF CM little decline until after age 50

Hanson (2001)

- Very few recidivists among sexual offenders released after 60 (5/131 or 3.8%)
- Age decline in recidivism attributed to
  - Deviant sexual interests
  - Opportunity
  - Low self-control
    - Impulsivity, high risk behaviors

The Validity of the Static-99 with Older Offenders (User Report 2005-01)

- N = 3,425
- 5 year follow-up
- 8 samples
  - Canada (6)
  - US 3 (WA SSOSA, Dynamic Supv Project)
  - UK 1 (same as Static-99 cross-valid1)

HANSON (User Report 2005-01)

Table III. Five year sexual recidivism rates divided by age and Static-99 risk categories.

Static-99 Category	AGE AT RELEASE									
	18 - 39.9		40 - 49.9		50 - 59.9		60 and older		All ages	
	n	recid.±95%CI	n	recid.±95%CI	n	recid.±95%CI	n	recid.±95%CI	n	recid.±95%CI
Low	503	6.7 ± 2.6	321	5.5 ± 2.9	159	2.5 ± 2.8	112	0.0 ± 0.0	1095	5.2 ± 1.6
Moderate-Low	865	10.3 ± 2.5	260	6.7 ± 4.3	126	4.3 ± 4.4	56	3.0 ± 5.7	1307	8.7 ± 1.9
Moderate-High	520	24.5 ± 4.6	124	13.8 ± 8.0	63	19.4 ± 16.1	25	4.8 ± 9.1	732	21.4 ± 3.8
High	177	37.0 ± 9.1	71	25.7 ± 13.2	32	24.3 ± 22.6	11	9.1 ± 17.0	291	31.6 ± 6.9
All Levels	2065	14.8 ± 1.9	776	8.8 ± 2.5	380	7.5 ± 3.8	204	2.0 ± 2.3	3425	12.0 ± 1.4
ROC AUC (95% CI)	.68	(.65 - .72)	.66	(.58 - .73)	.76	(.66 - .85)	.81	(.68 - .95)	.70	(.67 - .72)

Note : "recid.±95%CI" is the sexual recidivism rate calculated through survival analysis with its 95% confidence interval, "n" is the sample size starting the interval. ROC AUC is the area under the receiver operating characteristic curve.

Hanson (User Report 2005-01)

- Results
  - Static-99 was equally effective at ranking relative risk of both younger and older offenders
    - 40-49 years ROC=.66
    - 60 and older ROC=.81

Hanson (User Report 2005-01)

- Advanced age contributed information to the prediction of sex recidivism after controlling for Static-99.
- Static-99 equally good at ranking relative risk for offenders all age groups.
- Age related declines should occur for low, moderate and high risk offenders
- Steady decline in recidivism for offender >40 years
- 5 year recidivism rate of >60 2% versus <40 14.8%

Hanson (User Report 2005-01)

- Evaluators should consider advanced age in risk assessment
- Do not adjust risk for age for offender under 40
- Offenders over 60 appeared at "substantially lower risk""

Application of age research to risk assessment

- There is a reduction in risk for sexual reoffense for all types of sexual offenders after age 60
- If an older offender is typical of other high Static-99 scorers in every other dimension but age, age may be a mitigating factor and actuarial probabilities may overestimate risk.

Application of age research to risk assessment

- Age may mitigate risk on the Static-99 in considering the following:
  - Opportunity
  - Sex drive/motivation
  - Impulsivity/self control
  - Health issues
  - Mobility

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STATIC-99 Coding Rules

Revised - 2003

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STATIQUE-99 Règles de codage révisées – 2003

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How To Use This Manual

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

We strongly recommend that you read pages 3 to 21 and the section "Scoring the STATIC-99 and Computing the Risk Estimates" before you score the STATIC-99. These pages explain the nature of the STATIC-99 as a risk assessment instrument; to whom this risk assessment instrument may be applied; the role of self-report; exceptions for juvenile, developmentally delayed, and institutionalized offenders; changes from the last version of the STATIC-99 coding rules; the information required to score the STATIC-99; and important definitions such as "Index Offence", Category "A" offences versus Category "B" offences, "Index Cluster", and "Pseudo-recidivism".

Individual item coding instructions begin at the section entitled "Scoring the Ten Items". For each of the ten items, the coding instructions begin with three pieces of information: **The Basic Principle, Information Required to Score this Item,** and **The Basic Rule.** In most cases, just reading these three small sections will allow you to score that item on the STATIC-99. Should you be unsure of how to score the item you may read further and consider whether any of the special circumstances or exclusions apply to your case. This manual contains much information that is related to specific uses of the STATIC-99 in unusual circumstances and many sections of this manual need only be referred to in exceptional circumstances.

We also suggest that you briefly review the ten appendices as they contain valuable information on adjusting STATIC-99 predictions for time free in the community, a self-test of basic concepts, references, surgical castration, a table for converting raw STATIC-99 scores to risk estimates, the coding forms, a suggested report format for communicating STATIC-99-based risk information, a list of replication studies for the STATIC-99, information on inter-rater reliability and, how to interpret Static-99 scores greater than 6.

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

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Introduction

The Nature of the STATIC-99

The STATIC-99 utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99 can be thought of as a baseline of risk for violent and sexual reconviction. From this baseline of long-term risk assessment, treatment and supervision strategies can be put in place to reduce the risk of sexual recidivism.

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

The strengths of the STATIC-99 are that it uses risk factors that have been empirically shown to be associated with sexual recidivism and the STATIC-99 gives explicit rules for combining these factors into a total risk score. This instrument provides explicit probability estimates of sexual reconviction, is easily scored, and has been shown to be robustly predictive across several settings using a variety of samples. The weaknesses of the STATIC-99 are that it demonstrates only moderate predictive accuracy (ROC = .71) and that it does not include all the factors that might be included in a wide-ranging risk assessment (Doren, 2002).

While potentially useful, an interview with the offender is not necessary to score the STATIC-99.

The authors of this manual strongly recommend training in the use of the STATIC-99 before attempting risk assessments that may affect human lives. Researchers, parole and probation officers, psychologists, sex offender treatment providers, and police personnel involved in threat and risk assessment activities typically use this instrument. Researchers are invited to make use of this instrument for research purposes and this manual and the instrument itself may be downloaded from www.sgc.gc.ca.

It is possible to score more than six points on the STATIC-99 yet the top risk score is 6 (High-Risk). In analyzing the original samples it was found that there was no significant increase in recidivism rates for scores between 6 and 12. One of the reasons for this finding may be diminishing sample size. However, in general, the more risk factors, the more risk. There may be some saturation point after which additional factors do not appear to make a difference in risk. It is useful to keep in mind that all measurement activities contain some degree of error. If the offender's score is substantially above 6 (High-Risk), there is greater confidence the offender's "true" score is greater than 6 (High-Risk) than if the offender had only scored a 6.

The STATIC-99 does not address all relevant risk factors for sexual offenders. Consequently a prudent evaluator will always consider other external factors that may influence risk in either direction. An obvious example is where an offender states intentions to further harm or "get" his victims (higher risk).

Or, an offender may be somewhat restricted from further offending either by health concerns or where he has structured his environment such that his victim group is either unavailable or he is always in the company of someone who will support non-offending (lower risk). These additional risk factors should be stated in any report as "additional factors that were taken into consideration" and not "added" to the STATIC-99 Score. Adding additional factors to the STATIC-99, or adding "over-rides" distances STATIC-99 estimates from their empirical base and substantially reduces their predictive accuracy.

- **Missing Items** – The only item that may be omitted on the STATIC-99 is "Ever Lived With ..." (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** – In the original STATIC-99 samples the recidivism criteria was a new conviction for a sexual offence.

- **Non-Contact Sexual Offences** – The original STATIC-99 samples included a small number of offenders who had been convicted of non-contact sexual offences. STATIC-99 predictions of risk are relevant for non-contact sexual offenders, such as Break-&-Enter Fetishists who enter a dwelling to steal underwear or similar fetish objects.

- **RRASOR or STATIC-99?** On the whole, if the information is available to score the STATIC-99 it is preferable to use the STATIC-99 over the RRASOR as estimates based on the STATIC-99 utilize more information than those based upon RRASOR scores. The average predictiveness of the STATIC-99 is higher than the average predictiveness of the RRASOR (Hanson, Morton, & Harris, in press).

Recidivism Estimates and Treatment

The original samples and the recidivism estimates should be considered primarily as "untreated". The treatment provided in the Millbrook Recidivism Study and the Oak Ridge Division of the Penetanguishene Mental Health Centre samples were dated and appeared ineffective in the outcome evaluations. Most of the offenders in the Pinel sample did not complete the treatment program. Except for the occasional case, the offenders in the Her Majesty's Prison Service (UK) sample would not have received treatment.

Self-report and the STATIC-99

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

Demographic Questions: For Item #1 – Young, while it is always best to consult official written records, self-report of age is generally acceptable for offenders who are obviously older than 25 years of age. For Item #2 – Ever Lived With..., to complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. There may, however, be certain cases (immigrants, refugees from third world countries) where confirmation is not possible. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. For further guidance on the use of self-report and the STATIC-99 please see section "Item #2 – Ever Lived with an Intimate Partner – 2 Years".

Criminal History Questions: For the five (5) items that assess criminal history (Items 3, 4, 5, 6, & 7) an official criminal history is required to score these items and self-report is not acceptable. This being said, there may be certain cases (immigrants, refugees from third world countries) where self-report of crimes may be accepted if it is reasonable to assume that no records exist or that existing records are truly un-retrievable. In addition, to the evaluator, the self-report must seem credible and reasonable.

Victim Questions: For the three (3) victim items self-report is generally acceptable assuming the self-report meets the basic criteria of appearing reasonable and credible. Confirmation from official records or collateral contacts is always preferable.

Who can you use the STATIC-99 on?

The STATIC-99 is an actuarial risk prediction instrument designed to estimate the probability of sexual and violent reconviction for adult males who have already been charged with or convicted of at least one sexual offence against a child or a non-consenting adult. This instrument may be used with first-time sexual offenders.

This instrument is not recommended for females, young offenders (those having an age of less than 18 years at time of release) or for offenders who have only been convicted of prostitution related offences, pimping, public toileting (sex in public locations with consenting adults) or possession of pornography/indecent materials. The STATIC-99 is not recommended for use with those who have never committed a sexual offence, nor is it recommended for making recommendations regarding the determination of guilt or innocence in those accused of a sexual offence. The STATIC-99 is not appropriate for individuals whose only sexual "crime" involves consenting sexual activity with a similar age peer (e.g., Statutory Rape {a U.S. charge} where the ages of the perpetrator and the victim are close and the sexual activity was consensual).

The STATIC-99 applies where there is reason to believe an actual sex offence has occurred with an identifiable victim. The offender need not have been convicted of the offence. The original samples used to create this instrument contained a number of individuals who had been found Not Guilty by Reason of Insanity and others who were convicted of non-sexual crimes, but in all cases these offenders had committed real sex crimes with identifiable victims. The STATIC-99 may be used with offenders who have committed sexual offences against animals.

In some cases, an evaluator may be faced with an offender who has had a substantial period at liberty in the community with opportunity to re-offend, but has not done so. In cases such as these, the risk of sexual re-offence probabilities produced by the STATIC-99 may not be reliable and adjustment should be considered (Please see Appendix #1).

STATIC-99 with Juvenile Offenders

It should be noted that there were people in the original STATIC-99 samples who had committed sexual offences as juveniles (under the age of 18 years) and who were released as adults. In some cases an assessment of STATIC-99 risk potential may be useful on an offender of this nature. If the juvenile offences occurred when the offender was 16 or 17 and the offences appear "adult" in nature (preferential sexual assault of a child, preferential rape type activities) – the STATIC-99 score is most likely of some utility in assessing overall risk.

Evaluations of juveniles based on the STATIC-99 must be interpreted with caution as there is a very real theoretical question about whether juvenile sex offending is the same phenomena as adult sex offending in terms of its underlying dynamics and our ability to affect change in the individual. In addition, the younger the juvenile offender is, the more important these questions become. In general, the research literature leads us to believe that adolescent sexual offenders are not necessarily younger versions of adult sexual offenders. Developmental, family, and social factors would be expected to impact on recidivism potential. We have reason to believe that people who commit sex offences only as children/young people are a different profile than adults who commit sexual offences. In cases such as these, we recommend that STATIC-99 scores be used with caution and only as part of a more wide-ranging assessment of sexual and criminal behaviour. A template for a standard, wide-ranging assessment can be found in the

Solicitor General Canada publication, Harris, A. J. R., (2001), High-Risk Offenders: A Handbook for Criminal Justice Professionals, Appendix "d" (Please see the references section).

At this time we are aware of a small study that looked at the predictiveness of the STATIC-99 with juveniles. This study suggested that the scale worked with juveniles; at least in the sense that there was an overall positive correlation between their score on the STATIC-99 and their recidivism rate. This Texas study (Poole et al., 2000) focused on older juveniles who were 19 when released but younger when they offended.

In certain cases, the STATIC-99 may be useful with juvenile sexual offenders, if used cautiously. There would be reasonable confidence in the instrument where the convictions are related to offenses committed at the age of 17. In general, the younger the child, the more caution should be exercised in basing decisions upon STATIC-99 estimates. For example, if a 17-year-old offender committed a rape, alone, on a stranger female, you would have reasonable confidence in the STATIC-99 estimates. On the other hand, if the offender is now an adult (18+ years old) and the last sexual offence occurred when that individual was 14 or 15, STATIC-99 estimates would not apply. If the sexual offences occurred at a younger age and they look "juvenile" (participant in anti-social behaviour towards peers that had a sexual component) we would recommend that the evaluator revert to risk scales specifically designed for adolescent sexual offenders, such as the ERASOR (Worling, 2001).

The largest category of juvenile sexual offenders is generally antisocial youth who sexually victimize a peer when they are 13 or 14 years of age. These juvenile sexual offenders are most likely sufficiently different from adult sexual offenders that we do not recommend the use of the STATIC-99 nor any other actuarial instruments developed on samples of adult sexual offenders. We would once again refer evaluators to the ERASOR (Worling, 2001).

When scoring the STATIC-99, Juvenile offences when they are known from official sources, count as charges and convictions on "Prior Sexual Offences" regardless of the present age of the offender. Self-reported juvenile offences in the absence of official records do not count.

STATIC-99 with Juvenile Offenders who have been in prison for a long time

In this section we consider juvenile offenders who have been in prison for extended periods (20 years plus) and who are now being considered for release. In one recent case a male juvenile offender had committed all of his offences prior to the age of 15. This individual is now 36 years old and has spent more than 20 years incarcerated for these offences. The original STATIC-99 samples contained some offenders who committed their sexual offences as juveniles and were released as adults. However, most of these offenders were in the 18 – 20 age group upon release. Very few, if any, would have served long sentences for offences committed as juveniles. Although cases such as these do not technically violate the sampling frame of the STATIC-99, such cases would have been sufficiently rare that it is reasonable for evaluators to use more caution than usual in the interpretation of STATIC-99 reconviction probabilities.

STATIC-99 with Offenders who are Developmentally Delayed

The original STATIC-99 samples contained a number of Developmentally Delayed offenders. Presently, research is ongoing to validate the STATIC-99 on samples of Developmentally Delayed offenders. Available evidence to date supports the utility of actuarial approaches with Developmentally Delayed offenders. There is no current basis for rejecting actuarials with this population.

STATIC-99 with Institutionalized Offenders

The STATIC-99 is intended for use with individuals who have been charged with, or convicted of, at least one sexual offence. Occasionally, however, there are cases where an offender is institutionalized for a non-sex offence but, once incarcerated, engages in sexual assault or sexually aggressive behaviour that is sufficiently intrusive to come to official notice. In certain of these cases charges are unlikely, e.g., the offender is a "lifer". If no sanction is applied to the offender, these offences are not counted. If the behaviour is sufficiently intrusive that it would most likely attract a criminal charge had the behaviour occurred in the community and the offender received some form of "in-house" sanction, (administrative segregation, punitive solitary confinement, moved between prisons or units, etc.), these offences would count as offences on the STATIC-99. If that behaviour were a sexual crime, this would create a new Index sexual offence. However, if no sanction is noted for these behaviours they cannot be used in scoring the STATIC-99.

The STATIC-99 may be appropriate for offenders with a history of sexual offences but currently serving a sentence for a non-sexual offence. The STATIC-99 should be scored with the most recent sexual offence as the Index offence. The STATIC-99 is not applicable to offenders who have had more than 10 years at liberty in the community without a sexual offence before they were arrested for their current offence. STATIC-99 risk estimates would generally apply to offenders that had between two (2) and ten (10) years at liberty in the community without a new sexual offence but are currently serving a new sentence for a new technical (fail to comply) or other minor non-violent offence (shoplifting, Break and Enter). Where an offender did have a prolonged (two to ten years) sex-offence-free period in the community prior to their current non-sexual offence, the STATIC-99 estimates would be adjusted for time free using the chart in Appendix One – "Adjustments in risk based on time free".

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences.

STATIC-99 with Black, Aboriginal, and members of other Ethnic/Social Groups

Most members of the original samples from which recidivism estimates were obtained were white. However, race has not been found to be a significant predictor of sexual offence recidivism. It is possible that race interacts with STATIC-99 scores, but such interactions between race and actuarial rates are rare. It has been shown that the SIR Scale works as well for Aboriginal offenders as it does for non-aboriginal offenders (Hann et al., 1993). The LSI-R has been shown to work as well for non-white offenders as it does for white offenders (Lowenkamp et al., 2001) and as well for aboriginal offenders as it does for non-aboriginal offenders (Bonta, 1989). In Canada there is some evidence that STATIC-99 works as well for Aboriginal sexual offenders as it does for whites (Nicholaichuk, 2001). At this time, there is no reason to believe that the STATIC-99 is culturally specific.

STATIC-99 and Offenders with Mental Health Issues

The original STATIC-99 samples contained significant numbers of individual offenders with mental health concerns. It is appropriate to use the STATIC-99 to assess individuals with mental health issues such as schizophrenia and mood disorders.

STATIC-99 and Gender Transformation

Use of the STATIC-99 is only recommended, at this time, for use with adult males. In the case of an offender in gender transformation the evaluator would score that person based upon their anatomical sex at the time their first sexual offence was committed.

What's New? What's Changed?

Since the last version of the Coding Rules

The most obvious change in the layout of the STATIC-99 is the slight modification of three of the items to make them more understandable. In addition, the order in which the items appear on the Coding Form has been changed. It is important to remember that no item definitions have been changed and no items have been added or subtracted. Present changes reflect the need for a clearer statement of the intent of the items as the use of the instrument moves primarily from the hands of researchers and academics into the hands of primary service providers such as, parole and probation officers, psychologists, psychometrists and others who use the instrument in applied settings. The revised order of questions more closely resembles the order in which relevant information comes across the desk of these individuals.

The first item name that has been changed is the old item #10, Single. The name of this item has been changed to "Ever lived with an intimate partner – 2 years" and this item becomes item number 2 in the revised scale. The reason for this change is that the new item name more closely reflects the intent of the item, whether the offender has ever been capable of living in an intimate relationship with another adult for two years.

The two Non-sexual violence items, "Index Non-sexual violence" and "Prior non-sexual violence" have been changed slightly to make it easier to remember that a conviction is necessary in order to score these items. These two items become "Index Non-sexual violence – Any convictions?" and "Prior Non-sexual violence – Any convictions?" in the new scheme.

Over time, there have been some changes to the rules from the previous version of the coding rules. Some rules were originally written to apply to a specific jurisdiction. In consultation with other jurisdictions, the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item. These minor changes are most evident in Item #6 – Prior Sentencing Dates.

Over the past two years, a large number of direct service providers have been trained in the administration of the STATIC-99. The training of direct service providers has revealed to us that two related concepts must be clearly defined for the evaluator. These concepts are "Pseudo-recidivism" and "Index cluster". Pseudo-recidivism results when an offender who is currently engaged in the criminal justice process has additional charges laid against them for crimes they committed before they were apprehended for the current offence. Since these earlier crimes have never been detected or dealt with by the justice system they are "brought forward" and grouped with the Index offence. When, for the purposes of scoring the STATIC-99, these offences join the "Index Offence" this means there are crimes from two, or more, distinct time periods included as the "Index". This grouping of offences is known as an "Index Cluster". These offences are not counted as "priors" because, even though the behaviour occurred a long time ago, these offences have never been subject to a legal consequence.

Finally, there is a new section on adjusting the score of the STATIC-99 to account for offenders who have not re-offended for several years. There is reason to downgrade risk status for the offender who has not re-offended in the community over a protracted period (See Appendix One).

Information Required to Score the STATIC-99

Three basic types of information are required to score the STATIC-99, Demographic information, an official Criminal Record, and Victim information.

Demographic Information

Two of the STATIC-99 items require demographic information. The first item is "Young?". The offender's date of birth is required in order to determine whether the offender is between 18 and 25 years of age at the time of release or at time of exposure to risk in the community. The second item that requires knowledge of demographic information is "Ever lived with an intimate partner – 2 years?". To answer this question the evaluator must know if the offender has ever lived in an intimate (sexual) relationship with another adult, continuously, for at least two years.

Official Criminal Record

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

Victim Information

The STATIC-99 contains three victim information items" "Any unrelated victims", "Any stranger victims" and, "Any male victims". To score these items the evaluator may use any credible information at their disposal except polygraph examination. For each of the offender's sexual offences the evaluator must know the pre-offence degree of relationship between the victim and the offender.

Definitions

Sexual Offence

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

Criminal justice interventions may include the following:

- Alternative resolutions agreements (Restorative Justice)
- Arrests
- Charges
- Community-based Justice Committee Agreements
- Criminal convictions
- Institutional rule violations for sexual offences (Do not count consenting sexual activity in prison)
- Parole and probation violations

Sanctions may include the following:

- Alternative resolution agreements
- Community supervision
- Conditional discharges
- Fines
- Imprisonment
- Loss of institutional time credits due to sexual offending ("worktime credits")

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

Sexual offences are scored only from official records and both juvenile and adult offences count. You may not count self-reported offences except under certain limited circumstances, please refer to the Introduction section – sub-section "Self-report and the STATIC-99".

An offence need not be called "sexual" in its legal title or definition for a charge or conviction to be considered a sexual offence. Charges or convictions that are explicitly for sexual assaults, or for the sexual abuse of children, are counted as sexual offenses on the STATIC-99, regardless of the offender's motive. Offenses that directly involve illegal sexual behaviour are counted as sex offenses even when the legal process has led to a "non-sexual" charge or conviction. An example of this would be where an offender is charged with or pleads guilty to a Break and Enter when he was really going in to steal dirty underwear to use for fetishistic purposes.

In addition, offenses that involve non-sexual behavior are counted as sexual offenses if they had a sexual motive. For example, consider the case of a man who strangles a woman to death as part of a sexual act but only gets charged with manslaughter. In this case the manslaughter charge would still be considered a sexual offence. Similarly, a man who strangles a woman to gain sexual compliance but only gets charged

with Assault; this Assault charge would still be considered a sexual offence. Further examples of this kind include convictions for murder where there was a sexual component to the crime (perhaps a rape preceding the killing), kidnapping where the kidnapping took place but the planned sexual assault was interrupted before it could occur, and assaults "pled down" from sexual assaults.

Physical assaults, threats, and stalking motivated by sexual jealousy do not count as sexual offenses when scoring the STATIC-99.

Additional Charges

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

- Sexual assault (rape) and false imprisonment
- Sexual assault (rape) and kidnapping
- Sexual assault (rape) and battery

In instances such as these, depending upon when in the court process the risk assessment was completed, the offender would be coded as having been convicted of two sexual offences plus scoring in another item (Index or Prior Non-sexual Violence). For example if an offender were convicted of any of the three examples above prior to the current "Index" offence, the offender would score 2 "prior" sex offence charges and 2 "prior" sex offence convictions (On Item #5 – Prior Sexual Offences) and a point for Prior Non-sexual Violence (Please see "Prior Non-sexual Violence" or "Index Non-sexual Violence" for a further explanation).

Category "A" and Category "B" Offences

For the purposes of the STATIC-99, sexual misbehaviours are divided into two categories. Category "A" involves most criminal charges that we generally consider "sexual offences" and that involve an identifiable child or non-consenting adult victim. This category includes all contact offences, exhibitionism, voyeurism, sex with animals and dead bodies.

Category "B" offences include sexual behaviour that is illegal but the parties are consenting or no specific victim is involved. Category "B" offences include prostitution related offences, consenting sex in public places, and possession of pornography. Behaviours such as urinating in public or public nudity associated with mental impairment are also considered Category "B" offences.

Rule: if the offender has **any** category "A" offences on their record - all category "B" offences should be counted as sex offences for the purpose of scoring sexual priors or identifying the Index offense. They do not count for the purpose of scoring victim type items. The STATIC-99 is not recommended for use with offenders who have only category "B" offences.

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

Category "A" Offences

- Aggravated Sexual Assault
- Attempted sexual offences (Attempted Rape, Attempted Sexual Assault)
- Contributing to the delinquency of a minor (where the offence had a sexual element)
- Exhibitionism

- Incest
- Indecent exposure
- Invitation to sexual touching
- Lewd or lascivious acts with a child under 14
- Manufacturing/Creating child pornography where an identifiable child victim was used in the process (The offender had to be present or participate in the creation of the child pornography with a human child present)
- Molest children
- Oral copulation
- Penetration with a foreign object
- Rape (includes in concert) (Rape in concert is rape with one or more co-offenders. The co-offender can actually perpetrate a sexual crime or be involved to hold the victim down)
- Sexual Assault
- Sexual Assault Causing Bodily Harm
- Sexual battery
- Sexual homicide
- Sexual offences against animals (Bestiality)
- Sexual offences involving dead bodies (Offering an indignity to a dead body)
- Sodomy (includes in concert and with a person under 14 years of age)
- Unlawful sexual intercourse with a minor
- Voyeuristic activity (Trespass by night)

Category "B" Offences

- Consenting sex with other adults in public places
- Crimes relating to child pornography (possession, selling, transporting, creating where only pre-existing images are used, digital creation of)
- Indecent behaviour without a sexual motive (e.g., urinating in public)
- Offering prostitution services
- Pimping/Pandering
- Seeking/hiring prostitutes
- Solicitation of a prostitute

Certain sexual behaviours may be illegal in some jurisdictions and legal in others (e.g., prostitution). Count only those sexual misbehaviours that are illegal in the jurisdiction in which the risk assessment takes place and in the jurisdiction where the acts took place.

Exclusions

The following offences would not normally be considered sexual offences

- Annoying children
- Consensual sexual activity in prison (except if sufficiently indiscreet to meet criteria for gross indecency).
- Failure to register as a sex offender
- Being in the presence of children, loitering at schools
- Possession of children's clothing, pictures, toys
- Stalking (unless sexual offence appears imminent, please see definition of "Truly Imminent" below)
- Reports to child protection services (without charges)

Rule: Simple questioning by police not leading to an arrest or charge is insufficient to count as a sexual offence.

Probation, Parole or Conditional Release Violations as Sexual Offences

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

Sometimes the violations are not clearly defined as a sexual arrest or conviction. The determination of whether to count probation, parole, or conditional release violations as sexual offences is dependent upon the nature of the sexual misbehaviour. Some probation, parole and conditional release violations are clearly of a sexual nature, such as when a rape or a child molestation has taken place or when behaviours such as exhibitionism or possession of child pornography have occurred. These violations would count as the Index offence if they were the offender's most recent criminal justice intervention.

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

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

Definition of "Truly Imminent"

Examples of this nature would include an individual with a history of child molesting being discovered alone with a child and about to engage in a "wrestling game." Another example would be an individual with a long history of abducting teenage girls for sexual assault being apprehended while attempting to lure teenage girls into his car.

Institutional Rule Violations

Institutional rule violations resulting in institutional punishment can be counted as sex offences if certain conditions exist. The first condition is that the sexual behaviour would have to be sufficiently intrusive that a charge for a sexual offence would be possible were the offender not already under legal sanction. In other words, "if he did it on the outside would he get charged for it?" Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. Poorly timed or insensitive homosexual advances would not count even though this type of behaviour might attract institutional sanctions. The second condition is that the evaluator must be sure that the sexual assaults actually occurred and the institutional punishment was for the sexual behaviour.

In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female officer and masturbates in front of her, where she is the obvious and intended target of the act, would count as a

"charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell is discovered by a female officer and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If the evaluator has insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and the evaluator would not score these occurrences. A further important distinction is whether the masturbation takes place covered or uncovered. Masturbating under a sheet would not be regarded as an attempt at indecent exposure.

Consider these two examples:

(1) A prisoner is masturbating under a sheet at a time when staff would not normally look in his cell. Unexpectedly a female member of staff opens the observation window, looks through the door, and observes him masturbating. This would not count as a sex offence for the purposes of STATIC-99, even if a disciplinary charge resulted.

(2) In the alternate example, a prisoner masturbates uncovered so that his erect penis is visible to anyone who looks in his cell. Prison staff have reason to believe that he listens for the lighter footsteps of a female guard approaching his cell. He times himself so that he is exposed in this fashion at the point that a female guard is looking into the cell. This would count as a sexual offence for the purposes of scoring STATIC-99 if it resulted in an institutional punishment.

Rule: Prison Misconducts and Institutional Rule Violations for Sexual Misbehaviours count as one charge per sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Mentally Disordered and Developmentally Delayed Offenders

Some offenders suffer from sufficient mental impairment (major mental illness, developmental delays) that criminal justice intervention is unlikely. For these offenders, informal hearings and sanctions such as placement in treatment facilities and residential moves would be counted as both a charge and a conviction for a sexual offence.

Clergy and the Military

For members of the military or religious groups (clergy) (and similar professions) some movements within their own organizations can count as charges and convictions and hence, Index offences. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of this would be the "de-frocking" of a priest or minister or being publicly denounced. Another example would be where an offender is transferred within the organization and the receiving institution knows they are receiving a sex offender. If this institution considers it part of their mandate to address the offender's problem or attempt to help him with his problem then this would function as equivalent to being sent to a correctional institution, and would count as a conviction and could be used as an Index Offence.

For members of the military, a religious group (clergy) or teachers (and similar professions) being transferred to a new parish/school/post or being sent to graduate school for re-training does not count as a conviction and cannot be used as an Index Offence.

Juveniles

Instances in which juveniles (ages 12–15) are placed into residential care for sexual aggression would count as a charge and conviction for a sexual offence. In jurisdictions where 16 and 17 year old sexual offenders remain in a juvenile justice system (not charged, tried, and sent to jail as adults are), where it is possible to be sent to a "home" or "placement", this would count as a charge and a conviction for a sexual offence. In jurisdictions where juveniles aged 16 and 17 are charged, convicted, sentenced, and jailed much like adults, juvenile charges and convictions (between ages 16 & 17) would be counted the same as adult charges and convictions.

Sexual misbehaviour of children 11 or under would not count as a sex offence unless it resulted in official charges.

Official Cautions – United Kingdom

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

Similar Fact Crimes

An Offender assaults three different women on three different occasions. On the first two occasions he grabs the woman as she is walking past a wooded area, drags her into the bushes and rapes her. For this he is convicted twice of Sexual Assault (rape). In the third case he grabs the woman, starts to drag her into the bushes but she is so resistant that he beats her severely and leaves her. In this case he is convicted of Aggravated Assault. In order for the conviction to be counted as a sexual offence, it must have a sexual motivation. In a case like this it is reasonable to assume that the Aggravated Assault had a sexual motivation because it resembles the other sexual offences so closely. In the absence of any other indication to the contrary this Aggravated Assault would also be counted as a sexual offence. Note: This crime could also count as Non-sexual Violence.

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

Index offence

The Index offence is generally the most recent sexual offence. It could be a charge, arrest, conviction, or rule violation (see definition of a sexual offence, earlier in this section). Sometimes Index offences include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. If this results in a single conviction regardless of the number of counts, all counts are considered part of the Index offence. Convictions for sexual offences that are subsequently overturned on appeal can count as the Index offence. Charges for sexual offences can count as the Index Offence, even if the offender is later acquitted.

Most of the STATIC-99 sample (about 70%) had no prior sexual offences on their record; their Index offence was their first recorded sexual misbehaviour. As a result, the STATIC-99 is valid with offenders facing their first sexual charges.

Acquittals

Acquittals count as charges and can be used as the Index Offence.

Convictions Overturned on Appeal

Convictions that are subsequently overturned on appeal can count as an Index Offence.

"Detected" by Child Protection Services

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction. This is insufficient to create a new Index Offence.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences – As an Index Offence

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

> If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour this can serve as the Index Sexual Offence if the behaviour is of such gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence given the same behaviour. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police.

Historical Offences

The evaluator may face a situation where an offender is brought before the court on a series of sexual offences, all of which happened several years in the past. This most often occurs when an offender has offended against children in the past and as these children mature they come forward and charge the perpetrator. After the first charge is laid it is not unusual for other victims to appear and lay subsequent charges. The evaluator may be faced with an offender with multiple charges, multiple court dates, and possibly multiple convictions who has never before been to court – or who has never before been sanctioned for sexual misbehaviour. In a case like this, where the offender is before the court for the first time, all of the charges, court appearances and convictions become what is known as an "Index Cluster" and they are all counted as part of the Index Offence.

Index Cluster

An offender may commit a number of sexual offences in different jurisdictions, over a protracted period, in a spree of offending prior to being detected or arrested. Even though the offender may have a number of sentencing dates in different jurisdictions, the subsequent charges and convictions would constitute an "Index Cluster". These "spree" offences would group together – the early ones would not be considered "priors" and the last, the "Index", they all become the "Index Cluster". This is because the offender has not been "caught" and sanctioned for the earlier offences and then "chosen" to re-offend in spite of the sanction. Furthermore, historical offences that are detected after the offender is convicted of a more recent sexual offence would be considered part of the Index offence (pseudo-recidivism) and become part of the Index Cluster (See subsequent section).

For two offences to be considered separate offences, the second offence must have been committed after the offender was detected and detained and/or sanctioned for the previous offence. For example, an offence committed while an offender was released on bail for a previous sexual offence would supersede

the previous charge and become the Index offence. This is because the offender knew he/she had been detected for their previous crimes but chose to re-offend anyway.

An Index cluster can occur in three ways.

The first occurs when an offender commits multiple offences at the same time and these offences are then subsequently dealt with as a group by the police and the courts.

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

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

> **For Example:** An offender commits a rape, is apprehended, charged, and released on bail. Very shortly after his release, he commits another rape, is apprehended and charged. Because the offender was apprehended and charged between crimes this does not qualify as a crime "spree" – these charges and possible eventual convictions would be considered separate crimes. If these charges were the last sexual offences on the offender's record – the second charge would become the Index and the first charge would become a "Prior".
>
> However, if an offender commits a rape in January, another in March, another in May, and another in July and is finally caught and charged for all four in August this constitutes a crime "spree" because he was not detected or consequenced between these crimes. As such, this spree of sexual offences, were they the most recent sexual offences on the offenders record, would be considered an "Index Cluster" and all four rape offences would count as "Index" not just the last one.

Pseudo-recidivism

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

> **For Example:** Mr. Jones was convicted in 1998 of three sexual assaults of children. These sexual assaults took place in the 1970's. As a result of the publicity surrounding Mr. Jones' possible release in 2002, two more victims, now adults, come forward and lay new charges in 2002. These offences also took place in the 1970's but these victims did not come forward until 2002. Because Mr. Jones

had never been sanctioned for these offences they were not on his record when he was convicted in 1998. Offences for which the offender has never been sanctioned that come to light once the offender is in the judicial process are considered "pseudo-recidivism" and are counted as part of the "Index Cluster". Historical charges of this nature are not counted as "priors".

The basic concept is that the offender has to be sanctioned for previous mis-behaviours and then "chose" to ignore that sanction and re-offend anyway. If he chooses to re-offend after a sanction then he creates a new offence and this offence is considered part of the record, usually a new Index offence. If historical offences come to light, for which the offender has never been sanctioned, once the offender is in the system for another sexual offence, these offences "come forward' and join the Index Offence to form an "Index Cluster".

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

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

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

Prior Offence(s)

A prior offence is any sexual or non-sexual crime, institutional rule violation, probation, parole or conditional release violation(s) and/or arrest charge(s) or, conviction(s), that was legally dealt with PRIOR to the Index offence. This includes both juvenile and adult offences. In general, to count as a prior, the sanction imposed for the prior offense must have occurred before the Index offense was committed. However, if the offender was aware that they were under some form of legal restraint and then goes out and re-offends in spite of this restriction, the new offence(s) would create a new Index offence. An example of this could be where an offender is charged with "Sexual Communication with a Person Under the Age of 14 Years" and is then released on his own recognizance with a promise to appear or where they are charged and released on bail. In both of these cases if the offender then committed an "Invitation to Sexual Touching" after being charged and released the "Invitation to Sexual Touching" would become the new Index offence and the "Sexual Communication with a Person Under the Age of 14 Years" would automatically become a "Prior" sexual offence.

In order to count violations of conditional release as "Priors" they must be "real crimes", something that someone not already engaged in the criminal justice system could be charged with. Technical violations such as Being in the Presence of Minors or Drinking Prohibitions do not count.

Scoring the 10 Items

Item # 1 - Young

The Basic Principle: Research (Hanson, 2001) shows that sexual recidivism is more likely in an offender's early adult years than in an offender's later adult years. See Figure 1, next page.

Information Required to Score this Item: To complete this item the evaluator has to confirm the offender's birth date or have other knowledge of the offender's age.

The Basic Rule: If the offender is between his 18th and 25th birthday at exposure to risk you score the offender a "1" on this item. If the offender is past his 25th birthday at exposure to risk you score the offender a "0" on this item.

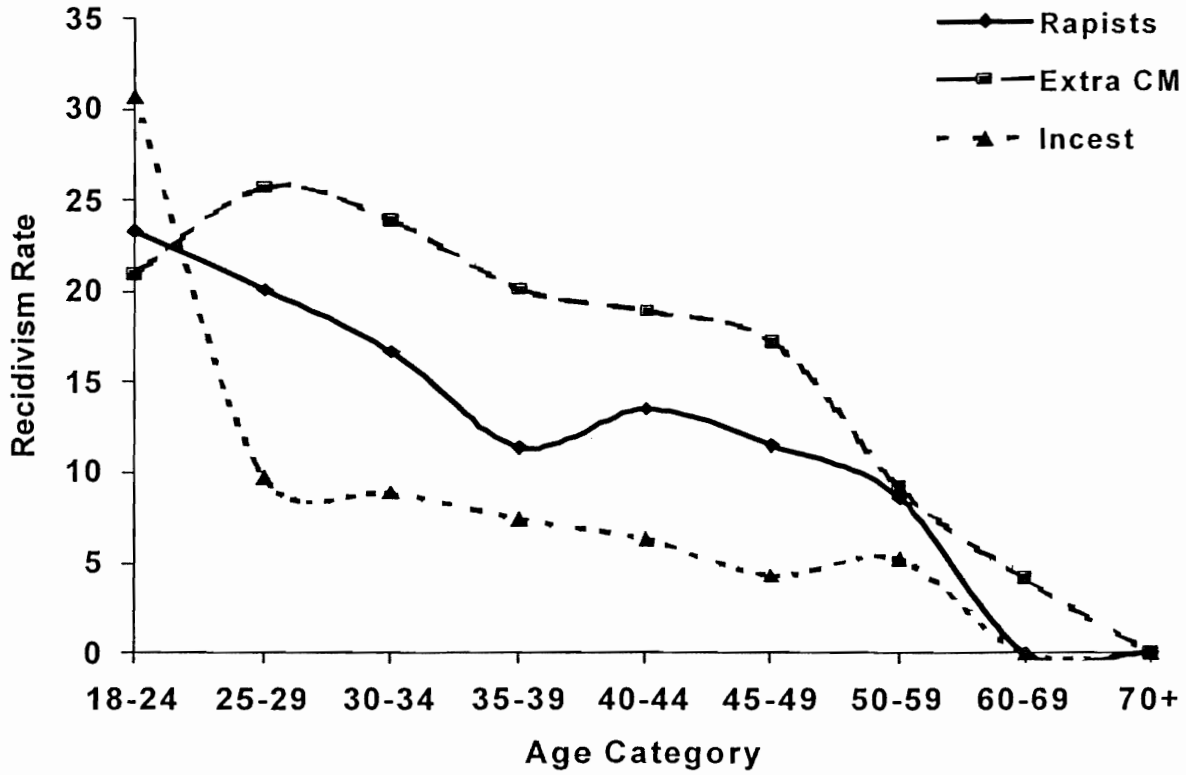
STATIC-99 is not intended for those who are less than 18 years old at the time of exposure to risk.

Under certain conditions, such as anticipated release from custody, the evaluator may be interested in an estimate of the offender's risk at some specific point in the future. This may occur if the offender is presently incarcerated (January) and you are interested in his risk when he is eligible for release in September. However, you know that the offender's 25th birthday will occur in May. If you were assessing the offender's estimated risk of re-offence for his possible release in September – because at time of exposure to risk he is past his 25th birthday - you would not give the risk point for being less-than-25 even though he is only 24 today. You calculate risk based upon age at exposure to risk.

Sometimes the point at which an offender will be exposed to risk may be uncertain, for example, if he is eligible for parole but may not get it. In these cases it may be appropriate to use some form of conditional wording indicating how his risk assessment would change according to when he is released.

Figure 1

Age Distribution of Sexual Recidivism in Sexual Offenders



Rapists (n = 1,133)
Extra-familial Child Molesters [Extra CM] (n = 1,411)
Incest Offenders (n = 1,207)

Hanson, R. K. (2002). Recidivism and age: Follow-up data on 4,673 sexual offenders. Journal of Interpersonal Violence, 17, 1046-1062.

Hanson, R. K. (2001). *Age and sexual recidivism: A comparison of rapists and child molesters.* User Report 2001-01. Ottawa: Department of the Solicitor General of Canada. Department of the Solicitor General of Canada website, www.sgc.gc.ca

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

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

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

The Basic Rule: If the offender has never had an intimate adult relationship of two years duration you score the offender a "1" on this item. If the offender has had an intimate adult relationship of two years duration you score the offender a "0" on this item.

The intent of this item is to reflect whether the offender has the personality/psychological resources, as an adult, to establish a relatively stable "marriage-like" relationship with another person. It does not matter whether the intimate relationship was/is homosexual or heterosexual.

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

- To complete this item the evaluator should make an attempt to confirm the offender's relationship history through collateral sources and official records. In the absence of these sources self-report information may be utilized, assuming of course, that the self-report seems credible and reasonable to the evaluator. There may be certain cases (immigrants, refugees from third world countries) where it is not possible to access collaterals or official records. Where the evaluator, based upon the balance of probabilities, is convinced this person has lived with an intimate partner for two years the evaluator may score this item a "0". It is greatly preferred that you confirm the existence of this relationship through collateral contacts or official records. This should certainly be done if the assessment is being carried out in an adversarial context where the offender would have a real motive to pretend to a non-existent relationship.

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

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

The offender is given a point for this item if he has never lived with an adult lover (male or female) for at least two years. An adult is an individual who is over the age of consent to marriage. The period of co-habitation must be continuous with the same person.

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

Cases where the offender has lived over two years with a child victim in a "lover" relationship do not count as living with an intimate partner and the offender would be scored a "1" on this item. Illegal relationships (Incestuous relationship with his Mother) and live-in relationships with "once child" victims do not count as "living together" for the purposes of this item and once again the offender would score a "1" on this item. A "once child" victim is the situation where the offender abused a child but that victim is either still living, as an adult, in an intimate relationship with the offender or who has lived, as an adult, in an intimate relationship with the offender.

Exclusions

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

Extended Absences

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

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

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

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

In English data, convictions for non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense.

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

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence at the same time they were convicted of their Index Offence, you score the offender a "0" on this item.

This item refers to convictions for non-sexual violence that are dealt with on the same sentencing occasion as the Index sex offence. A separate Non-sexual violence conviction is required to score this item. These convictions can involve the same victim as the Index sex offence or they can involve a different victim. All non-sexual violence convictions are included, providing they were dealt with on the same sentencing occasion as the Index sex offence(s).

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault causing bodily harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item
- Kidnapping
- Murder

- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

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

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

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

Convictions that are coded as only "sexual"

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

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

An offender may initially be charged with one count of sexual assault of a child but plea-bargains this down to one Forcible Confinement and one Physical Assault of a Child. In this instance, both offences

would be considered sexual offences (they could be used as an "Index" offence or could be used as "priors" if appropriate) as well; a risk point would be given for non-sexual violence.

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" sexual offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

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

Murder – With a sexual component

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

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

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that would generally attract a sexual charge if the offender were not already under sanction and at the same time this same offender committed a violent act sufficient that it would generally attract a

separate criminal charge for a violent offence, this offender can be scored for Index Non-sexual Violence when the accompanying sexual behaviour stands as the Index offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that both a sexual offence charge and a violent offence charge would be laid by police.

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

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

In English data, convictions for prior non-sexual violence were specifically predictive of rape (forced sexual penetration) rather than all kinds of sexual offenses (Thornton & Travers, 1991). In some English data sets this item has also been predictive of reconviction for any sex offense. Sub-analyses of additional data sets confirm the relation of prior non-sexual violence and sexual recidivism (Hanson & Thornton, 2002).

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

The Basic Rule: If the offender's criminal record shows a separate conviction for a non-sexual violent offence prior to the Index Offence, you score the offender a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-sexual violent offence prior to their Index Offence, you score the offender a "0" on this item.

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

Both adult and juvenile convictions count in this section. In cases where a juvenile is not charged with a violent offence but is moved to a secure or more secure residential placement as the result of a non-sexually violent incident, this counts as a conviction for Non-sexual Violence.

Included are:

- Aggravated Assault
- Arson
- Assault
- Assault Causing Bodily Harm
- Assault Peace/Police Officer
- Attempted Abduction
- Attempted Robbery
- False Imprisonment
- Felonious Assault
- Forcible Confinement
- Give Noxious Substance (alcohol, narcotics, or other stupefacient in order to impair a victim)
- Grand Theft Person ("Grand Theft Person" is a variation on Robbery and may be counted as Non-sexual violence)
- Juvenile Non-sexual Violence convictions count on this item

- Kidnapping
- Murder
- "PINS" Petition (Person in need of supervision) There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to violent actions. This would count as a conviction for Non-sexual violence.
- Robbery
- Threatening
- Using/pointing a weapon/firearm in the commission of an offence
- Violation of a Domestic Violence Order (Restraining Order) (a conviction for)
- Wounding

Note: If the conviction was "Battery" or "Assault" and the evaluator knew that there was a sexual component, this would count as a sexual offence and as a Non-sexual Violence offence.

Excluded are:

- Arrest/charges do not count
- Convictions overturned on appeal do not count
- Non-sexual violence that occurs after the Index offence does not count
- Institutional rules violations cannot count as Non-sexual Violence convictions
- Do not count driving accidents or convictions for Negligence causing Death or Injury

Weapons offences

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

A conviction for Possession of a firearm or Possession of a firearm without a licence would generally not count as a non-sexual violent offence. A conviction for Pointing a firearm would generally count as non-sexual violence as long as the weapon was used to threaten or gain victim compliance. Intent to harm or menace the victim with the weapon must be present in order to score a point on this item.

Resisting arrest

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

Convictions that are coded as only "sexual"

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

Situations where points are scored both for a "Sexual Offence" and a Non-sexual Violence offence

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

If you have an individual convicted of Kidnapping/Forcible Confinement (or a similar offence) and it is known, based on the balance of probabilities, this was a sexual offence - this offence may count as the "Index" offence or you may score this conviction as a sexual offence under Prior Sexual Offences, whichever is appropriate given the circumstances.

For Example

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	Forcible Confinement	Forcible Confinement	20 Months incarceration and 3 years probation
If the evaluator knows that the behaviour was sexual this conviction for Forcible Confinement would count as One Sexual Offence (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

However, were you to see the following:

Criminal Record for Joe Smith			
Date	**Charge**	**Conviction**	**Sentence**
July 2000	1) Forcible Confinement 2) Sexual Assault	1) Forcible Confinement 2) Sexual Assault	20 Months incarceration and 3 years probation
If the evaluator knows that the Forcible Confinement was part of the sexual offence this situation would count as Two Sexual Offences (either for "priors" or an "Index") and One Non-sexual Violence (either "prior" or "Index")			

Military

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

Murder – With a sexual component

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

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

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence has been revoked (returned to prison from conditional release in the community without trial) for a Non-sexual Violent offence that happened prior to the Index sexual offence (or Index Cluster) this revocation can stand as a conviction for Non-sexual Violence if that non-sexually violent act were sufficient that it would generally attract a separate criminal charge for a violent offence. Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a violent offence charge would be laid by police.

Item # 5 – Prior Sex Offences

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. More recently, and specific to sexual offenders, a meta-analytic review of the literature indicates that having prior sex offences is a predictive factor for sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Prior Sex Offences".

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

The Basic Rule: This is the only item in the STATIC-99 that is not scored on a simple "0" or "1" dichotomy. From the offender's official criminal record, charges and convictions are summed separately. Charges that are not proceeded with or which do not result in a conviction are counted for this item. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

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

Note: For this item, arrests for a sexual offence are counted as "charges".

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

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

This item is based on officially recorded institutional rules violations, probation, parole and conditional release violations, charges, and convictions. Only institutional rules violations, probation, parole, and conditional release violations, charges, and convictions of a sexual nature that occur **PRIOR** to the Index offence are included.

Do not count the Index Sexual Offence

The Index sexual offence charge(s) and conviction(s) are not counted, even when there are multiple offences and/or victims involved, and the offences occurred over a long period of time.

Count all sexual offences prior to the Index Offence

All pre-Index sexual charges and convictions are coded, even when they involve the same victim, or multiple counts of the same offence. For example, three charges for sexual assault involving the same victim would count as three separate charges. Remember, "counts count". If an offender is charged with six counts of Invitation to Sexual Touching and is convicted of two counts you would score a "6" under

charges and a "2" under convictions. Convictions do not take priority over charges. If the record you are reviewing only shows convictions, each conviction is also counted as a charge.

Generally when an offender is arrested, they are initially charged with one or more criminal charges. However, these charges may change as the offender progresses through the criminal justice system. Occasionally, charges are dropped for a variety of legal reasons, or "pled down" to obtain a final plea bargain. As a basic rule, when calculating charges use the most recent charging document as your source of official charges.

In some cases a number of charges are laid by the police and as the court date approaches these charges are "pled-down" to fewer charges. When calculating charges and convictions you count the number of charges that go to court. In other cases an offender may be charged with a serious sexual offence (Aggravated Sexual Assault) and in the course of plea bargaining agrees to plead to two (or more) lesser charges (Assault). Once again, you count the charges that go to court and in a case like this the offender would score as having more charges than were originally laid by the police.

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

Probation, Parole and Conditional Release Violations

If an offender violates probation, parole, or conditional release with a sexual misbehaviour, these violations are counted as one charge.

If the offender violates probation or parole on more than one occasion, within a given probation or parole period, each separate occasion of a sexual misbehaviour violation is counted as one charge. For example, a parole violation for indecent exposure in July would count as one charge. If the offender had another parole violation in November for possession of child pornography, it would be coded as a second charge.

Multiple probation, parole and conditional release violations for sexual misbehaviours laid at the same time are coded as one charge. Even though the offender may have violated several conditions of parole during one parole period, it is only counted as one charge, even if there were multiple sex violations.

The following is an example of counting charges and convictions.

Criminal History for John Jack

Date	Charges	Convictions	Sanction
July 1996	Lewd and Lascivious with Child (X3) Sodomy Oral Copulation Burglary	Lewd and Lascivious with Child (X3) Sodomy (dismissed) Oral Copulation (dismissed) Burglary (dismissed)	3 Years
May 2001	Sexual Assault on a Child		

To determine the number of Prior Sex Offences you first exclude the Index Offence. In the above case, the May 2001 charge of Sexual Assault on a Child is the Index Offence. After excluding the May 2001

charge, you sum all remaining sexual offence charges. In this case you would sum, {Lewd and Lascivious with Child (X3), Sodomy (X1), and Oral Copulation (X1)} for a total of five (5) previous Sex Offence charges. You then sum the number of Prior Sex Offence convictions. In this case, there are three convictions for Lewd and Lascivious with Child. These two sums are then moved to the scoring chart shown below. The offender has five prior charges and three prior convictions for sexual offences. Looking at the chart below, the evaluator reads across the chart that indicates a final score for this item of two (2).

Prior Sexual Offences		
Charges	**Convictions**	**Final Score**
None	None	0
1-2	1	1
3-5	2-3	2
6+	4	3

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

Acquittals

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

Note: Acquittals do not count for Item #6 – Prior Sentencing Dates.

Adjudication Withheld

In some jurisdictions it is possible to attract a finding of "Adjudication Withheld", in which case the offender receives a probation-like period of supervision. This is counted as a conviction because a sentence was given.

Appeals

If an offender is convicted and the conviction is later overturned on appeal, code as one charge.

Arrests Count

In some instances, the offender has been arrested for a sexual offence, questioning takes place but no formal charges are filed. If the offender is arrested for a sexual offence and no formal charges are filed, a "1" is coded under charges, and a "0" is coded under convictions. If the offender is arrested and one or more formal charges are filed, the total number of charges is coded, even when no conviction ensues.

Coding "Crime Sprees"

Occasionally, an evaluator may have to score the STATIC-99 on an offender who has been caught at the end of a long line of offences. For example, over a 20-day period an offender breaks into 5 homes, each of which is the home of an elderly female living alone. One he rapes, one he attempts to rape but she gets away, and three more get away, one with a physical struggle (he grabs her wrists, tells her to shut up). The offender is subsequently charged with Sexual Assault, Attempted Sexual Assault, B & E with Intent (X2), and an Assault. The question is, do all the charges count as sexual offences, or just the two charges

that are clearly sexual? Or, does the evaluator score the two sex charges as sex charges and the assault charges as Non-sexual Violence?

In cases such as this, code all 5 offences as sex offences - based upon the following thinking:

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

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Consent Decree

Where applicable, "Consent Decree" counts as a conviction and a sentencing date.

Court Supervision

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

Detection by Child Protection Officials

Being "detected" by the Children's Aid Society or other Child Protection Services does not count as an official sanction; it may not stand as a charge or a conviction.

Extension of Sentence by a Parole Board (or similar)

In some jurisdictions Parole Boards (or similar) have the power to extend the maximum period of incarceration beyond that determined by the court. If an offender is assigned extra time, added to their sentence, by a parole board for a sexual criminal offence this counts as an additional sexual charge and conviction. The new additional period of incarceration must extend the total sentence and must be for sexual misbehaviour. This would not count as a sexual conviction if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is not presently possible in Canada.

Giving Alcohol to a Minor

The charge of Giving Alcohol to a Minor (or it's equivalent, drugs, alcohol, noxious substance, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit a sexual offence. If there were evidence the alcohol (or substance) was given to the victim just prior to the sexual assault, this would count as a sexual offence. If

there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Institutional Disciplinary Reports

Institutional Disciplinary Reports for sexual misbehaviours that would likely result in a charge were the offender not already in custody count as charges. In a prison environment it is important to distinguish between targeted activity and non-targeted activity. Institutional disciplinary reports that result from an offender who specifically chooses a female guard and masturbates in front of her, where she is the obvious and intended target of the act would count as a "charge" and hence, could stand as an Index offence. The alternative situation is where an offender who is masturbating in his cell and is discovered by a female employee and she is not an obvious and intended target. In some jurisdictions this would lead to a Disciplinary Report. Violations of this "non-targeted" nature do not count as a "charge' and could not stand as an Index offence. If you have insufficient information to distinguish between these two types of occurrences the offender gets the benefit of the doubt and you do not score the occurrence.

> An example of a behaviour that might get an inmate a disciplinary charge, but would not be used as a charge for scoring the STATIC-99, includes the inmate who writes an unwanted love letter to a female staff. The letter does not contain sexual content to the extent that the offender could be charged. Incidents of this nature do not count as a charge.
>
> Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Juvenile Offences

Both adult and juvenile charges and convictions count when scoring this item. In cases where a juvenile was not charged with a sexual offence but was moved to a secure or more secure residential placement as the result of a sexual incident, this counts as a charge and a conviction for the purposes of scoring Prior Sex Offences.

Juvenile Petitions

In some states, it is impossible for a juvenile offender to get a "conviction". Instead, the law uses the wording that a juvenile "petition is sustained" (or any such wording). For the purposes of scoring the STATIC-99 this is equivalent to an adult conviction because there are generally liberty-restricting consequences. Any of these local legal wordings can be construed as convictions if they would be convictions were that term available.

Military

For members of the military, a discharge from service as a result of sexual crimes would count as a charge and a conviction.

If an "undesirable discharge" were given to a member of the military as the direct result of a sexual offence, this would count as a sexual conviction and as a sentencing date (Item #6). However, if the member left the military when he normally would have, and the "undesirable discharge" is the equivalent to a bad job reference, the undesirable discharge would not count as a sexual offence or as a Sentencing Date (Item #6).

Military Courts Martial

If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence, rather than a purely military offence {failure of duty}, these offences count, both charges and convictions, when scoring the STATIC-99. If the charges are sexual they count as sexual offences and if violent, they count as violent offences. These offences also count as sentencing dates (Item #6). Pure Military Offences {Conduct Unbecoming, Insubordination, Not following a lawful order, Dereliction of Duty, etc.} do not count when scoring the STATIC-99.

Noxious Substance

The charge of Giving A Noxious Substance (or it's equivalent, drugs, alcohol, or other stupefacient) – can count as a sexual offence (both charge and conviction) if the substance was given with the intention of making it easier to commit the sexual offence. If there were evidence the substance was given to the victim just prior to the sexual assault, this would count as a sexual offence. If there is no evidence about what went on, or the temporal sequence of events, the substance charge would not count as a sexual offence.

Not Guilty

Being found "Not Guilty" can count as charges and can be used as the Index Offence. Note: This is not the case for Item #6, "Prior Sentencing Dates", where being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom

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

Official Diversions

Official diversions are scored as equivalent to a charge and a conviction (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Peace Bonds, Judicial Restraint Orders and "810" Orders

In some instances a Peace Bond/Judicial Restraint Order/810 Orders are placed on an offender when sexual charges are dropped or dismissed or when an offender leaves jail or prison. Orders of this nature, primarily preventative, **are not counted** as charges or convictions for the purposes of scoring the STATIC-99.

"PINS" Petition (Person in need of supervision)

There have been cases where a juvenile has been removed from his home by judicial action under a "PINS" petition due to sexual aggression. This would count as a charge and a conviction for a sexual offence.

Priests and Ministers

For members of a religious group (Clergy and similar professions) some disciplinary or administrative actions within their own organization can count as a charge and a conviction. The offender has to receive some form of official sanction in order for it to count as a conviction. An example of an official sanction would be removal from a parish for a priest or minister under the following circumstances.

If the receiving institution knows they are being sent a sex offender and considers it part of their mandate to address the offender's problem or attempt to help, this would function as equivalent to being sent to a

correctional institution and would count as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Allegations that result in a "within-organization" disciplinary move or a move designed to explicitly address the offenders problems would be counted as a charge and a conviction. A conviction of this nature may stand as an Index offence.

Being transferred to a new parish or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a priest/minister is transferred between parishes due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Prison Misconducts for Sexual Misbehaviours Count as One Charge per Sentence

Prison misconducts for sexual misbehaviours count as one charge per sentence, even when there are multiple incidents. The reason for this is that in some jurisdictions the threshold for misconducts is very low. Often, as previously described, misconduct will involve a female guard simply looking into a cell and observing an inmate masturbating. Even in prison, serious sexual offences, rape and attempted rape will generally attract official criminal charges.

Post-Index Offences

Offences that occur after the Index offence do not count for STATIC-99 purposes. Post-Index sexual offences create a new Index offence. Post-Index violent offences should be considered "external" risk factors and would be included separately in any report about the offender's behaviour.

> **For Example, Post-Index Sexual Offences:** Consider a case where an offender commits a sexual offence, is apprehended, charged, and released on bail. You are assigned to evaluate this offender but before you can complete your evaluation he commits another sexual offence, is apprehended and charged. Because the offender was apprehended, charged, and released this does not qualify as a crime "spree". He chose to re-offend in spite of knowing that he was under legal sanction. These new charges and possible eventual convictions would be considered separate crimes. In a situation of this nature the new charges would create a new sexual offence and become the new Index offence. If these charges happened to be the last sexual offences on the offender's record – the most recent charges would become the Index and the charge on which he was first released on bail would become a "Prior" Sexual Offence.
>
> **For Example, Post-Index Violent Offences:** Consider a case where an offender in prison on a sexual offence commits and is convicted of a serious violent offence. This violent offence would not be scored on either Item #3 (Index Non-sexual Violence convictions) or Item #4 (Prior Non-sexual Violence convictions) but would be referred to separately, outside the context of the STATIC-99 assessment, in any subsequent report on the offender.

Probation before Judgement

Where applicable, "Probation before judgment" counts as a charge, conviction, and a sentencing date.

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

If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for a sexual behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a sexual criminal offence, this revocation of conditional release would

count as both a Prior Sex Offence "charge" and a Prior Sex Offence "conviction". Note: the evaluator should be sure that were this offender not already under sanction that it is highly likely that a sexual offence charge would be laid by police. Revocations for violations of conditional release conditions, so called "technicals" (drinking violations, failure to report, being in the presence of minors, being in the possession of legally obtained pornography) are insufficient to stand as Prior Sentencing Dates.

RRASOR and STATIC-99 – Differences in Scoring

Historical offences are scored differently between the RRASOR and the STATIC-99. On the RRASOR, if the offender is charged or convicted of historical offences committed prior to the Index Offence, these are counted as Prior Sexual Offences (User Report, The Development of a Brief Actuarial Risk Scale for Sexual Offense Recidivism 1997-04, Pg. 27, end of paragraph titled Prior Sexual Offences). This is not the case for the STATIC-99. For the STATIC-99, if the offender is charged or convicted of historical offences after the offender is charged or convicted of a more recent offence, these offences are to be considered part of the Index Offence (pseudo-recidivism) – forming an "Index Cluster".

Suspended Sentences

Suspended sentences should be treated as equivalent to a charge and a conviction.

Teachers

Being transferred to a new school or being given an administrative posting away from the public with no formal sanction or being sent to graduate school for re-training would not count as a charge or conviction.

Where a teacher is transferred between schools due to allegations of sexual abuse but there is no explicit internal sanction; these moves would not count as charges or convictions.

Item # 6 Prior Sentencing Dates

The Basic Principle: This item and the others that relate to criminal history and the measurement of persistence of criminal activity are based on a firm foundation in the behavioural literature. As long ago as 1911 Thorndyke stated that the "the best predictor of future behaviour, is past behaviour". Andrews & Bonta (2003) state that having a criminal history is one of the "Big Four" predictors of future criminal behaviour. Prior Sentencing Dates is a convenient method of coding the length of the criminal record.

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

The Basic Rule: If the offender's criminal record indicates four or more separate sentencing dates prior to the Index Offence, the offender is scored a "1" on this item. If the offender's criminal record indicates three or fewer separate sentencing dates prior to the Index Offence, the offender scores a "0" on this item.

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

If the offender is on some form of conditional release (parole/probation/bail etc.) "technical" violations do not count as new sentencing dates. For example, if an offender had a condition prohibiting drinking alcohol, a breach for this would not be counted as a new sentencing date. To be counted as a new sentencing date, the breach of conditions would have to be a new offence for which the offender could be charged if he were not already under criminal justice sanction.

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

Count:

- Juvenile offences count (if you know about them – please see section on the use of self-report in the Introduction)
- Where applicable "Probation before judgment" counts as a conviction and a sentencing date
- Where applicable "Consent Decree" counts as a conviction and a sentencing date
- Suspended Sentences count as a sentencing date

Do Not Count:

- Stayed offences do not count as sentencing dates
- Institutional Disciplinary Actions/Reports do not count as sentencing dates

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

Generally, most offences that would be recorded on an official criminal history would count – but the statute, as written in the jurisdiction where the offence took place, must allow for the imposition of a custodial sentence or a period of community supervision (adult or juvenile). Only truly trivial offences

are excluded; those where it is impossible to get a period of incarceration or community supervision. Offences that can **only** result in fines do not count.

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

Offence convictions occurring after the Index offence cannot be counted on this item.

Conditional Discharges

Where an offender has been charged with a sexual offence and receives a Conditional Discharge, for the purposes of the STATIC-99 a conditional discharge counts as a conviction and a sentencing date.

Diversionary Adjudication

If a person commits a criminal offence as a juvenile or as an adult and receives a diversionary adjudication, this counts as a sentencing date (Restorative Justice, Reparations, Family Group Conferencing, Community Sentencing Circles).

Extension of Sentence by a Parole Board (or similar)

If an offender is assigned extra time added to their sentence by a parole board for a criminal offence this counts as an additional sentencing date if the new time extended the total sentence. This would not count as a sentencing date if the additional time was to be served concurrently or if it only changed the parole eligibility date. This situation is presently not possible in Canada.

Failure to Appear

If an offender fails to appear for sentencing, this is not counted as a sentencing date. Only the final sentencing for the charge for which the offender missed the sentencing date is counted as a sentencing date.

Failure to Register as a Sexual Offender

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

Juvenile Extension of Detention

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

Juvenile Offences

Both adult and juvenile convictions count in this item. In the case where a juvenile is not charged with a sexual or violent offence but is moved to a secure or more secure residential placement as the result of a sexual or violent incident, this counts as a sentencing date for the purposes of scoring Prior Sentencing Dates.

Military

If an "undesirable discharge" is given to a member of the military as the direct result of criminal behaviour (something that would have attracted a criminal charge were the offender not in the military),

this would count as a sentencing date. However, if the member left the military when he normally would have and the "undesirable discharge" is the equivalent to a bad job reference then the criminal behaviour would not count as a Sentencing Date.

Military Courts Martial
If an offender is given a sanction (Military Brig or it's equivalent) for a criminal offence rather than a purely military offence {failure of duty} this counts as a sentencing date. Pure Military Offences {Insubordination, Not Following a Lawful Order, Dereliction of Duty, Conduct Unbecoming, etc.} do not count as Prior Sentencing Dates.

Not Guilty
Being found "Not Guilty" is not counted as a Prior Sentencing Date.

Official Cautions – United Kingdom
In the United Kingdom, an official caution should be treated as equivalent to a sentencing date.

Post-Index Offences
Post-Index offences are not counted as sentencing occasions for the STATIC-99.

Revocation of Conditional Release for "Lifers", Dangerous Offenders, and Others with Indeterminate Sentences
If a "lifer", Dangerous Offender, or other offender with an already imposed indeterminate sentence is simply revoked (returned to prison from conditional release in the community without trial) for criminal behaviour that is of sufficient gravity that a person not already involved with the criminal justice system would most likely be charged with a criminal offence, this revocation of conditional release would count as a Prior Sentencing Date. Note: the evaluator should be sure that were this offender not already under sanction that a criminal charge would be laid by police and that a conviction would be highly likely. Revocations for violations of conditional release conditions, so called "technicals", (drinking violations, failure to report, being in the presence of minors) are insufficient to stand as Prior Sentencing Dates.

> Note: for this item there have been some changes to the rules from previous versions. Some rules were originally written to apply to a specific jurisdiction. Over time, and in consultation with other jurisdictions the rules have been generalized to make them applicable across jurisdictions in a way that preserves the original intent of the item.

Suspended Sentences
Suspended sentences count as a sentencing date.

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

The Basic Principle: Offenders with paraphilic interests are at increased risk for sexual recidivism. For example, most individuals have little interest in exposing their genitals to strangers or stealing underwear. Offenders who engage in these types of behaviours are more likely to have problems conforming their sexual behaviour to conventional standards than offenders who have no interest in paraphilic activities.

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

The Basic Rule: If the offender's criminal record indicates a separate conviction for a non-contact sexual offence, the offender is scored a "1" on this item. If the offender's criminal record does not show a separate conviction for a non-contact sexual offence, the offender is scored a "0" on this item.

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

- Exhibitionism
- Possessing obscene material
- Obscene telephone calls
- Voyeurism
- Exposure
- Elicit sexual use of the Internet
- Sexual Harassment (Unwanted sexual talk)
- In certain jurisdictions "Criminal Trespass" or "Trespass by Night" may be used as a charge for voyeurism – these would also count

The criteria for non-contact sexual offences are strict: the offender must have been convicted, and the offence must indicate non-contact sexual misbehaviour. The "Index" offence(s) may include a conviction for a non-contact sexual offence and this offence can count in this category. The most obvious example of this is where an offender is charged and convicted of Exposure for "mooning" a woman from a car window. This would result in a coding of "1" for this item.

There are some cases, however, where the legal charge does not reflect the sexual nature of the offence. Take, for example, the same situation where an offender is charged with Exposure for "mooning" a woman from a car window, but the case is pled-down to, and the offender is finally convicted of Disorderly Conduct. In cases like this, while this item requires that there be a conviction, the coding of a non-contact sexual offence can be based on the behaviour that occurred in cases where the name of the offence is ambiguous.

Charges and arrests do not count, nor do self-reported offences. Sexual offences in which the offender intended to make contact with the victim (but did not succeed) would be considered attempted contact offences and are coded as contact offences (e.g., invitation to sexual touching, attempted rape). Some offences may include elements of both contact and non-contact offences, for example, sexual talk on Internet - arranging to meet the child victim. In this case, the conviction would count as a non-contact sex offence.

Attempted Contact Offences

Invitation to Sexual Touching, Attempted Rape and other such "attempted" contact offences are counted as "Contact" offences due to their intention.

Internet Crimes

Internet crimes were not recorded in the original samples for the STATIC-99 because the Internet had not advanced to the point where it was commonly available. As a result, determining how to score Internet crimes on the STATIC-99 requires interpretation beyond the available data. Internet crimes could be considered in two different ways. First, they could be considered a form of attempted sexual contact, where the wrongfulness of the behaviour is determined by what is about to happen. Secondly, they could be considered an inappropriate act in themselves, akin to indecent telephone calls (using an older technology). We believe that luring children over the Internet does not represent a fundamentally new type of crime but is best understood as a modern expression of traditional crimes. We consider communicating with children over the Internet for sexual purposes to be an inappropriate and socially harmful act in itself and, therefore, classify these acts with their historical precursors, such as indecent/obscene telephone calls, in the category of non-contact sexual offences.

Pimping and Prostitution Related Offences

Pimping and other prostitution related offences (soliciting a prostitute, promoting prostitution, soliciting for the purposes of prostitution, living off the avails of prostitution) do not count as non-contact sexual offences. (Note: prostitution was not illegal in England during the study period, though soliciting was).

Plea Bargains

Non-contact sexual offence convictions do not count if the non-contact offence charge arose as the result of a plea bargain. Situations such as this may appear in the criminal record where charges for a contact offence are dropped and the non-contact charges appear simultaneously with a guilty plea. An occurrence of this nature would be considered a contact offence and scored as such.

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

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

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

The following three items concern victim characteristics: Unrelated Victims, Stranger Victims, and Male Victims. For these three items the scoring is based on all available credible information, including self-report, victim accounts, and collateral contacts. The items concerning victim characteristics, however, only apply to sex offences in which the victims were children or non-consenting adults (Category "A" sex offences). Do not score victim information from non-sexual offences or from sex offences related to prostitution/pandering, possession of child pornography, and public sex with consenting adults (Category "B" sex offences). Do not score victim information on sexual offences against animals (Bestiality and similar charges).

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

- Illegal use of a Minor in Nudity-oriented Material/Performance
- Importuning (Soliciting for Immoral Purposes)
- Indecent Exposure (When a specific victim has been identified)
- Sexually Harassing Telephone Calls
- Voyeurism (When a specific victim has been identified)

You do not score Victim Information on the following charges:

- Compelling Acceptance of Objectionable Material
- Deception to Obtain Matter Harmful to Juveniles
- Disseminating/Displaying Matter Harmful to Juveniles
- Offences against animals
- Pandering Obscenity
- Pandering Obscenity involving a Minor
- Pandering Sexually-Oriented Material involving a Minor
- Prostitution related offences

"Accidental Victims"

Occasionally there are "Accidental Victims" to a sexual offence. A recent example of this occurred when an offender was raping a woman in her living room. The noise awoke the victim's four-year-old son. The son wandered into the living room and observed the rape in progress. The victim instructed her son to return to his bedroom and he complied at once. The perpetrator was subsequently charged and convicted of "Lewd and Lascivious Act on a Minor" in addition to the rape. In court the offender pleaded to both charges. In this case, the four-year-old boy would not count as a victim as there was no intention to commit a sexual offence against him. He would not count in any of the three victim items regardless of the conviction in court.

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

stumbling upon a crime scene does not make the observer a victim regardless of how repugnant the observer finds the behaviour.

Acquitted or Found Not Guilty

The criteria for coding victim information is "all credible information". In this type of situation it is important to distinguish between the court's stringent standard of determining guilt (Beyond a reasonable doubt) and "What is most likely to be true" – a balance of probabilities. When the court sticks to the "Beyond a reasonable doubt" criteria they are not concluding that someone did not do the crime, just that the evidence was insufficient to be certain that they did it. The risk assessment perspective is guided by: "On the balance of probabilities, what is most likely to be true?" If the assessor, "On the balance of probabilities" feels that the offence more likely than not took place the victims may be counted.

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

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

Child Pornography

Victims portrayed in child pornography are not scored as victims for the purposes of the STATIC-99. They do not count as non-familial, stranger, nor male victims. Only real, live, human victims count. If your offender is a child pornography maker and a real live child was used to create pornography by your offender or your offender was present when pornography was created with a real live child, this child is a victim and should be scored as such on the STATIC-99 victim questions. (Note: manipulating pre-existing images to make child pornography [either digitally of photographically] is not sufficient – a real child must be present) Making child pornography with a real child victim counts as a "Category A" offence and, hence, with even a single charge of this nature, the STATIC-99 is appropriate to use.

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

Conviction, But No Victim

For the purposes of the STATIC-99, consensual sexual behaviour that is prohibited by statute does not create victims. This is the thinking behind Category "B" offences. Examples of this are prostitution offences and public toileting (Please see "Category "A" and Category "B" offences" in the Introduction section for a further discussion of this issue). Under some circumstances it is possible that in spite of a conviction for a sexual offence the evaluator may conclude that there are no real victims. An example of this could be where a boy (age 16 years) is convicted of Statutory Rape of his 15-year-old boyfriend (Assume age of consent in this jurisdiction to be 16 years of age). The younger boy tells the police that the sexual contact was consensual and the police report informs the evaluator that outraged parents were the complainants in the case. In a scenario like this, the younger boy would not be scored as a victim, the conviction notwithstanding.

Credible Information

Credible sources of information would include, but are not limited to, police reports, child welfare reports, victim impact statements or discussions with victims, collateral contacts and offender self-report.

If the information is credible (Children's Protective Association, victim impact statements, police reports) you may use this information to code the three victim questions, even if the offender has never been arrested or charged for those offences.

Exhibitionism

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

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

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

Internet Victims and Intention

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

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

Polygraph Information

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

Prowl by Night - Voyeurism

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

Sexual Offences Against Animals

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

Sex with Dead Bodies

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

Stayed Charges

Victim information obtained from stayed charges should be counted.

Victims Not at Home

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

Item # 8 - Any Unrelated Victims?

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

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in the previous section "Items #8, #9, & #10 -The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences outside their immediate family, score the offender a "1" on this item. If the offender's victims of sexual offences are all within the immediate family score the offender a "0" on this item.

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

Time and Jurisdiction Concerns

A difficulty in scoring this item is that the law concerning who you can marry is different across jurisdictions and across time periods within jurisdictions. For example, prior to 1998, in Ontario, there were 17 relations a man could not marry, including such oddities as "nephew's wife" and "wife's grandmother". In 1998 the law changed and there are now only 5 categories of people that you cannot marry in Ontario: grandmother, mother, daughter, sister, and granddaughter (full, half, and adopted). Hence, if a man assaulted his niece in 1997 he would not have an unrelated victim but if he committed the same crime in 1998 he would technically be assaulting an unrelated victim. We doubt very much the change in law would affect the man's choice of victim and his resulting risk of re-offence. As a result the following rules have been adopted.

People who are seen as related for the purposes of scoring the STATIC-99

1. Legally married spouses
2. Any live-in lovers of over two years duration. (Girlfriends/Boyfriends become related once they have lived with the offender as a lover for two years)
3. Anyone too closely related to marry (by jurisdiction of residence of the perpetrator)
4. The following relations whether or not marriage is permitted in the jurisdiction of residence of the perpetrator:
    - Aunt
    - Brother's wife
    - Common-law wife/Ex common-law wife (lived together for 2 years)
    - Daughter
    - Father's wife/step-mother
    - First cousins
    - Granddaughter
    - Grandfather
    - Grandfather's wife

- Grandmother
- Grandson's wife
- Mother
- Niece/Nephew
- Sister
- Son's wife
- Stepdaughter/Stepson (Must have more than two years living together before abuse begins)
- Wife and Ex-wife
- Wife's daughter/step-daughter
- Wife's granddaughter
- Wife's grandmother
- Wife's mother

The relationships can be full, half, adopted, or common-law (two years living in these family relationships). The mirror relationships of the opposite gender would also count as related (e.g., brother, sons, nephews, granddaughter's husband).

People who are seen as <u>unrelated</u> for the purposes of scoring the STATIC-99

- Any step-relations where the relationship lasted less than two years
- Daughter of live-in girlfriend/Son of live-in girlfriend
  (less than two years living together before abuse begins)
- Nephew's wife
- Second cousins
- Wife's aunt

Decisions about borderline cases (e.g., brother's wife) should be guided by a consideration of the psychological relationship existing prior to the sexual assault. If an offender has been living with the victim in a family/paternal/fraternal role for two years prior to the onset of abuse, the victim and the offender would be considered related.

Becoming "Unrelated"

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

Item # 9 - Any Stranger Victims?

The Basic Principle: Research shows that having a stranger victim is related to sexual recidivism. See Hanson and Bussière (1998), Table 1 – Item "Victim Stranger (versus acquaintance)".

Information Required to Score this Item: Use all credible information to score this item. "Credible Information" is defined in the section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has victims of sexual offences who were strangers at the time of the offence, score the offender a "1" on this item. If the offender's victims of sexual offences were all known to the offender for at least 24 hours prior to the offence, score the offender a "0" on this item. If the offender has a "stranger" victim, Item #8, "Any Unrelated Victims", is generally scored as well.

A victim is considered a stranger if the victim did not know the offender 24 hours before the offence. Victims contacted over the Internet are not normally considered strangers unless a meeting was planned for a time less than 24 hours after initial communication.

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

The criteria for being a stranger are very high. Even a slight degree of knowing is enough for a victim not to be a stranger. If the victim knows the offender at all for more than 24 hours, the victim is not a stranger. For example, if the victim was a convenience store clerk and they recognized the perpetrator as someone who had been in on several occasions to buy cigarettes, the victim would no longer be a stranger victim. If a child victim can say they recognize the offender from around the neighborhood and the perpetrator has said "Hi" to them on occasion, the child is no longer a stranger victim. The evaluator must determine whether the victim "knew" the offender twenty-four hours (24) before the assault took place. The criteria for "know/knew" is quite low but does involve some level of interaction. They need not know each other's names or addresses. However, simply knowing of someone but never having interacted with them would not be enough for the victim to count as "known".

The Reverse Case

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

The "24 hour" rule also works in reverse – there have been cases where a performer assaulted a fan the first time they met. In this case, the victim (the fan) had "known of" the performer for years, but the performer (the perpetrator) had not known the fan for 24 hours. Hence, in cases such as this, the victim would count as a stranger because the perpetrator had not known the victim for 24 hours prior to the offence.

Internet, E-mail, and Telephone

Sometimes offenders attempt to access or lure victims over the Internet. This is a special case and the threshold for not being a stranger victim is quite low. If the offender and the victim have communicated over the Internet (e-mail, or telephone) for more than twenty-four hours (24 hours) before the initial face-

to-face meeting, the victim (child or adult) is not a stranger victim. To be clear, this means that if an offender contacts, for the first time, a victim at 8 p.m. on a Wednesday night, their first face-to-face meeting must start before 8 p.m. on Thursday night. If this meeting starts before 8 p.m., and they remain in direct contact, the sexual assault might not start until midnight – as long as the sexual assault is still within the first face-to-face meeting – this midnight sexual assault would still count as a stranger assault. If they chat back and forth for longer than 24 hours, the victim can no longer be considered a stranger victim for the purposes of scoring the STATIC-99.

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

Becoming a "Stranger" Again

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

Item # 10 - Any Male Victims?

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

Information Required to Score this Item: To score this item use all available credible information. "Credible Information" is defined in section "Items #8, #9, & #10 - The Three Victim Questions".

The Basic Rule: If the offender has male victims of sexual offences, non-consenting adults or child victims, score the offender a "1" on this item. If the offender's victims of sexual offences are all female, score the offender a "0" on this item.

Included in this category are all sexual offences involving male victims. Possession of child pornography involving boys, however, does not count. Exhibitionism to a mixed group of children (girls and boys) would not count unless there was clear evidence the offender was targeting the boys. Contacting male victims over the Internet does count.

If an offender assaults a transvestite in the mistaken belief the victim is a female (may be wearing female clothing) do not score the transvestite as a male victim. If it is certain the offender knew he was assaulting a male before the assault, score a male victim.

In some cases a sexual offender may beat-up or contain (lock in a car trunk) another male in order to sexually assault the male's date (wife, etc.). If the perpetrator simply assaults the male (non-sexual) in order to access the female you do not count him as a male victim on the STATIC-99. However, if the perpetrator involves the male in the sexual offence, such as tying him up and making him watch the rape (forced voyeuristic activity), the assault upon the male victim would count as a sexual offence and the male victim would count on the STATIC-99.

Scoring the STATIC-99 & Computing the Risk Estimates

Using the STATIC-99 Coding Form (Appendix 5) sum all individual item scores for a total risk score based upon the ten items. This total score can range from "0" to "12".

Scores of 6 and greater are all considered high risk and treated alike.

Once you have computed the total raw score refer to the table titled STATIC-99 Recidivism Percentages by Risk Level (Appendix 6).

Here you will find recidivism risk estimates for both sexual and violent recidivism over 5, 10, and 15-year projections. In the left-most column find the offender's raw STATIC-99 risk score. Remember that scores of 6 and above are read off the "6" line, high risk.

For example, if an offender scored a "4" on the STATIC-99 we would read across the table and find that this estimate is based upon a sample size of 190 offenders which comprised 18% of the original sample. Reading further, an offender with a score of "4" on the STATIC-99 is estimated as having a 26% chance of sexual reconviction in the first 5 years of liberty, a 31% chance of sexual reconviction over 10 years of freedom, and a 36% chance of sexual reconviction over 15 years in the community.

For violent recidivism we would estimate that an offender that scores a "4" on the STATIC-99 would have a 36% chance of reconviction for a violent offence over 5 years, a 44% chance of reconviction for a violent offence over 10 years, and a 52% chance of reconviction for a violent offence over a 15 year period. It is important to remember that sexual recidivism is included in the estimates of violent recidivism. You **do not** add these two estimates together to create an estimate of violent and sexual recidivism. The estimates of violent recidivism include incidents of sexual recidivism.

STATIC-99 risk scores may also be communicated as nominal risk categories using the following guidelines. Raw STATIC-99 scores of "0" and "1" should be reported as "Low Risk", scores of "2" and "3" reported as "Moderate-Low" risk, scores of "4" and "5" reported as "Moderate-High" risk, and scores of "6" and above as "High Risk".

Having determined the estimated risk of sexual and violent recidivism we suggest that you review Appendix seven (7) which is a suggested template for communicating STATIC-99 risk information in a report format.

Appendices

Appendix One

Adjustments in Risk Based on Time Free

In general, the expected sexual offence recidivism rate should be reduced by about half if the offender has five to ten years of offence-free behaviour in the community. The longer the offender has been offence-free, post-Index, the lower the expected recidivism rate. It is not known what the expected rates of sexual re-offence should be if the offender has recidivated post-Index with a non-sexual offence. Presently, no research exists shedding light on this issue. Arguments could be made that risk scores should be increased (further criminal activity), decreased (he has still not committed another sexual offence in the community) or remain the same. We suspect that an offender who remains criminally active will maintain the same risk for sexual recidivism.

Adjusted crime-free rates only apply to offenders who have been without a new sexual or violent offence. Criminal misbehaviour such as threats, robberies, and assaults void any credit the offender may have for remaining free of additional sexual offences. For these purposes, an offender could, theoretically, commit minor property offences and still remain offence-free.

The recidivism rate estimates reported in Hanson & Thornton (2000) are based on the offender's risk for recidivism at the time they were released into the community after serving time for a sexual offence (Index offence). As offenders successfully live in the community without incurring new offences, their recidivism risk declines. The following table provides reconviction rates for new sexual offences for the three STATIC-99 samples where survival data were available (Millbrook, Pinel, HM Prison), based on offence-free time in the community. "Offence-free" means no new sexual or violent convictions, nor a non-violent conviction that would have resulted in more than minimal jail time (1-2 months).

The precise amount of jail time for non-violent recidivism was not recorded in the data sets, but substantial periods of jail time would invalidate the total time at risk. We do not recommend attempting to adjust the survival data given below by subtracting "time in prison for non-violent offences" from the total time elapsed since release from Index sexual offence.

For example, if offender "A" has been out for five years on parole got 60 days in jail for violating a no-drinking condition of parole the adjusted estimates would most likely still apply. However, if offender "B" also out on parole for five years got 18 months for Driving While Under the Influence these adjustments for time at risk would not be valid.

Adjusted risk estimates for time free would apply to offenders that are returned to custody for technical violations such as drinking or failing to register as a sexual offender.

Table for Adjustments in Risk Based on Time Free

STATIC-99 Risk Level at original assessment	Years offence-free in community					
	0	2	4	6	8	10
	Recidivism rates – Sex Offence Convictions %					
0-1 (n = 259)						
5 year	5.7	4.6	4.0	2.0	1.4	1.4
10 year	8.9	6.4	4.6	3.3	3.2	(5.8)
15 year	10.1	8.7	9.5	7.7	(6.5)	
2-3 (n = 412)						
5 year	10.2	6.8	4.4	3.1	5.5	5.3
10 year	13.8	11.1	9.1	8.1	8.2	8.4
15 year	17.7	14.5	13.6	13.9	(18.7)	
4-5 (n = 291)						
5 year	28.9	14.5	8.0	6.9	7.6	6.8
10 year	33.3	21.4	13.7	11.5	(13.1)	(11.5)
15 year	37.6	22.8	(18.7)			
6+ (n = 129)						
5 year	38.8	25.8	13.1	7.0	9.4	13.2
10 year	44.9	30.3	23.7	16.0	(17.8)	(17.8)
15 year	52.1	37.4	(27.5)			

Note: The total sample was 1,091. The number of cases available for each analysis decreases as the follow-up time increases and offenders recidivate. Values in parentheses were based on less than 30 cases and should be interpreted with caution.

Appendix Two

Self-Test

1.Qu estion: In 1990, Mr. Smith is convicted of molesting his two stepdaughters. The sexual abuse occurred between 1985 and 1989. While on conditional release in 1995, Mr. Smith is reconvicted for a sexual offence. The offence related to the abuse of a child that occurred in 1980. Which conviction is the Index offence?

> ***Answer:*** The 1990 and 1995 convictions would both be considered part of the Index offence. Neither would be counted as a prior sexual offence. The 1995 conviction is pseudo-recidivism because the offender did not re-offend after being charged with the 1990 offence.

2.Qu estion: In April 1996, Mr. Jones is charged with sexual assault for an incident that occurred in January 1996. He is released on bail and reoffends in July 1996, but this offence is not detected until October 1996. Meanwhile, he is convicted in September 1996, for the January 1996 incident. The October 1996 charge does not proceed to court because the offender is already serving time for the September 1996 conviction. You are doing the evaluation in November. What is the Index offence?

> ***Answer:*** The October 1996 charge is the Index offence because the offence occurred after Mr. Jones was charged for the previous offence. The Index sexual offence need not result in a conviction.

3.Qu estion: In January 1997, Mr. Dixon moves in with Ms. Trembley after dating since March 1996. In September 1999, Mr. Dixon is arrested for molesting Ms. Trembley's daughter from a previous relationship. The sexual abuse began in July 1998. Is the victim related?

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

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

> ***Answer:*** For Item #5, Prior Sexual Offences, score this as 2 prior charges and 2 prior convictions. Although Mr. Miller has no prior convictions for sexual offences, there are official records indicating he has engaged in sexual offences as an adolescent that resulted in custodial sanctions on two separate occasions. The Index offence at age 24 is not counted as a prior sexual offence.

5.Qu estion: Mr. Smith was returned to prison in July 1992 for violating several conditions of parole including child molestation, lewd act with a child and contributing to the delinquency of a minor. Once back in prison he sexually assaulted another prisoner. Mr. Smith has now been found guilty of the sexual assault and the judge has asked you to contribute to a pre-sentence report. How many Prior Sexual Offence (Item #5) points would Mr. Smith receive for his parole violations?

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

6.Qu estion: Mr. Moffit was charged with child molestation in April 1987 and absconded before he was arrested. Mr. Moffit knew the police were coming to get him when he left. He travelled to another jurisdiction where he was arrested and convicted of child molesting in December 1992. He served 2 years in prison and was released in 1994. He was apprehended, arrested and convicted in January of 1996 for the original charges of Child Molestation he received in April 1987. Which offence is the Index offence?

Answer: The most recent offence date, December 1992 becomes the Index offence. In this case, the offence dates should be put back in chronological order given that he was detected and continued to offend. The April, 1987 charges and subsequent conviction in January of 1996 become a prior sexual offence.

7.Qu estion: While on parole, Mr. Jones, who has an extensive history of child molestation, was found at the county fair with an 8 year-old male child. He had met the child's mother the night before and volunteered to take the child to the fair. Mr. Jones was in violation of his parole and he was returned to prison. He subsequently got out of prison and six months later re-offended. You are tasked with the pre-sentence report. Do you count the above parole violation as a prior sex offence charge?

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

Appendix Three

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Appendix Four

Surgical Castration in Relation to Sex Offender Risk Assessment

Surgical castration or orchidectomy is the removal of the testicles. In most cases this is done for medical reasons but in sex offenders may be done for the reduction of sexual drive. Orchidectomy was practiced in Nazi Germany and in post-war Europe in sufficient numbers that several studies have been conducted on the recidivism rates of those who have undergone the operation. In general, the post-operative recidivism rates are low, but not zero (2% - 5%). In addition, the subjects in the European samples tended to be older men and this data may not generalize well to ordinary sex offender samples. The recidivism rates reported, however, are lower than expected base rates. This may suggest that there is some protective effect from castration.

However, this effect can be reversed. There have been a number of case studies where a castrated individual has obtained steroids, reversed the effects of the operation, and gone on to re-offend.

In terms of overall risk assessment, if an individual has undergone surgical castration it is worth consideration but this is not an overriding factor in risk assessment. In particular, an evaluator must consider the extent to which sex drive contributes to the offence pattern and whether the offender has the motivation and intellectual resources to maintain a low androgen lifestyle in the face of potentially serious side effects (e.g., bone loss, weight gain, breast growth).

Appendix Five

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	Low
2,3	Moderate-Low
4,5	Moderate-High
6 plus	High

Appendix Six

STATIC-99 Recidivism Percentages by Risk Level

Static-99 score	sample size	sexual recidivism			violent recidivism		
		5 years	10 years	15 years	5 years	10 years	15 years
0	107 (10%)	.05	.11	.13	.06	.12	.15
1	150 (14%)	.06	.07	.07	.11	.17	.18
2	204 (19%)	.09	.13	.16	.17	.25	.30
3	206 (19%)	.12	.14	.19	.22	.27	.34
4	190 (18%)	.26	.31	.36	.36	.44	.52
5	100 (9%)	.33	.38	.40	.42	.48	.52
6 +	129 (12%)	.39	.45	.52	.44	.51	.59
Average							
3.2	1086 (100%)	.18	.22	.26	.25	.32	.37

Appendix Seven

Suggested Report Paragraphs for Communicating STATIC-99-based Risk Information

The STATIC-99 is an instrument designed to assist in the prediction of sexual and violent recidivism for sexual offenders. This risk assessment instrument was developed by Hanson and Thornton (1999) based on follow-up studies from Canada and the United Kingdom with a total sample size of 1,301 sexual offenders. The STATIC-99 consists of 10 items and produces estimates of future risk based upon the number of risk factors present in any one individual. The risk factors included in the risk assessment instrument are the presence of prior sexual offences, having committed a current non-sexual violent offence, having a history of non-sexual violence, the number of previous sentencing dates, age less than 25 years old, having male victims, having never lived with a lover for two continuous years, having a history of non-contact sex offences, having unrelated victims, and having stranger victims.

The recidivism estimates provided by the STATIC-99 are group estimates based upon reconvictions and were derived from groups of individuals with these characteristics. As such, these estimates do not directly correspond to the recidivism risk of an individual offender. The offender's risk may be higher or lower than the probabilities estimated in the STATIC-99 depending on other risk factors not measured by this instrument. This instrument should not be used with Young Offenders (those less than 18 years of age) or women.

Mr. X scored a ?? on this risk assessment instrument. Individuals with these characteristics, on average, sexually reoffend at ??% over five years and at ??% over ten years. The rate for any violent recidivism (including sexual) for individuals with these characteristics is, on average, ??% over five years and ??% over ten years. Based upon the STATIC-99 score, this places Mr. X in the Low, [score of 0 or 1](between the 1st and the 23rd percentile); Moderate-Low, [score of 2 or 3] (between the 24th and the 61st percentile); Moderate-High, [score of 4 or 5] (between the 62nd and the 88th percentile); High, [score of 6 plus](in the top 12%) risk category relative to other adult male sex offenders.

Based on a review of other risk factors in this case I believe that this STATIC-99 score (Over/Under/Fairly) represents Mr. X's risk at this time. The other risk factors considered that lead me to this conclusion were the following: {Stable Variables: Intimacy Deficits, Social Influences, Attitudes Supportive of Sexual Assault, Sexual Self-Regulation, and General Self-Regulation; Acute Variables: Substance Abuse, Negative Mood, Anger/Hostility, Opportunities for Victim Access - Taken from the SONAR*}, (Hanson & Harris, 2001). Both the STATIC-99 and the SONAR 2000 are available from the Solicitor General Canada's Website www.sgc.gc.ca.

* Note: This list is not intended to be definitive. Evaluators may want to include other static or dynamic variables in their evaluations.

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[Evaluator – these paragraphs are available electronically by e-mailing Andrew Harris, harrisa@sgc.gc.ca and requesting the electronic file – Standard STATIC-99 Paragraphs]

Appendix Eight

STATIC-99 Inter-rater Reliability

Reliability is the extent to which the same individual receives the same score on different assessments. Inter-rater reliability is the extent to which different raters independently assign the same score to the same individual at a given point in time.

These independent studies utilized different methods of calculating inter-rater reliability. The Kappa statistic provides a correction for the degree of agreement expected by chance. Percent agreement is calculated by dividing the agreements (where both raters score "0" or both raters score "1") by the total number in the item sample. Pearson correlations compare the relative rankings between raters. Intra-class correlations compare absolute values between raters.

The conclusion to be drawn from this data is that raters would rarely disagree by more than one point on a STATIC-99 score.

Summary of Inter-rater Reliability			
Study	**N of cases double coded**	**Method of reliability calculation**	**Reliability**
Barbaree et al.	30	Pearson correlations between total scores	.90
Hanson (2001)	55	Average Item Percent Agreement	.91
	55	Average Item Kappa	.80
	55	Intra-class correlation for total scores	.87
Harris et al.	10	Pearson correlations between total scores	.96

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Appendix Nine

STATIC-99 Replication Studies References

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STATIC-99 Replications

Authors	Country	Sample	n	Reported ROC
Hanson & Thornton (2000)	**Canada & the UK**	**Prison Males**	**1,301**	**.71**
	These are the original samples for the Static-99 Prison Males			
Barbaree et al., (2001)	Canada	Prison Males	215	.70
Beech et al., (2002)	England	Community	53	.73
Hanson (2002) Unpublished	Canada	Community	202	.59
Harris et al., (Submitted)	Canada	Forensic Mental Health Patients	396	.62
Hood et al., (2002)	England	HM Prison Males	162	.77
McGrath et al., (2000)	United States	Prison Males	191	.74
Motiuk (1995)	Canada	Prison Males	229	.77
Nicholaichuk (2001)	Canada	Aboriginal Males	109	.67
Nunes et al., (2002)	Canada	Community Pre-trial	258	.70
Poole et al., (2001)	United States	Juv. sex offenders released after age 18	45	.95
Reddon et al., (1995)	Canada	Prison Males	355	.76
Sjöstedt & Långström (2001)	Sweden	All released male offenders (1993-1997)	1,400	.76
Song & Lieb (1995)	United States	Community	490	.59
Thornton (2000a)	England	Prison Males	193	.89
Thornton (2000b)	England	Prison Males	110	.85
Tough (2001)	Canada	Developmentally Delayed Males	76	.60
Wilson et al., (2001)	Canada	Detained High-Risk Offenders	30	.61
		TOTAL	**4,514**	**MEAN = 72.4**

Appendix Ten

Interpreting STATIC-99 Scores Greater than 6

In the original Hanson and Thornton (1999, 2000) study, all offenders with scores of 6 or more were grouped together as "high risk" because there were insufficient cases to provide reliable estimates for offenders with higher scores. Consequently, some evaluators have wondered how to interpret scores for offenders with scores greater than 6. We believe that there is insufficient evidence to conclude that offenders with scores greater than 6 are higher risk to re-offend than those who have a score of 6. However, as an offender's score increases, there is increased confidence that he is indeed a member of the high-risk group.

Below are the sexual and violent recidivism rates for the offenders with scores of 6 through 9. No offender in these samples had a score of 10 or greater. The rates were based on the same subjects and the same statistics (survival analysis) as those used to generate the estimates reported in Table 5 of Hanson and Thornton (1999, 2000).

Overall, the recidivism rates for the offenders with scores of 6, 7 and 8 were similar to the rates for the high-risk group as a whole. There were only three cases with a Static-99 score of 9, one of which sexually recidivated after 3 years, one re-offended with non-sexual violent offence after 18 years, and one did not recidivate. None of the differences between the groups were statistically significant.

Static-99 score	sample size	Sexual recidivism			Violent recidivism		
		5 years	10 years	15 years	5 years	10 years	15 years
6	72	.36	.44	.51	.46	.53	.60
7	33	.43	.43	.53	.43	.46	.56
8	21	.33	.52	.57	.43	.57	.62
9	3	.33	.33	.33	.33	.33	.33
10, 11, 12	0						
Scores 6 thru 12	129	.39	.45	.52	.44	.51	.59

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	**Low**
2,3	**Moderate-Low**
4,5	**Moderate-High**
6 plus	**High**

STATIC-99 Coding Form

Question Number	Risk Factor	Codes	Score
1	Young (S9909)	Aged 25 or older Aged 18 – 24.99	0 1
2	Ever Lived With (S9910)	Ever lived with lover for at least two years? Yes No	 0 1
3	Index non-sexual violence - Any Convictions (S9904)	No Yes	0 1
4	Prior non-sexual violence - Any Convictions (S9905)	No Yes	0 1
5	Prior Sex Offences (S9901)	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6+ / 4+	 0 1 2 3
6	Prior sentencing dates (excluding index) (S9902)	3 or less 4 or more	0 1
7	Any convictions for non-contact sex offences (S9903)	No Yes	0 1
8	Any Unrelated Victims (S9906)	No Yes	0 1
9	Any Stranger Victims (S9907)	No Yes	0 1
10	Any Male Victims (S9908)	No Yes	0 1
	Total Score	**Add up scores from individual risk factors**	

TRANSLATING STATIC 99 SCORES INTO RISK CATEGORIES

Score	Label for Risk Category
0,1	**Low**
2,3	**Moderate-Low**
4,5	**Moderate-High**
6 plus	**High**

Static-99 Quick Reference Guide

It should be noted that this is not a replacement for the Static 99 Coding Rules, revised 2003 by A. Harris, A. Phenix, R.K. Hanson, and D. Thornton.

Risk Factor #1 – Young

- Age greater than or equal to 25 years of age = 0
- Age less than 25 = 1
- Age is calculated at the time of release from an institution or time of assessment
- See page 23 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #2 – Ever lived with an intimate partner

- Must be 2 years or longer, continuous.
- Must be a sexual relationship.
- Roommates/prison cellies do not count.
- Legitimate absences tolerated.
- Length of legal marriage is irrelevant.
- See page 25 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #3 – Index non-sexual violence

- At the time of the index offense, was there a violent conviction in addition to a sex offense? Example: rape and murder; sex abuse and kidnapping.
- Sex offenses convicted as a violent offense count. Example: Assault that was by description a rape.
- Convictions overturned on appeal do not count.
- Violations or institutional rules violations do not count.
- See page 27 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #4 – Prior non-sexual violence

- Same rules as Risk Factor #3.
- Any violent convictions, prior to the index offense.

- Driving accidents/convictions resulting in injury or death do not count.
- See page 31 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #5 – Prior sex offenses

- Only count sex offenses **PRIOR** to the index offense.
- Things to count:
  - Sex offense convictions
  - Sex offense charges
  - Convictions/charges and attempts with a sexual intent (burglary with the intent to steal women's underwear).
  - Institution rules violations **IF** the action could be charged as a new crime.
  - Probation, parole, Post-Prison Supervision violations that could be charged as a new crime or there is a "truly imminent" risk of a new crime/new victim.
- "pseudo-recidivism" is not counted and is a part of the "index cluster".
- Convictions overturned on appeal do not count
- Non-sexual charges and convictions can be coded as a sex offense if the act involved sexual behavior.
- See page 35 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #6 – Prior sentencing dates

- All convictions that resulted in a penalty from the Court (restitution, probation, jail, prison).
- Sanctions count only if the offense could be charged as a new crime.
- See page 43 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #7 – Non-contact sex offense convictions

- **Only** convictions
- Non-contact sex offenses: exhibitionism, voyeurism, exposure, etc...
- No offenses with attempted contact
- See page 46 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #8 – Any unrelated victims

- step-children are considered related if the offender lived with children for 2+ years.
- Exclude biological relatives.
- See page 52 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #9 – Any stranger victims

- If the victim states, "I have never met the offender before", believe the victim and score.
- If both have known each other for 24 hours, not a stranger and do not score.
- If #9 is scored, #8 is ALWAYS scored. We get to double dip.
- If victim has had internet communication with offender for 24 hours, not a stranger and do not score.
- See page 54 of the Static 99 Coding Rules, revised 2003 for specific details.

Risk Factor #10 – Any male victims

- No "accidental" victims (exposing to a female in a grocery store and a male comes into the isle).
- Child pornography does not count, unless there is clear evidence of a history of targeting boys.
- Exposing to a mixed group does not count.
- See page 56 of the Static 99 Coding Rules, revised 2003 for specific details.

Glossary of Odd Terms

Index Offense— "Generally the most recent sexual offense. It could be a charge, arrest, conviction, or rule violation. Sometimes Index Offenses include multiple counts, multiple victims, and numerous crimes perpetrated at different times because the offender may not have been detected and apprehended. Some offenders are apprehended after a spree of offending. It this results in a single conviction regardless of the number of counts, all counts are considered part of the Index Offense. Convictions for sexual offenses that are subsequently overturned on appeal con count as the Index Offense. Charges for sexual offenses can count as the Index Offense, even if the offender is later acquitted." See page 18 of the Static 99 Coding Rules, revised 2003 for an expanded definition and examples.

Index Cluster— an offender commits multiple offenses prior to being caught. Rather than counting the offenses individually, for purposes of scoring on the Static 99, all the offenses are "lumped together" and are only counted once if the offenses go undetected or without an arrest. See page 19 of the Static 99 Coding Rules, revised 2003 for an expanded definition and examples.

Pseudo-Recidivism— "when an offender who is currently involved in the criminal justice system is charged with old offenses for which they have never before been charged." To count as a new sex offense for the Static 99, the offender must be released and reoffends to be a new sex offense. See page 20 of the Static 99 Coding Rules, revised 2003 for specific details.

Truly Imminent— "examples of this nature would include an individual with a history of child molesting being discovered alone with a child about to engage in a 'wrestling game'." See page 16 of the Static 99 Coding Rules, revised 2003 for specific details.*

Compiled by Will A. Benson, Parole/Probation Officer with Umatilla/Morrow County Community Corrections, Pendleton, Oregon. Reviewed by Amy Phenix, PhD. All information for this guide was gathered from the **Static 99 Coding Rules; revised 2003**, by Harris, et al and the "Train The Trainer" seminar facilitated by Dr. Phenix on 10/13/03-10/14/03 in Salem, Oregon

Scoring Example #1

Name: Mr. Good
DOB: 06/07/43
Assessment date: 12/11/99

DATE	CHARGES	Conviction/Disposition
01-02-81	Sexual Assault (3 counts)	Sexual Assault (2 counts) 5 yrs DOC
04-05-99	Invitation to Sexual Touching Possession of Child Pornography	Invitation to Sexual Touching 6 years DOC

Relationship History:

Mr. Good married Judy F. in January 1967. They separated in November 1968, and divorced the following year (1969).

Mr. Good moved in with Gail C. in July 1977 after dating for three years. Gail C. had three children from a previous relationship: Lucy (DOB: 03/04/68), Susan (DOB: 24/06/70) and Ryan (DOB: 18/12/76).

Mr. Good and Gail C. separated after disclosure of the incidents that resulted in the 1981 charges.

In 1997, Mr. Good started dating Tammy R., who had a daughter, Nicki (DOB 27/11/86).

Description of offenses:

The 1981 offenses all involve the children of Mr. Good's common-law wife, Gail C.

Victim 1: Lucy C. stated that Mr. Good came into her bedroom and touched her on her breasts and between her legs sometime in February/March, 1980.

Victim 2: Susan C. stated that Mr. Good came into her bedroom naked and lay on top of her. He had just come home from a Christmas party in 1979.

Victim 3: Ryan stated that in the summer of 1980, Mr. Good had pulled on his own penis and told Ryan to do the same. When Ryan hesitated, Mr. Good pulled on Ryan's penis. Mr. Good claimed that he was trying to teach Ryan about personal hygiene and the charge was dismissed in court.

The 1999 offenses involved his girlfriend's daughter.

Victim 4: In January 1999, Tammi came home to find Mr. Good showing pictures to Nicki, her daughter. The pictures were cut-outs showing girls in erotic poses with men or other girls. Nicki said that Mr. Good asked her if she wanted to do the things described in the pictures.

Scoring Example #2

Name: Mr. Quick
DOB: 03-09-77
Assessment date: 12-11-00

DATE	CHARGES	Conviction/Disposition
11-04-93	Gross Indecency (which is exhibitionism)	Gross Indecency 3 months probation as juvenile
04-09-00	Gross Indecency Harassing Telephone Calls (or obscene telephone calls) Assault Break and Enter	Gross Indecency Assault 1 year

Relationship history:

Mr. Quick shared a house with Debbie K. (and 2 others) between September 1995 and April 1998 while they were both at college. Mr. Quick and Debbie did social activities together (movies, bike rides). Mr. Quick said that he was in love with Debbie (and she with him), but they never had a sexual relationship.

In May/June of 1999, Mr. Quick dated a Lynn, a co-worker, and they had sexual intercourse on several occasions. In July 1999, Lynn stopped going out in the evenings with Mr. Quick, although they would occasionally have lunch together at work. In August, Mr. Quick began leaving messages on her answering machine telling her how much he loved her and describing the sexual activities that he wanted to do with her. She avoids him at work that week. The following week, Lynn comes home to find Mr. Quick naked in her apartment. She turns to leave and Mr. Quick runs and grabs her. She struggles free and calls the police from a local convenience store.

Offense 1: In March 1993, a member of the evening maintenance staff (a male) finds Mr. Quick masturbating in a public park. The staff member does not confront Mr. Quick, but calls the police. Mr. Quick tells the police/courts that he has no privacy at home.

Offense 2: Lynn, ex-girlfriend – see above.

Scoring Example #3

Name: Mr. Reckless
DOB: 11-11-68
Assessment date: 12-11-99

DATE	CHARGES		Conviction/Disposition	
03-12-83	Theft Under $50	1	Theft Under $50 Restitution	1
06-30-84	Possession of Stolen Property Breaking and Entering Possession of Burglary Tools	3	Possession of Stolen Property 6 months probation	1
07-15-84	Assault	1	Dismissed	0
03-31-87	Armed Robbery	1	Armed Robbery 6 years	1
08-18-91	Parole Violation Theft Under $50	1	Parole Violation Recommitted	0
02-01-96	Public Mischief	1	Public Mischief $100 fine	1
01-23-97	Forcible Confinement Sexual Assault	2	Forcible Confinement 3 years	1

Relationship History:

Prior to 1987, Mr. Reckless dated a number of women, but no relationship lasted longer than six months. While serving time for the 1987 Armed Robbery, Mr. Reckless began a relationship with a prison volunteer. He lived with her when he was paroled in May 1991, and they married in July 1991. They stayed in the relationship when he returned to prison in August 1991, and they lived together when he was released in February 1993. They separated in May 1993.

Sexual Assault Victim 1: Joan M. (DOB: 04-12-75). On the evening of 12-08-96, Mr. Reckless recognizes Joan, a neighbor, at his usual bar. She does not remember seeing him before. After an evening of drinking and dancing, they return to Mr. Reckless' apartment, where Joan is bound with tape and sexually assaulted. She frees herself and escapes after Mr. Reckless falls asleep beside her.

Scoring Example #4

Name: Mr. Jones
DOB: 11-11-67
Assessment date: 03-03-01

DATE	CHARGES	Conviction/Disposition
10-03-86	Auto Theft	Auto Theft 12 months probation
01-05-96	Lewd and Lascivious Act with a Child under 1 (3 counts)	Sexual Assault (3 counts) 4 years
02-15-01	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (2 counts) 18 months conditional sentence and 3 years probation

> index sex off
-index cluster

In January 2000 when Mr. Jones was released from prison, two women came forward and charged Mr. Jones with having touched them in 1987. These two women are now both 21 years of age and were friends of Mr. Jones's family. Mr. Jones was subsequently charged and in February 2001 Mr. Jones was convicted of two counts of Lewd and Lascivious Act with a Child for which he received an 18-month conditional sentence and three years on probation.

From 1990 to 1996 Mr. Jones worked as a farm laborer. Two of his victims were the daughters of his employer on the farm where Mr. Jones lived each summer (Tammy, age 12 and Ruth, age 14). The third victim was a friend of Ruth's (Crystal, age 15). The offenses occurred during the summer of 1994 and 1995, and involved fondling Tammy and Crystal, and intercourse with Ruth on at least one occasion.

Mr. Jones has never been married, although he has dated occasionally. His only previous criminal conviction was for riding around his hometown in a stolen car. Because he was older than the other teenage boys in the car, he was the only one convicted.

never went out to re-offend (sexual offense)

Scoring Example #5

Name: Mr. Busy
DOB: 05-05-65
Assessment Date: 11-27-03

Official Criminal History:

DATE	CHARGES	Conviction/Disposition
10-04-83	Sodomy Exhibitionism	Sodomy California Youth Authority for 4 years
03-14-88	Forgery	Forgery, 3yr probation, 6 Days Jail
06-16-90	Driving with Revoked license	Driving with revoked license, 3 years probation
10-09-90	Driving with Revoked license	Driving with revoked license, 3 years probation, jail, fine
06-18-93	Burglary Possession of a Weapon	Burglary (2 years prison) Possession of a Weapon (a gun was found on the dash of his car)
08-05-93	Lewd and Lascivious Act with a Child under 14 (25 counts)	Lascivious Act with a child under 14 (2 counts) 6 yr & 8 mo prison
09-19-97	Parole Violation	Mr. Busy was within 120 yards of a High School and had contact with several 15 to 16 year old juveniles who were found talking to him while he was in his car. He began spinning his tires and creating smoke. He was arrested by police and his parole was violated for being in the presence of children.
09-28-99	Parole Violation	Parole Violation for being in the presence of children. Mr. Busy was found with an 8 year old at the county fair. He was on parole and knew he was not to be with minors. The 8 year old male reported that he and his older brother spent the night at Mr. Busy's several times over the years but denied any physical or sexual contact. When Mr. Busy was in custody they would write to each other. The boy said he "loved "Mr. Busy." Mr. Busy had bought the boy Scooby Doo underwear, dropped the boy off at school at the mother's request and signed medical forms the child turned into school. He had a picture of the boy in his wallet. The police thought that Mr. Busy was "grooming" the boy.
05-20-2000	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (1 count)

Relationship History:

Mr. Busy had two relationships as a teen. Prior to age 17 he dated Katie and a child was born to this union. Mr. Busy has had no contact with the child. Although reporting an attraction to adult females he has never had a sustained relationship with a female or married.

Description of Offenses:

10-04-83: Sodomy 3 ½ year-old male: Details of this offense are unknown since his juvenile records were unavailable.

08-05-93: 12-year-old John was being investigated as having sodomized a five-year-old male child. During the investigation his mother reported that Mr. Busy had sodomized her son, John, on numerous occasions from the late 1987 to mid 1989. Mr. Busy would visit with her son one to four times a month. John had been repeatedly sodomized by Mr. Busy. While spending the night at John's house, Jimmy reported that he was also fondled by Mr. Busy. Jimmy came over to John's house about 5 p.m. and the molest occurred that evening while watching a movie. Jimmy indicated he had not met Mr. Busy before meeting him at John's house.

05-20-00: Billy, a 14-year-old male child disclosed to his mother that he was molested by Mr. Busy when he spent the night at John L. and Jimmy L.'s house in 1993. Billy was seven years old at the time. He said he trusted Mr. Busy because when he had visited with him previously Mr. Busy was so nice to the boys. This conviction occurred when Mr. Busy was serving time in San Quinton State Prison on his 1999 Parole Violation.

Scoring Example #6

Name: Father Clergy
DOB: 09-01-38
Assessment Date: Today

Official Criminal History:

Date	Charges	Convictions
1993	Lewd and Lascivious Act on a Child under 14 (4 counts)	Lewd and Lascivious Act on a Child under 14 (2 counts)
2001	Lewd and Lascivious Act on a Child under 14 (31 counts)	Lewd and Lascivious Act on a Child under 14 (31 counts)

Relationship History:

Father Clergy attended a Catholic Seminary just out of High School and thereafter worked as a Catholic Priest. He has never been married and has no children. He has engaged in sexual activity with adult and minor males as an adult but he has not maintained any adult relationships.

Sexual Offense Victims:

Father Clergy was arrested in connection with his molest of Sam, Joe and James in September of 1992, and then released on his own recognizance. After his conviction, he served a six-month jail sentence from March of 1993 to September of 1993. Per Interstate Compact Agreement, he was placed on probation in Kansas City, Missouri, where he was in residence of and under the direct supervision of the Missionaries of the Kind of Heart. He entered a sex offender treatment center on 11-22-93 where he spent approximately six months in intensive residential treatment. He then participated in a halfway house continuation program for approximately three months and then entered their aftercare program through the Missionaries of the Kind of Heart who worked closely with the treatment program. He was discharged from the aftercare program in June of 1999.

Since 1994 Father Clergy has resided at the Missionaries in Kansas City doing administrative work. He has been prohibited from working as a priest in situations that might place him in the presence of children. In October of 1999, Father Clergy was served a warrant for his arrest for the offenses perpetrated against Ty and Bob in the 1980s. He was sentenced to prison in March of 2001. He has been incarcerated since that time.

Father Clergy reported first becoming involved with Mark in 1978 when Mark was 10 years of age. Mark was an alter boy who helped him with mass. Later he asked him to help with lawn work. It started with mutual back rubs on fishing trips. Genital touching

and anal intercourse started in 1980. Father Clergy believed there was "mutual caring." The molest against Mark was never charged or convicted.

1993 Offense: After changing parishes in 1990, Father Clergy met Sam, the son of a local police officer. Sam was an alter boy and he helped to maintain the church grounds. He slept at the priest's home on more than 100 occasions over three years so that he could wake up early to work on Father Clergy's home and grounds. They engaged in back rubs, body rubs and genital rubbing. The investigation revealed two other boys; Joe and James from the church were molested by Father Clergy using a similar M.O. The molests against Sam, Joe and James resulted in the 1992/1993 charges and convictions.

2001 Offense: Father Clergy molested brothers Ty from age 11 and Bob from age 10. Bob was an alter boy in the early 1980's and he worked on the grounds of Father Clergy's parish and home. From 1978 to 1982 he engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. He went on trips with Father Clergy to many states. Ty first had contact with Father Clergy in spring of 1981 and within one year the sexual activity began. He engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. Ty was also given alcohol to drink at the time of the molests. He was last molested in 1982.

Scoring Example #7

Name: Mr. Force
DOB: 11-05-51
Assessment Date: 10-10-03

DATE	CHARGES	CONVICTION / DISPOSITION
12-12-68	Strong Arm Rape (In the military)	Strong Arm Rape 2 years In military brig
09-14-70	Larceny	60 days jail
10-09-72	Escape from jail	recaptured
04-15-74 24 years (CONV)	Rape, First Degree (6 counts)	Rape, First Degree (2 counts) 10 years prison
08-14-80	Drunk driving	One year probation, fine
04-30-82	Residential burglary	Residential burglary, 1 year prison
05-21-83	Possession of marijuana	Arrest in prison, 3 months added to prison sentence
04-04-84	Criminal Trespass	Criminal Trespass, 18 months prison, probation
07-17-87	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder Sentenced to 24 years in Prison

Relationship History:

- Married Susie 11-22-69. Lived together for 6 months.
- Hallie. Lived together "on and off" for 9 years.
- Married June in 1989 when he was in prison. Met her in 1986 where he worked. Dated her for 18 month's but did not want to be tied down. They are still married.

Sexual Offense Victims:

12-12-68: Strong Arm Rape. He goes to the door of a 24-year-old housewife, asking for directions and when the victim goes to get a phone book, he follows her into the house and forcefully rapes her.

04-15-74: 2 Counts Rape First Degree. He forcefully raped 6 women strangers, was charged and convicted of two rapes.

04-30-82: Residential Burglary. He entered an apartment of a woman and removed panties, bras, bathing suit; dress from dresser drawers and spread them on her bed. He said to police he was her former boyfriend and he became sexually aroused in her bedroom and removed her under garments from the drawers to masturbate. He admitted to other acts of entering homes to look for female lingerie to use for masturbation purposes.

04-04-84: Criminal Trespass. At a hotel he was in the women's bathroom when an unsuspecting woman came into bathroom and used restroom. She saw his boots under stall door became alarmed.

07-17-87: Rape by Force, False Imprisonment, Oral Copulation, Sexual Penetration Foreign Object, Burglary, Assault with a Deadly Weapon and Attempted Murder. After the 22 year old female pulled into her garage and Mr. Force grabbed the victim around the neck. He took her into her house, put her on her bed face down, and tied her hands behind her with a scarf and placed a sock in her mouth. He tied a cloth around her eyes. He raped the victim. Her roommate arrived home and Mr. Force assaulted the victim's roommate by pounding her head against concrete walk. She suffered a fractured jaw and skull fracture. This assault resulted in the arrest and conviction for assault with a deadly weapon and attempted murder. The other charges and convictions pertained to the rape victim.

Scoring Example #1

Name: Mr. Good
DOB: 06/07/43
Assessment date: 12/11/99

DATE	CHARGES	Conviction/Disposition
01-02-81	Sexual Assault (3 counts)	Sexual Assault (2 counts) 5 yrs DOC
04-05-99	Invitation to Sexual Touching Possession of Child Pornography	Invitation to Sexual Touching 6 years DOC

Relationship History:

Mr. Good married Judy F. in January 1967. They separated in November 1968, and divorced the following year (1969).

Mr. Good moved in with Gail C. in July 1977 after dating for three years. Gail C. had three children from a previous relationship: Lucy (DOB: 03/04/68), Susan (DOB: 24/06/70) and Ryan (DOB: 18/12/76).

Mr. Good and Gail C. separated after disclosure of the incidents that resulted in the 1981 charges.

In 1997, Mr. Good started dating Tammy R., who had a daughter, Nicki (DOB 27/11/86).

Description of offenses:

The 1981 offenses all involve the children of Mr. Good's common-law wife, Gail C.

Victim 1: Lucy C. stated that Mr. Good came into her bedroom and touched her on her breasts and between her legs sometime in February/March, 1980.

Victim 2: Susan C. stated that Mr. Good came into her bedroom naked and laid on top of her. He had just come home from a Christmas party in 1979.

Victim 3: Ryan stated that in the summer of 1980, Mr. Good had pulled on his own penis and told Ryan to do the same. When Ryan hesitated, Mr. Good pulled on Ryan's penis. Mr. Good claimed that he was trying to teach Ryan about personal hygiene and the charge was dismissed in court.

The 1999 offenses involved his girlfriend's daughter.

Victim 4: In January 1999, Tammi came home to find Mr. Good showing pictures to Nicki, her daughter. The pictures were cut-outs showing girls in erotic poses with men or other girls. Nicki said that Mr. Good asked her if she wanted to do the things described in the pictures.

Answers to Example #1

Question Number	Risk Factor	Codes	Score
1	Young	**Aged 25 or older – He's an old guy** Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? **Yes – Lived with Gail C. July 77 -81** No	**0** 1
3	Index non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
4	Prior non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 **3-5 / 2-3** 6 + / 4+	0 1 **2** 3
6	Prior sentencing dates (excluding index)	**3 or less -- Only 1 prior** 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	**No – Note: Not convicted** Yes	**0** 1
8	Any Unrelated Victims	No **Yes -- Nicki**	0 **1**
9	Any Stranger Victims	**No** Yes	**0** 1
10	Any Male Victims	No **Yes -- Ryan**	0 **1**
	Total Score	**Add up scores from individual risk factors**	**4**

Scoring Example #2

Name: Mr. Quick
DOB: 03-09-77
Assessment date: 12-11-00

DATE	CHARGES	Conviction/Disposition
11-04-93	Gross Indecency (which is exhibitionism)	Gross Indecency 3 months probation as juvenile
04-09-00	Gross Indecency Harassing Telephone Calls (or obscene telephone calls) Assault Break and Enter	Gross Indecency Assault 1 year

Relationship history:

Mr. Quick shared a house with Debbie K. (and 2 others) between September 1995 and April 1998 while they were both at college. Mr. Quick and Debbie did social activities together (movies, bike rides). Mr. Quick said that he was in love with Debbie (and she with him), but they never had a sexual relationship.

In May/June of 1999, Mr. Quick dated a Lynn, a co-worker, and they had sexual intercourse on several occasions. In July 1999, Lynn stopped going out in the evenings with Mr. Quick, although they would occasionally have lunch together at work. In August, Mr. Quick began leaving messages on her answering machine telling her how much he loved her and describing the sexual activities that he wanted to do with her. She avoids him at work that week. The following week, Lynn comes home to find Mr. Quick naked in her apartment. She turns to leave and Mr. Quick runs and grabs her. She struggles free and calls the police from a local convenience store.

Offense 1: In March 1993, a member of the evening maintenance staff (a male) finds Mr. Quick masturbating in a public park. The staff member does not confront Mr. Quick, but calls the police. Mr. Quick tells the police/courts that he has no privacy at home.

Offense 2: Lynn, ex-girlfriend – see above.

Answers to Example #2

The September 1999 Gross Indecency, Harassing Telephone Calls, Assault, and B&E form the INDEX CLUSTER of offenses. The Gross Indecency and the Harassing Telephone Calls are the Index Sexual Offenses.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older **Aged 18 – 24.99 – He's a young guy**	0 **1**
2	Ever Lived With	Ever lived with lover for at least two years? Yes **No – No Sexual Relationships**	 0 **1**
3	Index non-sexual violence Convictions	No **Yes – Assault Conviction**	0 **1**
4	Prior non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None **1-2 / 1** 3-5 / 2-3 6 + / 4+	 0 **1** 2 3
6	Prior sentencing dates (excluding index)	**3 or less -- Only 1 prior** 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	No **Yes – Gross Indecency Conviction**	0 **1**
8	Any Unrelated Victims	No **Yes -- Lynn**	0 **1**
9	Any Stranger Victims	**No** Yes	**0** 1
10	Any Male Victims	**No – Note: Maintenance Staff does not count "accidental"** Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**6**

Scoring Example #3

Name: Mr. Reckless
DOB: 11-11-68
Assessment date: 12-11-99

DATE	CHARGES	Conviction/Disposition
03-12-83	Theft Under $50	Theft Under $50 Restitution
06-30-84	Possession of Stolen Property Breaking and Entering Possession of Burglary Tools	Possession of Stolen Property 6 months probation
07-15-84	Assault	Dismissed
03-31-87	Armed Robbery	Armed Robbery 6 years
08-18-91	Parole Violation Theft Under $50	Parole Violation Recommitted
02-01-96	Public Mischief	Public Mischief $100 fine
10-23-97	Forcible Confinement Sexual Assault	Forcible Confinement 3 years

Relationship History:

Prior to 1987, Mr. Reckless dated a number of women, but no relationship lasted longer than six months. While serving time for the 1987 Armed Robbery, Mr. Reckless began a relationship with a prison volunteer. He lived with her when he was paroled in May 1991, and they married in July 1991. They stayed in the relationship when he returned to prison in August 1991, and they lived together when he was released in February 1993. They separated in May 1993.

Sexual Assault Victim 1: Joan M. (DOB: 04-12-75). On the evening of 12-08-96, Mr. Reckless recognizes Joan, a neighbor, at his usual bar. She does not remember seeing him before. After an evening of drinking and dancing, they return to Mr. Reckless' apartment, where Joan is bound with tape and sexually assaulted. She frees herself and escapes after Mr. Reckless falls asleep beside her.

Answers to Example #3

The October 1996 Forcible Confinement and Sexual Assault are the Index Sexual Offenses

This exercise tests knowledge of the rules surrounding Prior Sentencing Dates

Question Number	Risk Factor	Codes	Score
1	Young	**Aged 25 or older – He's an old guy** Aged 18 – 24.99	**0** 1
2	Ever Lived With {May 91 – Aug. 91} {Feb. 93 – May 93}	Ever lived with lover for at least two years? Yes **No – No 2-year long Relationships**	 0 **1**
3	Index non-sexual violence Convictions	No **Yes: Forcible Confinement Conviction**	0 **1**
4	Prior non-sexual violence Convictions	No **Yes – Armed Robbery**	0 **1**
5	Prior Sex Offenses	Charges / Convictions **None / None** 1-2 / 1 3-5 / 2-3 6 + / 4+	 **0** 1 2 3
6	Prior sentencing dates (excluding index)	3 or less **4 or more – See note below**	0 **1**
7	Any convictions for non-contact sex offenses	**No – No Convictions on record** Yes	**0** 1
8	Any Unrelated Victims	No **Yes -- Joan M.**	0 **1**
9	Any Stranger Victims **Remember "24 hr" rule**	No **Yes – She does not know him**	0 **1**
10	Any Male Victims	**No – None on record** Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**6**

Note 1: The Forcible Confinement counts as both a sexual offense and as non-sexual violence (Kidnapping also works the same way)

Note 2: This exercise tests knowledge of the rules surrounding Prior Sentencing Dates – As you count back through the criminal record – The Index is the October 96 Forcible Confinement/Sexual Assault, these do not count in "Prior Sentencing Dates" – The Feb. 96 Public Mischief is a good sentencing date (#1) – the August 91 Parole Revocation does not count as he is not a lifer – the March 83 Armed Robbery counts as a good sentencing date (#2) The July 84 Assault does not count as a sentencing date because he wasn't given any sanction, he was not sentenced to anything on that date – The June 84 Poss. Stolen Property etc. counts as a good sentencing date (#3) and the December 83 Petty Theft counts as a good sentencing date as he was ordered Restitution (#4) – Hence, four (4) prior sentencing dates for this offender Extra Points for those who note that the 83 Theft Under $50 is a Juvenile Offense!

Scoring Example #4

Name: Mr. Jones
DOB: 11-11-67
Assessment date: 03-03-01

DATE	CHARGES	Conviction/Disposition
10-03-86	Auto Theft	Auto Theft 12 months probation
01-05-96	Lewd and Lascivious Act with a Child under 1 (3 counts)	Sexual Assault (3 counts) 4 years
02-15-01	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (2 counts) 18 months conditional sentence and 3 years probation

In January 2000 when Mr. Jones was released from prison, two women came forward and charged Mr. Jones with having touched them in 1987. These two women are now both 21 years of age and were friends of Mr. Jones's family. Mr. Jones was subsequently charged and in February 2001 Mr. Jones was convicted of two counts of Lewd and Lascivious Act with a Child for which he received an 18-month conditional sentence and three years on probation.

From 1990 to 1996 Mr. Jones worked as a farm laborer. Two of his victims were the daughters of his employer on the farm where Mr. Jones lived each summer (Tammy, age 12 and Ruth, age 14). The third victim was a friend of Ruth's (Crystal, age 15). The offenses occurred during the summer of 1994 and 1995, and involved fondling Tammy and Crystal, and intercourse with Ruth on at least one occasion.

Mr. Jones has never been married, although he has dated occasionally. His only previous criminal conviction was for riding around his hometown in a stolen car. Because he was older than the other teenage boys in the car, he was the only one convicted.

Answers to Example #4

The January 96 Lewd and Lascivious Act With a Child Under the Age of 14 and Sexual Assault (3 counts) are the Index Sexual Offenses.

This exercise is designed to test the knowledge of the rules surrounding Pseudo-recidivism

Question Number	Risk Factor	Codes	Score
1	Young	**Aged 25 or older – He's an old guy** Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes **No**	 0 **1**
3	Index non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
4	Prior non-sexual violence Convictions	**No – Not Present in the Record** Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions **None / None** 1-2 / 1 3-5 / 2-3 6 + / 4+	 **0** 1 2 3
6	Prior sentencing dates (excluding index)	**3 or less -- Only 1 prior** 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	**No – Note: Not convicted** Yes	**0** 1
8	Any Unrelated Victims	No **Yes -- The Two Women**	0 **1**
9	Any Stranger Victims	**No** Yes	**0** 1
10	Any Male Victims	**No** Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**2**

This is a case where there is pseudo-recidivism – In this case the Feb. 2001 Lewd and Lascivious Act with a Child (2 counts)- while the latest conviction – is not the latest

sexual offense – the actual behavior for the Feb. 2001 Lewd and Lascivious Act with a Child (2 counts) happened back in 1987 – the trick here is to put the behavior back in chronological order – in addition, Mr. Jones was never sanctioned for those behaviors – so he never had the chance to make the conscious decision to reoffend after having been sanctioned. So here we get an "Index Cluster" – the Feb. Lewd and Lascivious Act with a Child (2 counts) comes forward and joins the Jan 96 L & L and Sexual Assault (X3) charges and forms an Index Cluster. He has only one Prior Sentencing Date – the Oct. 86 Theft Auto. – He has no prior sexual offenses.

Scoring Example #5

Name: Mr. Busy
DOB: 05-05-65
Assessment Date: 11-27-03

Official Criminal History:

DATE	CHARGES	Conviction/Disposition
10-04-83	Sodomy Exhibitionism	Sodomy California Youth Authority for 4 years
03-14-88	Forgery	Forgery, 3yr probation, 6 Days Jail
06-16-90	Driving with Revoked license	Driving with revoked license, 3 years probation
10-09-90	Driving with Revoked license	Driving with revoked license, 3 years probation, jail, fine
06-18-93	Burglary Possession of a Weapon	Burglary (2 years prison) Possession of a Weapon (a gun was found on the dash of his car)
08-05-93	Lewd and Lascivious Act with a Child under 14 (25 counts)	Lascivious Act with a child under 14 (2 counts) 6 yr & 8 mo prison
09-19-97	Parole Violation	Mr. Busy was within 120 yards of a High School and had contact with several 15 to 16 year old juveniles who were found talking to him while he was in his car. He began spinning his tires and creating smoke. He was arrested by police and his parole was violated for being in the presence of children.
09-28-99	Parole Violation	Parole Violation for being in the presence of children. Mr. Busy was found with an 8 year old at the county fair. He was on parole and knew he was not to be with minors. The 8 year old male reported that he and his older brother spent the night at Mr. Busy's several times over the years but denied any physical or sexual contact. When Mr. Busy was in custody they would write to each other. The boy said he "loved " Mr. Busy." Mr. Busy had bought the boy Scooby Doo underwear, dropped the boy off at school at the mother's request and signed medical forms the child turned into school. He had a picture of the boy in his wallet. The police thought that Mr. Busy was "grooming" the boy.
05-20-2000	Lewd and Lascivious Act with a Child under 14 (2 counts)	Lewd and Lascivious Act with a Child under 14 (1 count)

Relationship History:

Mr. Busy had two relationships as a teen. Prior to age 17 he dated Katie and a child was born to this union. Mr. Busy has had no contact with the child. Although reporting an attraction to adult females he has never had a sustained relationship with a female or married.

Description of Offenses:

10-04-83: Sodomy 3 ½ year-old male: Details of this offense are unknown since his juvenile records were unavailable.

08-05-93: 12-year-old John was being investigated as having sodomized a five-year-old male child. During the investigation his mother reported that Mr. Busy had sodomized her son, John, on numerous occasions from the late 1987 to mid 1989. Mr. Busy would visit with her son one to four times a month. John had been repeatedly sodomized by Mr. Busy. While spending the night at John's house, Jimmy reported that he was also fondled by Mr. Busy. Jimmy came over to John's house about 5 p.m. and the molest occurred that evening while watching a movie. Jimmy indicated he had not met Mr. Busy before meeting him at John's house.

05-20-00: Billy, a 14-year-old male child disclosed to his mother that he was molested by Mr. Busy when he spent the night at John L. and Jimmy L.'s house in 1993. Billy was seven years old at the time. He said he trusted Mr. Busy because when he had visited with him previously Mr. Busy was so nice to the boys. This conviction occurred when Mr. Busy was serving time in San Quinton State Prison on his 1999 Parole Violation.

Answers to Example #5

The index offense is the 08-05-93 offense. The 05-20-00 offense is pseudo-recidivism. Thus the INDEX CLUSTER is the 08-05-93 offense and the 05-20-00 offense. Count the two convictions for Driving with a Revoked License as sentencing dates since the disposition of the offenses was probation and prison.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 **1**
3	Index non-sexual violence Convictions	No Yes	**0** 1
4	Prior non-sexual violence Convictions	No Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-**2** / **1** 3-5 / 2-3 6 + / 4+	 0 **1** 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 **1**
7	Any convictions for non-contact sex offenses	No Yes	**0** 1
8	Any Unrelated Victims	No Yes	0 **1**
9	Any Stranger Victims	No Yes	0 **1**
10	Any Male Victims	No Yes	0 **1**
	Total Score	**Add up scores from individual risk factors**	**6**

Scoring Example #6

Name: Father Clergy
DOB: 09-01-38
Assessment Date: Today

Official Criminal History:

Date	Charges	Convictions
1993	Lewd and Lascivious Act on a Child under 14 (4 counts)	Lewd and Lascivious Act on a Child under 14 (2 counts)
2001	Lewd and Lascivious Act on a Child under 14 (31 counts)	Lewd and Lascivious Act on a Child under 14 (31 counts)

Relationship History:

Father Clergy attended a Catholic Seminary just out of High School and thereafter worked as a Catholic Priest. He has never been married and has no children. He has engaged in sexual activity with adult and minor males as an adult but he has not maintained any adult relationships.

Sexual Offense Victims:

Father Clergy was arrested in connection with his molest of Sam, Joe and James in September of 1992, and then released on his own recognizance. After his conviction, he served a six-month jail sentence from March of 1993 to September of 1993. Per Interstate Compact Agreement, he was placed on probation in Kansas City, Missouri, where he was in residence of and under the direct supervision of the Missionaries of the Kind of Heart. He entered a sex offender treatment center on 11-22-93 where he spent approximately six months in intensive residential treatment. He then participated in a halfway house continuation program for approximately three months and then entered their aftercare program through the Missionaries of the Kind of Heart who worked closely with the treatment program. He was discharged from the aftercare program in June of 1999.

Since 1994 Father Clergy has resided at the Missionaries in Kansas City doing administrative work. He has been prohibited from working as a priest in situations that might place him in the presence of children. In October of 1999, Father Clergy was served a warrant for his arrest for the offenses perpetrated against Ty and Bob in the 1980s. He was sentenced to prison in March of 2001. He has been incarcerated since that time.

Father Clergy reported first becoming involved with Mark in 1978 when Mark was 10 years of age. Mark was an alter boy who helped him with mass. Later he asked him to help with lawn work. It started with mutual back rubs on fishing trips. Genital touching

and anal intercourse started in 1980. Father Clergy believed there was "mutual caring." The molest against Mark was never charged or convicted.

1993 Offense: After changing parishes in 1990, Father Clergy met Sam, the son of a local police officer. Sam was an alter boy and he helped to maintain the church grounds. He slept at the priest's home on more than 100 occasions over three years so that he could wake up early to work on Father Clergy's home and grounds. They engaged in back rubs, body rubs and genital rubbing. The investigation revealed two other boys. Joe and James. from the church were molested by Father Clergy using a similar M.O. The molests against Sam, Joe and James resulted in the 1992/1993 charges and convictions.

2001 Offense: Father Clergy molested brothers Ty from age 11 and Bob from age 10. Bob was an alter boy in the early 1980's and he worked on the grounds of Father Clergy's parish and home. From 1978 to 1982 he engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. He went on trips with Father Clergy to many states. Ty first had contact with Father Clergy in spring of 1981 and within one year the sexual activity began. He engaged in mutual masturbation, oral copulation and sodomy with Father Clergy. Ty was also given alcohol to drink at the time of the molests. He was last molested in 1982.

Answers to Example #6

The 1993 sex offense is the Index Offense. The 2000 sexual offense is an example of pseudo-recidivism. Thus the INDEX CLUSTER is the 1993 offense and the 2000 offense.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 **1**
3	Index non-sexual violence Convictions	No Yes	**0** 1
4	Prior non-sexual violence Convictions	No Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6 + / 4+	 **0** 1 2 3
6	Prior sentencing dates (excluding index)	3 or less 4 or more	**0** 1
7	Any convictions for non-contact sex offenses	No Yes	**0** 1
8	Any Unrelated Victims	No Yes	0 **1**
9	Any Stranger Victims	No Yes	**0** 1
10	Any Male Victims	No Yes	0 **1**
	Total Score	**Add up scores from individual risk factors**	**3**

Scoring Example #7

Name: Mr. Force
DOB: 11-05-51
Assessment Date: 10-10-03

DATE	CHARGES	CONVICTION / DISPOSITION
12-12-68	Strong Arm Rape (In the military)	Strong Arm Rape 2 years In military brig
09-14-70	Larceny	60 days jail
10-09-72	Escape from jail	recaptured
04-15-74 24 years (CONV)	Rape, First Degree (6 counts)	Rape, First Degree (2 counts) 10 years prison
08-14-80	Drunk driving	One year probation, fine
04-30-82	Residential burglary	Residential burglary, 1 year prison
05-21-83	Possession of marijuana	Arrest in prison, 3 months added to prison sentence
04-04-84	Criminal Trespass	Criminal Trespass, 18 months prison, probation
07-17-87	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder	Rape by Force and Violence False Imprisonment Oral Copulation Sexual Penetration Foreign Object Burglary Assault With Deadly Weapon Attempted Murder Sentenced to 24 years in Prison

Relationship History:

- Married Susie 11-22-69. Lived together for 6 months.
- Hallie. Lived together "on and off" for 9 years.
- Married June in 1989 when he was in prison. Met her in 1986 where he worked. Dated her for 18 month's but did not want to be tied down. They are still married.

Sexual Offense Victims:

12-12-68: Strong Arm Rape. He goes to the door of a 24-year-old housewife, asking for directions and when the victim goes to get a phone book, he follows her into the house and forcefully rapes her.

04-15-74: 2 Counts Rape First Degree. He forcefully raped 6 women strangers, was charged and convicted of two rapes.

04-30-82: Residential Burglary. He entered an apartment of a woman and removed panties, bras, bathing suit; dress from dresser drawers and spread them on her bed. He said to police he was her former boyfriend and he became sexually aroused in her bedroom and removed her under garments from the drawers to masturbate. He admitted to other acts of entering homes to look for female lingerie to use for masturbation purposes.

04-04-84: Criminal Trespass. At a hotel he was in the women's bathroom when an unsuspecting woman came into bathroom and used restroom. She saw his boots under stall door became alarmed.

07-17-87: Rape by Force, False Imprisonment, Oral Copulation, Sexual Penetration Foreign Object, Burglary, Assault with a Deadly Weapon and Attempted Murder. After the 22 year old female pulled into her garage and Mr. Force grabbed the victim around the neck. He took her into her house, put her on her bed face down, and tied her hands behind her with a scarf and placed a sock in her mouth. He tied a cloth around her eyes. He raped the victim. Her roommate arrived home and Mr. Force assaulted the victim's roommate by pounding her head against concrete walk. She suffered a fractured jaw and skull fracture. This assault resulted in the arrest and conviction for assault with a deadly weapon and attempted murder. The other charges and convictions pertained to the rape victim.

Answers to Example #7

The 07-17-87 is the Index Offense. He received a point for Any convictions for non-contact sex offenses for the 04-30-82 Residential Burglary.

Question Number	Risk Factor	Codes	Score
1	Young	Aged 25 or older Aged 18 – 24.99	**0** 1
2	Ever Lived With	Ever lived with lover for at least two years? Yes No	 0 **1**
3	Index non-sexual violence Convictions	No Yes	0 **1**
4	Prior non-sexual violence Convictions	No Yes	**0** 1
5	Prior Sex Offenses	Charges / Convictions None / None 1-2 / 1 3-5 / 2-3 6 + **(9)** / 4+ **(5)**	 0 1 2 **3**
6	Prior sentencing dates (excluding index)	3 or less 4 or more	0 **1**
7	Any convictions for non-contact sex offenses	No Yes	0 **1**
8	Any Unrelated Victims	No Yes	0 **1**
9	Any Stranger Victims	No Yes	0 **1**
10	Any Male Victims	No Yes	**0** 1
	Total Score	**Add up scores from individual risk factors**	**9**

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Improving Risk Assessments for Sex Offenders: A Comparison of Three Actuarial Scales

R. Karl Hanson[1] and David Thornton[2]

The study compared the predictive accuracy of three sex offender risk-assessment measures: the RRASOR (Hanson, 1997), Thornton's SACJ-Min (Grubin, 1998), and a new scale, Static-99, created by combining the items from the RRASOR and SACJ-Min. Predictive accuracy was tested using four diverse datasets drawn from Canada and the United Kingdom (total n *= 1301). The RRASOR and the SACJ-Min showed roughly equivalent predictive accuracy, and the combination of the two scales was more accurate than either original scale. Static-99 showed moderate predictive accuracy for both sexual recidivism (*r *= 0.33, ROC area = 0.71) and violent (including sexual) recidivism (*r *= 0.32, ROC area = 0.69). The variation in the predictive accuracy of Static-99 across the four samples was no more than would be expected by chance.*

The management of sex offenders within the criminal justice system can be substantially influenced by the offender's perceived risk for recidivism. Those sex offenders deemed high risk may be subject to substantial restrictions, such as postsentence detention, indeterminate sentences, and long-term community supervision. Conversely, sex offenders deemed to be low risk may be placed on probation and, if incarcerated, considered for early release.

Although many decisions require risk assessments, the procedures used for making such assessments often have limited validity. In general, the average predictive accuracy of professional judgment to predict sex offense recidivism is only slightly better than chance (average $r = 0.10$; Hanson & Bussière, 1998). Some researchers have even argued that the accuracy of prediction is sufficiently low that it threatens the very basis of risk-based legal sanctions for sex offenders (Janus & Meehl, 1997).

Recent research, however, has the potential of substantially improving the accuracy of recidivism risk assessments for sex offenders. Hanson and Bussière's

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(1998) meta-analytic review identified a number of risk factors that were associated reliably with sex offense recidivism. Most of these factors were static, historical variables related to sexual deviance (e.g., prior sex offenses, stranger victims) and general criminality (e.g., prior nonsex offenses, antisocial personality disorder). Several different actuarial risk instruments have also been developed to predict recidivism among sex offenders [e.g., Sex Offender Risk Appraisal Guide (SORAG), Quinsey, Harris, Rice, & Cormier, 1998; Minnesota Sex Offender Screening Tool–Revised (MnSOST-R), Epperson, Kaul & Hesselton, 1998; Rapid Risk Assessment for Sex Offense Recidivism (RRASOR), Hanson, 1997; Thornton's Structured Anchored Clinical Judgement (SACJ), Grubin, 1998]. These actuarial scales not only specify the items to consider, but also provide explicit direction as to the relative importance of each item. The items in the scales are similar, although the scales vary as to the relative weight accorded to the general factors of sexual deviance vs. antisociality.

The SORAG (Quinsey et al., 1998) is a variation of the Violence Risk Appraisal Guide (VRAG; Quinsey et al., 1998) for sex offenders. Like the VRAG, the SORAG was designed to assess any violent recidivism, not just sexual recidivism. It contains 15 items addressing early childhood behavior problems, alcohol problems, sexual and nonsexual criminal history, age, marital status, and personality disorders (with a large weight on psychopathy). The MnSOST-R was developed to predict sexual recidivism among rapists and extrafamilial child molesters. The MnSOST-R includes 16 items addressing sexual and nonsexual criminal history, the victim's age and relationship to the offender, substance abuse, unstable employment, age, and treatment history (Epperson et al., 1998). Both the RRASOR (Hanson, 1997) and SACJ (Grubin, 1998) were intended to be relatively brief screening instruments for predicting sex offense recidivism.

The purpose of the present study was to compare the predictive accuracy of two of these actuarial schemes: the RRASOR (Hanson, 1997) and the SACJ (see Grubin, 1998). Although rarely used in North America, the SACJ is routinely used in Her Majesty's Prison Service (England and Wales) and in many police departments in the United Kingdom. The SACJ contains items related to sexual deviance but also places considerable weight on nonsexual criminal history. The RRASOR, in contrast, almost exclusively targets factors related to sexual deviance. The RRASOR is widely used in Canada and the United States, being the most common risk assessment tool used in postsentence detention procedures (Doren, 1999). Given the different emphasis of the RRASOR and SACJ, one goal of the current study was to examine whether a simple combination of these two scales could improve on the predictive accuracy of either original scale.

Rapid Risk Assessment for Sex Offense Recidivism

The aim of the RRASOR (Hanson, 1997) was to predict sex offense recidivism using a small number of easily scored variables. The initial pool of seven items were those that correlated at least 0.11 with sex offense recidivism in Hanson and Bussière's (1998) meta-analysis and were commonly recorded: prior sex offenses, any prior nonsex offenses, any male victims, any stranger victims, any unrelated

victims, never married, and age less than 25 years. In order to identify the most efficient combination of these items, the correlations between these predictor variables were calculated in seven different datasets (total sample of 2592), and then averaged using standard meta-analytic techniques (Hedges & Olkin, 1985). Following a suggestion by Becker (1996), the averaged correlation matrix was then subjected to stepwise regression to identify the best predictor variables.

Of the original seven variables, four contributed substantially to the regression equation (beta >0.09): prior sex offenses, any unrelated victims, any male victims, and age less than 25 (see Table 1). The scale resulting from the simple combination of these four variables was then tested on an entirely new sample (HM Prison). Overall, the scale showed comparable predictive accuracy in both the development and validation samples (average r = 0.27; average ROC area = 0.71).

Structured Anchored Clinical Judgement

Unlike many actuarial tools, risks scores on the SACJ (Grubin, 1998) are not based on the simple summation of weighted items. Instead, it uses a stepwise approach. The first step classifies offenders into three risk categories (low, medium, and high) based on their official convictions. In the next steps, offenders can be reclassified (up or down) based on protective or aggravating factors. Each stage incorporates different types of information.

The first step considers the following five items: any current sexual offenses, any prior sex offenses, any current nonsexual violent offenses, any prior nonsexual violent offenses, and four or more prior sentencing occasions (see Table 1). If offenders have four or more of the initial factors, they are automatically considered high risk. If two or three factors are present, offenders are considered medium risk, and zero or one factor indicates low initial risk.

The second step considers the following eight items: any stranger victims, any male victims, never married, convictions for noncontact sex offenses (e.g., exhibitionism, obscene phone calls), substance abuse, placement in residential care as a child, deviant sexual arousal, and psychopathy. If two or more of these factors are present, then the offenders' initial risk level is increased one category (i.e., low to medium, or medium to high).

Table 1. Items in the RRASOR, SACJ-Min, and Static-99

RRASOR	SACJ-Min	Static-99
Male victims	Male victims	Male victims
	Never married	Never married
	Noncontact sex offenses	Noncontact sex offenses
Unrelated victims		Unrelated victims
	Stranger victims	Stranger victims
Prior sex offenses (3 points)	Current sex offense	Prior sex offenses (3 points)
	Prior sex offense	
	Current nonsexual violence	Current nonsexual violence
	Prior nonsexual violence	Prior nonsexual violence
	4+ sentencing dates	4+ sentencing dates
18–24.99 years		18–24.99 years

The SACJ was designed to be used even when there is missing data. The minimum information required is the step 1 variables and the first four variables from step 2 (strangers, males, single, noncontact offenses). This minimum set of items is called *SACJ-Min.*

The final step of the SACJ (step 3) considers information that is unlikely to be obtained except for sex offenders who enter treatment programs (e.g., treatment drop-out, improvement on dynamic risk factors). Because only the SACJ-Min has been subject to cross-validation, the final step of the SACJ is not considered further in this report.

The SACJ was developed through exploratory analyses on several UK datasets. The primary aim in scale development was the prediction of sexual recidivism, but the prediction of any violent recidivism was also a consideration. The SACJ-Min was then validated on an entirely new sample of approximately 500 sex offenders released from Her Majesty's Prison Service in 1979 (16-year follow-up on the complete cohort). This HM Prison sample included the 303 offenders originally used to validate the RRASOR. In the validation sample, the SACJ-Min correlated 0.34 with sex offense recidivism and 0.30 with any sexual or violent recidivism (Thornton, personal communication, February 10, 1999). The SACJ-Min has yet to be tested on samples from outside the United Kingdom.

Static-99

Preliminary analyses suggested that RRASOR and the SACJ-Min were assessing related but not identical constructs. Both scales contributed unique variance to regression equations when their total scores were used to predict sexual recidivism. Consequently, it was possible that a combination of the two scales would predict better than either original scale. A new scale was created by adding together the items from the RRASOR and SACJ-Min. The scale is called *Static-99* to indicate that it includes only static factors and that it is the 1999 version of a work in progress. The complete list of items is listed in Table 1 and the scoring criteria are given in Appendix I.

The risk scales (RRASOR, SACJ-Min, and Static-99) were compared in four diverse samples selected from Canada and the United Kingdom. Because the datasets were created independently, the variables were not identical in each sample. Any observed variability across samples could therefore be attributed to either variation in scoring procedures or differential validity across samples. However, if similar results are found across samples (despite minor differences in coding rules), then the scale would appear robust.

METHOD

Samples

The first three samples were, with minor modifications, the same samples used in the development of the RRASOR (see Table 2). The results reported here are

Table 2. Sample Characteristics

	Sample			
	Institut Philippe Pinel	Millbrook	Oak Ridge	HM Prison, England and Wales
Setting	Secure psychiatric	Provincial prison	Secure psychiatric	All prisoners released in 1979
Minimum sample size	344	191	142	531
Age at release (*SD*)	36.2 (10.9)	33.1 (9.9)	30.4 (9.5)	34.4 (12.7)
Child molesters (%)	70.4	100.0	49.3	60.7
Prior offenses				
Sexual (%)	50.5	41.9	31.8	34.0
Any (%)	58.1	72.0	67.7	74.9
Average years of follow-up	4	23	10	16
Recidivism criteria	Convictions	Convictions	Charges/ readmissions	Convictions
Recidivism rates				
Sexual only (%)	15.4	35.1	35.1	25.0
Any violent (%)	21.5	44.0	57.6	37.4

not identical to those reported in Hanson (1997) due to minor recoding of some variables (correcting coding errors, replacing missing data). The fourth sample (HM Prison) was not used in the development of either the RRASOR or SACJ, but a subsample of the HM Prison offenders were used as the validation sample for both risk scales. The HM Prison sample has the important feature of being an unbiased cohort of all the sex offenders released in the target year (1979). In contrast, the other samples primarily comprised sex offenders referred to assessment and/or treatment at particular institutions. The racial ethnicity of the samples was not recorded, but given the demographics of the provinces and countries from which they were selected, the samples can be expected to be predominantly white.

Institut Philippe Pinel (Montreal)

This study (Proulx, Pellerin, McKibben, Aubut, & Ouimet, 1995; see also Proulx, Pellerin, McKibben, Aubut, & Ouimet, 1997; Pellerin et al., 1996) focused on sexual offenders treated at a maximum security psychiatric facility between 1978 and 1993. The Institut Philippe Pinel provides long-term (1–3 years) treatment for sex offenders referred from both the mental health and correctional systems. Information concerning predictor variables was drawn from their clinical files and recidivism information from RCMP records collected in 1994.

Information was available on all the predictor variables except stranger victims and noncontact sex offences. As well, it was impossible to separate index and prior nonsexual violence because only the total number of charges for nonsexual violence were recorded. Similarly, the variable marking the total number of sex offense charges included index offenses. To estimate the number of prior sex offense convictions, the number of victims for the index offense was subtracted from the total number of charges.

Millbrook Recidivism Study

This study (Hanson, Steffy, & Gauthier, 1993b; see also Hanson, Scott, & Steffy, 1995; Hanson, Steffy, & Gauthier, 1992; Hanson, Steffy & Gauthier, 1993a) collected long-term recidivism information (15–30 years) for child molesters released between 1958 and 1974 from Millbrook Correctional Centre, a maximum security provincial correctional facility located in Ontario, Canada. About half of the sample went through a brief treatment program. For the treatment sample, the information concerning the predictors was collected from their clinical files, whereas for the remainder of the sample, the information was extracted from their correctional files. Recidivism information was coded from national records maintained by the Royal Canadian Mounted Police (RCMP).

Information was available on all the relevant predictor variables, except for convictions for noncontact sex offenses (missing for all cases). Information concerning stranger victims was available for the treatment sample only (n = 99). As well, the total number of prior convictions was used instead of the total number of prior sentencing dates.

Oak Ridge Division of the Penetanguishene Mental Health Centre

The Oak Ridge study (Rice & Harris, 1996; see also Quinsey, Rice, & Harris, 1995; Rice & Harris, 1997; Rice, Harris, & Quinsey, 1990; Rice, Quinsey, & Harris, 1991) followed sexual offenders referred for treatment and/or assessment between 1972 and 1993 to a maximum security mental health center located in Ontario, Canada. The majority of the referrals came from the mental health systems or the courts (e.g., pretrial fitness examinations), with a minority of cases coming from provincial or federal corrections. Follow-up information was based on RCMP records as well as mental health records (i.e., new admissions for sex offenses, regardless of whether new charges were laid).

Information was available for all the predictor variables with the following exceptions. Data for convictions for noncontact sex offense were not available for all cases. Data for relationship to victim were available only for the most serious offense. The dataset counted any male child victims rather than any male victims. The number of prior convictions was used instead of the number of prior sentencing dates. Finally, only the most serious index offense was recorded in the data set. Consequently, index convictions for nonsexual violence that was considered less serious than the index sex offense would not have been recorded.

Her Majesty's Prison Service (UK)

This study (Thornton, 1997) provided a 16-year follow-up of 563 sex offenders released from Her Majesty's Prison Service (England and Wales) in 1979. Recidivism information was based on Home Office records collected in 1995. Very few of the offenders in this sample would have received specialized sex offender treatment.

Information was available for all the relevant predictor variables. Data for previous sex offenses, however, were coded based on the offenders' previous sentencing occasions rather than the number of convictions or charges.

ANALYSIS

Measure of Predictive Accuracy

The area under the receiver operating characteristic (ROC) curve was used as the primary measure of predictive accuracy (Hanley & McNeil, 1982; Mossman, 1994; Rice & Harris, 1995). The ROC curve plots the hits (accurately identified recidivists) and false alarms at each level of the risk scale. The area under the ROC curve can range from 0.50 to 1.0, with 1.0 indicating perfect prediction (no overlap between recidivists and nonrecidivists) and 0.50 indicating prediction no better than chance. In general, the ROC area can be interpreted as the probability that a randomly selected recidivist would have a more deviant score than a randomly selected nonrecidivist. The ROC area has advantages over other commonly used measures of predictive accuracy (e.g., percentage agreement, correlation coefficients, RIOC) because it is not constrained by base rates or selection ratios (see Swets, 1986).

The correlation coefficient, *r,* is also presented to facilitate comparison with the results of other studies. For example, the average correlation between prior sex offenses and sex offense recidivism is 0.19 (95% Confidence Interval 0.17–0.21; Hanson & Bussière, 1998). To have utility in predicting long-term recidivism, risk scales must improve on this minimum standard.

Comparing Results

Standard meta-analytic procedures were used to compare results across studies (Hedges & Olkin, 1985; Hedges, 1994; McClish, 1992). Variability across studies was indexed by the Q statistic: $Q = \Sigma\ w_i\ (A_i - A.)^2$, where A_i is the ROC area for each sample, w_i is the weight for each sample (inverse of its variance $- SE^2$), and $A.$ is the weighted grand mean ($\Sigma w_i A_i / \Sigma w_i$). The Q statistic is distributed as χ^2 with degrees of freedom equal to $k - 1$, where k is the number of groups. The predictive accuracy of the risk scales was compared using the test of correlated ROC areas described by Hanley and McNeil (1983): $Z = (A_1 - A_2)/(SE_1^2 + SE_2^2 - 2rSE_1SE_2)^{1/2}$. The ROC statistics were computed using ROCKIT Version 0.9.1 (Metz, 1998).

Estimating Recidivism Rates

Applied risk assessments are often concerned about whether offenders have a specific probability of recidivism (e.g., >50%). Because recidivism rates are highly influenced by the length of the follow-up period, recidivism probabilities were estimated using survival analysis (Allison, 1984; Soothill & Gibbens, 1978). Survival analysis calculates the probability of recidivating for each time period given that the offender has not yet reoffended. Once offenders recidivate, they are removed from the analysis of subsequent time periods. Survival analysis has the advantage of being able to estimate year-by-year recidivism rates even when the follow-up periods vary across offenders. Readers should be aware, however, that the estimates

Table 3. Predictive Accuracy of RRASOR, SAC-J-Min, and Static-99 Across Samples (ROC Areas)

	Pinel	Millbrook	Oak Ridge	HM Prison 1979	Average *A.*	Average *Q*	Average Sample size
Sexual recidivism							
RRASOR	0.71	0.66	0.62	0.71	0.68	3.56	1225
SACJ-Min	0.66	0.61	0.63	0.74	0.69	7.89*	1301
Static-99	0.73	0.65	0.67	0.72	0.70	3.42	1228
Any violent recidivism							
RRASOR	0.65	0.67	0.60	0.65	0.65	1.17	1228
SACJ-Min	0.65	0.65	0.67	0.69	0.67	2.24	1304
Static-99	0.71	0.71	0.69	0.69	0.69	1.52	1231

*$p < 0.05$.

for the longest follow-up periods can be unstable if there are few offenders remaining in the later years.

RESULTS

As can be seen in Table 3, the predictive accuracy of the scales was relatively consistent across the samples. For both the RRASOR and Static-99, the amount of variability was no greater than would be expected by chance (all $p > 0.30$). The SACJ-Min, however, showed significant variability in the prediction of sexual recidivism ($Q = 7.89$, $df = 3$, $p < 0.05$). The SACJ-Min predicted sex offense recidivism best in HM Prison sample ($A = 0.74$) and worst in the Millbrook sample ($A = 0.61$).

The samples were combined to test directly the relative predictive accuracy of the RRASOR, SACJ-Min, and Static-99 (see Table 4). Only subjects who had complete data on all three risk scales were used in the combined sample (total $n = 1208$). The average values of the scales in the combined samples were as follows: RRASOR mean = 1.77, $SD = 1.29$; SACJ-Min, mean = 2.02, $SD = 0.76$; Static-99 mean = 3.15, $SD = 1.97$. The comparison of predictive accuracy of the

Table 4. Relative Predictive Accuracy of the RRASOR, SACJ-Min, and Static-99

	Combined ($n = 1208$)				ROC area	
	ROC area	95% CI	*r*	95% CI	Rapists ($n = 363$)	Child molesters ($n = 799$)
Sexual recidivism						
RRASOR	0.68	0.65–0.72	0.28	0.23–0.33	0.68	0.69
SACJ-Min	0.67	0.63–0.71	0.23	0.18–0.28	0.69	0.68
Static-99	0.71	0.68–0.74	0.33	0.28–0.38	0.71	0.72
Any violent recidivism						
RRASOR	0.64	0.60–0.67	0.22	0.16–0.27	0.64	0.66
SACJ-Min	0.64	0.61–0.68	0.22	0.16–0.27	0.62	0.66
Static-99	0.69	0.66–0.72	0.32	0.27–0.37	0.69	0.71

scales used the test for correlated ROC areas described by Hanley and McNeil (1983).

For the prediction of sex offense recidivism, Static-99 ($A = 0.71$) was more accurate than the RRASOR ($A = 0.68$, $Z = 2.38$, $p < 0.05$) or the SACJ-Min ($A = 0.67$, $Z = 2.84$, $p < 0.01$). The RRASOR and SACJ-Min predicted sex offense recidivism with similar levels of accuracy ($Z = 0.72$, $p > 0.40$). For the prediction of any violent recidivism (including sexual), Static-99 ($A = 0.69$) was more accurate than either the RRASOR ($A = 0.64$, $Z = 5.37$, $p < 0.001$) or SACJ-Min ($A = 0.64$, $Z = 3.84$, $p < 0.001$). The RRASOR and SACJ-Min did not differ in the accuracy with which they predicted violent recidivism ($Z = 0.35$, $p > 0.70$).

In order to test the generalizability of the scales across subgroups of sex offenders, the offenders were divided into those who victimized adult females (rapists, $n = 363$) and those who victimized children (child molesters, $n = 799$). The comparison of predictive accuracy across these groups used the test of uncorrelated ROC areas described by McClish (1992). All the scales showed similar predictive accuracy for both rapists and child molesters (all $Z < 1$, all $p > 0.30$).

As can be seen from Figs. 1 and 2, the recidivism rates were very similar in the Pinel, HM Prison, and Millbrook samples (for sexual recidivism, Survival $\chi^2 = 1.62$, $df = 2$, $p > 0.40$; for violent recidivism, Survival $\chi^2 = 0.65$, $df = 2$, $p > 0.70$). Survival dates were not available for the Oak Ridge sample. Given the similarity in the samples, the three datasets (Pinel, HM Prison, and Millbrook) were combined for the purpose of creating estimated recidivism rates.

The relationship between Static-99 scores and sexual recidivism is presented

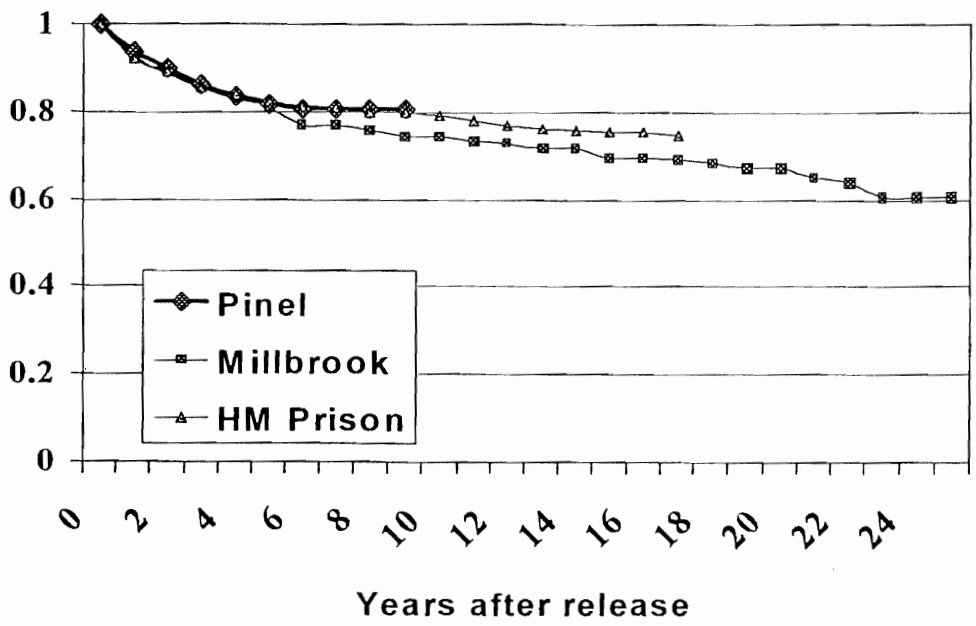

Fig. 1. Sex offense recidivism rates (survival curves) for offenders released from three institutions.

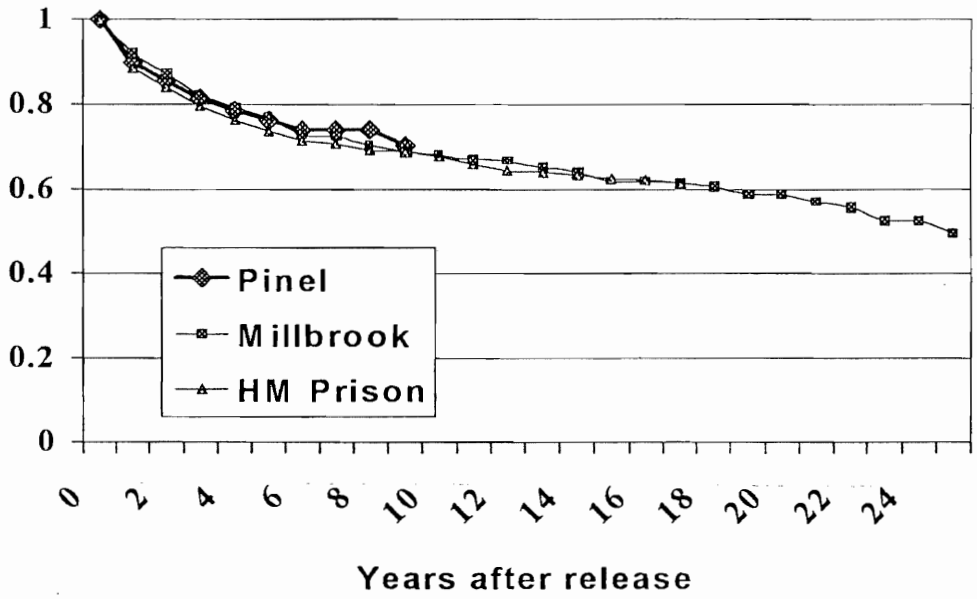

Fig. 2. Violent recidivism rates (survival curves) for offenders released from three institutions.

in Fig. 3. The Static-99 scores were categorized as low (0, 1; n = 257), medium-low (2, 3; n = 410), medium-high (4, 5; n = 290), and high (6+ n = 129). To minimize the influence of isolated, late recidivism events, the survival curves ended when there were fewer than 15 offenders exposed to risk for a particular year. The observed 5-, 10-, and 15-year recidivism rates are presented in Table 5. The rates up to 15 years should be reasonably reliable because all the offenders in the HM Prison and Millbrook samples were followed for at least 15 years.

Static-99 identified a substantial subsample (approximately 12%) of offenders whose long-term risk for sexual recidivism was greater than 50%. The recidivism rates for the minimum entrant into the high-risk category (score of 6) was 37%, 44%, and 51% after 5, 10, and 15 years, respectively, postrelease. Most of the offenders, however, were in the lower risk categories, with long-term recidivism risk of 10% to 20%.

As can be seen in Fig. 4, offenders with high scores on Static-99 were also at substantial risk for any violent recidivism (approximately 60% violent recidivism rate over 15 years). The violent recidivism rate (including sexual) for the minimum entrant into the high-risk category (score of 6) was 46%, 53%, and 60% over 5, 10, and 15 years, respectively. The violent recidivism rate of Static-99's low-risk category (0, 1) was 17% after 15 years.

DISCUSSION

The study compared the predictive accuracy of three sex offender risk assessment measures (RRASOR, SACJ-Min, and a combined scale, Static-99) across four

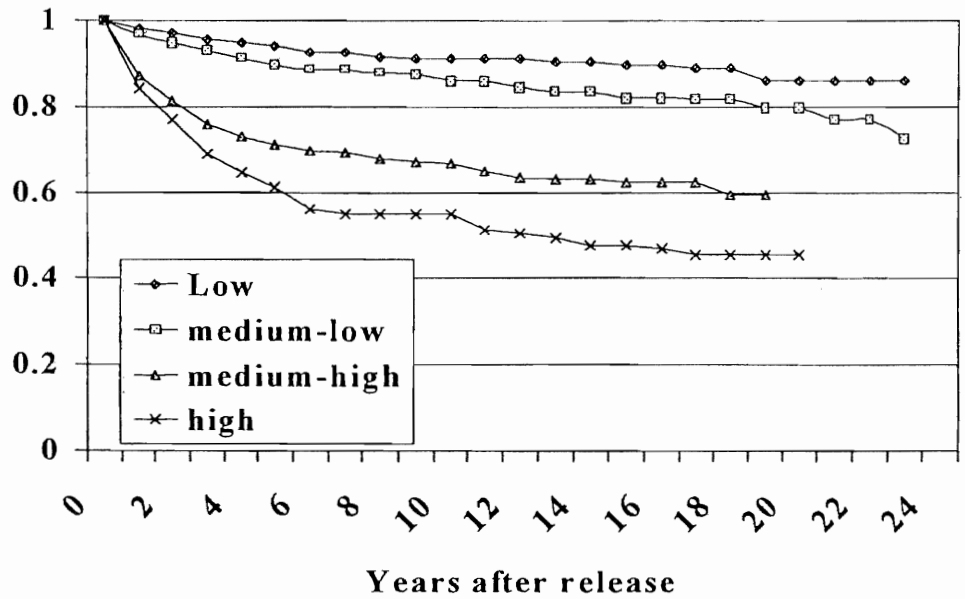

Fig. 3. The relationship of Static-99 scores to sexual recidivism.

datasets. The RRASOR and the SACJ-Min showed roughly equivalent predictive accuracy, and the combination of the two scales was more accurate than either original scale. The incremental improvement of Static-99, however, was relatively small. Static-99 showed moderate predictive accuracy for both sexual recidivism (r = 0.33, ROC area = 0.71) and violent (including sexual) recidivism (r = 0.32, ROC area = 0.69). The variation in the predictive accuracy of Static-99 across the four samples was no more than would be expected by chance.

If a risk scale is to be used in applied contexts, then it is important that the degree of predictive accuracy is sufficient to inform rather than mislead. Critics could suggest, for example, that a correlation in the 0.30 range is insufficient for decision making because it accounts for only 10% of the variance. Even if such an argument was correct (and many argue that it is not—see Ozer, 1985), most decision

Table 5. Recidivism Rates for Static-99 Risk Levels

		Sexual recidivism			Violent recidivism		
Static-99 score	Sample size	5 years	10 years	15 years	5 years	10 years	15 years
0	107 (10%)	0.05	0.11	0.13	0.06	0.12	0.15
1	150 (14%)	0.06	0.07	0.07	0.11	0.17	0.18
2	204 (19%)	0.09	0.13	0.16	0.17	0.25	0.30
3	206 (19%)	0.12	0.14	0.19	0.22	0.27	0.34
4	190 (18%)	0.26	0.31	0.36	0.36	0.44	0.52
5	100 (9%)	0.33	0.38	0.40	0.42	0.48	0.52
6+	129 (12%)	0.39	0.45	0.52	0.44	0.51	0.59
Average—3.2	1086 (100%)	0.18	0.22	0.26	0.25	0.32	0.37

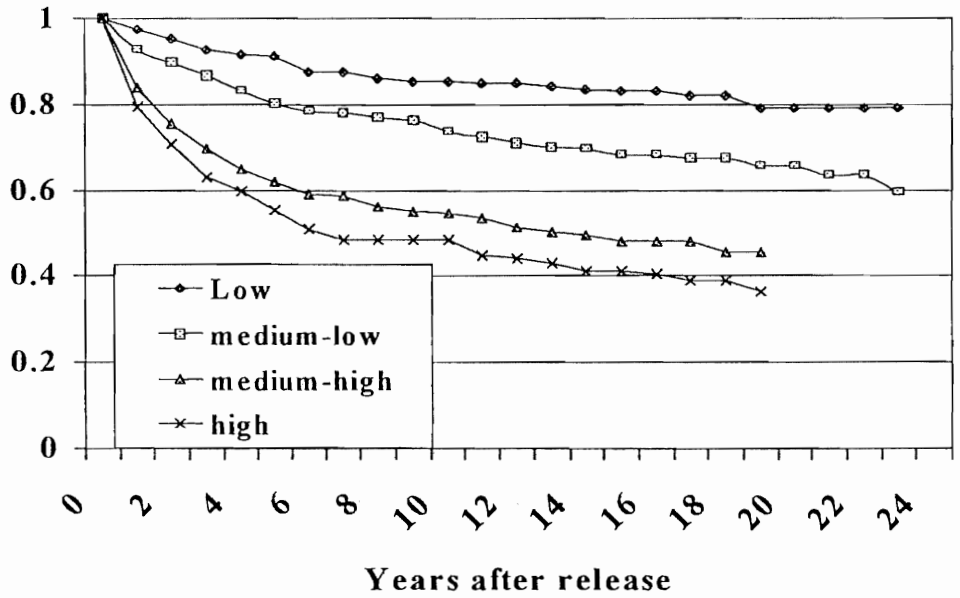

Fig. 4. The relationship of Static-99 scores to violent recidivism.

makers are not particularly concerned about "percent of variance accounted for." Instead, applied risk decisions typically hinge on whether offenders surpass a specified probability of recidivism (e.g., >50%).

Estimating absolute recidivism rates is a difficult task because many sex offenses go undetected (e.g., Bonta & Hanson, 1994). Observed recidivism rates (especially with short follow-up periods) are likely to substantially underestimate the actual recidivism rates. Nevertheless, Static-99 identified a substantial subsample of offenders (approximately 12%) whose observed sex offense recidivism rate was greater than 50%. At the other end, the scale identified another subsample whose observed recidivism rates was only 10% after 15 years. Differences of this magnitude should be of interest to many applied decision makers.

The similarity in the observed recidivism rates across the samples allows some confidence in conviction rate estimates provided by Static-99. The degree of similarity was remarkable considering that the studies were drawn from different countries, different language groups, different settings (i.e., prison, secure hospital), and different decades. All the studies for which survival data was available used official conviction as the outcome criteria. However, the Oak Ridge sample had a higher recidivism rate than the other three samples. Thirty-five percent of the Oak Ridge sample recidivated with a sex offense recidivism rate within 10 years, whereas only 25% of the HM Prison Service recidivated after a longer follow-up period (16 years). The Oak Ridge recidivism rates were relatively high because they used a broad recidivism criteria (arrests, readmissions) and they may have included particularly high-risk offenders. In support of the later hypothesis, Scheffé's *post hoc* tests found that the mean score on Static-99 was higher in the Oak Ridge sample (mean =

4.1) than in the other three samples (mean = 3.0). Whether recidivism rate differences would remain after controlling for preexisting risk levels could not be determined with the available data.

Another approach to judging a measure's predictive accuracy is to compare it to the available alternatives. For the prediction of sex offense recidivism, Static-99 is clearly more accurate ($r = 0.33$) than unstructured clinical judgment (average $r = 0.10$; Hanson & Bussière, 1998). The VRAG, one of best established risk assessment instruments, correlated only 0.20, with sex offense recidivism in a cross-replication (Rice & Harris, 1997). Quinsey et al. (1998) proposed a revision of the VRAG, for sexual offenders. In the Oak Ridge dataset, the SORAG and Static-99 predicted sex offense recidivism with similar levels of accuracy. Whether the SORAG shows equal accuracy in other datasets remains to be determined. The MnSOST-R appears to predict sex offense recidivism ($r = 0.45$) somewhat better than Static-99, but the Min-SOST has yet to be fully cross-validated (Epperson et al., 1998).

Although Static-99 was designed to predict sex offense recidivism, it also showed reasonable accuracy in the prediction of any violent recidivism among sex offenders ($r = 0.32$, ROC area = 0.69). In comparison, a recent meta-analysis found the average correlation between Hare's Psychopathy Checklist-Revised (PCL-R; Hare, 1991) and violent recidivism was 0.27 ($n = 1374$; Hemphill, Hare, & Wong, 1998). Static-99, however, may not be the instrument of choice when the goal is predicting any violent recidivism. The VRAG, for one, predicts any violent recidivism substantially better than the Static-99 ($r = 0.47$, ROC area = 0.77; in a cross-replication sample of 159 sex offenders; Rice & Harris, 1997). Nevertheless, Static-99 may be useful in settings that lack the time, resources, and/or information required to complete the VRAG.

Rater reliability for Static-99 could not be assessed directly in the current study because the scales were scored from existing datasets. An effort was made to promote rater reliability by selecting only clearly defined variables, but a certain amount of disagreement would be expected given the complexity of real cases. Evaluators wishing to minimize coding errors should study the coding rules in Appendix I and the corresponding RRASOR coding rules carefully (Phenix & Hanson, in press).

It is likely that actuarial risk scales can improve on Static-99 by including dynamic (changeable) risk factors as well as additional static variables. Many of the variables used in Static-99 can be grouped into general dimensions that are plausibly related to the risk of sex offense recidivism, such as sexual deviance, range of available victims, persistence (lack of deterrence or "habit strength"), antisociality, and age (young). Victimizing males, for example, has been correlated with deviant sexual preferences (Freund & Watson, 1991), and the willingness to victimize strangers indicates a wide range of potential victims. Deliberate efforts to create variables targeting these general risk dimensions has the promise of substantially improving the prediction of sex offense recidivism. Additional variables could include, for example, repetitive victim choice (same age and sex) as a marker for sexual deviance (see Freund & Watson, 1991), or early onset of sex offending as a marker of "persistence."

The inclusion of dynamic factors would likely increase the scale's predictive

accuracy (Hanson & Harris, 1998, in press). Among nonsexual criminals, dynamic variables predict recidivism as well as or better than static variables (Gendreau, Little, & Goggin, 1996). The research on dynamic factors related to sex offending is not well developed, but some plausible dynamic risk factors include intimacy deficits (Saidman, Marshall, Hudson, & Robertson, 1994), sexualization of negative affect (Cortoni, 1998), attitudes tolerant of sexual assault (Hanson & Harris, 1998), emotional identification with children (Wilson, 1999), treatment failure, and noncooperation with supervision (Hanson & Harris, 1998).

Use of Static-99 in Sex Offender Risk Assessments

Static-99 is intended to be a measure of long-term risk potential. Given its lack of dynamic factors, it cannot be used to select treatment targets, measure change, evaluated whether offenders have benefited from treatment, or predict when (or under what circumstances) sex offenders are likely to recidivate.

There are several different ways in which empirically derived risk scales can be used in clinical assessments. Quinsey et al. (1998) argue for a pure actuarial approach: risk predictions are those provided by the actuarial scale with no allowances for other factors. They argue that clinical judgment is so much inferior to actuarial methods that any consideration of clinical judgment simply dilutes predictive accuracy.

Their position is plausible and likely true in many situations. When actuarial tools are available, they have generally proved more accurate than clinical judgment (Grove & Meehl, 1996). The prediction of sexual recidivism is no exception (Hanson & Bussière, 1998). Critics of pure actuarial prediction, however, argue that the existing scales fail to consider all relevant risk factors. Consequently, many evaluators conduct clinically adjusted actuarial predictions in which the actuarial predictions are adjusted up or down based on external factors.

Static-99 does not claim to provide a comprehensive assessment, for it neglects whole categories of potentially relevant variables (e.g., dynamic factors). Consequently, prudent evaluators would want to consider whether there are external factors that warrant adjusting the initial score or special features that limit the applicability of the scale (e.g., a debilitating disease or stated intentions to reoffend). Given the poor track record of clinical prediction, however, adjustments to actuarial predictions require strong justifications. In most cases, the optimal adjustment would be expected to be minor or none at all.

The Structured Risk Assessment (SRA) framework developed by David Thornton is one example of a structured approach to combining actuarial risk scales with other empirically based risk factors. The current version of SRA uses Static-99 as the first step in risk assessment. The second step uses the offenders' functioning on dynamic risk factors to revise this initial classification. Medium-risk cases are reclassified up as high risk if their functioning is psychologically similar to high-risk offenders, and it is reclassified down to lower risk if their functioning is psychologically similar to low-risk offenders. The third step uses information devised from response to treatment. The fourth step considers the offenders' typical offense pattern in conjunction with situational risk factors. This kind of system reflects the

complexity of the real situations in which risk assessment takes place. At each stage, the system is empirically based, becoming actuarial where practical and elsewhere using lesser, although still credible, forms of evidence (bivariate analyses, retrospective analyses, etc.). Two recent prospective studies (Allam, 1998; Clark, 1999, personal communication) found that the key dynamic components of the SRA improved on assessments using solely static factors.

Although Static-99 can differentiate meaningfully between sex offenders with higher or lower probabilities of recidivism, the labels used to describe the various risk levels (low, medium-low, medium-high, high) do not reflect any absolute standard of risk. The standard of tolerable risk depends on the context of the assessment. An offender with a 10% chance of sexual recidivism over 15 years may be a good candidate for conditional release (i.e., "low" risk), but an unacceptably high risk for holding positions of trust over children.

CONCLUSION

The present study is part of growing body of research supporting empirically based risk prediction for sexual offenders. No risk prediction scheme will be entirely accurate, and the measures described in this article are far from perfect. Nevertheless, the current results are a serious challenge to sceptics who claim that sexual recidivism cannot be predicted with sufficient accuracy to be worthy of consideration in applied contexts. The value of unstructured clinical opinion can be questioned, but there is sufficient evidence to indicate that empirically based risk assessments can meaningfully predict the risk for sexual offence recidivism. It is up to future researchers and clinicians to build on the foundations that have already been established.

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APPENDIX I
Coding Rules for Static-99

Risk factor	Codes		Score
Prior sex offenses (same rules as in PRASOR)[a]	Charges	Convictions	
	None	None	0
	1–2	1	1
	3–5	2–3	2
	6+	4+	3

Prior sentencing dates (excluding index)[b]	3 or less	0
	4 or more	1
Any convictions for noncontact sex offenses[c]	No	0
	Yes	1
Index nonsexual violence[d]	No	0
	Yes	1
Prior nonsexual violence[e]	No	0
	Yes	1
Any unrelated victims[f]	No	0
	Yes	1
Any stranger victims[g]	No	0
	Yes	1
Any male victims[h]	No	0
	Yes	1
Young[i]	Age 25 or older	0
	Age 18–24.99	1
Single[j]	Ever lived with lover for at least 2 years?	
	Yes	0
	No	1
Total score	Add up scores from individual risk factors	

Notes. Static-99 is intended for males aged at least 18 who are known to have committed at least one sex offense involving a child or a nonconsenting adult. It is not recommended for men convicted only of prostitution, pornography, or public toileting offenses.

[a]Count only officially recorded offenses. These could include (1) arrests and charges, (2) convictions, (3) institutional rules violations, and (4) probation, parole, or conditional release violations arising from sexual assault, sexual abuse, sexual misconduct, or violence engaged in for sexual gratification. Prostitution and pornography offenses would count, provided that the offender has at least one sexual offense against a nonconsenting victim. Count only those prison or community supervision violations that would normally have resulted in a charge for a sexual offense if the offender had not already been under legal sanction. Do not count violations for sexual behavior that is a crime only because the offender is under legal sanction (e.g., failure to register as a sex offender, possession of legal pornography).

Nonsexual charges or convictions resulting from sexual behavior are counted as sexual offenses (e.g., voyeur convicted of trespass by night). When the offense behavior was sexual but resulted in a conviction for a violent offense (e.g., assult, murder), then the offender is considered to have committed both a sexual and nonsexual violent offenses and could receive points for both items.

Count only the number of sexual convictions or charges prior to the index offense. Do not count the sex offenses included in the most recent court appearance. Institutional rule violations and conditional release violations count as one charge. Use either charges or convictions, whichever indicates the higher risk. More detailed examples of scoring prior sex offenses are given in the RRASOR scoring guidelines (Phenix & Hanson, in press).

[b]Count the number of distinct occasions on which the offender has been sentenced for criminal offenses of any kind. The number of charges/convictions does not matter; only the number of sentencing dates. Court appearances that resulted in complete acquittal are not counted, nor is the index sentencing date.

[c]This category includes convictions for noncontact sexual offenses, such as exhibitionism, possessing obscene material, obscene telephone calls, and voyeurism. Self-reported offenses do not count in this category. The index offense does count.

[d]Refers to convictions for nonsexual assault that are dealt with on the same sentencing occasion as the index sex offense. These convictions can involve the same victim as the index sex offense or they can involve a different victim. All nonsexual violence convictions are included providing they were dealt with on the same sentencing occasion as the index sex offenses. Example offenses would include murder, wounding, assault causing bodily harm, assault, robbery, pointing a firearm, arson, and threatening.

[e]This category includes any conviction for nonsexual violence prior to the index sentencing occasion.

The previous items (*a–e* 1–5; prior offenses) are based on official records. The following items (*f–j*) are based on all available information, including self-report, victim accounts, and collateral contacts. Information based solely on polygraph testing (lie detector) would not count without corroborating evidence.

[f]A related victim is one for whom the relationship would be sufficiently close that marriage would normally be prohibited, such as parent, uncle, grandparent, or stepsister.

[g]A victim is considered to be a stranger if the victim did not know the offender 24 hours before the offense.
[h]Included in this category are all sexual offenses involving male victims. Possession of child pornography involving boys, however, would not count in this category. Indecent exposure to a group of boys and girls would not count unless it was clear that the offender was specifically targeting the boys.
[i]This item refers to the offender's age at the time of the risk assessment. If the assessment concerns the offender's current risk level, it would be his current age. If the assessment concerns an anticipated exposure to risk (e.g., release, reduced security at some future date), the relevant age would be his age when exposed to risk. Static-99 is not intended for those who are less than 18 years old at the time of exposure to risk.
[j]The offender is considered single if he has not lived with a lover (male or female) for at least 2 years. Legal marriages involving less than 2 years of cohabitation do not count.

Translating Static-99 Scores into Risk Categories

Score	Label for Risk Category
0, 1	Low
2, 3	Medium-low
4, 5	Medium-high
6+	High

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Effective: September 30, 2006

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)

→ § 1202.8. Probation; supervision by county officer; assessment and electronic monitoring of sex offenders; report on monitoring of offenders

(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

CREDIT(S)

(Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

Stats.2006, c. 336 (S.B.1178), added subds. (b) and (d); and redesignated former subd. (b) as subd. (c).

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"(b) Commencing July 1, 2008, every adult male who is convicted of an offense that requires him to register as a sex offender pursuant to Section 290 shall be assessed for the risk of reoffending consistent with Section 290.06. The assessment shall be performed by a probation officer who has been trained pursuant to Section 290.05. Every adult male who has a risk assessment of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law."

"(d) Beginning January 1, 2009, each probation department shall report every two years to the Legislature and to the Governor on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored."

The 2006 amendment of this section by c. 886 explicitly amended the 2006 amendment of this section by c. 337.

Sections 8 to 11 of Stats.2006, c. 886 (A.B.1849), provide:

"SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

"SEC. 9. This bill shall only become operative if Senate Bill 1128 [c. 337] of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

"SEC. 10. Sections 1, 2, 3, 5, and 6 of this act shall become operative only if Senate Bill No. 1178 [c. 336] is also enacted and this act is enacted after Senate Bill 1178 [c. 336].

"SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

"In order to ensure the public safety of California families and their children and to ensure that the Megan's Law database provides adequate information about registered sex offenders living in California, it is necessary that this act take effect immediately."

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The 1986 amendment substituted "both the level and type of supervision consistent with the court-ordered conditions of probation" for "the level of supervision".

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CROSS REFERENCES

"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

Good for more than just driving directions: GPS helps protect Californians from recidivist sex offenders. R. Brooks Whitehead, 38 McGeorge L. Rev. 265 (2007).

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Lost in probation: Contrasting the treatment of probationary search agreements in California and federal courts. Marc R. Lewis, 51 UCLA L. Rev. 1703 (2004).

LIBRARY REFERENCES

2004 Main Volume

Sentencing and Punishment 1973, 1988.
Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1556, 1559, 1771 to 1786.

RESEARCH REFERENCES

Encyclopedias

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 390, Evaluation and Hearing Prior to Grant of Probation for Specified Sexual Offenders.

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3 Witkin Cal. Crim. L. 3d Punishment § 549, (S 549) Statutory Requirements.

NOTES OF DECISIONS

Discretion of court 1
Probation conditions 2

1. Discretion of court

Trial court has broad discretion to determine probation conditions. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1962

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A condition of probation will not be held invalid unless it (1) has no relationship to the crime of which the defendant was convicted, (2) relates to conduct which is not in itself criminal, (3) requires or forbids conduct which is not reasonably related to future criminality. People v. Kwizera (App. 4 Dist. 2000) 93 Cal.Rptr.2d 522, 78 Cal.App.4th 1238, review denied. Sentencing And Punishment 1963

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West's Ann. Cal. Penal Code § 1202.8, CA PENAL § 1202.8

Current with urgency legislation through Ch. 266 of 2008 Reg.Sess. and Ch. 7 of 2007-2008 Third Ex.Sess., and Prop. 99

END OF DOCUMENT

→ § 1202.8. Probation; supervision by county officer; assessment and electronic monitoring of sex offenders; report on monitoring of offenders

(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

(b) Commencing January 1, 2009, every person who has been assessed with the State Authorized Risk Assessment Tool for Sex Offenders (SARATSO) pursuant to Sections 290.04 to290.06, inclusive, and who has a SARATSO risk level of high shall be continuously electronically monitored while on probation, unless the court determines that such monitoring is unnecessary for a particular person. The monitoring device used for these purposes shall be identified as one that employs the latest available proven effective monitoring technology. Nothing in this section prohibits probation authorities from using electronic monitoring technology pursuant to any other provision of law.

(c) Within 30 days of a court making an order to provide restitution to a victim or to the Restitution Fund, the probation officer shall establish an account into which any restitution payments that are not deposited into the Restitution Fund shall be deposited.

(d) Beginning January 1, 2009, and every two years thereafter, each probation department shall report to the Corrections Standard Authority all relevant statistics and relevant information regarding on the effectiveness of continuous electronic monitoring of offenders pursuant to subdivision (b). The report shall include the costs of monitoring and the recidivism rates of those persons who have been monitored. The Corrections Standard Authority shall compile the reports and submit a single report to the Legislature and the Governor every two years through 2017.

CREDIT(S)

(Added by Stats.1981, c. 1142, § 6.5. Amended by Stats.1986, c. 47, § 2; Stats.1996, c. 629 (S.B.1685), § 4; Stats.2006, c. 336 (S.B.1178), § 4, eff. Sept. 20, 2006; Stats.2006, c. 886 (A.B.1849), § 5, eff. Sept. 30, 2006.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2006 Legislation

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"SEC. 9. This bill shall only become operative if Senate Bill 1128 [c. 337] of the 2005-06 Regular Session is also enacted and becomes effective on or before January 1, 2007.

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"SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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2004 Main Volume

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For provisions of Stats.1996, c. 629 (S.B.1685), requiring the Judicial Council to undertake certain measures to ensure that restitution is ordered in every case as required by law, see Historical and Statutory Notes under Penal Code § 155.5.

CROSS REFERENCES

"Probation" defined for purposes of this Code, see Penal Code § 1203.

Effective: October 13, 2007

West's Annotated California Codes Currentness
Penal Code (Refs & Annos)
Part 2. Of Criminal Procedure (Refs & Annos)
Title 8. Of Judgment and Execution
Chapter 1. The Judgment (Refs & Annos)
§ 1202.7. Probation; legislative findings, declarations and intent; primary considerations in granting

The Legislature finds and declares that the provision of probation services is an essential element in the administration of criminal justice. The safety of the public, which shall be a primary goal through the enforcement of court-ordered conditions of probation; the nature of the offense; the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation; the loss to the victim; and the needs of the defendant shall be the primary considerations in the granting of probation. It is the intent of the Legislature that efforts be made with respect to persons who are subject to Section 290.011 who are on probation to engage them in treatment.

CREDIT(S)

(Added by Stats.1981, c. 1142, § 6. Amended by Stats.1986, c. 47, § 1; Stats.2001, c. 485 (A.B.1004), § 2; Stats.2007, c. 579 (S.B.172), § 42, eff. Oct. 13, 2007.)

HISTORICAL AND STATUTORY NOTES

2008 Electronic Update

2007 Legislation

Stats.2007, c. 579 (S.B.172), substituted "Section 290.011" for "subparagraph (C) of paragraph (1) of subdivision (a) of Section 290".

For legislative intent and urgency effective provisions relating to Stats.2007, c. 579 (S.B.172), see Historical and Statutory Notes under Penal Code § 290.

2004 Main Volume

The 1986 amendment rewrote the second sentence, which formerly read: "The safety of the public, the nature of the offense, the interests of justice, the loss to the victim, and the needs of the defendant shall be primary considerations in the granting of probation."

Stats.2001, c. 485 (A.B.1004), added the third sentence concerning sex offenders under Section 290.

CROSS REFERENCES

"Probation" defined for purposes of this Code, see Penal Code § 1203.

LAW REVIEW AND JOURNAL COMMENTARIES

Juvenile court dispositional alternatives: Imposing a defense duty. John L. Roche, 27 Santa Clara L.Rev. 279 (1987).

Lost in probation: Contrasting the treatment of probationary search agreements in California and federal courts. Marc R. Lewis, 51 UCLA L. Rev. 1703 (2004).

The Norplant prescription: birth control, woman control, or crime control? Stacey L. Arthur, 40 UCLA L.Rev. 1 (1992).

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Westlaw Topic No. 350H.
C.J.S. Criminal Law §§ 1460, 1472, 1477, 1479, 1492 to 1495, 1530, 1549 to 1550, 1552 to 1555.

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CA Jur. 3d Criminal Law: Post-Trial Proceedings § 391, Court's Discretion to Grant or Deny Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 392, Criteria Affecting Decision to Grant or Deny Probation.

CA Jur. 3d Criminal Law: Post-Trial Proceedings § 399, Discretion of Court.

Treatises and Practice Aids

3 Witkin Cal. Crim. L. 3d Punishment § 250, (S 250) Commitment of Vietnam Veteran to Federal Institution.

3 Witkin Cal. Crim. L. 3d Punishment § 502, (S 502) Nature and Purpose.

NOTES OF DECISIONS

1. Discretion of court

The sentencing court has broad discretion to determine whether an eligible defendant is suitable for probation and, if

so, under what conditions. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1802

Although the trial court's probation discretion is broad, it is not without limits; a condition of probation must serve a purpose specified in the statute. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1962

As with any exercise of discretion, sentencing court violates standard for granting or denying probation when its determination is arbitrary or capricious or exceeds the bounds of reason, all of the circumstances being considered. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1802

2. Factors considered

In granting probation, the primary considerations are the nature of the offense, the interests of justice, including punishment, reintegration of the offender into the community, and enforcement of conditions of probation, the loss to the victim, and the needs of the defendant. People v. Orabuena (App. 6 Dist. 2004) 10 Cal.Rptr.3d 99, 116 Cal.App.4th 84, as modified. Sentencing And Punishment 1830

3. Public safety

Probation is generally reserved for convicted criminals whose conditional release into society poses minimal risk to public safety and promotes rehabilitation. People v. Welch (1993) 19 Cal.Rptr.2d 520, 5 Cal.4th 228, 851 P.2d 802. Sentencing And Punishment 1832; Sentencing And Punishment 1833

West's Ann. Cal. Penal Code § 1202.7, CA PENAL § 1202.7

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END OF DOCUMENT

Effective: September 30, 2006

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(a) Persons placed on probation by a court shall be under the supervision of the county probation officer who shall determine both the level and type of supervision consistent with the court-ordered conditions of probation.

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END OF DOCUMENT

CALIFORNIA DEPARTMENT OF
Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

February 1, 2008

SUBJECT: SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee Notification

Senate Bill 1128, Alquist (Chapter 337, Statutes of 2006) established the state committee, known as the SARATSO (State Authorized Risk Assessment Tool for Sex Offenders) Review Committee, to consider the selection of the risk assessment tools for California. (Pen. Code, 290.04) This Committee has three representatives appointed from the Department of Mental Health (DMH), the Attorney General's office, and the California Department of Corrections and Rehabilitation (CDCR). One mandate of the committee is to select a state risk assessment tool for juvenile sex offenders, female offenders and adult offenders, if an appropriate tool is available and approved by the committee. To that end, the Committee has heard testimony from several experts who have authored risk assessment tools. The Committee has considered all testimony and reviewed the presentations in concert with the associated requirements established by statute.

For adults, the Committee has selected the Static-99 designed and cross-validated by Dr. Karl Hanson and Dr. David Thornton. This instrument is currently in use by CDCR as a tool to designate a parolee as a High Risk Sex Offender (HRSO). This instrument will become the only statewide risk assessment tool for adult males, which is mandated to be used by CDCR to assess every eligible inmate prior to parole and every eligible inmate on parole. This tool is further mandated for use by DMH to assess every eligible individual prior to release and by Probation for every eligible individual for whom there is a probation report. (Pen. Code, § 290.06)

For juveniles the Committee has selected the J-SORAT II designed and cross-validated by Dr. Douglas Epperson. This instrument will become the only state-authorized risk assessment tool for juveniles, which is mandated to be used by probation when assessing a juvenile sex offender at adjudication, and by CDCR/DJJ both prior to release from DJJ and while on supervision. (Pen. Code, §290.06.)

For female offenders the Committee has found that there currently is no risk assessment tool for this population that has been scientifically researched and validated. Therefore, the Committee does not have a recommendation

Implementation and Training:

On July 1, 2008 the Static-99 is mandated for use by the DMH, CDCR Parole and County Probation. Training-for-Trainers sessions will take place in the Winter/Spring of 2008.

This training shall be conducted by experts in the field of risk assessment and the use of actuarial instruments in predicting sex offender risk. Subject to requirements established by the committee, CDCR, DMH, County Probation Departments, and authorized local law enforcement agencies shall designate the appropriate persons within their organizations to attend training and, as authorized by the department, to train others within their organizations. Any person who administers the SARATSO shall receive training no less frequently than every two years.

The time factor is immediate. All agencies need to be fully trained for the July 1, 2008 implementation date.

If you have any questions or comments about the decisions of the Committee, please contact Kimberly Anderson, M.A. at (916) 651-2067 or by email at kimberly.anderson@dmh.ca.gov

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Penal Code Sections 1000.93, 1000.94 and 1000.95; Penal Code Sections 273.5, Subdivisions (e), (f), (g), (h), and (i); and Penal Code Section 1203.097; As Repealed, Added or Amended by Statutes of 1992, Chapters 183 and 184; Statutes of 1994, Chapter 28X; and Statutes of 1995, Chapter 641; And filed on November 13, 1996; By County of Los Angeles, Claimant.	NO. CSM-9628101 *Domestic Violence Treatment Services - Authorization and Case Management* ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND TITLE 2, CALIFORNIA CODE OF REGULATIONS, SECTIONS 1183.12. (Adopted on November 30, 1998)

ADOPTED PARAMETERS & GUIDELINES

The attached Parameters & Guidelines of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on December 8, 1998.

Paula Higashi, Executive Director

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Adopted: November 30, 1998

Parameters and Guidelines

Penal Code Sections 1000.93, 1000.94 and 1000.95
Penal Code Sections 273 .5, subdivisions (e), (f), (g), (h) and (i)
Penal Code Section 1203.097
As Repealed, Added or Amended by Chapters 183/92, 184/92, 28X/94, 641195
Domestic Violence Treatment Services — Authorization and Case Management

I. Summary and Source of the Mandate

The test claim legislation provides that if an accused is convicted of a domestic violence crime and granted probation as part of sentencing, the defendant is required to successfully complete a batterer's treatment program as a condition of probation.

The Commission determined that probation *is a penalty* for conviction of a crime. The successful completion of probation is required before the unconditional release of the defendant. If the defendant fails to successfully complete a batterer's treatment program, the test claim legislation subjects the defendant to further sentencing and incarceration.

Since the legislature changed the penalty for domestic violence crimes by changing the requirements for probation, the Commission determined that the "crimes and infractions" disclaimer in Government Code section 17556, subdivision (g), applies to this claim. Based on the plain and ordinary meaning of the words used by the Legislature, the Commission concluded that subdivision (g) applies to those activities required by the test claim legislation that are directly related to the enforcement of the statute which changed the penalty for a crime.

The Commission concluded that the activities listed below are *not* directly related to the enforcement of the test claim statute under Government Code section 17556, subdivision (g), and, therefore, are reimbursable:

- Administration and regulation of batterers' treatment programs (Pen. Code, § 1203.097, subds. (c)(l), (c)(2), and (c)(5)) offset by the claimant's fee authority under Penal Code section 1203.097, subdivision (c)(5)(B).
- Providing services for victims of domestic violence. (Pen. Code, § 1203.097, subd. (b)(4) .)
- Assessing the future probability of the defendant committing murder. (Pen. Code, § 1203.097, subd. (b)(3)(1).)

II. Eligible Claimants

Eligible claimants include counties, and city and county.

III. Period of Reimbursement

Section 17557 of the Government Code states that a test claim must be submitted on or before December 3 1 following a given fiscal year to establish eligibility for reimbursement for that fiscal year. The test claim was filed by the County of Los Angeles on October 4, 1996.

Statutes of 1995, Chapter 641, became effective and operative on January 1, 1996. Therefore, costs incurred on or after January 1, 1996, are eligible for reimbursement.

Actual costs for one fiscal year shall be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable.

Pursuant to Government Code section 1756 1, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of issuance of the claiming instructions by the State Controller.

If total costs for a given year do not exceed $200, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies, services, travel and training, for the following activities are eligible for reimbursement:

A. Administration and regulation of batterers' treatment programs (Pen. Code, §§ 1203.097, subds. (c)(l), (c)(2) and (c)(5)) offset by the claimant's fee authority under Penal Code section 1203.097, subdivision (c)(5)(B).

1. Development of an approval and annual renewal process for batterers' programs, not previously claimed under former Penal Code sections 1000.93 and 1000.95. (One-time activity .)

   a. Meeting and conferring with and soliciting input from criminal justice agencies and domestic violence victim advocacy programs.

   b. Staff training regarding the administration and regulation of batterers' treatment programs. (One-time for each employee performing the mandated activity.)

2. Processing of initial and annual renewal approvals for vendors, including:

   a. Application review.

   b. On-site evaluations.

   c. Notification of application approval, denial, suspension or revocation.

B. Victim Notification. (Pen. Code, § 1203.097, subd (b)(4).)

1. The probation department shall attempt to:

   a. Notify victims regarding the requirement foi the defendant's participation in a batterer's program.

   b. Notify victims regarding available victim resources.

   c. Inform victims that attendance in any program does not guarantee that an abuser will not be violent.

2. Staff training on the following activities:

   a. Notify victims regarding the requirement for the defendant's participation in a batterer's program, and inform victims that attendance in any program does not guarantee that an abuser will not be violent. (One-time for each employee performing the mandated activities .)

b. Notify victims regarding available victim resources. (Once-a-year training for each employee performing the mandated activity .)

C. Assessing the future probability of the defendant connnitting murder. (Pen. Code, § 1203.097, subd. (b)(3)(1).)

1. Evaluation and selection of a homicidal risk assessment instrument.

2. Purchasing or developing a homicidal risk assessment instrument.

3. Training staff on the use of the homicidal risk assessment instrument.

4. Evaluation of the defendant using the homicidal risk assessment instrument, interviews and investigation, to assess the future probability of the defendant committing murder.

In the event a local agency obtains a new homicidal risk assessment instrument, documentation substantiating the improved value of the new instrument is required to be provided with the claim.

v. Claim Preparation

Claims for reimbursement must be timely filed and identify each cost element for which reimbursement is claimed under this mandate. Clairned costs must be identified to each reimbursable activity identified in Section IV of this document.

SUPPORTING DOCUMENTATION

Claimed costs shall be supported by the following cost element information:

A. Direct Costs

Direct Costs are defined as costs that can be traced to specific goods, services, units, programs, activities or functions .

Claimed costs shall be supported by the following cost element information:

1. Salaries and Benefits

Identify the employee(s), and/or show the classification of the employee(s) involved. Describe the reimbursable activities performed and specify the actual time devoted to each reimbursable activity by each employee, productive hourly rate and related fringe benefits.

Reimbursement for personal services includes compensation paid for salaries, wages and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

2. Materials and Supplies

Only expenditures that can be identified as direct costs of this mandate may be claimed. List the cost of the materials and supplies consumed specifically for the purposes of this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

3. Contract Services

Provide the name(s) of the contractor(s) who performed the services, including any fixed contracts for services. Describe the reimbursable activity(ies) performed by each named contractor and give the number of actual hours spent on the activities, if applicable. Show the inclusive dates when services were performed and itemize all costs for those services.

4. Fixed Assets

List the costs of the fixed assets that have been acquired specifically for the purpose of this mandate. If the fixed asset is utilized in some way not directly related to the mandated program, only the pro-rata portion of the asset which is used for the purposes of the mandated program is eligible for reimbursement.

5. Travel

Travel expenses for mileage, per diem, lodging and other employee entitlements are eligible for reimbursement in accordance with the rules of the local jurisdiction. Provide the name(s) of the traveler(s), purpose of travel, inclusive dates and times of travel, destination points and travel costs.

6. Training

The cost of training an employee to perform the mandated activities is eligible for reimbursement. Identify the employee(s) by name and job classification. Provide the title and subject of the training session, the date(s) attended and the location. Reimbursable costs may include salaries and benefits, registration fees, transportation, lodging and per diem.

B. Indirect Costs

Indirect costs are defined as costs which are incurred for a common or joint purpose, benefiting more than one program and are not directly assignable to a particular department or program without efforts disproportionate to the result achieved. Indirect costs may include both (1) overhead costs of the unit performing the mandate; and (2) the costs of central government services distributed to other departments based on a systematic and rational basis through a cost allocation plan.

Compensation for indirect costs is eligible for reimbursement utilizing the procedure provided in the OMB A-87. Claimants have the option of using 10% of direct labor, excluding fringe benefits, or preparing an Indirect Cost Rate Proposal (ICRP) for the department if the indirect cost rate claimed exceeds 10%. If more than one department is claiming indirect costs for the mandated program, each department must have its own ICRP prepared in accordance with OMB A-87. An ICRP must be submitted with the claim when the indirect cost rate exceeds 10%.

VI. Supporting Data

For audit purposes, all costs claimed shall be traceable to source documents (e.g., employee time records, invoices, receipts, purchase orders, contracts, worksheets, calendars, declarations, etc.) that show evidence of the validity of such costs and their relationship to the state mandated program. All documentation in support of the claimed costs shall be made available to the State Controller's Office, as may be requested, and all reimbursement claims

are subject to audit during the period specified in Government Code section 17558.5, subdivision (a).

VII. Data for Development of a Statewide Cost Estimate

The State Controller's Office is directed to include in the claiming instructions a request that claimants send an additional copy of the test claim specific form for the initial years' reimbursement claim by mail or facsimile to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, California 958 14, Facsimile number: (9 16) 445-0278. Although providing this information to the Comrnission on State Mandates is not a condition of reimbursement, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate. which will be the basis for the Legislature's appropriation for this program.

VIII. Offsetting Savings and Other Reimbursement

Any offsetting savings the claimant experiences as a direct result of the subject mandate must be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but not limited to, service fees collected under Penal Code section 1203.097, subdivision (c)(5)(B), federal funds and other state funds shall be identified and deducted from this claim.

IX. State Controller's Office Required Certification

An authorized representative of the claimant shall be required to provide a certification of the claim, as specified in the State Controller's claiming instructions, for those costs mandated by the State contained herein.

DECLARATION OF SERVICE BY MAIL

I, the undersigned, declare as follows:

I am a resident of the County of Sacramento and I am over the age of 18 years, and not a party to the within action. My place of employment and business address is 1300 I Street, Suite 950, Sacramento, California 95814.

On December 8, 1998, I served the attached:

Adopted Parameters and Guidelines for CSM-9628101 *Domestic* ***Violence*** *Treatment Services - Authorization and Case Management.*

for the Commission on State Mandates by placing a true copy thereof in an envelope addressed to each of the persons listed on the attached mailing list, and by sealing and depositing said envelope in the United States mail at Sacramento, California, with postage thereon fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on December 8, 1998 at Sacramento, California.

Caroline Baltazar

DOMESTIC VIOLENCE TREATMENT SERVICES AUTHORIZATION AND CASE MANAGEMENT

1. Summary of Chapters 183/92, 184/92, 28/94, and 641/95

Penal Code Sections 1000.93, 1000.94, and 1000.95
Penal Code Sections 273.5, Subdivisions (e), (f), (g), (h), and (i)
Penal Code Section 1203.097
As repealed, added, or amended by Chapters 183 and 184, Statutes of 1992, Chapter 28, Statutes of 1994, Chapter 641, Statutes of 1995

Legislation provides that if an accused is convicted of a domestic violence crime and granted probation as part of sentencing, the defendant is required to successfully complete a batterer's treatment program as a condition of probation.

The Commission on State Mandates determined that probation is a penalty for conviction of a crime. The successful completion of probation is required before the unconditional release of the defendant. If the defendant fails to successfully complete a batterer's treatment program, the test claim legislation subjects the defendant to further sentencing and incarceration.

Since the Legislature changed the penalty for domestic violence crimes by changing the requirements for probation, the Commission determined that the "crimes and infractions" disclaimer in Government Code Section 17556, Subdivision (g), applies to this claim. The Commission also concluded that Subdivision (g) applies to those activities required by the test claim legislation that are directly related to the enforcement of the statute that changed the penalty for a crime.

On November 30, 1998, the Commission on State Mandates determined that the activities listed below are not directly related to the enforcement of the test claim statute under Government Code Section 17556, Subdivision (g) and, therefore, are reimbursable.

A. Administration and regulation of batterer's treatment programs (Pen. Code § 1203.097, Subds. (c)(1), (c)(2), and (c)(5)), offset by the claimant's fee authority under Penal Code Section 1203.097, Subdivision (c)(5)(B).

B. Providing services for victims of domestic violence (Pen. Code § 1203.097, Subd. (b)(4).

C. Assessing the future probability of the defendant committing murder (Pen. Code § 1203.097, Subd. (b)(3)(I)).

2. Eligible Claimants

Any city, county, or city and county incurring increased costs as a direct result of this mandate is eligible to claim reimbursement of these costs.

3. Appropriations

These claiming instructions are issued following the adoption of the program's parameters and guidelines by the Commission on State Mandates. Funding for payment of initial claims covering the period January 1, 1996, through June 30, 1996, and fiscal years 1996-97, 1997-98, and 1998-99 will be made available in a future appropriation act subject to approval of the Legislature and the Governor.

To determine if funding is available for the current fiscal year, refer to the schedule "Appropriations for State Mandated Cost Programs" in the *Annual Claiming Instructions for*

State Mandated Costs issued in October of each year to city fiscal officers and county auditors.

4. Types of Claims

A. Reimbursement and Estimated Claims

A claimant may file a reimbursement and/or an estimated claim. A reimbursement claim details the costs actually incurred for a prior fiscal year. An estimated claim shows the costs to be incurred for the current fiscal year.

B. Minimum Claim

Section 17564(a) of the Government Code provides that no claim shall be filed pursuant to Section 17561 unless such a claim exceeds $200 per program per fiscal year.

5. Filing Deadline

A. Initial Claims

Pursuant to Government Code Section 17561, Subdivision (d)(3), initial claims must be filed within 120 days from the issuance date of claiming instructions. Accordingly:

(1) Reimbursement claims detailing the actual costs incurred for the period January 1, 1996, through June 30, 1996, and 1996-97 and 1997-98 fiscal years must be filed with the State Controller's Office and postmarked by June 25, 1999. If the reimbursement claim is filed after the deadline of June 16, 1999, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

(2) Estimated claims for costs to be incurred during the 1998-99 fiscal year must be filed with the State Controller's Office and postmarked by June 25, 1999. Timely filed estimated claims are paid before late claims. If a payment is received for the estimated claim, a 1998-99 reimbursement claim must be filed by January 15, 2000.

B. Annually Thereafter

Refer to the item "Reimbursable State Mandated Cost Programs," contained in the cover letter for mandated cost programs issued annually in October, that identifies the fiscal years for which claims may be filed. If an "x" is shown for the program listed under "19__/19__ Reimbursement Claim," and/or "19__/19__ Estimated Claim," claims may be filed as follows:

(1) An estimated claim filed with the State Controller's Office must be postmarked by January 15 of the fiscal year in which the costs will be incurred. Timely filed estimated claims will be paid before late claims.

After having received payment for an estimated claim, the claimant must file a reimbursement claim by January 15 of the following fiscal year. If the local agency fails to file a reimbursement claim, monies received for the estimated claim must be returned to the State. If no estimated claim was filed, the agency may file a reimbursement claim detailing the actual costs incurred for the fiscal year, provided there was an appropriation for the program for that fiscal year. For information regarding appropriations for reimbursement claims refer to the "Appropriation for State Mandated Cost Programs" in the previous fiscal year's annual claiming instructions.

(2) A reimbursement claim detailing the actual costs must be filed with the State Controller's Office and postmarked by January 15 following the fiscal year in

which the cost will be incurred. If the claim is filed after the deadline, but by January 15 of the succeeding fiscal year, the approved claim must be reduced by a late penalty of 10%, not to exceed $1,000. Claims filed more than one year after the deadline will not be accepted.

6. Reimbursable Activities

For each eligible claimant, all direct and indirect costs of labor, supplies, services, training, and travel for the following activities only are eligible for reimbursement:

A. Administration and regulation of batterers' treatment programs (Pen. Code § 1203.097, Subds. (c)(1), (c)(2), and (c)(5)) offset by the claimant's fee authority under Penal Code Section 1203.097, Subdivision (c)(5)(B).

1. Development of an approval and annual renewal process for batterers' programs not previously claimed under former Penal Code Sections 1000.93 and 1000.95 (one-time activity).

   a. Meeting and conferring with and soliciting input from criminal justice agencies and domestic violence victim advocacy programs.

   b. Staff training regarding the administration and regulation of batterers' treatment programs (once for each employee performing the mandated activity).

2. Processing of initial and annual renewal approvals for vendors, including:

   a. application review;

   b. on-site evaluations; and

   c. notification of application approval, denial, suspensions, or revocation.

B. Victim Notification (Pen. Code § 1203.097, Subd. (b)(4)).

1. The probation department shall attempt to:

   a. Notify victims regarding the requirement for the defendant's participation in a batterer's program.

   b. Notify victims regarding available victim resources.

   c. Inform victims that attendance in any program does not guarantee that an abuser will not be violent.

2. Staff training on the following activities:

   a. Notify victims regarding the requirement for the defendant's participation in a batterer's program and inform victims that attendance does not guarantee that an abuser will not be violent (once for each employee performing the mandated activities).

   b. Notify victims regarding available victims resources (once-a-year training for each employee performing the mandated activity).

C. Assessing the future probability of the defendant committing murder (Pen. Code § 1203.097, Subd. (b)(3)(I)).

1. Evaluation and selection of a homicidal risk assessment instrument.

2. Purchasing or developing a homicidal risk assessment instrument.

3. Training staff on the use of the homicidal risk assessment instrument.

4. Evaluation of the defendant using the homicidal risk assessment instrument, interviews, and investigation to assess the future probability of the defendant committing murder.

In the event a local agency obtains a new homicidal risk instrument, documentation substantiating the improved value of the new instrument is required to be provided with the claim.

7. Reimbursement Limitations

Any offsetting savings or reimbursement the claimant received from any source including, but not limited to, service fees collected, federal funds, and other state funds as a direct result of this mandate shall be identified and deducted so only the net local cost is claimed.

8. Claiming Forms and Instructions

The diagram "Illustration of Claim Forms" provides a graphical presentation of forms required to be filed with a claim. A claimant may submit a computer-generated report in substitution for forms DVTS-1 and DVTS-2 provided the format of the report and data fields contained within the report are identical to the claim forms included in these instructions. The claim forms provided with these instructions should be duplicated and used by the claimant to file estimated or reimbursement claims. The State Controller's Office will revise the manual and claim forms as necessary. In such instances, new replacement forms will be mailed to claimants.

A. Form DVTS-2, Component/Activity Cost Detail

This form is used to segregate the detailed costs by claim component. A separate form DVTS-2 must be completed for each cost component being claimed. Costs reported on this form must be supported as follows:

(1) Salaries and Benefits

Identify the employee(s) and/or show the classification of the employee(s) involved. Describe the mandated functions performed by each employee and specify the actual time spent, the productive hourly rate, and related fringe benefits.

Reimbursement of personnel services includes compensation paid for salaries, wages, and employee fringe benefits. Employee fringe benefits include regular compensation paid to an employee during periods of authorized absences (e.g., annual leave, sick leave) and the employer's contribution of social security, pension plans, insurance, and worker's compensation insurance. Fringe benefits are eligible for reimbursement when distributed equitably to all job activities which the employee performs.

Source documents required to be maintained by the claimant may include, but are not limited to, employee time records that show the employee's actual time spent on this mandate.

(2) Supplies

Only expenditures that can be identified as a direct cost of this mandate may be claimed. List the cost of materials consumed or expended specifically for the purpose of this mandate. The cost of materials and supplies that are not used exclusively for the mandate is limited to the pro rata portion used to comply with

this mandate. Purchases shall be claimed at the actual price after deducting cash discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged based on a recognized method of costing, consistently applied.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders, and other documents providing evidence of the validity of the expenditures.

(3) Contract Services

Give the name(s) of the contractor(s) who performed the services. Describe the activities performed by each named contractor, actual time spent on this mandate, inclusive dates when services were performed, and itemize all costs for services performed. Attach consultant invoices with the claim.

Source documents required to be maintained by the claimant may include, but are not limited to, contracts, invoices, and other documents providing evidence of the validity of the expenditures.

(4) Equipment

Compensation for fixed asset costs are reimbursable utilizing the procedure provided in the Office and Management Budget Circular A-87 (OMB A-87). Example: Compensation for the use of equipment. The claimant may be compensated for the equipment use through a use allowance or depreciation. A use allowance may be computed at an annual rate not to exceed 6 2/3% of acquisition cost. This is reported and claimed through the agency's service-wide cost allocation plan under the cost element "Use Allowance." Where a depreciation method is followed, adequate property records must be maintained and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific class of assets for all affected programs.

List the cost of equipment acquired specifically for the purpose of this mandate. If the equipment is acquired for the subject state mandate, but is utilized in some way not directly related to the program, only the pro-rated portion of the equipment that is used for purposes of the program is reimbursable.

Source documents required to be maintained by the claimant may include, but are not limited to, invoices, receipts, purchase orders, and other documents providing evidence of the validity of the purchases.

(5) Travel

Travel expenses for mileage, per diem, lodging, and other employee entitlements are reimbursable in accordance with the rules of the local jurisdiction. Give the name(s) of the traveler(s), purpose of travel, inclusive travel dates, destination points, and costs.

Source documents required to be maintained by the claimant may include, but are not limited to, receipts, employee travel expense claims, and other documents providing evidence of the validity of the expenditures.

(6) Training

Only the cost of a reasonable number of employees attending the training is reimbursable. Give the class title, dates, location, and name(s) of the employee(s)

attending training associated with the mandate. Reimbursable costs include salaries and benefits for time spent, the registration fee, transportation, lodging, and per diem. Reimbursement for travel expenses, lodging, and per diem shall not exceed those rates which are applicable to state employees. Refer to the Appendix "State of California Travel Expense Guidelines."

Source documents may include, but are not limited to, employee travel expense claims, receipts, and other documents providing evidence of the training expenses.

For audit purposes, all supporting documents must be retained for a period of two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds were appropriated for the initial claim at the time the claim was filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

B. Form DVTS-1, Claim Summary

This form is used to summarize direct costs by cost component and compute allowable indirect costs for the mandate. Direct costs summarized on this form are derived from form DVTS-2 and carried forward to form FAM-27.

Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is involved in the mandated program, each department must have its own ICRP.

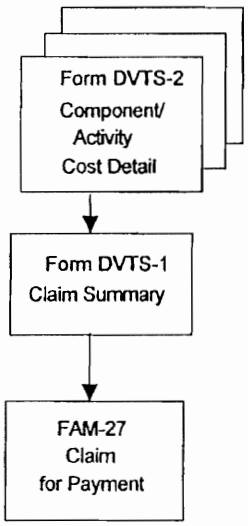
C. Form FAM-27, Claim for Payment

This form contains a certification that must be signed by an authorized representative of the local agency. All applicable information from form DVTS-1 must be carried forward to this form for the State Controller's Office to process the claim for payment.

D. Cost Accounting Statistics

The Commission on State Mandates requests that claimants send a copy of form DVTS-1 for each of the initial year's reimbursement claims by mail to the Commission on State Mandates, 1300 I Street, Suite 950, Sacramento, CA 95814, or by facsimile, (916) 445-0278. Although providing this information is not a condition of payment, claimants are encouraged to provide this information to enable the Commission to develop a statewide cost estimate and recommend an appropriation to the Legislature.

Illustration of Claim Forms



Form DVTS-2 Component/Activity Cost Detail

Complete a separate form DVTS-2 for each cost component for which expenses are claimed.

A. Administration and Regulation of Batterers' Treatment Program.

B. Victim Notification.

C. Assessing Future Probability of Defendant Committing Murder.

State Controller's Office | Mandated Cost Manual

CLAIM FOR PAYMENT
Pursuant to Government Code Section 17561
DOMESTIC VIOLENCE TREATMENT SERVICES
AUTHORIZATION AND CASE MANAGEMENT

For State Controller Use Only
(19) Program Number 00177
(20) Date Filed ____/____/____
(21) LRS Input ____/____/____

Program **177**

LABEL HERE

(01) Claimant Identification Number

(02) Claimant Name

County of Location

Street Address or P.O. Box | Suite

City | State | Zip Code

Type of Claim	Estimated Claim	Reimbursement Claim
	(03) Estimated ☐	(09) Reimbursement ☐
	(04) Combined ☐	(10) Combined ☐
	(05) Amended ☐	(11) Amended ☐
Fiscal Year of Cost	(06) 20___/20___	(12) 20___/20___
Total Claimed Amount	(07)	(13)
Less: **10% Late Penalty, not to exceed $1,000**		(14)
Less: **Prior Claim Payment Received**		(15)
Net Claimed Amount		(16)
Due from State	(08)	(17)
Due to State		(18)

Reimbursement Claim Data

(22) DVTS-1, (03)(a)	
(23) DVTS-1, (03)(b)	
(24) DVTS-1, (04)(1)(f)	
(25) DVTS-1, (04)(2)(f)	
(26) DVTS-1, (04)(3)(f)	
(27) DVTS-1, (06)	
(28) DVTS-1, (08)	
(29) DVTS-1, (09)	
(30) DVTS-1, (10)	
(31)	
(32)	
(33)	
(34)	
(35)	
(36)	

(37) CERTIFICATION OF CLAIM

In accordance with the provisions of Government Code §17561, I certify that I am the officer authorized by the local agency to file mandated cost claims with the State of California for this program, and certify under penalty of perjury that I have not violated any of the provisions of Government Code Sections 1090 to 1098, inclusive.

I further certify that there was no application other than from the claimant, nor any grant or payment received, for reimbursement of costs claimed herein, and such costs are for a new program or increased level of services of an existing program. All offsetting savings and reimbursements set forth in the Parameters and Guidelines are identified, and all costs claimed are supported by source documentation currently maintained by the claimant.

The amounts for this Estimated Claim and/or Reimbursement Claim are hereby claimed from the State for payment of estimated and/or actual costs set forth on the attached statements. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Signature of Authorized Officer | Date

Type or Print Name | Title

(38) Name of Contact Person for Claim

Telephone Number ( ) - Ext.

E-Mail Address

Form FAM-27 (Revised 09/03)

Program 177	DOMESTIC VIOLENCE TREATMENT SERVICES AUTHORIZATION AND CASE MANAGEMENT Certification Claim Form Instructions	FORM FAM-27

(01) Enter the payee number assigned by the State Controller's Office.

(02) Enter your Official Name, County of Location, Street or P. O. Box address, City, State, and Zip Code.

(03) If filing an estimated claim, enter an "X" in the box on line (03) Estimated.

(04) If filing a combined estimated claim on behalf of districts within the county, enter an "X" in the box on line (04) Combined.

(05) If filing an amended estimated claim, enter an "X" in the box on line (05) Amended.

(06) Enter the fiscal year in which costs are to be incurred.

(07) Enter the amount of the estimated claim. If the estimate exceeds the previous year's actual costs by more than 10%, complete form DVTS-1 and enter the amount from line (11). If more than one form is completed due to multiple department involvement in this mandate, add line (11) of each form.

(08) Enter the same amount as shown on line (07).

(09) If filing a reimbursement claim, enter an "X" in the box on line (09) Reimbursement.

(10) If filing a combined reimbursement claim on behalf of districts within the county, enter an " X " in the box on line (10) Combined.

(11) If filing an amended reimbursement claim, enter an "X " in the box on line (11) Amended.

(12) Enter the fiscal year for which actual costs are being claimed. If actual costs for more than one fiscal year are being claimed, complete a separate form FAM-27 for each fiscal year.

(13) Enter the amount of the reimbursement claim from form DVTS-1, line (11). The total claimed amount must exceed $1,000.

(14) Reimbursement claims must be filed by January 15 of the following fiscal year in which costs are incurred or the claims shall be reduced by a late penalty. Enter zero if the claim was timely filed, otherwise, enter the product of multiplying line (13) by the factor 0.10 (10% penalty), or $1,000, whichever is less.

(15) If filing a reimbursement claim and a claim was previously filed for the same fiscal year, enter the amount received for the claim. Otherwise, enter a zero.

(16) Enter the result of subtracting line (14) and line (15) from line (13).

(17) If line (16), Net Claimed Amount, is positive, enter that amount on line (17), Due from State.

(18) If line (16), Net Claimed Amount, is negative, enter that amount on line (18), Due to State.

(19) to (21) Leave blank.

(22) to (36) Reimbursement Claim Data. Bring forward the cost information as specified on the left-hand column of lines (22) through (26) for the reimbursement claim, e.g., DVTS-1, (03)(a), means the information is located on form DVTS-1, block (03), line (a). Enter the information on the same line but in the right-hand column. Cost information should be rounded to the nearest dollar, i.e., no cents. Indirect costs percentage should be shown as a whole number and without the percent symbol, i.e., 35.19% should be shown as 35. **Completion of this data block will expedite the payment process.**

(37) Read the statement "Certification of Claim." If it is true, the claim must be dated, signed by the agency's authorized officer, and must include the person's name and title, typed or printed. **Claims cannot be paid unless accompanied by an original signed certification. (To expedite the payment process, please sign the form FAM-27 with blue ink, and attach a copy of the form FAM-27 to the top of the claim package.)**

(38) Enter the name, telephone number, and e-mail address of the person to contact if additional information is required.

SUBMIT A SIGNED ORIGINAL, AND A COPY OF FORM FAM-27, WITH ALL OTHER FORMS AND SUPPORTING DOCUMENTS TO:

Address, if delivered by U.S. Postal Service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
P.O. Box 942850
Sacramento, CA 94250

Address, if delivered by other delivery service:

OFFICE OF THE STATE CONTROLLER
ATTN: Local Reimbursements Section
Division of Accounting and Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

MANDATED COSTS DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT CLAIM SUMMARY	FORM DVTS-1

(01) Claimant	(02) Type of Claim Reimbursement ☐ Estimated ☐	Fiscal Year 19___/19___

(03) (a) Number of vendor applications reviewed during the fiscal year of claim	
(b) Number of domestic violence cases for which the victim was notified pursuant to Penal Code Section 1203.097(b)(4) during the fiscal year of claim	

Direct Costs

(04) Reimbursable Components	(a) Salaries	(b) Benefits	(c) Services and Supplies	(d) Training and Travel	(e) Fixed Assets	(f) Total
1. Administration and Regulation of Batterers' Treatment Programs						
2. Victim Notification						
3. Assessing Future Probability of Defendant Committing Murder						
(05) Total Direct Costs						

Indirect Costs

(06) Indirect Cost Rate	[From ICRP]	%
(07) Total Indirect Costs	[Line (06) x line (05)(a)] or [line (06) x {line (05)(a) + line (05)(b)}]	
(08) Total Direct and Indirect Costs	[Line (05)(f) + line (07)]	

Cost Reduction

(09) Less: Offsetting Savings, if applicable	
(10) Less: Amount Received from Penal Code § 1203.097(c)(5)(B) and Other Applicable	
(11) Total Claimed Amount [Line (08) - {Line (09) + Line (10)}]	

DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT CLAIM SUMMARY Instructions	FORM DVTS-1

(01) Enter the name of the claimant.

(02) Type of Claim. Check a box, Reimbursement or Estimated, to identify the type of claim being filed. Enter the fiscal year for which costs were incurred or are to be incurred.

Form DVTS-1 must be filed for a reimbursement claim. Do not complete form DVTS-1 if you are filing an estimated claim and the estimate does not exceed the previous fiscal year's actual costs by more than 10%. Simply enter the amount of the estimated claim on form FAM-27, line (07). However, if the estimated claim exceeds the previous fiscal year's actual costs by more than 10%, form DVTS-1 must be completed and a statement attached explaining the increased costs. Without this information the high estimated claim will automatically be reduced to 110% of the previous fiscal year's actual costs.

(03) (a) Enter the number of vendor applications that were reviewed during the fiscal year of claim.
(b) Enter the number of domestic violence cases for which the victim was notified pursuant to Penal Code Section 1203.097(b)(4) during the fiscal year of claim.

(04) Reimbursable Components. For each reimbursable component, enter the totals from form DVTS-2, line (05), columns (d) through (h) to form DVTS-1, block (04) columns (a) through (e) in the appropriate row. Total the rows.

(05) Total Direct Costs. Total columns (a) through (f).

(06) Indirect Cost Rate. Indirect costs may be computed as 10% of direct labor costs, excluding fringe benefits. If an indirect cost rate of greater than 10% is used, include the Indirect Cost Rate Proposal (ICRP) with the claim. If more than one department is reporting costs, each must have their own ICRP.

(07) Total Indirect Costs. Multiply Total Salaries, line (05)(a), by the Indirect Cost Rate, line (06). If both salaries and benefits were used in the distribution base for the computation of the indirect cost rate, then multiply the sum of Total Salaries, line (05)(a), and Total Benefits, line (05)(b), by the Indirect Cost Rate, line (06).

(08) Total Direct and Indirect Costs. Enter the sum of Total Direct Costs, line (05)(f), and Total Indirect Costs, line (07).

(09) Less: Offsetting Savings, if applicable. Enter the total savings experienced by the claimant as a direct result of this mandate. Submit a detailed schedule of savings with the claim.

(10) Less: Other Reimbursements, if applicable. Enter the amount of other reimbursements received from Penal Code Section 1203.097(c)(5)(B), including but not limited to, service fees collected, federal funds, and other state funds, which reimbursed any portion of the mandated cost program. Submit a schedule detailing the reimbursement sources and amounts.

(11) Total Claimed Amount. Subtract the sum of Offsetting Savings, line (09), and Other Reimbursements, line (10), from Total Direct and Indirect Costs, line (08). Enter the remainder on this line and carry the amount forward to form FAM-27, line (13) for the Reimbursement Claim.

MANDATED COSTS DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT COMPONENT/ACTIVITY COST DETAIL	FORM DVTS-2

(01) Claimant

(02) Fiscal Year Costs Were Incurred

(03) Reimbursable Components: Check **only** one box per form to identify the component being claimed.

☐ Administration and Regulation of Batterers' Treatment Programs

☐ Victim Notification ☐ Assessing Future Probability of Defendant Committing Murder

(04) Description of Expenses: Complete columns (a) through (h).

(a) Employee Names, Job Classifications, Functions Performed and Description of Expenses	(b) Hourly Rate or Unit Cost	(c) Hours Worked or Quantity	Object Accounts (d) Salaries	(e) Benefits	(f) Services and Supplies	(g) Travel and Training	(h) Equipment
(05) Total ☐ Subtotal ☐ Page: _____ of _____							

DOMESTIC VIOLENCE TREATMENT SERVICES - AUTHORIZATION AND CASE MANAGEMENT COMPONENT/ACTIVITY COST DETAIL Instructions	FORM DVTS-2

(01) Enter the name of the claimant.

(02) Enter the fiscal year in which costs were incurred.

(03) Reimbursable Components. Check the box which indicates the cost component being claimed. Check only one box per form. A separate form DVTS-2 shall be prepared for each component which applies.

(04) Description of Expenses. The following table identifies the type of information required to support reimbursable costs. To detail costs for the component activity box "checked" in line (03), enter the employee's name, position title, a brief description of the activities performed, actual time spent by each employee, productive hourly rates, fringe benefits, supplies used, contract services, training and travel expenses. **The descriptions required in column (4)(a) must be of sufficient detail to explain the cost of activities or items being claimed.** For audit purposes, all supporting documents must be retained by the claimant for a period of not less than two years after the end of the calendar year in which the reimbursement claim was filed or last amended, whichever is later. When no funds are appropriated for the initial claim at the time the claim is filed, supporting documents must be retained for two years from the date of initial payment of the claim. Such documents shall be made available to the State Controller's Office on request.

Object/ Subobject Accounts	Columns								Submit these supporting documents with the claim
	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	
Salaries	Employee Name Title	Hourly Rate	Hours Worked	Salaries = Hourly Rate x Hours					
Benefits	Activities	Benefit Rate			Benefits = Benefit Rate x Salaries				
Services and Supplies Supplies	Description of Supplies Used	Unit Cost	Quantity Used			Cost = Unit Cost x Quantity Used			
Contracted Services	Name of Contractor Specific Tasks Performed	Hourly Rate	Hours Worked Inclusive Dates of Service			Itemized Cost of Services Performed			Invoices
Travel and Training Travel	Purpose of Trip Name and Title	Per Diem Rate Mileage Rate	Days Miles Transportation Mode				Rate x Days or Miles Total Transportation Cost		
Training	Employee Name & Title Name of Class		Dates Attended				Registration Fee		
Equipment	Description of Equipment Purchased Equipment ID	Unit Cost	Quantity Used					Itemized Cost of Equipment	Invoice

(05) Total line (04), columns (d), (e), (f), (g), and (h) and enter the sum on this line. Check the appropriate box to indicate if the amount is a total or subtotal. If more than one form is needed for the component/activity, number each page. Enter totals from line (05), columns (d), (e), (f), (g), and (h) to form DVTS-1, block (04), columns (a), (b), (c), (d), and (e) in the appropriate row.

BEFORE THE
COMMISSION ON STATE MANDATES

Claim of: County of San Mateo Claimant	No. CSM-4256 Chapter 1077, Statutes of 1986 Guardianships

PROPOSED DECISION

This claim was heard by the Commission on State Mandates (commission) on September 23, 1987, in Sacramento, California, during a regularly scheduled hearing.

Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the commission finds:

I.

NOTE

1. The finding of a reimbursable state mandate does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to commission approval of parameters and guidelines for reimbursement of the claim, and a statewide cost estimate; a specific legislative appropriation for such purposes; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller.

II.

FINDINGS AND CONCLUSIONS

1. The test claim was filed with the commission on April 1, 1987, by the County of San Mateo.

2. The claim alleges that Chapter 1017, Statutes of 1986, imposes costs mandated by the State.

3. Probate Code Section 1513, as added by Chapter 1017, Statutes of 1986, requires for the first time that investigations of certain guardianship petitions be conducted by probate court staff, unless waived by the court. Prior law provided for such investigations when expressly ordered by the court. Probate Code Section 1513 also specifies the content of the report of the guardianship investigation. Prior to the enactment of Chapter 1017, the specific content of the report of the guardianship investigation was not set forth in statute.

4. Chapter 1017, Statutes of 1986, allows for an assessment, in an amount determined by the State Controller's Office, to be used by counties to cover the costs of mandated guardianship activities. The State Controller's Office establishes a statewide rate for the allowable assessment by averaging actual costs for conducting the investigations. The average is derived from actual cost data submitted by counties.

III.

DETERMINATION OF ISSUES

1. The commission has the authority to decide this claim under the provisions of Government Code Section 17551.

2. Chapter 1017, Statutes of 1986, added Probate Code Section 1513 which requires investigations of guardianship petitions unless such investigation is waived by the court. Chapter 1017 added the requirement that certain specific information be included in the report reflecting the results of the investigation.

3. The Commission on State Mandates concludes that the costs of investigations, and reports, required by Chapter 1017, Statutes of 1986, which exceed the amount of the allowable assessment, as determined by the State Controller, are costs mandated by the state and as such are reimbursable costs.

WP:0114r

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE REQUEST FOR REMOVAL FROM THE STATE MANDATES APPORTIONMENT SYSTEM: Statutes of 1975, Chapter 694; Filed on November 4, 1998; By the County of Tulare, Requester.	No. 98-RSMAS-01 *Developmentally Disabled-Attorney Service* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 30, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on March 3 1, 2000.

Paula Higashi, Executive Director

Hearing Date: March 30, 2000

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE REQUEST FOR REMOVAL FROM THE STATE MANDATES APPORTIONMENT SYSTEM: Statutes of 1975, Chapter 694; Filed on November 4, 1998; By the County of Tulare, Requester.	No. 98-RSMAS-01 *Developmentally Disabled-Attorney Services* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ. ; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on March 30, 2000)*

STATEMENT OF DECISION

This Request for Removal from the State Mandates Apportionment System (SMAS) was heard and decided by the Commission on State Mandates (Commission) on February 24, 2000 during a regularly scheduled hearing.

The law applicable to the Commission's determination to remove a program from SMAS is Government Code section 17615 et seq.

The Commission, by a vote of 5 to 0, approved this Request.

Background and Findings of Fact

State Mandate Apportionments System

The process for filing and processing claims for reimbursement with the State Controller is cumbersome. Local governments are required to maintain voluminous records and documentation to support their claims. The Controller may conduct extensive audits. Therefore, in 1985, the Legislature enacted SMAS to allow certain ongoing state-mandated programs to be funded automatically through the State Budget process, without the need for local governments to file annual claims for those costs with the State Controller. [1]

[1] Statutes of 1985, Chapter 1534; Government Codes sections 1761517616

Following is a description of the procedures related to SMAS:

- Reviewing Mandated Cost Programs for Eligibility

  The Department of Finance, State Controller, local governments or school districts may request that the Commission review any mandated cost programs, for which appropriations have been made by the State to local governments and school districts for any three consecutive years, to determine if those programs are eligible for inclusion in SMAS.[2] The requesting agency is required to file a "request for inclusion" with the Commission.

  The Commission must then determine at a public hearing whether to include the subject mandated cost program in SMAS. When considering the request for inclusion, the Commission must determine if the program has a history of stable costs for most claimants, if the program has been recently modified, and if inclusion would accurately reflect the costs of the program. If the Commission determines that the program should be included in SMAS, it then directs the State Controller to include the program in SMAS.[3]

- Calculating Actual Allocations

  Once a program is included in SMAS, the State Controller determines the amount of reimbursement that will be disbursed to local agencies and school districts that submitted reimbursement claims for the program. The amount of reimbursement is computed by taking three consecutive years of actual reimbursement claims for the subject program, adjusting each year's amount by the Implicit Price Deflator for Costs of Goods and Services to Governmental Agencies (IPD), and then averaging those three amounts. This amount is called the base year entitlement. Reimbursements are then allocated to local governments and school districts to the extent money is provided in the State Budget Act.[4]

- Adjusting Allocations

  Allocations for reimbursement for programs included in SMAS must be adjusted annually, according to changes in the IPD, and changes in the workload of the affected local agency or school district.[5] For purposes of this calculation, "workload" is defined as follows:

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[2] Government Code section 176 15.1; Title 2, California Code of Regulations, section 1184.6

[3] Title 2, California Code of Regulations, sections 1184.6 and 1184.7

[4] Government Code sections 176 15.2 and 176 15.3

[5] Government Code sections 176 15.4

For cities and counties: changes in population within their boundaries.

- For special districts: *changes in the population of the county in which the largest percentage of the district's population is located.*
- For school districts and county offices of education: *changes in the average daily attendance.*
- For community colleges: *changes in the number of full-time equivalent students.*

- Review of Apportionment or Base Year Entitlement

If local agencies or school districts believe that the total apportionment for all of their SMAS programs is inadequate to cover their actual costs for the programs, they are entitled to request that the Commission review the reimbursement they receive or the base year entitlements of any program included in SMAS. The local agency or school district must file a Request for Review with the Commission. [6]

If the Commission determines that a local agency or school district's apportionment over or under reimburses the agency or district by 20 percent or $1,000 (whichever is less), then the Commision directs the State Controller to adjust the apportionment .[7]

- Removal of Mandated Cost Programs from SMAS

For any mandated cost program included in SMAS that has been modified or amended by the Legislature or by Executive Order, any local agency, school district, or state agency may request that the Commission review that program for removal from SMAS.

The Commission must adopt a finding that the mandated cost program shall or shall not be removed from SMAS, based upon a determination that the program was significantly modified, and as a result, the apportionment no longer accurately reflects actual costs incurred. Upon adoption of a finding that a program should be removed from SMAS, the Commission directs the State Controller to remove the program.[8]

There are currently seven programs in SMAS, including the program for providing attorney representation for developmentally disabled persons. There are currently 36 counties that receive reimbursement through SMAS, 17 of

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[6] Government Code section 176 15.8; Title 2, California Code of Regulations, section 1184.10
[7] Government Code section 176 15.8; Title 2, California Code of Regulations, section 1184.10
[8] Title 2, California Code of Regulations, section 1184.11

which receive reimbursement under SMAS for the Developmentally Disabled - Attorney Services Program.

Developmentally Disabled - Attorney Services Program

Under existing law, the Director of the California Department of Developmental Services may be appointed as a guardian or conservator over developmentally disabled persons. In addition, existing law allows a court to commit mentally retarded persons who are a danger to themselves or others to a state hospital. Statutes of 1975, Chapter 694 provides developmentally disabled persons and mentally retarded persons with the right to court-appointed legal counsel prior to entering guardianship or being committed to a state hospital. Chapter 694 requires those persons for whom counsel is appointed to pay the cost of the legal services if he or she is able to do so.

Reauest for Removal from SMAS

The Requester (Tulare County) requested that the Commission remove the Developmentally Disabled - Attorney Services Program from SMAS. The requester contends that since this program was included in SMAS, two state hospitals have closed, causing patients to be relocated to the Porterville State Hospital in Tulare County. Therefore, costs for attorney services has increased, and the reimbursement Tulare County receives under SMAS is inadequate.

Issue 1

DID THE LEGISLATU RE MODIFY THE DEVELOPMENTALLY DISABLED - ATTORNEY SERVICES PROGRAM IN A MANNER THAT SIGNIFICANTLY AFFECTED THE COST OF THE PROGRAM?

Prior to 1969, the state housed its committed developmentally disabled and mentally retarded persons in state institutions. In 1969, the Lanterman Mental Retardation Services Act was enacted to move from the state institution system to a community-based system. This shift resulted in a substantial decline in state hospital population as those persons were transferred to local regional facilities.

In addition, the state was under threat of litigation because it had not taken sufficient action to reduce the number of persons residing in state hospitals and to move those persons to community facilities. This prompted the state to develop plans to close the Stockton State Hospital and the Camarillo State Hospital. As a result, the Legislature enacted legislation to close the Stockton facility in 1995, and the Camarillo facility in 1996.[9] Those patients who were judicially committed to the closed facilities were transferred to the Porterville Developmental Center in Tulare County.

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[9] Statutes of 1995, Chapter 303, and Statutes of 1996, Chapter 162. These statutes provided revenues for closure costs.

Prior to closure of the Stockton and Camarillo facilities, Tulare County's costs for the Developmentally Disabled - Attorney Services program were stable. For fiscal year (FY) 1995-96, Tulare County's Public Defender represented 67 patients from the Porterville facility, and in FY 1996-97 the caseload grew to 90. After patients from the closed facilities were transferred, the caseload grew to 158 in FY 1997-98. Therefore, the Requester asserted that it faced a 135 percent increase in caseload during a two-year period.

Due to the increased caseload, the amount of reimbursement it receives for this program is inadequate under SMAS. The Requester stated that for FY 1996-97, it received $1,890 in reimbursement, while its actual costs were $8,441.

Based on this information, the Commission found that the Legislature's closure of the two state hospitals, and the subsequent transfer of patients to the Tulare County facility, significantly affected the costs of Tulare County's Developmentally Disabled - Attorney Services program.

Issue 2

DOES REMOVAL OF THE DEVELOPMENTALLY DISABLED - ATTORNEY SERVICES PROGRAM FROM SMAS NEGATIVELY IMPACT THE OTHER PARTICIPATING COUNTIES?

When a program is removed from SMAS, the program is removed for all participating local governments and school districts. Therefore, all counties that receive reimbursement for the Developmentally Disabled - Attorney Services through SMAS will be required to revert to filing annual reimbursement claims for this program if it is removed from SMAS.

There are currently 17 counties that receive reimbursement for this program under SMAS. San Joaquin County does not receive reimbursement for this program through SMAS. Therefore, this request will not negatively impact San Joaquin County. Tulare County, Ventura County, and 15 other counties do receive reimbursement through SMAS. However, while the costs for Tulare County may have increased, there should have been a corresponding reduction in costs in Ventura and San Joaquin Counties where the two state facilities were closed. The Commission notified these participating counties of the Request for Removal from SMAS, but none of these counties responded.

The Commission found that although removing this program from SMAS may result in less revenue for some of the participating counties, those counties may no longer be entitled to the revenues.

Conclusion

The Commission found that the Developmentally Disabled - Attorney Services program has been modified by the Legislature in a manner that significantly affects the cost of the program, and as a result, reimbursement for the program no longer accurately reflects the actual costs of the program. Therefore, the Commission approved Tulare County's Request to Remove the Developmentally Disabled - Attorney Services Program from SMAS.