

OCEAN

Age is the Most Important Element

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AGE IS THE MOST IMPORTANT ELEMENT

Since 1994, statistical research has consistently shown that offender age is the most important element over all other factors when considering a convicted sex offender's likelihood to reoffend. In fact, changes to the Static 99R in relation to "aging out"¹ led to an influx of releases for civilly committed men in Wisconsin. Dr. Beth McCulloch Ph.D., a court expert in Wisconsin, publicly stated:

What I can say is that if you look at the data in Wisconsin, there was a spike in 2009, 2010 of total discharges and that was related to changes in the actuarial assessments, in particular the development of Static-99R, which identified lower risks to re-offend; therefore, there were a number of people that were committed that no longer met the criteria. They successfully petitioned the court after they were evaluated and were then subsequently discharged.

While Wisconsin's civil commitment spiked in discharges in 2009-2010, Minnesota's did not, despite research showing that Minnesota and Wisconsin are generally the same in population. Also, there was not an influx of sex offenses in the community immediately after the individuals were released in Wisconsin.

Karl R. Hanson, the founder of the Static-99 and 99R risk assessment instruments, candidly acknowledges that the factor of increasing age, by itself, outweighs the impact of all known factors that suggest a likelihood to recidivate. This well-known and undeniable scientifically studied phenomenon of "aging-out" is best understood as the year-by-year reduction of sex-crime recidivism from age 30 on, such that recidivism approaches zero percent by age 70.

Recidivism Decline from Age 40 On

Ages	Recidivism
40-44	12.0%
45-49	10.9%
50-59	7.9%
60-69	3.2%
70+	0.0%

Consistent with Dr. Richard Wollert's meta-analysis² of Karl R. Hanson's data,³ average sexual recidivism rates among released sex offenders declined abruptly past

¹ year-by-year reduction of sex-crime recidivism from age 30 on, such that recidivism approaches zero percent by age 70.

² "Low Base Rates Limit Expert Certainty When Current Actuarials Are Used To Identify Sexually Violent Predators: An Application of Bayes's Theorem" *12 Psychological Pub. Policy & L.* 56, 61 (2006). Dr. Richard Wollert did a well-known and consistent scientific study of a phenomenon of 'aging-out'

³ "The Validity of Static-99 with Older Sexual Offenders", Karl R. Hanson, (2005) (*Public Safety and Emergency Preparedness Canada*): (p. 5): "The average recidivism rates steadily declined from 14.8% in the offenders less than 40, to 8.8% for the offenders in their forties, 7.5% for offenders in their fifties, and 2.0% for offenders greater than 60." (p. 10)

age 40. (See Table 1, Wollert's Findings of Reduced Sex-Crime Recidivism Past Age 40). Wollert, in a follow-up article,⁴ concluded that "evaluators should report recidivism estimates from age-stratified tables or equivalent tables when they are assessing sexual recidivism risk, particularly when evaluating the aging sex offender".

Age is the number one predictor for accuracy of risk comparable to all other Static factors. Professional literature guides professional standards in judgment as applied to science when dangerousness to the public is considered, as:

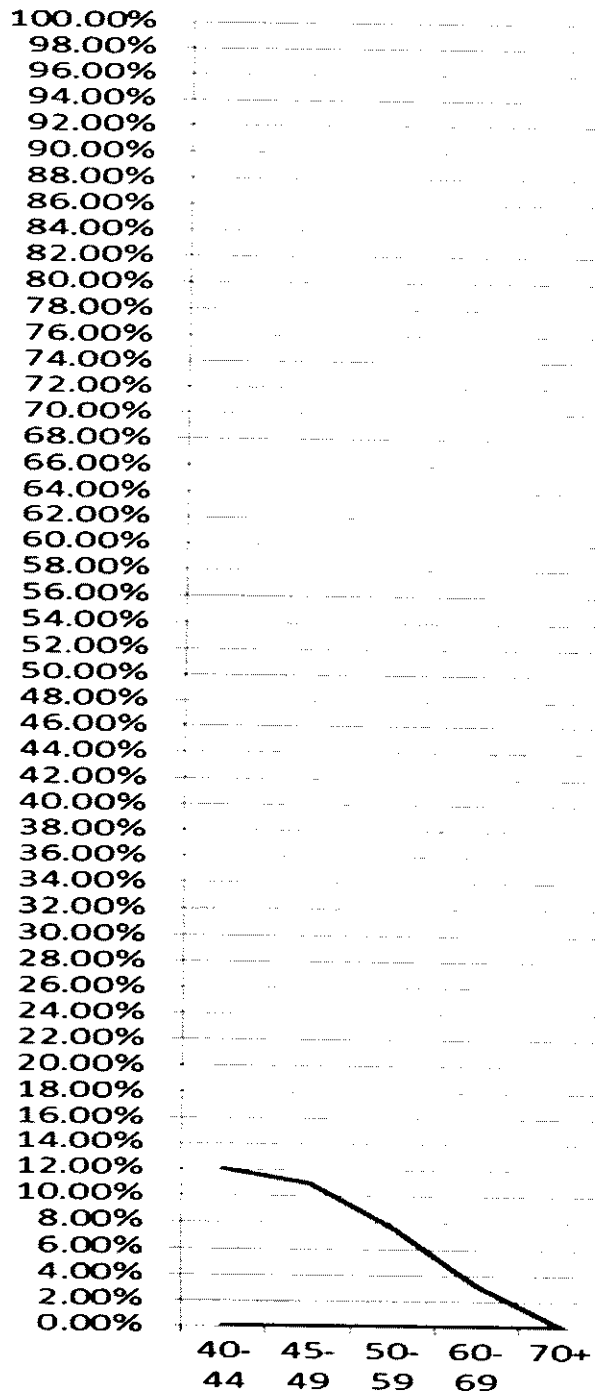
For years it was standard practice for experts to interpret rates as probabilities (or more precisely, proportions were treated as probabilities, and percentages were treated as likelihoods). A reconvicted offender percentage of 52% tips above 50%. Treating the percentage as likelihood, this means that offenders in the high risk category for the Static-99 would have a 52% likelihood of becoming reconvicted offenders. This likelihood would be treated as sufficient for "more likely than not" and thus high enough to reach the "likely" threshold.ⁱ

Current science shows that a risk of a 12.0% recidivism rate is not considered "high". The current reality faced by forensic examiners is uncertainty – a common theme with actuarial studies, under a science that has been misunderstood. The misconception is a result of convictions committed at an earlier age by those who share the same treatment intervention "needs" and "risks" of an older population – rendering those needs and risks inapplicable. The literature on age regression has reasonable degrees of scientific certainty to be relied upon in 2021. Yet the Commissioner review boards in Minnesota are provided with opinions from risk assessments that will stray from these standards of practice and literature.

Also see, "Recidivism and Age: Follow-Up Data From 4,673 Sexual Offenders", *17 J. Interpersonal Violence* 1046, 1059 (2002)

⁴ *22 Sexual Abuse: J. of Research & Treatment* 471, 484 (2010)

**Table 1:
Wollert's Findings of Reduced
Sex-Crime Recidivism Past Age 40**



Stats on Low Recidivism Rates for older Convicted Sex Offenders

- ✓ *P. Lussier & J. Healey*, "Rediscovering Quetelet, Again: The 'Aging' Offender and the Prediction of Reoffending in a Sample of Adult Sex Offenders," 26 *Justice Quarterly*, No. 4, p. 827, at 827 (2009), **flatly declare, "by itself, age at release showed a predictive accuracy comparable to that of the [entirety of all factors of the Static-99]."** In their independent study, these authors found that, past age 40, "after adjusting for the scores on Static-99, for every one-year increase in age, recidivism rates dropped ...4% for violent/sexual reoffending." *Id.*, p. 849, finding zero percent (0%) recidivism at age 60 and older (Table 3, p. 840).

Other Stats on Low Recidivism Rates for Convicted Sex Offenders in General

- ✓ Grant Duwe, 700-plus people who have been committed, we can conclude that in its twenty-year history the Minnesota courts have likely committed over 462 human beings who, had they been released, would not have been arrested for a new sex crime. In exchange, the program has likely reduced the overall rate of recidivism in Minnesota by only 0.4%. While every reduction in sexual violence is desirable, a reduction in sexual recidivism of 0.4% can hardly support the conclusion that only a narrow group of the "most dangerous" is being civilly committed. *Journal of Criminal Justice* (2013); <http://dx.doi.org/10.1016/j.jcrimjus.2013.06.009>
- ✓ Grant Duwe found 161 persons who were referred for civil commitment but not ultimately committed, just 6.5% were reconvicted of a new sex crime within four years of release. Duwe wrote, "What is worth emphasizing, however, is that although referred (but not committed) offenders were more likely to reoffend sexually than the non-referred offenders, their overall rate of reoffending (6.5%) was still low." Grant Duwe, *To What Extent Does Civil Commitment Reduce Sexual Recidivism? Estimating the Selective Incapacitation Effects in Minnesota*, 42 J. CRIM. JUST. 193, 194,197 (2014).
- ✓ Sex Offenders are actually less likely to recidivate than other types of criminals. *Constitutional Law and the Role of Scientific Evidence: The transformation of Doe v. Snyder*, 58 *Boston Collage Law Rev. E-Supplement* 34 (2017) at 39.

Dr. Daniel Montaldi, Ph.D., at 41 Wm. Mitchell L. Rev. 780, 801, A Study Of The Efficacy Of The Sexually Violent Predator Act In Florida—William Mitchel Law Review 2015. Westlaw Publishing.