



## Additional Guidance for Scoring the Non-Sexual Violence and Prior Sentencing Dates Items of Static-99R

The 2016 update to the scoring rules refined how the Prior Sex Offences item is scored using the concept of “detection”. Great emphasis was placed on whether a new offence was committed after a prior offence was detected. In the context of that item the date of detection was understood as the date at which someone was arrested for a sex offence. The concept of “detection” was also used, without further explanation, in the Non-Sexual-Violence and Sentencing Occasions items. Neither the Scoring Guide’s 2016 version nor the slightly different 2017 Public Safety version make clear whether detection is meant to refer to arrest for all items or just for the Prior Sex Offences item. Without guidance to the contrary, it would be reasonable to suppose that detection has the same meaning throughout the Scoring Guide. However, in the Non-Sexual-Violence and Sentencing Occasions items more emphasis is put on the dates of conviction and the dates of sentencing, so one might also suppose that what detection refers to might vary across items depending on what is more generally emphasized in that item’s scoring instruction.

This uncertainty regarding what detection refers to can lead to different scoring decisions in some circumstances. These circumstances are relatively rare, but they have now occurred sufficiently often that it has become important to provide additional guidance in resolve the matter. What follows is guidance for the Non-Sexual Violence and Prior Sentencing Dates items. Although it is largely consistent with the 2016/2017 Scoring Guides, when there is a potential disagreement, this new guidance is intended to take precedence.

## Updated Guidance for the Non-Sexual Violence (NSV) Items

In Static-99R, NSV convictions are classified as either prior, index, or post-index. In order to score the two NSV items it is necessary to first distinguish Post Index NSV convictions as these are not scoreable. The remaining NSV convictions are then classified as Index NSV convictions or Prior NSV convictions.

- Post Index NSV convictions are convictions that arose from criminal behavior that occurred after the date of the last criminal justice intervention for the index cluster. NSV convictions are, therefore, scoreable if the NSV behaviour occurred prior to date of the last criminal justice intervention for the index cluster.
- Scoreable NSV convictions are counted as Prior NSV if the offender committed either any new sexual offence (resulting in at minimum an arrest), or any further scoreable NSV offence (resulting in conviction, excluding post-index NSV offences), after being convicted for the NSV offence in question.
- Any scoreable NSV convictions that are not counted as Prior should be counted as Index NSV convictions.

The last criminal justice intervention is a direction of the courts, police, correctional authority, or other quasi-judicial body that is intended to sanction an individual for criminal behaviour (arrest, conviction, sentence). It is not the sanction itself (fine, probation, prison). Normally, it is the latest sentencing date, but arrests, charges, and convictions also count as criminal justice interventions and, in some instances, the last criminal justice intervention could be one of these events. For the purpose of scoring this item, being in prison, on conditional release, or on community supervision are not considered to be the last criminal justice intervention; instead, consider the date that these sanctions were determined.

Note that this means that NSV behavior that occurred after the person was first arrested in relation to the Index Sex Offense but prior to Index Sex Offense sentencing would count as Index NSV even if the conviction for the Index NSV occurred after the last sentencing date for the index sexual offence. These late NSV convictions could result in a new at-risk date (for scoring age) and could change the score for Index NSV.

## Updated Guidance for the Prior Sentencing Dates Item

In Static-99R, only Prior Sentencing Dates are scoreable. This means that Prior Sentencing Dates must be distinguished from the Index Sentencing Date and from Post-Index Sentencing Dates.

Sentencing Dates can involve clusters of offences and convictions. Consequently, to count the number of Prior Sentencing Dates, it is necessary to define the conditions under which Sentencing Dates are distinct.

- Sentencing Dates are the dates of convictions that eventually result in sentencing.
- Post Index Sentencing Dates are convictions that arose from criminal behavior that occurred after the date of the last criminal justice intervention for the index cluster.
- After disregarding all Post Index Sentencing Dates, Sentencing Dates can be identified as Prior if, after being convicted (and eventually sentenced) for the earlier criminal offence, the person commits and is sanctioned for a subsequent offence.
  - If the subsequent offence behaviour is a sexual offence, sanctioned is defined as being arrested, charged, or convicted of that sexual offence.
  - If the subsequent offence behaviour is not sexual, sanctioned is defined as being convicted (and eventually sentenced).
- For two prior sentencing dates to be considered separate, the second offence must have been committed after they were convicted for their first offence.

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If several offences cluster into a sentencing occasion, but they have different dates of conviction, the earliest conviction date in the cluster is the date used in applying the above guidance to separate index from prior sentencing dates, and to separate prior sentencing dates.

When scoring prior sentencing occasions, the person must be convicted of the offence prior to reoffending for it to be counted as a separate, prior sentencing occasion. For example, consider



someone who commits an assault in May and is arrested for that offence in May, and commits a theft in June and is arrested for that offence in June. The person is convicted on July 11 for Assault and receives a custodial sentence. He is subsequently convicted for the Theft on July 24, and is ordered to pay a fine. These offences would cluster into a single sentencing occasion. Even though there were two sentencing occasions, there was no new offending after being convicted on July 11.

For prior sexual offences, in contrast, it is possible to count a prior sexual offence as a conviction if the person was arrested prior to committing their index sexual offence but were not convicted of this sexual offence until after the last intervention for the index sexual offence cluster. This could result in a revision, after release from their index sexual offence, of both the release date (age/time free) and their score for prior sexual offences.

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11