

**MANAGING HIGH RISK OFFENDERS: AN EVALUATION OF PREVENTATIVE
DETENTION LEGISLATION IN CANADA**

by

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Abstract

The purpose of the present research was to evaluate preventative detention legislation in Canada by a) comparing designated offenders to non-designated offenders in terms of risk and comparing both designated groups in terms of treatment amenability, b) examining the risk assessment reports that informed the judges' decisions by comparing prosecution-retained versus court-appointed expert assessments, and c) evaluating the reasons for sentencing to assess the variables most important to the final designation outcome. The sample sizes for the three studies were as follows: Study 1 = 58 dangerous offenders (DOs), 129 long-term offenders (LTOs), and 562 flagged offenders; Study 2 = 43 prosecution-retained expert assessments, 68 court-appointed expert assessments; Study 3 = 31 DO decisions and 55 LTO decisions.

From Study 1 it can be concluded that the preventative detention legislation appears to be correctly applied in that a) DOs and LTOs were a higher risk group compared with flagged offenders, b) DOs and LTOs were similarly rated as high risk on validated risk measures, and c) DOs and LTOs differed on indices of treatability and risk management. Results from Study 2 demonstrated that across all comparisons, risk assessment reports between prosecution-retained versus court-appointed experts were more similar than they were different. Results also demonstrated that court-appointed experts were more likely than prosecution-retained experts to list risk factors and to discuss managing the offender's risk in the future. Results from Study 3 demonstrated that judges' decisions were consistent with expert assessments in terms of risk, treatment amenability, and risk management. Experts' ratings of treatment amenability and risk management were also significant predictors of the designation outcome indicating that judges rely on this information in making their final

decision. Finally, there was evidence of partisan allegiance with prosecution-retained Hare Psychopathy Checklist-Revised scores being significantly higher compared with defence-retained experts' scores. Implications of the results from all three studies are discussed in terms of the validity and appropriate application of preventative detention in Canada.

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Chapter 1: Managing High Risk Offenders: An Evaluation of Preventative Detention
Legislation in Canada

There has long been public fear and scrutiny surrounding the criminal justice system's (CJS¹) response to violent and sexual offenders. In answer to these fears, several countries including Australia, Germany, the United States (US), and Canada have enacted various forms of preventative detention legislation that prolong the incarceration of high risk offenders in the interest of public safety. Preventative detention can be accomplished through the civil commitment of offenders who have completed their sentences (e.g., sexually violent predator [SVP] statutes in the US) or by providing indeterminate periods of incarceration as an option at criminal sentencing (e.g., *Sicherungsverwahrung* in Germany). In Canada, preventative detention in the form of the dangerous offender (DO) designation allows for the indeterminate incarceration of some violent or sexual offenders partly based on the high likelihood of future offending (Part XXIV, *Criminal Code of Canada* [CCC]). In 1997, this legislation was amended in order to provide judges with the additional option of the long-term offender designation (LTO; Part XXIV, CCC). The intended purpose of both designations is to ensure that offenders who commit serious violent or sexual crimes *and* who pose an ongoing threat to society remain in custody or under longer periods of supervision in the community.

Preventative detention is not without criticism. Although it may succeed in protecting the public from potential harm, it has also been argued that the inconsistency in the application of preventative detention and the possibility that designated offenders may not differ markedly from non-designated offenders makes the legislation both arbitrary and unnecessary (Greenland, 1984; Koopman, 1985; Law Reform Commission of Canada, 1975).

¹ Please see Appendix A for a list of acronyms used throughout.

Although some studies have found evidence that DOs are high risk offenders (Bonta, Zinger, Harris, & Carriere, 1998), others have concluded that, despite this risk, sentences already existing in the *CCC* would adequately serve the sentencing principle of proportionality making indeterminate sentences unnecessary (Berzins, 1983; Koopman, 1985; Zanatta, 1996). Additionally, indeterminate sentences do not account for the fact that offender risk naturally declines with time (e.g., Hanson, Harris, Helmus, & Thornton, 2014; Harris & Rice, 2007; Howard, 2011).

Since the 1997 legislative changes, it also becomes necessary to examine the similarities and differences between DOs and LTOs. One study has reported that DOs are higher risk compared with LTOs (Trevethan, Crutcher, & Moore, 2002), however, further research is needed in order to assess other relevant factors such as treatment amenability. Although it is expected that both DOs and LTOs are high risk offenders, the legislation outlines that there should be a reasonable possibility of managing LTOs in the community. This requirement would indicate a difference between the designations in terms of treatment potential and risk management (i.e., DOs should be seen as unlikely to ever be managed in the community compared with LTOs). The purpose of Study 1 was therefore to compare DOs and LTOs on relevant risk variables and to explore the potential of treatability and risk management variables in distinguishing both groups. In order to ascertain differences in risk between designated offenders and other federal offenders who are not designated, a group of high risk offenders was also included as a comparison group.

In addition to ensuring that the legislation continues to target high risk offenders, it is also important to assess the validity of factors that lead to these decisions. Risk assessment has become a ubiquitous practice within the CJS, especially during preventative detention

hearings. For example, although there are differences in the criteria necessary for preventative detention in the US (e.g., presence of mental abnormality) and Canada (e.g., violent or sexual offence), both types of proceedings require that an assessment be completed by an expert (typically a psychiatrist or psychologist). The actual content of the behavioural or risk assessment can differ depending on the case, however, most risk assessment guidelines outline that the report should include an actuarial assessment of the risk for recidivism and a discussion of treatment amenability and risk management (Conroy & Murrie, 2007; Jackson & Guyton, 2008; Lanyon, 2001; Mills, Kroner, & Morgan, 2010).

Despite the creation of well validated risk assessment tools, recent research has demonstrated that the reliability of these tools in real world contexts (e.g., SVP evaluations) is far below that which is reported in research contexts leading researchers to question the source of this variability (e.g., Boccaccini, Murrie, Caperton, & Hawes, 2009; Boccaccini, Turner, & Murrie, 2008; Miller, Kimonis, Otto, Kline, & Wasserman, 2012; Murrie, Boccaccini, Caperton, & Rufino, 2012). One important research development in this field has been to compare and contrast the risk assessment reports provided by different types of experts (most notably prosecution versus defence experts). These comparisons have uncovered the possibility of partisan or adversarial allegiance which refers to the tendency of experts to assign scores in keeping with the expectation (real or perceived) of the party that retained them.

There is now considerable evidence demonstrating that partisan allegiance does in fact explain a substantial part of the variability in risk assessment scores (Boccaccini, Turner, Murrie, & Rufino, 2012; Lloyd, Clark, & Forth, 2010; Murrie, Boccaccini, Guarnera, & Rufino, 2013; Murrie, Boccaccini, Johnson, & Janke, 2008; Murrie et al., 2009; Rufino,

Boccaccini, Hawes, & Murrie, 2012). The partisan allegiance literature has highlighted the importance of comparing the source of risk assessment scores. The goal of Study 2 was therefore to compare and contrast the risk assessment reports of two types of experts, prosecution-retained and court-appointed (assumed to be neutral to the sentencing outcome), within the context of preventative detention hearings. Instead of focusing solely on the risk scale scores, this study extended the comparisons between experts to all elements of the report including (but not limited to) length, sources of information, and variables relating to treatment amenability and risk management.

A final consideration in the evaluation of preventative detention is how the decision maker interprets and utilizes the information provided by the expert assessment. Research has suggested that expert information is an important consideration in review board decisions (e.g., Hilton & Simmons, 2001; McKee, Harris, & Rice, 2007) and mock juror research has also emphasized the important effect of expert testimony on juror verdicts (e.g., Blais & Forth, 2013). Despite its importance, recent research has also demonstrated that providing jurors with relevant risk information had no effect on their perceptions of the defendant's risk (Boccaccini, Turner, Murrie, Henderson, & Chevalier, 2013). The purpose of Study 3 was therefore to examine the information that judges listed as important in making the final designation and to compare this information to that communicated by the expert assessments from Study 2. An additional consideration of Study 3 was to examine the factors most predictive of the final designation outcome. Given that preventative detention is the most serious sanction available to decision makers in Canada and that offenders may be subject to indeterminate detention, continuous evaluation of the validity of the legislation is necessary.

History of Dangerous Offender Legislation

Preventative detention legislation in Canada began with the *Habitual Offender Act* in 1947 and the *Criminal Sexual Psychopath Act* in 1948. Despite the intent to target high risk dangerous offenders, these early statutes were criticized for also capturing low risk nuisance offenders and were subsequently repealed (McRuer Report, 1958; Ouimet Report, 1969). The term “criminal sexual psychopath” was amended to “dangerous sexual offender” in 1960 and the statutes themselves became known as the dangerous sexual offender provisions of the CCC (Part XXI, CCC). The dangerous sexual offender provisions required and relied heavily on psychiatric testimony concerning the offender’s inability to control sexual impulses. Many aspects of the provisions were criticized: the designation targeted low risk sexual offenders as opposed to high risk offenders; the term “dangerous sexual offender” was not a clinical category that could be assessed by psychiatrists; psychiatrists could not reliably predict future behaviour; and the government failed to provide appropriate treatment programs for these offenders (Greenland, 1977, 1984; Ouimet Report, 1969; Price & Gold, 1976). In 1975, the Law Reform Commission of Canada recommended that the legislation be abolished completely.

Despite this recommendation, the dangerous sexual offender provisions were replaced by the current DO provisions (Part XXIV, CCC) allowing for the indeterminate detention of certain violent or sexual offenders (Webster, Dickens, & Addario, 1985). In order to evaluate the offender for a DO designation, both the prosecution and defence were to nominate a psychiatrist who would assess the offender and make recommendations to the court (this criteria essentially ignored the criticism of the overreliance on psychiatrists in these proceedings; Webster et al., 1985). If the offender was designated a DO, the judge

could choose an indeterminate sentence if the offender was perceived to be untreatable. By contrast, the judge could also choose to impose a determinate sentence if the offender was perceived as being amenable to change within a certain amount of time (*R. v. Carleton*, 1981; see Webster et al. [1985] for a complete review of the legislation).

In 1997, Bill C-55 (Part XXIV, *CCC*) sought to expand the scope of the provisions by creating the LTO designation (includes new long-term supervision orders which commence after the custodial sentence has ended and can be applied for up to 10 years). The goal of the LTO designation was to offer judges another sentencing option for offenders, who although continued to pose a risk to the public, were thought to be amenable to eventual control in the community (Valiquet, 2008). Bill C-55 also eliminated the possibility for determinate sentences for DOs and changed the initial parole review from three years to seven years with reviews every two years afterward. Other changes included extending the period for applications to six months after conviction and modifying some of the expert testimony requirements during the hearing itself (i.e., changed the requirement for the testimony of two psychiatrists to the requirement that there be an assessment performed by experts).

The actual criteria necessary for the designation of dangerous offenders remained unchanged despite criticisms from researchers attempting to evaluate the applicability of the designation (e.g., Jakimiec, Porporino, Addario, & Webster, 1986; Webster et al., 1985), and despite the difficulties that the judicial system was having in appropriately applying the criteria (for reviews see Coles & Grant, 1999; Rogers & Lynett, 1991). The most recent changes to the DO legislation were enacted in 2008 under Bill C-2 (Part XXIV of the *CCC*). Bill C-2 specifically identified any offender with a serious personal injury offence and at least two prior convictions for a “designated offence” (i.e., violent or sexual offence

excluding categories such as murder, treason, and manslaughter) as meeting the criteria for a DO application. In terms of sentencing, Bill C-2 more closely reflects the earlier DO legislation in that judges can now choose between an indeterminate sentence and a determinate sentence for DO offenders if the evidence presented at trial is sufficient to warrant a lesser sentence while still accomplishing the goal of public safety. Under this new legislation, DOs who breach a supervision order after serving a determinate sentence can be given an indeterminate sentence without going through the process of another DO hearing (s. 753.01[1]). For a complete review of Part XXIV of the *CCC*, see Appendix B.

Applying the Legislation²

There are certain criteria that must be met before a DO designation will be made. First, the offender must be convicted of a “serious personal injury offence” as defined by section 752 of the Criminal Code. This section includes two types of offences:

- (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
 - (i) the use or attempted use of violence against another person, or
 - (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,and for which the offender may be sentenced to imprisonment for ten years or more, or
- (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Once an offender is convicted of a violent offence specified in the above sections, the prosecuting attorney can make a recommendation to the Attorney General to commence an application for a dangerous offender assessment (MacAulay, 2001). Once the assessment is complete, a hearing is held in order to determine whether the offender reaches the other criteria set out in the criminal code.

² See Appendix B for a complete description of Part XXIV of the *CCC*.

Preventative detention legislation is meant to target high risk and dangerous offenders who, without indeterminate sentences, would likely commit further violent or sexual offences. In order to reach this standard of risk, prosecutors must prove beyond a reasonable doubt (*R v. Jackson*, 1981) that the offender reaches at least one of the following criteria for dangerousness as outlined in section 753 of the *Criminal Code*:

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or

(b) that the offence for which the offender has been convicted is a serious personal injury described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

In case law, a “pattern of repetitive behaviour” (s. 753[a][i]) has been defined as two incidents of violence, one of which can be the index offence itself (*R. v. Langevin*, 1984). In order to satisfy the criteria of a pattern, there should also be similarities between the types of past incidents. In order to meet the criteria in this section, an assessment of the offender's future risk must be undertaken (this will be explored in more detail later). The next section

(s. 753[a][ii]) speaks to the offenders “degree of indifference” and has generally been interpreted to mean a lack of remorse on the part of the offender (*R. v. Collier*, 1985) or a sense of enjoyment derived from the offence (*R. v. Macfarlane*, 1980). Although there is little consensus in case law as to the definition of “brutal nature” (s.753[a][iii]), it has generally been interpreted to mean “coarse, savage, and cruel” acts of violence (*R. v. Langevin*, 1984). It is interesting to note that if the index offence is “of such a brutal nature” no previous incidents of violence are required in order to satisfy the criteria for a DO designation. Research has found, however, that the “brutality” standard is rarely used as the sole criteria leading to a DO designation (Bonta, Zinger et al., 1998)³.

Since 1997, judges also have the option of imposing a LTO designation. There are essentially two ways that offenders can be declared LTOs: failure of the DO application and a stand-alone application. If a DO application is not successful, the judge can choose the LTO designation instead or impose a regular determinate sentence. Prosecutors can also choose to initiate a LTO application if the offender does not meet the criteria for a DO designation. In order to be designated a LTO, the following criteria of section 753.1 (1) of *CCC* must be met:

- a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
- (b) there is a substantial risk that the offender will reoffend; and
- (c) there is a reasonable possibility of eventual control of the risk in the community.

The process for determining the “substantial risk” posed by the offender is the same as that outlined for DOs in section 753. In addition, the *Supreme Court of Canada* has ruled that even though the criteria for a DO designation is met, the judge must first consider whether a LTO designation would sufficiently protect the public (*R v. Johnson*, 2003). The

³ For a more thorough review of the criteria please see Eaves, Douglas, Webster, Ogloff, and Hart (2000) and Rogers and Lynett (1991).

Johnson case discusses the fundamental principles of proportionality and restraint (sections 718 and 718.2 of the *CCC*) as being important sentencing considerations in DO and LTO proceedings. Based on these principles, judges should consider the possibility that a lesser sentence coupled with a long-term supervision order may be adequate to protect the public and manage the offender in the community. In gauging what is considered an acceptable level of risk, *R. v. Wormell* (2005) states that the test is whether there is a reasonable possibility of eventual control in the community. The Wormell case also states that the prosecution does not have to prove beyond a reasonable doubt or even on a balance of probabilities that there is no possibility of eventual control; rather, the court must simply be satisfied that there is the possibility of eventual control in the community.

As of April 2013, there were 538 active dangerous offenders designated under the past or current preventative detention legislation in Canada, 512 of which were incarcerated. Of the dangerous offenders not incarcerated, 24 were being supervised in the community, one had been deported and the other had escaped (Public Safety Canada, 2013). As of April 2013 there were 722 offenders under a long-term supervision order, 337 of which were currently supervised in the community. The majority of the long-term supervision orders imposed were for 10 years (Public Safety Canada, 2013).

Criticisms of the current legislation. Preventative detention legislation assumes that a) there exists a subsample of high risk offenders who are unable to inhibit their violent or sexually criminal behaviour, b) prolonged incarceration (or supervision in the case of LTOs) is therefore necessary to ensure public safety, and c) the CJS can accurately (and consistently) identify this group of offenders. The second premise underlying preventative detention has been criticized given that the *CCC* already has lengthy sentences in place for

dealing with violent or sexual offenders (Greenland, 1984; Koopman, 1985; Law Reform Commission of Canada, 1975; Webster et al., 1985; Zanatta, 1996). In an early review, Webster and colleagues (1985) estimated that half of the DOs at the time were eligible for a life sentence based on their offences and the rest of the sample would have qualified for a term of incarceration of 10 years. Of course this criticism ignores the first premise of preventative detention, that there exists a group of high risk offenders whose risk to the public cannot be controlled under existing sentencing options. Namely, if preventative detention legislation fails to identify the highest risk offenders for which the designation should be reserved then it loses its validity as a necessary sanction for the protection of the public.

Related to the issue of correct identification, the third premise of preventative detention has been criticized in that the selective and arbitrary application of the legislation may violate offenders' rights under the *Canadian Charter of Rights and Freedoms* (e.g., *Lyons v. The Queen*, 1987). Bonta, Harris, Zinger, and Carriere (1996) interviewed 21 prosecutors experienced with DO applications in order to determine what factors are considered in bringing forth an application. There was little consensus among the respondents, however, the most common factors that prosecutors listed included a sexual index offence, child victim, presence of a diagnosis of Antisocial Personality Disorder (APD), and severity of criminal record, all of which they said would indicate a threat to public safety. Given that there are no universal criteria necessary in deciding to enact a preventative detention application, more research on this decision-making process is needed. The courts have so far rejected constitutional challenges to preventative detention and upheld the discretionary power of prosecuting attorneys. In order to ensure the validity of

preventative detention, research should demonstrate that designated offenders are in fact higher risk compared with other federal offenders and that DOs are less likely to be successfully managed in the community compared with LTOs. It is therefore important to review the current research on designated offenders.

Research on DOs and LTOs

Whereas early research on DOs focused on providing preliminary descriptive information (Berzins, 1983; Koopman, 1985; Mackay, 1983), later studies focused on comparing DOs to other known high risk offenders (e.g., Bonta, Zinger et al., 1998; Zanatta, 1996). Comparison groups have included offenders with serious personal injury offences (SPIO) who were not designated (Zanatta, 1996), detention failures (i.e., inmates held in custody until warrant expiry and who subsequently reoffended violently; Bonta, Zinger, et al., 1998), and sex offenders matched on demographic variables (Zanatta, 2005). Overall, these studies have demonstrated that DOs are more likely to have index sex offences (Bonta, Zinger et al., 1998; Zanatta, 1996) and a history of convictions for sex offences (Bonta, Zinger et al., 1998; Zanatta, 1996, 2005) compared with other groups of non-designated offenders. In terms of risk profiles determined by valid and reliable risk assessment measures, DOs have tended to score similarly to the comparison groups overall (Bonta, Zinger et al., 1998; Zanatta, 1996). Zanatta (2005) did report, however, that DOs scored significantly higher than the group of matched sex offenders on psychopathy and sex offender risk assessments. This study utilized a larger sample size ($N = 164$) than previous studies and ensured that an equal number of each type of sex offender (e.g., child molester, rapist, etc.) was present in both designated and non-designated offenders, improving the comparability of both groups.

In order to assess the actual recidivism risk posed by a sample DOs, Nicholaichuk, Olver, Gu, and Takahashi (2013) created a group of “pseudo-DOs” by matching a group of 100 non-designated sex offenders taken from an earlier study (Gu, Wong, & Nicholaichuk, 2004) to a group of 100 DOs on age (current age for DOs and age at release for pseudo-DOs) and actuarial risk (scores on the Brief Actuarial Risk Scale; Olver, Nicholaichuk, Gu, & Wong, 2013). This type of matching is necessary in assessing recidivism risk given that DOs are rarely released into the community. After an average follow-up of 10 years, sexual recidivism rates for pseudo-DOs matched the average rate of recidivism for non-designated sex offenders (approximately 10%) indicating that the risk posed by these offenders was no different than the risk posed by the average sex offender. Overall, the results of Nicholaichuk et al. (2013) call into question whether DOs are actually a distinctive subsample of high risk offenders and whether existing sentencing options would have been more appropriate as opposed to indeterminate sentences.

There has been one study that compared DOs and LTOs (Trevethan et al., 2002). The sample represented all DOs designated between January 1, 1994 and June 30, 2001 ($n = 179$) and all LTOs designated up to June 30, 2001 ($n = 95$). When looking at offender profiles, DOs were less educated (Cohen's $d = .30$) and more likely to be unemployed at arrest ($d = .42$). When examining current and past offences, the majority of the offenders in both groups had an index sex offence as well as a history of past sex offences. DOs were more likely, however, to have used a weapon ($d = .73$), threatened a victim ($d = .64$), and have caused major ($d = .93$) and minor injuries ($d = .67$; Trevethan et al., 2002). In addition, based on Correctional Service of Canada (CSC) offender intake assessments, DOs were rated as being higher risk to reoffend ($d = 1.15$) and higher on overall treatment need ($d = .49$) compared

with LTOs. More specifically, DOs were rated more negatively on indices of employment, associates/social interaction, substance abuse, community functioning, and attitudes. Only the personal/emotional need domain failed to reach statistical significance ($d = .27$). Results from this study indicated that DOs were a higher risk sample than LTOs. The authors noted, however, that even though DOs were rated higher on risk/needs factors LTOs were rated higher on these factors compared with the general federal offender population (Trevethan et al., 2002).

There are certain limitations associated with the Trevethan et al. (2002) study. First, all variables were obtained from the CSC offender management system and were therefore scored by intake officers after the sentencing hearing. There is therefore no way of eliminating the effect of coder bias (the intake officers would have been aware of the designation outcome). Second, a more appropriate comparison group of high risk non-designated offenders would have been beneficial instead of making comparisons between LTOs and general offenders. Third, the study failed to consider further treatment and risk management variables beyond the level of offender need. It is on these variables that DOs and LTOs should differ given the legislative criterion that LTOs be seen as potentially manageable in the community after serving a federal sentence.

Treatability and Risk Management

Whether or not an offender can change as a result of treatment intervention is an important consideration for deciding the appropriateness of preventative detention. Within the offender literature, there is strong support for the utility of correctional interventions that adhere to the principles of risk (i.e., matching treatment intensity with offender risk level), need (i.e., targeting criminogenic needs), and responsivity (i.e., taking into consideration

offender specific variables in the delivery of cognitive-behavioural treatment [RNR]; Andrews, Bonta, & Wormith, 2006; Gendreau, Smith, & French, 2006). Several meta-analyses have reported that adherence to RNR principles results in lowered rates of recidivism for general, violent, and sexual offenders (Dowden & Andrews, 1999, 2000, 2004; Hanson, Bourgon, Helmus, & Hodgson, 2009). This is not to say, however, that every individual offender will benefit from treatment; offender change is a complex phenomenon and the factors that lead to crime desistance are still unclear (Maruna, 2001; Serin & Lloyd, 2009). In terms of preventative detention decisions it is still therefore important to consider the treatability of each individual offender within the context of the larger treatment literature.

Rogers and Webster (1989) defined treatability as the presence of certain factors (e.g., environmental) that would lead to the highest treatment success. The term treatability has since been used interchangeably with terms such as treatment motivation and treatment responsiveness. Given the broad definition of treatability and the different terminology used, there has been much debate concerning the specific factors involved in treatment readiness. The treatment readiness responsiveness and gain model (TRRG; Serin & Kennedy, 1997), for example, states that factors related to readiness (e.g., problem recognition, treatment interest, treatment distress; Serin, Mailloux, & Kennedy, 2007) and motivation are related to treatment effectiveness and treatment gain (Serin & Kennedy, 1997). More recently, these readiness factors have been placed within the broader concept of offender change (Lloyd & Serin, 2009). More specifically, interpersonal factors indicative of treatment readiness are important when considering offender change that can lead to crime desistance (Lloyd & Serin, 2012).

Other models, such as the multifactor offender readiness model (MORM; Ward, Day, Howells, & Birgden, 2004), focus on assessing internal factors (e.g., beliefs about treatment) and external factors (e.g., setting in which treatment is delivered) in order to predict treatment outcomes. More specifically, three factors are seen as being important in assessing treatability according to the MORM: alliance (i.e., the therapeutic relationship), group process (i.e., beliefs about achieving goals as a group), and confidence (i.e., self-confidence in achieving desired goals; Casey, Day, Howells, & Ward, 2007). Casey et al. (2007) demonstrated that these three factors were related to treatment engagement. Despite these positive results, it is important to note the paucity of research examining whether increased engagement in and motivation for treatment are actually related to changes in recidivism.

There is currently limited research on whether treatment readiness, as measured by the TRRG model or the MORM, is actually related to positive outcomes beyond treatment completion. A meta-analysis assessing predictors of recidivism among sex offenders reported no significant relationship between low treatment motivation ($d = -.08$) and poor progress in treatment ($d = .14$) with sexual recidivism (Hanson & Morton-Bourgon, 2005). In a more recent review, intra-individual changes on indices of treatment success (e.g., greater insight into problems, confidence) were significantly and inversely related to violent recidivism (Serin, Lloyd, Helmus, Derkzen, & Luong, 2013). These results highlight the importance of considering actual changes across different time points as opposed to static assessments that occur only once.

Several studies suggest that addressing treatment motivation issues, as assessed by the Violence Risk Scale (VRS; Wong & Gordon, 1999) or the Violence Risk Scale: Sex Offender version (VRS:SO; Wong, Olver, Nicholaichuk, & Gordon, 2003), may result in

higher treatment retention which could then result in reduced recidivism (Lewis, Olver, & Wong, 2013; Olver, Lewis, & Wong, 2013; Olver & Wong, 2009). The VRS scales measure treatment motivation through the five stages of the transtheoretical model of change (TMC; Prochaska & DiClemente, 1982): pre-contemplation (offender is not aware of any problem that needs to be changed), contemplation (offender acknowledges problems but has not taken steps towards change), preparation (offender wants to change, has taken steps towards change, but the changes themselves are recent and unstable), action (offender is committed to change, has addressed problems in behaviour, attitude, and environment), and maintenance (offender engages in relapse prevention strategies to strengthen changes made in action stage).

The VRS scales use the TMC process as a risk reduction strategy when assessing treatment change and risk for future recidivism. For example, an offender who began at the pre-contemplation stage in terms of criminal attitudes prior to treatment and was assessed as being in the action stage after treatment would receive a lower score compared with an offender who remained at the pre-contemplation stage. It is important to note that the TMC was originally developed as a way to treat non-criminal populations (i.e., substance abusers) and therefore its use with offenders is not without criticism. Casey, Day, and Howells (2005) report that although the TMC may be beneficial in assessing offender motivation, there are key differences between offenders and non-offenders that may limit the utility of the TMC. For example, Casey et al. (2005) argue that offenders are more likely to be externally motivated (e.g., court-mandated treatment) as opposed to internally motivated to change in seeking treatment. Also, the TMC was meant to be used in assessing high frequency

behaviours (i.e., smoking) instead of relatively low frequency behaviours (e.g., sexual recidivism).

Despite these limitations, there is consistent evidence that addressing offender change using the TMC stages is related to recidivism. Olver and Wong (2009) applied the stages of change from the VRS:SO in a sample of 156 federal sex offenders scoring high on psychopathy. Results indicated that psychopathy was a significant predictor of treatment dropout; however, focusing on treatment motivation reduced treatment attrition in that the majority of psychopathic offenders completed the treatment program. Controlling for sexual offending risk, after a 10-year follow-up period psychopathic offenders who did not complete treatment were more likely to violently reoffend (but not sexually reoffend) compared with psychopathic offenders who completed treatment ($d = .98$). More recently, Olver, Lewis, and Wong (2013) demonstrated that changes on the dynamic factors of the VRS (partly determined by the TMC) were associated with changes in the recidivism risk of a sample of 152 high risk male offenders with psychopathic traits after a five-year follow-up period. Combining risk information with changes on dynamic risk variables over time has been found to be an important consideration in assessing the risk posed by offenders after treatment (Olver, Beggs Christofferson, Grace, & Wong, 2013).

Preventative detention legislation requires that a distinction be made between DOs and LTOs in terms of eventual manageability in the community. Unfortunately, there is no clear definition of manageability and no set guidelines within the legislation that would aid the judge in making this determination. Certain criteria that may be useful to judges include expert opinion on the treatability of the offender, consideration of past treatment success or failures, examination of dynamic risk factors, and performance on past conditional releases

(Eaves et al., 2000). In addition to these recommendations, variables reflective of the treatment literature, such as readiness and motivation, may also be useful in comparing DOs and LTOs. In order to obtain this information, judges rely on the assessment report completed by the expert.

Role of the Expert

Expert testimony has always played a pivotal role in dangerous offender hearings and some have argued that DO hearings are “virtually dependent on psychiatric testimony” (Rogers & Lynett, 1991, p. 79). Given that a forensic clinical assessment is a necessary element to preventative detention it is important to assess the quality and content of the assessments being provided to the court. This is especially true given evidence that clinical opinions play a significant role in the decision making process. Studies examining review board decisions for mentally disordered offenders have found that among the variables presented (e.g., actuarial risk scores, criminal history, etc.), the clinical opinion of the expert was the most predictive of the final decision (Hilton & Simmons, 2001; McKee et al., 2007). In studies of potential jurors, studies have also demonstrated that both student and community mock jurors are influenced by evidence presented by an expert (Krauss, McCabe, & Lieberman, 2012; Krauss & Sales, 2001; McCabe, Krauss, & Lieberman, 2010), although there appears to be a preference among jurors for clinical judgment as opposed to actuarial risk estimates (Krauss et al., 2012; McCabe et al., 2010). Similarly, labeling research has demonstrated that including a diagnosis of psychopathy presented by an expert is sufficient for mock jurors and judges to assign higher risk ratings (Boccaccini, Murrie, Clark, & Cornell, 2008; Chauhan, Reppucci, & Burnette, 2007; Jones & Cauffman, 2008), and, in some cases, higher guilt ratings in cases with ambiguous evidence (e.g., one person’s word

against the other; Blais & Forth, 2013). Clearly, the inclusion of expert opinions and the content of risk assessment reports can affect final decisions within the CJS.

The format and content of risk assessment reports can differ drastically. There are, however, guidelines for risk assessments that would be informative for DO hearings. There is support within the literature for risk assessments to be comprised of four separate but equally important components: a) an estimation of the level of risk posed by the individual; b) identification of the risk factors that contribute to the individual's level of risk; c) identification of appropriate risk management strategies necessary to minimize the individual's level of risk; and d) appropriate communication of this information to the decision maker (Conroy & Murrie, 2007; Heilbrun, Ogloff, & Picarello, 1999; Jackson & Guyton, 2008; Mills et al., 2010). In DO cases, decision makers must consider the possibility of eventual release into the community; therefore, an assessment of the offender's potential for change (e.g., dynamic risk factors) is necessary. Although DO legislation does not explicitly state the need for mental abnormality to be present, the majority of DO assessments include a section on psychopathy. Given that the majority of designated offenders are sex offenders (e.g., Bonta, Zinger et al., 1998) it is likely that an assessment of sexual deviance is also warranted. A full evaluation of the differences between experts would therefore necessitate an examination of all elements of the reports (i.e., risk assessment, treatment amenability, and mental abnormality).

Risk assessment. Given the need for assessments to include an analysis of the offender's risk, it is important to review the types of assessment tools and procedures available to experts. Several surveys on the use of forensic assessment instruments have found that, overall, in assessing violence, the scales most likely recommended or used are the

Psychopathy Checklist-Revised (PCL-R; Hare, 2003) and its derivatives (e.g., PCL: Screening Version; Hart, Cox, & Hare, 1995), the Violence Risk Appraisal Guide (VRAG; Harris, Rice, & Quinsey, 1993), and the Historical Clinical Risk Management-20 (HCR-20; Webster, Douglas, Eaves, & Hart, 1997; Archer, Buffington-Vollum, Stredny, & Handel, 2006; Lally, 2003; Viljoen, McLachlan, & Vincent, 2010). When assessing risk among sex offenders, the most frequently used scale is the Static-99 (Hanson & Thornton, 1999) followed by, in order of frequency of use, Sexual Violence Risk-20 (SVR-20; Boer, Hart, Kropp, & Webster, 1997), the Minnesota Sex Offender Screening Tool-Revised (MnSOST-R; Epperson et al., 2003), the Rapid Risk Assessment for Sexual Offence Recidivism (RRASOR; Hanson, 1997), and the Sex Offender Risk Appraisal Guide (SORAG; Quinsey, Harris, Rice, & Cormier, 1998; Archer et al., 2006).

In terms of risk assessment procedures, it is now generally accepted that actuarial prediction scales (e.g., VRAG) and structured professional judgment scales (SPJ; e.g., HCR-20) outperform unstructured clinical judgment in terms of predictive validity (Ægisdóttir et al., 2006; Hanson & Morton-Bourgon, 2009). In terms of method preference, a recent survey by Viljoen, McLachlan et al. (2010) indicated that 61% of clinicians expressed the belief that both SPJ and actuarial scales were useful in the evaluation of adult offenders (although clinicians were significantly more likely to prefer actuarial scales for the assessment of adults compared to the assessment of youth). This study also reported that younger clinicians (defined as those 47 years old and younger) were significantly more likely to use risk assessment tools compared with older clinicians (Viljoen, McLachlan et al., 2010). Based on these reviews, it would be expected that expert opinion on risk assessment include the use of well-validated measures and procedures.

Communication of risk information. Although the identification of appropriate risk factors and the use of appropriate risk assessment methods are important considerations when examining the role of the expert in SVP and DO cases, an equally important consideration is the way in which risk information is communicated. Several studies have demonstrated the preference among experts for categorical statements of risk (e.g., low, moderate, high; Heilbrun et al., 2004; Heilbrun, Philipson, Berman, & Warren, 1999; Viljoen, McLachlan et al., 2010). Despite this preference, research has also consistently demonstrated that clinicians may not fully understand the different ways in which risk information can be presented (e.g., probabilities versus categorical terms; Hilton, Carter, Harris, & Sharpe, 2008; Scurich & John, 2011; Slovic, Monahan, & MacGregor, 2000). In a recent study, Scurich and John (2011) demonstrated that the way in which risk information is framed can affect the final decision. Mock judges were more lenient in their decision making when the risk was framed as a probability of violence not occurring (76% chance) as opposed to a probability of violence occurring (24% chance). Similar misinterpretations of the same risk information have also been reported with potential jurors (Varela, Boccaccini, Cuervo, Murrie, & Clark, 2013).

In addition to how risk is communicated, very little research exists on the contents of risk assessment reports beyond the risk assessment portion. In a survey of practicing forensic clinicians, Viljoen, McLachlan et al. (2010) reported that the average length of risk assessment reports was approximately 12 to 13 pages and always or almost always contained descriptions of past violent offending, risk factors, rationales for risk judgments, and protective factors. Less likely to be reported were time-lines for violent reoffending, the possible seriousness of future offending, and the confidence in risk judgments. Clinicians

were also less likely to discuss relevant research in their risk assessment reports. Reports concerning adult offenders (compared with juvenile offenders) were less likely to discuss protective factors, treatment considerations, and judgments regarding risk level. Risk assessment reports specifically relating to SVP and DO proceedings however, would be expected to provide this information given the need for discussing treatment amenability and risk management. In addition to considering the actual contents of risk assessment reports, it is also important to assess potential biases and limitations associated with the experts completing the assessments. More specifically, recent research has highlighted the importance of considering the adversarial nature of the proceedings and the party that requested the assessment.

Partisan Allegiance

In recent years the field reliability of risk assessment scales has been questioned, especially in the context of SVP proceedings in the US (Boccaccini, Turner et al., 2008; Boccaccini et al., 2009; Miller et al., 2012; Murrie et al., 2012). Studies have consistently shown that the reliability estimates of scales commonly used in SVP assessments, such as the PCL-R, Static-99, and the MnSOST-R, are much lower in the field than what has been reported in research contexts. In addition, research has also demonstrated that scores provided by experts on opposing sides can differ drastically. This partisan allegiance effect has been explored in several studies (Boccaccini et al., 2012; Lloyd et al., 2010; Murrie et al., 2013; Murrie et al., 2008; Murrie et al., 2009; Rufino et al., 2012), however, this research is still relatively new. Partisan allegiance effects have been reported for the PCL-R, Static-99, and the MnSOST-R, although evidence suggests that the effect is smaller for Static-99 (Murrie et al., 2009). Despite discrepant scores, there is some evidence that both scores

(prosecution and defence) significantly predict negative outcomes (e.g., parole violations, misconducts; Boccaccini et al., 2012).

Given the presence of partisan allegiance it is important to question the source of this bias. Although it could be argued that attorneys simply select experts they believe will be sympathetic to their case, a recent experimental study also reported partisan allegiance effects using random assignment of experts to either the prosecution or defence (Murrie et al., 2013). These results suggest that attorney choice cannot fully explain partisan allegiance effects. Miller and colleagues (2011) recently evaluated the validity of several hypotheses in explaining partisan allegiance by focusing on evaluator personality: a) compassion hypothesis (effect of high agreeableness; results in lower psychopathy scores for the defendant), b) interpersonal dissonance hypothesis (effect of high conscientiousness; results in higher psychopathy scores for the defendant), c) normalization hypothesis (effect of high impulsivity and sensation-seeking; results in lower psychopathy scores for the defendant), and d) psychopathy resemblance hypothesis (effect of high psychopathic traits; raters' psychopathy scores would be congruent with their own assessed levels of psychopathy). Overall, there was support for the compassion hypothesis and partial support for the interpersonal dissonance hypothesis and the normalization hypothesis. Certainly, explaining the biasing effect of partisan allegiance will require further examination of the evaluators themselves (Miller, Rufino, Boccaccini, Jackson, & Murrie, 2011).

The partisan allegiance literature has emphasized the importance of comparing risk information across different types of experts. Although many of these studies compared prosecution-retained versus defence-retained experts, Boccaccini et al. (2012) also compared results between prosecution-retained and corrections-contracted experts (seemingly neutral in

comparison). In this case, prosecution PCL-R scores were more predictive of negative outcomes compared with scores from corrections-contracted experts. In a separate study examining the agreement between independent raters' PCL-R scores and those from opposing experts, reliability estimates were greater between independent raters and prosecution-retained experts compared with defence experts; however, the agreement between all three types of raters was relatively low (Rufino et al., 2012).

In the only study examining the Canadian context (i.e., DO/LTO proceedings), Lloyd et al. (2010) collected information from 136 court transcripts of judges' reasons for sentencing. In total, 58 of the assessments mentioned the PCL-R, and 24 cases reported total scores for more than one type of expert. Results indicated that prosecution-retained experts and court-appointed experts scored the defendant significantly higher than the defence experts. In these cases, scores between prosecution and court-appointed experts did not differ. In addition, experts' opinion on whether the defendant scored low or high on psychopathy was not predictive of the final designation.

The partisan allegiance literature has emphasized that raters' scores can be influenced by external bias (e.g., the party that requested the evaluation) and internal bias (e.g., personality traits of the evaluator; Miller et al., 2011). Although these effects have been found for several scales (e.g., MnSOST-R and Static-99), the effects have been most pronounced for the PCL-R. Assessment of psychopathy forms an important part of the decision making process in preventative detention (DeMatteo et al., 2013) and therefore requires a more in depth analysis as to the reasons for its inclusion.

Psychopathy

In SVP proceedings an assessment of psychopathy is almost always included (in fact, in some states, an assessment of psychopathy is mandatory; DeMatteo et al., 2013). The utility of assessing relevant personality constructs such as psychopathy is also evident within Canadian case law. Most notably, Justice Ewaschuk stated that “whether the offender currently suffers from a psychological disorder, e.g., psychopathy,... may be relevant to the likelihood of future dangerous conduct” (*R. v. Moore*, 1984). Furthermore, it would be useful for the court to know whether the offences were characteristic of the offender or if the offences were “‘out of character’, and attributable to controllable conditions” (Coles & Grant, 1999, p. 15). An assessment of the offender’s personality can also speak to the issue of patterns of behaviour and to treatment amenability given that personality constructs are often seen as being stable over time (Costa & McCrae, 1994; McCrae & Costa, 1990).

Psychopathy is a personality disorder characterized by interpersonal (e.g., manipulative), affective (e.g., lack of empathy), behavioural (e.g., impulsive), and antisocial features (e.g., early and persistent criminal behaviour). The measurement of psychopathy is usually accomplished through the use of clinical rating scales such as the PCL-R (Hare, 2003) and its derivations (i.e., PCL:YV; Forth, Kosson, & Hare, 2003 and PCL:SV; Hart et al., 1995). These scales require raters to integrate information from interviews, collateral sources, and files to make inferences about traits (Hare, 2003). Using factor analysis, two factors have been identified within the PCL-R (Hare, 1991, 2003; Harpur, Hakstian, & Hare, 1988). Factor 1 represents the interpersonal (e.g., manipulative) and affective (e.g., callousness) components of psychopathy while Factor 2 describes the antisocial lifestyle (e.g., early antisocial behaviour) and behavioural (e.g., need for stimulation) components of

psychopathy. More recently, these two factors have been further divided into four facets: Interpersonal, Affective, Lifestyle, and Antisocial (Hare, 2003). Subsequent research has found support for these four facets as a means of more thoroughly capturing the nature of psychopathy in a variety of forensic, clinical, and community populations (e.g., Babiak, Neumann, & Hare, 2010; Kosson et al., 2013; Neumann, Kosson, Forth, & Hare, 2006; Neumann, Kosson, & Salekin, 2007).

Additional research has been conducted in an attempt to identify possible alternate factor structures for psychopathy. Cooke and Michie (2001) have studied the validity of a three-factor model: Arrogant and Deceitful Interpersonal Style, Deficient Affective Experience, and Impulsive and Irresponsible Behavioural Style. Weaver and colleagues (2006) conducted an examination of the original two-factor model (Harpur et al., 1988) as well as the three-factor model proposed by Cooke and Michie (2001), and the four-facet model proposed by Hare (2003). Confirmatory factor analysis revealed that the three-factor model represented the best fit to the data, followed by the four-facet model and the original two-factor model (Weaver, Meyer, Van Nort, & Tristan, 2006).

Psychopathy is one of the most researched risk factors for violence (Guy, Douglas, & Hendry, 2010; Harris, Rice, & Cormier, 1991; Leistico, Salekin, DeCoster, & Rogers., 2008; Salekin, Rogers, & Sewell, 1996; Weiler & Widom, 1996). Several meta-analyses examining this relationship have been conducted using adult samples (Guy, Edens, Anthony, & Douglas, 2005; Kennealy, Skeem, Walters, & Camp, 2010; Salekin, Rogers, & Sewell, 1996), youth samples (Asscher et al., 2011; Edens, Campbell, & Weir, 2006, Olver, Stockdale, & Wormith, 2009), or a combination of both (Walters, 2003a, 2003b, 2006). Although the majority of the samples represented forensic populations (offender or

psychiatric samples), two of the meta-analyses also included high school students (Walters, 2003a, 2003b). The most common outcome measures included general and violent recidivism, delinquency, and institutional misconduct. Overall, previous meta-analyses have identified a moderate relationship between psychopathy and violence. More recent research has also found that psychopathy is significantly and moderately related to sexual recidivism (Hawes, Boccaccini, & Murrie, 2013).

It is important to note that considerable variability between effect sizes is often cited and several significant moderators have been identified. For example, the relationship between psychopathy and violence is smaller for samples with higher ethnic heterogeneity (Edens et al., 2006). Also, several meta-analyses have reported that the relationship between psychopathy and risk for violence is significantly larger for Factor 2 compared to Factor 1 (e.g., Kennealy et al., 2010; Walters 2003a, 2003b). In addition, Kennealy and colleagues (2010) reported no significant interaction between Factor 1 and Factor 2 indicating that, although Factor 1 features predicted violence significantly, future violence would be best predicted by looking at impulsivity and past criminal behaviours. These results emphasize the importance of considering factor scores when making conclusions concerning psychopathy and future violence.

In addition to considerations of risk, psychopathy is often used to justify opinions of negative treatment outcomes. The clinical literature addressing the treatment amenability of individuals with psychopathic traits has been pessimistic (e.g., Rice, Harris, & Cormier, 1992; Langton, Barbaree, Harkins, & Peacock, 2006; Seto & Barbaree, 1999). Despite the negative findings concerning psychopathy and treatment amenability, some reviewers have claimed that poor study methodology may be confounding the results. For example, D'Silva,

Duggan, and McCarthy's (2004) review demonstrated that the apparent inverse relationship between high psychopathy and treatment response has not been shown when methodological issues are taken into account. Doren and Yates (2007) also concluded that, based on available evidence, it is still unclear whether psychopaths can benefit from treatment. Wong, Audrey, and Gu (2007) acknowledge that psychopaths are more likely to be unmotivated, resistant to treatment, and more likely to drop out of treatment. However, as previously mentioned, positive treatment outcomes have been reported when offender motivation is taken into account (e.g., Olver & Wong, 2009).

The use of psychopathy within the CJS has increased substantially in recent years (e.g., DeMatteo et al., 2014). Reviews of individual cases have identified that errors can occur in both the application of psychopathy (e.g., scoring errors, applying the "psychopath label to youth; Petrila & Skeem, 2003; Viljoen, MacDougall, Gagnon, & Douglas, 2010) and the conclusions that are drawn from these assessments (e.g., psychopaths cannot/should not be treated, exaggerated relationship between psychopathy and violent/sexual recidivism; DeMatteo & Edens, 2006; Edens, 2001; Zinger & Forth, 1998). The labeling research has also consistently found that including psychopathy information can result in more punitive decision making among mock jurors from the community (e.g., Boccaccini, Murrie et al., 2008), mock jurors from a university setting (e.g., Chauhan et al., 2007), judges (e.g., Jones & Cauffman, 2008), and probation officers (e.g., Murrie, Cornell, & McCoy, 2005). Combined with the information already reviewed concerning the reliability of the PCL-R within actual court cases and the presence of partisan allegiance, it is increasingly important to assess the use of psychopathy within the CJS, especially during preventative detention hearings where the consequences to the offender are particularly serious.

Overview of Purpose

The purpose of the present research was therefore to evaluate preventative detention legislation in Canada by a) comparing designated offenders to non-designated offenders in terms of risk and comparing both designated groups in terms of treatment amenability (Study 1), b) examining the risk assessment reports that inform the judges' decisions by comparing prosecution-retained versus court-appointed expert assessments (Study 2), and c) evaluating the reasons for sentencing to assess the variables most important to the final designation outcome (Study 3). Both studies 2 and 3 included a separate section specifically evaluating the use of psychopathy information.

Chapter 2: Study 1 – Examining the Offenders

Purpose

Given the serious and life changing consequences associated with preventative detention, it is important that research continue to explore its validity. With the 1997 legislative changes, it is also important to examine the similarities and differences between DOs and LTOs to ensure that a clear distinction between the designations is made. Research on the risk of DOs when compared to other high risk offenders has found that they sometimes score similarly to high risk offenders (Bonta, Zinger et al., 1998; Zanatta, 1996) and sometimes score higher (Zanatta, 2005). Research has also suggested that DOs convicted of sexual index offences may not be any higher risk compared with average sex offenders after a prolonged follow-up period (Nicholaichuk et al., 2013). The only study to date comparing DOs and LTOs reported that DOs were significantly higher risk based on individual risk factors (e.g., education/employment) and on offender intake assessments (Trevethan et al., 2002). This study was limited by the lack of a non-designated comparison group and the exclusion of treatment related variables.

The purpose of this study was therefore to assess the validity of preventative detention in Canada while also addressing some of the limitations of past research. In terms of risk, DOs and LTOs were compared with a group of known high risk offenders (i.e., flagged offenders) in order to ensure that the legislation continues to target the appropriate offenders. Unlike past studies, the current study also compared DOs and LTOs on treatability factors and risk management variables. Additionally, although the risk and treatment variables were coded retrospectively, interrater reliability analyses were conducted in order

to minimize coder bias. Finally, the current study also included a prospective examination of the recidivism rates for both LTOs and the high risk comparison group.

Based on previous research, both designated groups were expected to be higher risk than the comparison group of flagged offenders. Consistent with the Trevethan et al. (2002) study, DOs were expected to score higher on validated risk measures compared with LTOs. Given the current distinction between DOs and LTOs provided within the legislation, LTOs were expected to score more favourably on factors related to treatability and risk management as compared to DOs. This was the first study assessing recidivism among LTOs being supervised in the community and therefore, no specific hypotheses were made.

Method

Participants

Participants were Canadian male offenders⁴ categorized into three separate groups: flagged offenders ($n = 562$), dangerous offenders (DOs; $n = 58$), and long-term offenders (LTOs; $n = 129$). Flagged offenders represented offenders identified as high risk by Canada's National Flagging System (NFS) between 2004 and 2008. The stated goals of the NFS are to: a) assist attorneys to more successfully prosecute high risk violent offenders, b) prevent high risk violent offenders from falling through jurisdictional gaps, and c) encourage prosecutors to use the DO and LTO provisions in the appropriate cases. An evaluation of the NFS conducted by Yessine and Bonta (2006) identified that the base rates for violent and sexual recidivism for flagged offenders were considerably higher than what was reported for a large sample of federal recidivists (Bonta, Rugge, & Dauvergne, 2003; e.g., flagged: 22.2% and 7.6%, respectively; Sample: 13% and 2%, respectively) indicating that they are in fact a high risk population. Data collection for the province of Ontario was restricted to a random

⁴ The sample only contained 13 female offenders which were not included.

sample of 300 flagged offenders given the large number of offenders flagged during the study period (1,803 offenders). The sample of DOs and LTOs represented those offenders designated under Part XXIV of the *CCC*, the majority of which were designated between 2006 and 2008.

Procedures

File information for the three offender groups was gathered from NFS coordinators in several provinces across Canada (see Table 1). At the time of data collection the NFS was not operational in the province of Quebec or the territories of the Yukon and Nunavut. Although the NFS was operational in Newfoundland and the Northwest Territories, no offenders were flagged or designated during the study timeframes. File information varied considerably, however, the majority of files contained offender summaries, court transcripts, psychological and risk assessment reports, and arrest information. Information pertaining to offender demographics, index offence, criminal history, and psychosocial functioning was coded from the obtained files with supplemental information obtained from the offender management system of CSC. Recidivism follow-up information was obtained from the Royal Canadian Mounted Police's (RCMP) Criminal Records Branch, a national database of convictions and sentences (information on charges not resulting in convictions is available, but inconsistently).

Table 1

Distribution of Files Obtained by Province

Province	Flagged (<i>n</i>)	LTO (<i>n</i>)	DO (<i>n</i>)
British Columbia	110	26	9
Alberta	12	20	7
Saskatchewan	101	20	11
Manitoba	47	4	0
Ontario	286	57	29
New Brunswick	5	2	2
Prince Edward Island	1	0	0
Total	562	129	58

Note. Thirteen female offenders (11 flagged offenders; 2 LTOs) were removed from all analyses. Thirty-four flagged offenders that had a previous LTO designation or were flagged due to a LTO designation were removed. LTO = long-term offender; DO = dangerous offender.

Files were coded by a team of four coders (see Appendix C for a copy of the coding manual). All coders underwent training for the scoring of the actuarial risk measures used in the study. After training, the coders were randomly paired to code 40 files (20 flagged; 5 DOs; 15 LTOs) for interrater reliability (each pair coded 20 files). The reliability of categorical variables was assessed using the kappa statistic and the reliability of ordinal or continuous variables was assessed using a two-way random effects model intraclass correlation coefficient (ICC; absolute agreement). When kappa could not be calculated, a percent agreement between raters was calculated. The majority of variables showed acceptable reliability with kappa statistics ranging from .66 to 1.00 (*Mdn* = .75), ICCs ranging from .65 to 1.00 (*Mdn* = .87), and percent agreement ranging from 72.5 to 100.0 (*Mdn* = 82.5). When variables did not meet reliability standards⁵, the coding rules for those

⁵ For Study 1, the following variables did not initially meet reliability standards: total charges at index for flagged offenders and the non-contact sentencing occasions item of the Static-2002R.

variables were clarified, and a consensus coding was achieved between one of the coders and the principal investigator.

Measures

Several risk assessment tools were utilized: the Level of Service/Case Management Inventory (LS/CMI; Andrews, Bonta, & Wormith, 2004), the Statistical Information on Recidivism – R1 scale (SIR-R1; Nafekh & Motiuk, 2002), and the Psychopathy Checklist-Revised (PCL-R; Hare, 1991, 2003). For offenders with sexual index offences, Static-2002R (Hanson & Thornton, 2003) was also coded. The LS/CMI and Static-2002R were coded retrospectively for the current study from the information provided by the provinces, while the SIR-R1 and PCL-R were obtained directly from the files or from the offender management system of CSC. Sample sizes are smaller for the SIR-R1 and the PCL-R given that these scales were not always available.

LS/CMI. The LS/CMI is an actuarial risk assessment tool that emphasizes factors important for case management and treatment. Section 1 of the LS/CMI is based on the Level of Service Inventory-Revised (LSI-R; Andrews & Bonta, 1995) and consists of 43 items representing what is referred to as the Central Eight risk/need factors: Criminal History, Education/Employment, Family/Marital, Leisure/Recreation, Companions, Alcohol/Drug Problems, Procriminal Attitude/Orientation, and Antisocial Personality Pattern. Offenders can be placed in one of five risk categories based on their total Section 1 score (Very Low, Low, Medium, High, Very High) each associated with probability estimates for recidivism. Research has demonstrated that Section 1 scores are predictive of general, violent, and sexual recidivism (Campbell, French, & Gendreau, 2009; Girard & Wormith, 2004; Hanson & Morton-Bourgon, 2009; Olver, Stockdale, & Wormith, 2013). Section 2 of the LS/CMI

contains items pertaining to the personal circumstances of the offender that may be relevant to managing the offender's risk (e.g., racist/sexist behaviour). For the current study, the following items were taken from Section 2: diagnosis of APD/psychopathy, other personality disorder, and presence of an Axis I mental disorder (excluding substance abuse disorder).

SIR-R1. The SIR-R1 is a 15-item actuarial risk assessment tool used by CSC in the assessment of non-Aboriginal male inmates (Nafekh & Motiuk, 2002). The scale is a slightly modified version of the General Statistical Index for Recidivism (GSIR; Nuffield, 1982). It consists of demographic and criminal history items that are summated to produce a total score ranging from -30 to 27 (higher scores are indicative of lower risk), which can then be classified into one of five risk categories (Very Low to Very High). Each risk category is associated with a probability estimate for recidivism. Meta-analytic reviews have demonstrated that the SIR-R1 is predictive of general, violent (Campbell et al. 2009; Yang, Wong, & Coid, 2010), and sexual recidivism (Hanson & Morton-Bourgon, 2009).

PCL-R. The PCL-R (Hare, 1991, 2003) is designed to assess the traits and behaviours associated with psychopathy. Psychopathy refers to a personality disorder with interpersonal, affective, and behavioural components. The scale consists of 20 items scored on a 3-point scale (0, 1, 2) resulting in a total score ranging from 0 to 40. Higher scores are indicative of more psychopathic features with a score of 30 or more meeting the criteria for a diagnosis of psychopathy. The PCL-R is usually scored using a semi-structured interview and file information, however, given enough file information it can also be scored without an interview (Hare, 2003). Research into the factor structure of the PCL-R has consistently found 2 overarching factors: Factor 1 (Interpersonal/Affective) and Factor 2 (Lifestyle/Antisocial). Although not originally created as a risk assessment scale, research

has consistently shown the PCL-R to be moderately predictive of general, violent, and sexual recidivism (Campbell et al., 2009; Hawes et al., 2013; Hemphill, Hare, & Wong, 1998; Yang et al., 2010).

Static-2002R. Static-2002R is a 14-item actuarial measure that assesses sexual recidivism risk of adult male sexual offenders. The items are identical to Static-2002 (Hanson & Thornton, 2003) with the exception of updated age weights (see Helmus, Thornton, Hanson, & Babchishin, 2012). Offenders can be placed in one of five risk categories (low to high) based on their total score (-2 to 9+). Research shows that Static-2002R is moderately predictive of violent and sexual recidivism (Babchishin, Hanson, & Helmus, 2012). For the current study, the age item of the Static-2002R was calculated based on the offender's age at release. For DOs (none of which had been released), age at index was used.

Treatability and Risk Management Variables

Beyond the variables included within the coding manual, DOs and LTOs were further compared on treatability and risk management related variables taken directly from the offender management system⁶. Variables were chosen if they represented offender change or impacted release decisions. These variables would have been scored by front-line staff. Institutional adjustment is determined from the Custody Rating Scale (CRS) and is scored based on past institutional incidents, escape history, a rating of street stability (considers employment and education, family stability, interpersonal relationships, and living arrangements), alcohol or drug abuse, and age at sentencing (CSC, 2012). The CRS is coded as part of the intake assessment for all federal offenders. Offender accountability is scored on

⁶ Only the primary researcher had approved access to the offender management system. These variables were taken directly from the system and were not subject to interrater reliability.

a three-point scale of high (offender accepts full responsibility, displays guilt and empathy, and has low levels of cognitive distortions), medium (offender has not fully accepted responsibility but recognizes problems, displays some guilt and empathy with evidence of cognitive distortions), and low (offender does not accept responsibility, high level of denial and cognitive distortions). Motivation for treatment is also determined on a three-point scale of high (offender is self-motivated and is addressing problems), medium (offender does not fully accept correctional plan but is attending treatment), and low (offender rejects change). Engagement with treatment (no, yes) is determined by combining ratings of motivation and accountability and by considering any identified barriers to treatment (i.e., responsivity factors such as learning style). An offender is considered engaged in treatment if they have achieved medium to high ratings of motivation and accountability.

Dynamic need (low, medium, high) identifies the level of criminogenic need that should be addressed during treatment and is based on ratings for the following domains: employment/education, marital/family, associates, substance abuse, community functioning, personal/emotional, and attitudes (only the total rating was used; CSC, 2012). In order to assess risk management the variable reintegration potential was also obtained from the offender management System. Reintegration potential (high, medium, low) is determined by considering scores from the CRS, SIR-R1, and a static factor rating (assessed as low, moderate, and high)⁷. If an offender is rated high on reintegration potential, very few formal interventions are required and, if interventions are necessary, it is recommended that they take place in the community. Medium ratings indicate that correctional programming is recommended with maintenance sessions in the community. Low reintegration potential

⁷ Given that the SIR-R1 is not scored for Aboriginal offenders, reintegration potential for Aboriginal offenders is determined from the CRS, static factors rating, and dynamic factors rating.

necessitates both institutional programming and maintenance sessions prior to release. In order to provide an indicator of treatability available *prior* to the designation a treatment amenability rating (not amenable, low, moderate, high) coded from the risk assessment reports from Study 2 provided to the court during the hearing was also included when available. These ratings were completed by psychologists or psychiatrists tasked to assess the offender as part of the preventative detention hearing.

It is important to note that the treatability and risk management variables were not coded for the flagged offender sample. Originally, this decision was made based on the fact that the research question for treatability was only relevant for DOs and LTOs. When assessing the feasibility of obtaining these scores for flagged offenders, access to the offender management system was no longer available⁸.

Recidivism

Recidivism was defined as the first charge or conviction (whichever occurred first) following release from the index offence sentence. Charges or convictions were considered in order to ensure an adequate base rate of recidivism necessary for the analyses. If the offender was a flagged offender, the index offence referred to the event that led to the flag (i.e., charge or conviction). If the offender was a LTO, the index offence referred to the offence that led to the court designation. DOs are rarely released from prison (Public Safety Canada, 2013), therefore recidivism was not measured for this group.

Four types of recidivism were included. Non-violent recidivism included all property offences (e.g., break and enter, theft), narcotic offences, liquor/traffic violations, and public order and probation/parole violations. Violent offences included offences against the person

⁸ The Corrections Research Unit of Public Safety Canada only has one computer with access to the offender management system. Technical issues occurred with the computer which could not be resolved in time to code these variables for flagged offenders. Future studies should look at these variables across all three groups.

(e.g., assault, robbery), crimes against property with violence (e.g., arson), and resist arrest. Violent recidivism excluded all sexual offences. Sexual recidivism included any offence which was sexual by name (e.g., sexual assault, indecent exposure) including offences against public morals that were sexual in nature (e.g., procuring/soliciting/prostitution). A dichotomous variable was also created representing whether the offender was convicted of any offence during the follow-up period.

Time at risk was calculated for all offenders (excluding DOs). For offenders flagged while in the community, time at risk began on the date of flagging. If the offender was incarcerated for the offence that led to the flag, time at risk began once the offender was released into the community. For LTOs, time at risk began upon release into the community from the designated offence. Any time spent recommitted for the index offence was subtracted from overall time at risk. When examining the specific types of recidivism, any time spent incarcerated for other recidivistic offences was subtracted from time at risk (e.g., if examining time to first non-violent conviction, any time spent incarcerated for violent and/or sexual offences was subtracted from time to first non-violent conviction).

Recidivism coding was completed by two coders (including the principal investigator; see Appendix C for the coding manual). A total of 75 cases (60 flagged offenders; 15 LTOs) were chosen for interrater reliability. All variables showed acceptable reliability with kappa statistics ranging from .61 to 1.00 (*Mdn* = .91), ICCs ranging from .65 to 1.00 (*Mdn* = .91), and percent agreement ranging from 72.0 to 100.0 (*Mdn* = 99.0).

Data Analysis

For categorical variables differences between the three groups were analyzed using Pearson's chi-square analyses. Significant findings were further explored by examining the

standardized residuals for each combination of the levels (with Bonferroni corrections for multiple comparisons). Standardized residuals are interpreted as z -scores and can be compared with the z -distribution. Given that offender type contains more than two levels, Cramer's V was chosen as the overall effect size measure for all categorical variables (values under .20 are small, between .20 and .30 moderate, and over .30 strong; Field, 2010). One assumption of Pearson's chi-square test is that the expected value of each cell must exceed 5. If this assumption was violated, the Fisher's exact test, which corrects for this violation, was used. In instances where the outcome was a continuous variable, analysis of variance was used with Scheffé's test as a follow-up to significant results. Eta squared (η^2) was chosen as the overall effect size indicator. Eta squared represents the total proportion of variability in the dependent variable that is explained by the independent variable. Although η^2 is limited in terms of generalizability beyond the current sample, it is the recommended effect size in studies with unequal sample sizes (Tabachnick & Fidell, 2007). If Levene's test for the homogeneity of variance was violated, the Welch's F test was used with *Dunnett's T3* as a follow up to significant results as it corrects for violations to the variance assumption.

Recidivism rates for all four outcomes (non-violent, violent, sexual, and any) were calculated with corresponding 95% confidence intervals for flagged offenders and LTOs who had been released from their index offence prior to the end of the study period. In addition, survival analyses using Cox regression (proportional-hazards model; Allison, 1984) were conducted in order to determine differences between flagged offenders and LTOs and across several covariates (e.g., age at index, criminal history, risk scores on the LS/CMI, PCL-R, etc.). Given low base rates for some of the outcomes (i.e., sexual recidivism), Cox regression analyses were based on any charge or conviction for any type of recidivism during the study

time frame. Cox regression is appropriate when there are varying follow-up times and when there are censored cases (i.e., non-recidivists). The Wald statistic was used to determine the significance of covariates. Cox regression also provides an $\text{Exp}(B)$ value which represents the hazard ratio for each individual covariate.

Results

Sample Demographics and Mental Health Variables

Table 2 presents the comparisons across all three groups on demographic and mental health variables. The only difference in terms of sample demographics was that flagged offenders were significantly younger ($M = 37.3$, $SD = 11.4$) compared with both LTOs ($M = 39.6$, $SD = 10.1$) and DOs ($M = 41.1$, $SD = 9.8$), $F(2, 745) = 4.60$, $p = .01$, $\eta^2 = .01$. There were only three statistically significant differences for mental health variables. First, flagged offenders were the least likely to be diagnosed with antisocial personality disorder (APD) or psychopathy⁹ (35.8%) followed by LTOs (69.0%), with DOs having the highest percent of this diagnosis (86.0%), $\chi^2(2, 678) = 84.45$, $p < .001$, Cramer's $V = .35$. Second, flagged offenders were not as likely (14.8%) as the designated groups (LTOs: 47.7%; DOs: 46.4%) to have another personality disorder (excluding APD/ psychopathy), $\chi^2(2, 678) = 78.60$, $p < .001$, Cramer's $V = .34$. Finally, restricting analyses to those offenders with a sexual index offence, flagged offenders were significantly less likely to be diagnosed with sexual deviance (e.g., pedophilia; 56.8%) compared with both DOs (83.8%) and LTOs (87.2%), $\chi^2(2, 300) = 28.17$, $p < .001$, Cramer's $V = .31$. Significant group differences were not found for race, education, marital status, unemployed at index, and presence of an Axis I mental disorder (excluding substance abuse disorders).

⁹ This item is taken from the LS/CMI which specifies a diagnosis of APD or psychopathy. Information on psychopathy only can be found by examining scores from the PCL-R. Information on APD only is not available.

Criminal History and Index Offence Variables

Table 3 presents the results for criminal history and index offence variables. The three groups were very similar in terms of criminal history variables with the exception of prior failure on parole or probation; flagged offenders were less likely to have failed on parole or probation (84.5%) compared with DOs (96.5%; no other comparisons were significant), $\chi^2(2, 742) = 7.95, p = .02$, Cramer's $V = .10$. In terms of index offence, flagged offenders were more likely to have a violent index (56.9%; excluding any sexual offence) and less likely to have a sexual index offence (32.9%) compared with LTOs (38.8% and 58.9%, respectively) and DOs (36.8% and 63.2%, respectively), $\chi^2(2, 694) = 47.76, p < .001$, Cramer's $V = .19$. They were also more likely to be sentenced for a non-violent (i.e., "other") offence (10.2%; e.g., theft, driving under the influence) at index compared with LTOs (2.3%) and DOs (0.0%). This latter finding is not surprising given that preventative detention legislation requires a SPIO to have been committed. For the LTOs who also had an "other" index offence, these offenders were designated due to impaired driving causing bodily harm or death which was coded as "liquor or traffic" offences for this study. Finally, flagged offenders received significantly shorter sentences ($M = 5.8$ years, $SD = 6.3$) compared with LTOs ($M = 7.8$ years, $SD = 6.0$), $F(1, 512) = 9.50, p = .002, \eta^2 = .02$. All DOs received indeterminate sentences and were therefore not included in this analysis.

Table 2

Sample Demographics Including Mental Health Information for All Three Offender Groups

Variable	Flagged		LTO		DO		<i>p</i>	η^2 / [Cramer's <i>V</i>]
	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %		
Age at index	562	37.3 (11.4) _a	128	39.6 (10.1) _{ab}	58	41.1 (9.8) _b	.01	.01
Race	562		129		58		.69	[.03]
White (vs. other) ^a		51.8		48.1		48.3		
Less than grade 10	476	36.3	125	40.0	54	33.3	.65	[.04]
Marital status ^b	528		126		57		.24	[.06]
Single (vs. married)		87.5		89.7		94.7		
Unemployed at index	472	66.1	124	63.7	55	74.5	.36	[.06]
Axis I mental disorder ^c	506	18.0	129	25.6	57	26.3	.07	[.09]
Antisocial personality disorder/ psychopathy	495	35.8 _a	126	69.0 _b	57	86.0 _c	<.001	[.35]
Other personality disorder	494	14.8 _a	128	47.7 _b	56	46.4 _b	<.001	[.34]
Diagnosis of sexual deviance ^d	185	56.8 _a	78	87.2 _b	37	83.8 _b	<.001	[.31]

Note. Means or percentages sharing a common subscript are not statistically different at $\alpha = .05$. LTO = long-term offender; DO = dangerous offender.

^aAboriginal offenders made up 28% of the other category. ^bWhen defining marital status, being single included those who were divorced and those who never married. ^cAxis I excludes substance abuse disorder. ^dAnalyses restricted to offenders with a sexual index offence.

Table 3

Criminal History/ Index Offence Variables for All Three Offender Groups

Variable	Flagged		LTO		DO		<i>p</i>	η^2 / [Cramer's <i>V</i>]
	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %		
Arrested prior to 16	537	40.0	128	45.3	58	37.9	.50	[.04]
Early adjustment problems	515	57.9	126	69.0	57	64.9	.06	[.09]
Number of prior adult convictions	559	18.7 (19.2)	129	20.1 (18.6)	58	19.4 (13.1)	.73	.00
Previous escape	539	43.6	129	38.0	57	49.1	.32	[.06]
Prior failure on parole	556	84.5 _a	129	89.9 _{ab}	57	96.5 _b	.02	[.10]
Index offence								
Number of convictions	410	4.4 (5.0)	129	5.1 (8.9)	57	6.2 (13.7)	.16	.01
Type of MSO ^a	508		129		57		<.001	[.19]
Violent		56.9 _a		38.8 _b		36.8 _b		
Sexual		32.9 _a		58.9 _b		63.2 _b		
Other		10.2 _a		2.3 _b		0.0 _b		
Sentence (years) ^b	386	5.8 (6.3)	128	7.8 (6.0)	--	--	.002	[.02]

Note. Means or percentages sharing a common subscript are not statistically different at $\alpha = .05$. LTO = long-term offender; DO = dangerous offender; MSO = most serious offence.

^aExpected frequency for one cell was below 5. Fisher's exact test was interpreted. ^bSentence (years) was compared between LTOs and flagged offenders only given that all DOs in the current sample received indeterminate sentences.

Risk Assessment

Table 4 presents the comparisons on risk assessment scales. Overall, flagged offenders scored significantly lower on LS/CMI total scores ($M = 26.9$, $SD = 9.1$) compared with both designated groups (LTOs: $M = 30.5$, $SD = 7.7$; DOs: $M = 30.9$, $SD = 7.1$), $F(2, 552) = 10.56$, $p < .001$, $\eta^2 = .04$. In terms of dynamic risk variables (as determined by the LS/CMI subscales), flagged offenders scored significantly lower than both groups on the majority of the subscales. There were no differences between the groups in terms of Companions or Education/Employment problems. There were also no significant differences between the groups on total SIR-R1 scores. For PCL-R total scores, flagged offenders scored lower ($M = 21.7$, $SD = 7.5$) than DOs ($M = 25.6$, $SD = 7.7$) but not LTOs ($M = 22.2$, $SD = 7.8$), $F(2, 263) = 3.94$, $p = .02$, $\eta^2 = .03$. There was no significant difference in terms of classifying the offenders as a psychopath (based on a cut score of 30).

Analysis of Static-2002R total scores was restricted to offenders with an index sexual offence (a requirement for coding the scale). Both LTOs ($M = 7.4$, $SD = 2.4$) and DOs ($M = 7.7$, $SD = 1.8$) scored significantly higher on the Static-2002R compared with flagged offenders ($M = 5.5$, $SD = 2.7$), $F(2, 214) = 17.04$, $p < .001$, $\eta^2 = .14$. When compared with a large sample of Canadian sex offenders (see Hanson, Lloyd, Helmus, & Thornton, 2012), on average, flagged offenders scored in the 88th percentile, LTOs in the 93rd percentile, and DOs in the 96th percentile of Static-2002R scores. Despite the differences between the groups, the percentile rankings indicate that all three groups scored substantially higher than the average sex offender on the Static-2002R.

In order to further compare risk levels between the offender groups, the percent of each group falling within the different risk scale categories was calculated (see Table 5).

Significant differences were found for all three scales assessed. For the LS/CMI categories, the only difference between flagged offenders and the designated offenders occurred in the Low risk bin; flagged offenders were more likely to be low risk (6.4%) compared with both LTOs and DOs (0.0% for both groups), $\chi^2(8, 555) = 19.14, p = .01$, Cramer's $V = .13$. There were no significant differences in the percent of offenders appearing in the High and Very High risk categories of the LS/CMI. For the SIR-R1, DOs were less likely to be placed in the Medium category (5.1%) and more likely to be placed in the High category (38.5%) compared with flagged offenders (20.1% and 17.0%, respectively) and LTOs (20.3% and 12.7%, respectively), $\chi^2(8, 406) = 23.16, p = .003$, Cramer's $V = .17$. Again, however, there was no difference in the percent of offenders appearing in the Very High category.

Several differences were noted for the Static-2002R categories (analyses restricted to offenders with a sexual index offence). Overall, flagged offenders were more likely to be rated in the Low category (15.5%) compared with designated offenders (0.0% for both groups), however, they were similar to LTOs in terms of being placed in the Low/Moderate category (17.1% and 17.0%, respectively) compared with DOs (2.9%), $\chi^2(8, 217) = 31.91, p < .001$, Cramer's $V = .27$. DOs, on the other hand, were more likely to be placed in the Moderate/high category (45.7% compared with 22.5% for flagged offenders and 32.1% for LTOs), while LTOs were more likely to be placed in the High category (32.1%) compared with flagged offenders (14.0%) and DOs (25.7%).

Table 4

Scores on Risk Assessment Scales for All Three Offender Groups

Variable	Flagged		LTO		DO		<i>p</i>	η^2 / [Cramer's <i>V</i>]
	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %		
LS/CMI Section 1 total ^a	390	26.9 (9.1) _a	113	30.5 (7.7) _b	52	30.9 (7.1) _b	<.001	.04
Criminal History ^a	487	6.1 (1.9) _a	126	6.5 (1.4) _b	53	6.6 (1.1) _b	.01	.01
Procriminal Attitude ^a	450	3.0 (1.3) _a	125	3.3 (0.9) _b	56	3.6 (0.8) _b	.001	.02
Antisocial Personality Pattern ^a	419	3.2 (1.0) _a	113	3.5 (0.7) _b	54	3.5 (0.7) _b	.003	.02
Companions	397	3.4 (1.0)	110	3.2 (1.0)	51	3.3 (0.8)	.12	.01
Education/employ	335	5.8 (2.9)	95	6.4 (2.4)	44	6.4 (2.5)	.08	.01
Family/marital ^a	262	2.5 (1.2) _a	99	2.9 (1.0) _b	45	2.9 (0.9) _b	.004	.03
Leisure/recreation ^a	457	1.7 (0.6) _a	117	1.9 (0.3) _b	54	1.9 (0.4) _b	.001	.02
Substance Abuse	386	4.1 (2.9) _a	117	5.0 (3.0) _b	51	5.2 (2.8) _b	.001	.03
SIR-R1 total score	286	-0.7 (10.2)	79	-1.6 (8.4)	38	-2.3 (8.0)	.54	.00
PCL-R total score	132	21.7 (7.5) _a	92	22.2 (7.8) _{ab}	39	25.6 (7.7) _b	.02	.03
PCL-R cut-off	132		92		39		.31	[.09]
0 – 29		82.6		81.5		71.8		
30+		17.4		18.5		28.2		
Static-2002R total score ^{ab}	129	5.5 (2.7) _a	53	7.4 (2.4) _b	35	7.7 (1.8) _b	<.001	.14

Note. Means or percentages sharing a common subscript are not statistically different at $\alpha = .05$. LTO = long-term offender; DO = dangerous offender; LS/CMI = Level of Service/Case Management Inventory (Andrews et al., 2004); SIR-R1 = Statistical Information on Recidivism – R1 (Nafekh & Motiuk, 2002); PCL-R = Psychopathy Checklist-Revised (Hare, 2003).

^aLevene's test of homogeneity of variance was violated. Welch's *F* was interpreted with *Dunnett's T3* as a post hoc test. ^bAnalysis restricted to offenders with a sexual index offence.

Table 5

Classification within the Risk Scale Categories for All Three Offender Groups

Variable	Flagged		LTO		DO		<i>p</i>	Cramer's <i>V</i>
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%		
LS/CMI risk levels	390		113		52		.01	.13
Very Low (0-4)		0.5		0.0		0.0		
Low (5-10)		6.4 _a		0.0 _b		0.0 _b		
Medium (11-19)		14.1		8.8		7.7		
High (20-29)		33.3		34.5		28.8		
Very High (30-43)		45.6		56.6		63.5		
SIR-R1 categories	288		79		39		.003	.17
Very low (6 to 27)		26.0		21.5		12.8		
Low (1 to 5)		13.5		22.8		25.6		
Medium (-4 to 0)		20.1 _a		20.3 _a		5.1 _b		
High (-8 to -5)		17.0 _a		12.7 _a		38.5 _b		
Very high (-30 to -9)		23.3		22.8		17.9		
Static-2002R risk level ^a	129		54		35		<.001	.27
Low (-2 to 2)		15.5 _a		0.0 _b		0.0 _b		
Low/moderate (3, 4)		17.1 _a		17.0 _a		2.9 _b		
Moderate (5, 6)		31.0		18.9		25.7		
Moderate/high (7, 8)		22.5 _a		32.1 _{ab}		45.7 _b		
High (9+)		14.0 _a		32.1 _b		25.7 _{ab}		

Note. Percentages sharing a common subscript are not statistically different at $\alpha = .05$. LTO = long-term offender; DO = dangerous offender; LS/CMI = Level of Service/Case Management Inventory (Andrews et al., 2004); SIR-R1 = Statistical Information on Recidivism – R1 (Nafekh & Motiuk, 2002).

^aAnalysis restricted to offenders with a sexual index offence.

Treatability and Risk Management Variables

Table 6 presents comparisons between the two designated groups on a number of indicators of treatability and risk management. Consistent with the legislative requirements, LTOs were rated significantly higher on accountability, $\chi^2(2, 171) = 9.16, p = .01$, Cramer's $V = .23$, and motivation for treatment, $\chi^2(2, 183) = 6.72, p = .04$, Cramer's $V = .19$. They were also more likely to be rated positively in terms of treatment engagement, $\chi^2(1, 171) = 4.52, p = .04$, Cramer's $V = .16$, and reintegration potential, $\chi^2(2, 183) = 30.45, p < .001$, Cramer's $V = .41$. Consistent with the Trevethan et al. (2002) study, DOs were rated higher on level of dynamic needs, $\chi^2(2, 183) = 9.79, p = .01$, Cramer's $V = .23$. Whereas these variables were taken from the OMS and were therefore determined after the designation, the treatment amenability rating was coded from the expert assessments presented to the court during the preventative detention hearing. Based on this rating of treatment amenability, DOs were more likely to be rated as not amenable to treatment (36.0%) compared with LTOs (1.9%), $\chi^2(3, 77) = 21.63, p < .001$, Cramer's $V = .53$. What is still unknown is whether these variables, which are consistent with the treatment amenability and readiness literature, are actually related to positive outcomes such as reduced recidivism.

Table 6

Treatment Variables and Risk Management Variables for Dangerous and Long-Term Offenders

Variable	LTO		DO		<i>p</i>	η^2 / [Cramer's <i>V</i>]
	<i>n</i>	M (<i>SD</i>) / %	<i>n</i>	M (<i>SD</i>) / %		
Institutional adjustment ^a	121	62.2 (34.4)	56	69.3 (31.8)	.20	.01
Accountability	118		53		.01	[.23]
Low		18.6		34.0		
Medium		66.9		64.2		
High		14.4 _a		1.9 _b		
Takes responsibility	119	28.6	53	24.5	.71	[.04]
Motivation for treatment	126		57		.04	[.19]
Low		18.3		28.1		
Medium		60.3		64.9		
High		21.4 _a		7.0 _b		
Engaged with treatment	118	76.3	53	60.4	.04	[.16]
Level of dynamic need ^b	126		57		.01	[.23]
Low		4.0		0.0		
Medium		25.5 _a		8.8 _b		
High		70.6		91.2		
Reintegration potential ^b	126		57		<.001	[.41]
Low		50.8 _a		93.0 _b		
Medium		42.9 _a		7.0 _b		
High		6.3		0.0		
Treatment amenability ^b	52		25		<.001	[.53]
Not amenable		1.9 _a		36.0 _b		
Low		63.5		60.0		
Moderate		25.0		4.0		
High		9.6		0.0		

Note. Means or percentages sharing a common subscript are not statistically different at $\alpha = .05$. LTO = long-term offender; DO = dangerous offender.

^aHigher scores are indicative of positive adjustment. ^bExpected frequency for at least one cell was below 5. Fisher's exact test was interpreted.

Recidivism

A number of flagged offenders ($n = 482$) and LTOs ($n = 81$) were released into the community from the index offence that led to the flag or designation. The average follow-up time was 4.6 years ($SD = 2.1$; range: 1.2 months to 10.6 years). Table 7 presents the base rates for all four recidivism outcomes for any charge or conviction (whichever occurred first). Recidivism rates for flagged offenders were significantly higher than that of LTOs for all recidivism outcomes (as evidenced by non-overlapping confidence intervals) with the exception of sexual recidivism. Table 7 also presents the recidivism rates separately for sex offenders and non-sex offenders; the lower rates of recidivism in the LTO group are not attributable to the higher proportion of sex offenders, who generally have low recidivism rates. If analyses are restricted to any reconviction within a fixed 2-year follow-up, the rates can be compared with a sample of federal recidivists ($N = 18,235$; see Bonta et al., 2003). Flagged offenders were reconvicted at a significantly higher rate ($N = 453$; 50.1, 95% CI [45.5, 54.7]) than the sample of Canadian federal offenders (43.3, 95% CI [42.6, 44.0]) while LTOs were reconvicted at a significantly lower rate ($N = 57$; 17.5, 95% CI [7.6, 27.4]).

When examining the rates of any new charge or conviction during the follow-up period (see Figure 1), the recidivism rate for flagged offenders was almost three times the rate of any new charge or conviction for LTOs, controlling for age at index, mean number of prior adult convictions, and LS/CMI total scores, Wald = 14.99, $p < .001$, Exp[B] = 2.52, 95% CI [1.58, 4.02]. In terms of risk variables, results from the univariate Cox regression analyses (Table 8) demonstrated that for flagged offenders being younger at index offence, having a larger number of past adult convictions, the presence of APD/psychopathy, past failure on probation or parole, and higher total scores on the LS/CMI, PCL-R, and Static-

2002R and lower scores on the SIR-R1 (indicative of higher risk) were all significantly predictive of higher recidivism rates. For LTOs, although none of the individual predictors were significant, higher scores on the LS/CMI and PCL-R and lower scores on the SIR-R1 (indicative of higher risk) were all significantly predictive of any recidivism for LTOs. Static-2002R scores were not significant, however this is likely due to the small number of recidivists available for this analysis ($n = 4$).

An important consideration for the current study was whether the treatability and risk management variables would predict reoffending among the LTOs. Results indicated that none of these variables were significantly related to reoffending (see Table 9), although the comparison of low reintegration potential compared with medium reintegration potential approached significance; the recidivism rate for low reintegration potential was roughly half (45%) the recidivism rate of moderate reintegration potential, Wald = 3.68, $p = .055$, Exp[B] = 0.45, 95% CI [0.19, 1.02]. Survival graphs for the treatment variables are provided in Appendix D.

Table 7

Base Rates of Reconviction for all Four Recidivism Outcomes for Flagged Offenders and Long-Term Offenders

Class	N	% Recidivism			
		Non-violent (95% CI)	Violent (95% CI)	Sexual (95% CI)	Any (95% CI)
Flagged	482	54.6 (50.2, 59.0)	42.5 (38.1, 46.9)	6.2 (4.1, 8.4)	62.0 (57.7, 66.3)
Sexual index	175	42.9 (35.6, 50.2)	26.9 (20.3, 33.5)	11.4 (6.7, 16.1)	50.9 (43.5, 58.3)
Other index	306	61.4 (56.0, 66.9)	51.6 (46.0, 57.2)	3.3 (1.3, 5.3)	68.6 (63.4, 73.8)
LTO	81	28.4 (18.6, 38.2)	9.9 (3.4, 16.4)	4.9 (0.2, 9.6)	32.1 (21.9, 42.3)
Sexual index	54	27.8 (15.8, 39.8)	9.3 (1.6, 17.0)	7.4 (0.4, 14.4)	31.5 (19.1, 43.9)
Other index	27	29.6 (12.4, 46.8)	11.1 (0.0, 23.0)	0.0 (0.0, 37.7)	33.3 (15.5, 51.1)

Note. The offence that led to the flag could not be identified/ classified for one flagged offender. CI = confidence interval; LTO = long-term offender.

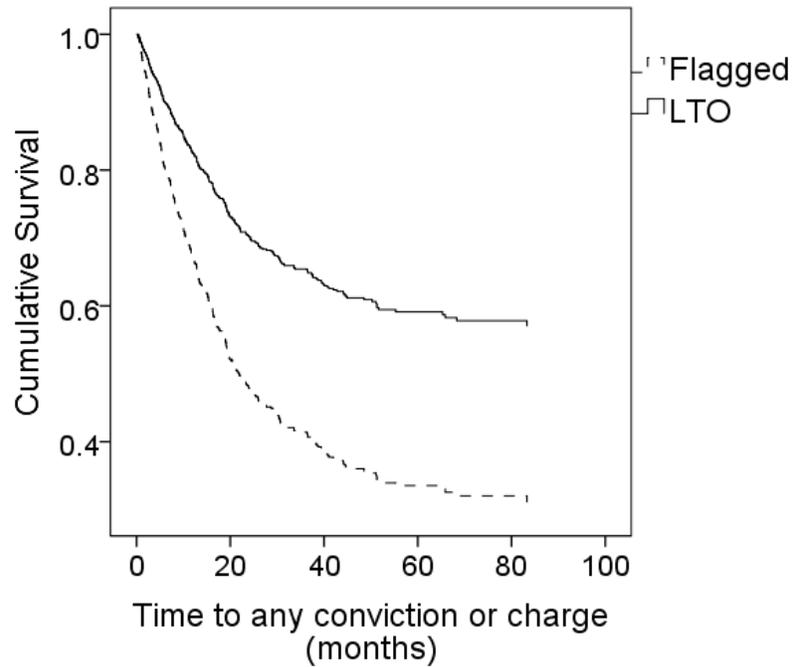


Figure 1. Survival times (in months) to any new charge or conviction for flagged offenders and long-term offenders (LTO) controlling for age at index, mean number of prior adult convictions, and total scores on the Level of Service/Case Management Inventory (Andrews et al., 2004).

Table 8

Cox Regression Results of Any New Charge or Conviction for Risk Variables Divided by Flagged Offenders (n = 482) and LTOs (n = 81)

Variable	B	SE	Wald	p	Exp(B)	95% CI	
						Lower	Higher
Flagged offenders							
Age at index	-0.027	0.01	26.48	< .001	0.97	0.96	0.98
Mean number of past adult convictions	0.018	0.00	53.92	< .001	1.02	1.01	1.02
APD/psychopathy	0.368	0.13	8.49	.004	1.44	1.13	1.85
Other personality disorder	0.215	0.18	1.39	.238	1.24	0.87	1.77
Prior failure on probation	1.48	0.26	33.15	< .001	4.41	2.66	7.30
LS/CMI total scores	0.065	0.01	52.08	< .001	1.07	1.05	1.09
SIR-R1	-0.065	0.01	39.36	< .001	0.94	0.92	0.96
PCL-R total scores	0.060	.018	10.91	.001	1.06	1.03	1.10
Static-2002R total	0.221	.041	28.52	< .001	1.25	1.15	1.35
LTOs							
Age at index	-0.029	0.02	2.20	.138	0.97	0.93	1.01
Mean number of past adult convictions	0.015	0.01	3.31	.069	1.02	1.00	1.03
APD/psychopathy	0.653	0.47	1.91	.167	1.92	0.76	4.86
Other personality disorder	-0.134	0.39	0.12	.733	0.88	0.40	1.89
Prior failure on probation	1.207	1.02	1.40	.237	3.34	0.45	24.75
LS/CMI total scores	0.072	0.03	5.49	.019	1.08	1.01	1.14
SIR-R1	-0.077	0.03	6.36	.012	0.93	0.87	0.98
PCL-R total scores	0.077	0.04	4.25	.039	1.08	1.00	1.16
Static-2002R total	0.098	0.09	1.11	.293	1.10	0.92	1.33

Note. All analyses are univariate. Lower scores on the SIR-R1 are indicative of higher risk. Analysis of Static-2002R restricted to offenders with a sexual index offence. CI = confidence interval; APD = antisocial personality disorder; LS/CMI = Level of Service/Case Management Inventory (Andrews et al., 2004); SIR-R1 = Statistical Information on Recidivism – R1 (Nafekh & Motiuk, 2002); PCL-R = Psychopathy Checklist-Revised (Hare, 2003); LTO = long-term offender.

Table 9

Cox Regression Results for Any New Charge or Conviction for Treatability and Risk Management Variables for Long-Term Offenders (n = 81)

Variable	B	SE	Wald	p	Exp(B)	95% CI	
						Lower	Higher
Institutional adjustment	0.010	.006	2.94	.086	1.01	0.99	1.02
Accountability							
Low vs. medium	-0.326	.489	0.45	.505	0.72	0.28	1.88
Low vs. high	-0.293	.607	0.23	.629	0.75	0.23	2.45
Takes responsibility	0.107	.446	0.06	.810	1.11	0.46	2.67
Motivation for treatment							
Low vs. medium	-0.394	.501	0.62	.432	0.67	0.25	1.80
Low vs. high	-0.059	.557	0.01	.916	0.94	0.32	2.81
Engaged with treatment	0.316	.446	0.50	.479	1.37	0.57	3.29
Level of dynamic need							
Low vs. medium	-0.314	.818	0.15	.701	0.73	0.15	3.63
Low vs. high	0.255	.750	0.12	.734	1.29	0.30	5.62
Reintegration potential							
Low vs. medium	-0.810	.422	3.68	.055	0.45	0.19	1.02
Low vs. high	-0.635	.762	0.69	.405	0.53	0.12	2.36
Treatment amenability							
Low vs. moderate	-0.720	.828	0.76	.385	0.49	0.10	2.47

Note. All analyses are univariate. For variables with multiple levels, low = 0. Only two levels of the treatment amenability variable could be analyzed due to missing cases. CI = confidence interval.

Discussion

The goal of Study 1 was to assess the validity of preventative detention legislation in Canada by examining whether a) designated offenders were in fact higher risk compared with other offenders and b) LTOs and DOs differed on indices of risk or treatability and risk management. Study 1 also provided the first opportunity to prospectively examine the recidivism rates of a small sample of LTOs currently being supervised in the community. Overall, the results indicated that DOs and LTOs were a higher risk group when compared to a sample of flagged offenders based on validated risk measures. LTOs and DOs also scored

similarly on the majority of individual risk factors and validated risk measures. In terms of treatability and risk management, consistent with the legislative requirements, LTOs were rated more positively compared with DOs. Finally, LTOs supervised in the community recidivated at a significantly lower rate compared to both flagged offenders and a sample of federal offenders. Although validated risk measures predicted recidivism in LTOs, none of the treatability or risk management variables were significant predictors.

The groups were first compared on a number of individual risk factors. For example, research has demonstrated that age (being younger; Gendreau, Little, & Goggin, 1996), unemployment (Andrews et al., 2006), and marital status (being single; Collins, 2010) are all related to increased recidivism. In terms of mental health variables, the presence of Axis I disorders (excluding substance abuse disorder) is associated with decreases in risk while the presence of personality disorders such as APD and psychopathy are associated with increased risk (e.g., Bonta, Law, & Hanson, 1998). Overall, the offenders scored similarly on many risk factors; however, DOs were rated higher in terms of prior failure on probation or parole compared with flagged offenders. Flagged offenders and LTOs scored similarly on the majority of individual risk variables. The only variable that significantly differed across all three groups was the presence of APD or psychopathy; flagged offenders were the least likely to receive either diagnosis followed by LTOs and DOs having the highest rate of these disorders.

These results are largely consistent with past research on designated offenders which have found few differences between DOs and comparison groups (e.g., Bonta, Zinger et al., 1998; Zanatta, 1996, 2005) and between DOs and LTOs (e.g., Trevethan et al., 2002) on individual risk factors. Also consistent with past research on preventative detention, both

designated groups were more likely sentenced for a sexual index offence compared with flagged offenders. It is important to note that there were a larger number of designated offenders with violent index offences in the current study (representing over one third of index offences) compared to past research which has found that the majority of designated offenders are sex offenders.

Although it is important to examine individual risk factors, predictive utility is greatly improved by combining risk indices into valid and reliable risk assessment measures. Results from these comparisons indicated that designated offenders were significantly higher risk on the LS/CMI total score as well as the majority of the subscales (with the exception of procriminal companions and education/employment) and, for sex offenders, on the Static-2002R. In terms of the PCL-R, DOs scored significantly higher compared with flagged offenders; however, flagged offenders and LTOs did not differ. Results were consistent with the Zanatta (2005) study which also identified DOs as higher risk on the PCL-R and Static-99 compared to a matched comparison group. Unlike Trevethan et al. (2002), there was no difference between DOs and LTOs in terms of their overall risk scores. A similar pattern of results was evident when examining risk categories, with designated offenders less likely to be placed within the lower risk categories compared with flagged offenders.

Overall, results have so far confirmed that designated offenders do in fact represent a higher risk group compared to other high risk offenders. In addition, DOs and LTOs did not differ on valid and reliable risk assessment measures. This finding is consistent with the preventative detention legislation which outlines the same risk criteria to be considered for both designations (i.e., a pattern of repetitive behaviour, failure to restrain behaviour in the future, etc.). The distinction between the designations lies in the potential management of

LTOs in the community. Given that there are no clear definitions of management provided in the legislation, this study aimed to compare DOs and LTOs on variables taken from the treatability or treatment amenability literature such as treatment motivation (e.g., Olver & Wong, 2009; Serin & Kennedy, 1997) and engagement (e.g., Casey et al., 2007). Results did indicate that LTOs were rated significantly more positive on accountability (i.e., accepts responsibility, displays guilt and empathy), motivation (i.e., self-motivated in addressing problems), and engagement (i.e., a combination of accountability and motivation with a focus on potential treatment barriers) as compared to DOs. In terms of future manageability, LTOs were also rated positively on reintegration potential.

Although these findings are consistent with the treatment literature, there is an inherent bias given that the variables were taken from the offender management system and were therefore scored by intake officers who would have been aware of the designation at the time of assessment. In order to reduce the potential for bias, a treatment amenability variable was also taken from the expert assessments provided to the court during the preventative detention hearing. Prior to the designation, offenders who were subsequently given a DO designation were more likely rated as not amenable to any treatment compared to offenders who were later given a LTO designation. Based on the results reviewed to this point, it appears that the legislation is applied correctly in that designated offenders are higher risk than other high risk offenders, and that LTOs are thought to have a higher likelihood of eventual success in the community.

Another way to assess the validity of the distinction between DOs and LTOs is to determine whether LTOs were in fact successful once released into the community. Such information was available for 81 of the LTOs in the current sample (63%). If the LTOs

reoffended with another SPIO, it could be argued that a DO designation may have been more appropriate. In total, 26 LTOs reoffended and 11 offenders reoffended with a SPIO (1 offender reoffended both violently and sexually, 3 offenders reoffended sexually, and 7 offenders reoffended violently). Although these offenders can be categorized as having failed in the community, it is also important to note that the base rates for all recidivism outcomes for LTOs (with the exception of sexual recidivism) were significantly lower compared with flagged offenders and a sample of federal offenders. In fact, these results closely resemble the findings of Nicholaichuk et al. (2013). In this study, federal offenders were matched on key variables in order to resemble DOs, thereby creating a group of pseudo DOs. After an average 10-year follow-up, recidivism rates of pseudo DOs were the same as the average base rate for sex offenders thereby raising the possibility that DOs would pose no additional risk to the public in comparison. The LTOs in the current study who were being supervised in the community represented a lower risk compared to other high risk offenders based on recidivism rates.¹⁰

Although it was possible to examine the validity of the risk and treatability variables in predicting any recidivism for LTOs, these analyses were limited in that the base rate for recidivism was relatively low resulting in low power. This is likely due to the small number of LTOs released into the community and the fact that LTOs are subject to supervision orders once released. Research has demonstrated that community supervision can have a small effect on general recidivism rates (e.g., Bonta, Rugge, Bourgon, & Yessine, 2008; Trotter, 1996). Despite this limitation, scores on several of the risk scales remained significant

¹⁰ LTOs who were released into the community were significantly lower risk (determined by LS/CMI total scores) compared with LTOs who were not yet released, however, LTOs who were released did not differ from flagged offenders who were released in terms of mean number of years served (approximately 5 years) and total LS/CMI scores.

predictors of any recidivism among LTOs. Even though LTOs were rated positively in terms of treatability and risk management, none of these variables were predictive of recidivism. Although there have been some indications that treatability factors such as motivation can be related to recidivism (e.g., Olver & Wong, 2009), other studies have found no relationship between treatment motivation, progress, and recidivism (e.g., Hanson & Morton-Bourgon, 2009). Future studies utilizing better indicators of treatability for LTOs (e.g., variables from the TRRG model) and a larger sample size are therefore needed in order to assess whether these variables are actually related to relevant outcomes.

Based on the results of the current study, certain conclusions can be drawn concerning the criticisms of preventative detention legislation. The main criticism stems from questioning the overall need for preventative detention given existing sentences in the CCC (e.g., Greenland, 1984, Koopman, 1985, Zanatta, 1996). Preventative detention would be necessary if there existed a higher risk group of offenders that could not be managed under current sentences. The results of the present study demonstrated that designated offenders were in fact higher risk compared to a pre-selected (i.e., flagged) group of high risk offenders, however it is still unclear whether existing sentences could have properly managed these offenders. Without proper follow-up information on DOs this criticism is not easily tested. Based on the results of Nicholaichuk et al. (2013) it appears that over time DOs may not present an increased risk compared to the general sex offender population. This is consistent with other research which questions the length of time needed for a high risk offender to no longer be high risk once released into the community (Hanson et al., 2014). Hanson et al. (2014) demonstrated that among a large sample of sex offenders ($N = 7,740$), high risk offenders had a 22% recidivism rate after 5 years in the community, however, this

rate decreased to under 5% after 10 years offence free in the community. These results challenge the idea that high risk offenders would remain at an elevated risk over time. Given that DOs are often serving indeterminate sentences and that they are not likely to be granted parole (Public Safety Canada, 2013), it is difficult to assess whether shorter sentences combined with community supervision would be equally effective for DOs.

There is also the criticism that preventive detention continues to be arbitrarily applied. Commenting on SVP hearings in the US, Janus (2013) stated that “the likelihood that a given individual will be caught up in the net of [preventative detention] depends substantially on arbitrary, extralegal factors of time and geography” (p. 330). It is quite possible that within the sample of flagged offenders, some would have met the criteria for preventative detention, but, for unknown reasons, an application was not pursued. This is supported by the fact that a number of flagged offenders were placed within the highest risk categories of the risk scales and resembled LTOs on some of the risk indicators. Prosecuting attorneys retain wide discretionary powers in deciding when an application will be made. To date, there is very little research into the factors that prompt these applications. Despite this lack of research, certain programs like Canada’s NFS aim to improve the identification of offenders who would be appropriate for preventative detention. An early evaluation indicated that flagged offenders were in fact more likely to be subject to a preventative detention application compared to other federal recidivists (Yessine & Bonta, 2006). Despite this finding, preventative detention will likely continue to be arbitrarily applied given prosecuting attorneys’ discretion in bringing forth applications. Future research should examine more closely the factors that are considered within the applications themselves given that preventative detention will certainly continue to be a part of the CJS.

Several limitations of Study 1 must be noted. The first limitation is that the majority of the information for the current study was collected from a retrospective review of offender files obtained from NFS coordinators and from the CSC offender management system. Unfortunately, there is no consensus on the information that should be contained within NFS files and the quality of this information was therefore variable across provinces. Despite this limitation, the majority of the files from the NFS contained enough information allowing for the coding of the study variables. Notably, the Static-2002R can easily be coded from file information and coding of the LS/CMI can be coded without an interview as long as there is detailed collateral information available.

A second limitation to Study 1 was the potential for coder bias. It was not possible to be blind to the designation outcome when coding any of the variables in the current study. In order to reduce the effect of coder bias, all raters were trained on the coding of the LS/CMI and Static-2002R and a number of training cases were completed where all variables were coded by at least two raters and consensus decisions were reached when discrepancies occurred. In addition, interrater reliability statistics were calculated for a number of cases. Relatedly, however, there was no way to protect against bias in the scoring of the treatability and risk management variables. Almost all of these variables (excluding the treatment amenability rating taken from expert assessments) would have been determined by intake officers at CSC aware of the court designation at the time. Future studies should also consider the inclusion of validated scales in determining treatability such as the VRS:SO (Wong et al., 2003) or the Treatment Responsivity Scale (TRS; Serin & Kennedy, 1997) in order to more fully assess differences between DOs and LTOs.

Third, although the present study was able to prospectively examine the recidivism rates of LTOs, these analyses were limited by the small sample size and base rate for recidivism. Given the number of LTOs currently being supervised in the community (337 as of April, 2013; Public Safety Canada, 2013), it is important that studies continue to examine relevant outcomes such as treatment completion and recidivism. In addition, given that there are currently only 18 DOs supervised in the community (Public Safety Canada, 2013), future studies should examine institutional outcomes for DOs such as treatability and violent infractions. This would provide some indications of the differences between DOs and LTOs on actual outcome variables.

Conclusion

From the results of Study 1, it can be concluded that the preventative detention legislation is being correctly applied in that a) designated offenders are a higher risk group compared to other high risk offenders, b) DOs and LTOs are similarly rated as high risk on validated risk measures, and c) DOs and LTOs differ on indices of treatability and risk management. In addition, although LTOs were rated as high risk prior to the designation, their recidivism rates were significantly lower once released into the community compared with flagged offenders and a sample of federal offenders. What is still unknown, however, are the factors that are actually taken into account during the preventative detention hearings. Study 2 examines the risk assessment reports provided by experts during the hearing while Study 3 examines the interpretation of risk and treatment information by the judges as well as exploring the factors that predict the final designation.

Chapter 3: Study 2¹¹ - Examining the Risk Assessment Reports

Purpose

Research has consistently shown that expert evidence affects decisions within the CJS (e.g., Hilton & Simmons, 2001; Krauss et al., 2012; McCabe et al., 2010; McKee et al., 2007). Given that preventative detention legislation in Canada requires that an assessment be completed by an expert, it is important to examine the content and quality of the information provided. Research has further found that the reliability of assessment tools within real-world contexts is discrepant to what is reported within a research setting (e.g., Boccaccini, Turner et al., 2008; Boccaccini et al., 2009; Miller et al., 2012), and that partisan allegiance explains part of this discrepancy (e.g., Boccaccini et al., 2012; Lloyd et al., 2010; Rufino et al., 2012). Finally, it is also apparent that a psychopathy assessment is often included within preventative detention hearings (e.g., DeMatteo et al., 2014; Lloyd et al., 2010). Combined with research questioning the appropriate use of psychopathy within the CJS generally (e.g., DeMatteo & Edens, 2006; Edens, 2001; Zinger & Forth, 1998), it is important to continually assess how psychopathy is being used within preventative detention hearings specifically.

The purpose of Study 2 was to examine the risk assessment reports provided within the context of preventative detention. Consistent with the partisan allegiance literature, Study 2 examined the similarities and differences between prosecution-retained and court-appointed experts. In order to add to this literature, Study 2 also examined the risk assessment report in its entirety as opposed to only focusing on risk assessment scores. Available evidence to date has either found that assessments from neutral experts are not as accurate in predicting outcomes as prosecution assessments (Boccaccini et al., 2012) or show no differences with scores provided by prosecution experts (Lloyd et al., 2010). Given the

¹¹ Please note that a version of Study 2 has been published (see Blais & Forth, in press).

need for SVP and DO assessments to address a number of issues (mental abnormality, risk for violent and sexual recidivism, treatment amenability), it is important that risk assessment reports between experts be compared on a broader number of variables.

Method

Sample

The present sample consisted of 120 risk assessment reports presented to the court within the context of a DO or LTO application. DO/LTO applications require at least one risk assessment report from a qualified professional (Part XXIV, CCC). The risk assessment reports were completed by 39 separate evaluators. When examining the origin of the requests, 43 assessments were requested by the prosecutor, 7 were requested by the defence, and 68 were requested from a court-appointed expert ($n = 118$; the origin of 2 assessments could not be determined). For the purposes of the present study, only the assessments completed by prosecution-retained ($n = 43$) and court-appointed experts ($n = 68$) were included leaving 111 assessments completed by 37 separate evaluators. In a few cases, the reports from both experts were present in the file. Preference was given to the prosecution-retained expert report in these cases in order to ensure an adequate sample size for comparison. Therefore, only one assessment for each case was analyzed. In addition, no offender appeared twice before the court within the study timeframe.

Of the 111 assessments, the average number of cases that each of the 37 evaluators contributed was 3 ($SD = 3.5$). In addition, 12 of the evaluators provided assessments as prosecution-retained and as court-appointed experts at least once. The majority of the assessments were completed by psychiatrists (82%; the remaining 18% were completed by psychologists) and by men (87%). Of these assessments, 99% ($n = 110$) contained an

assessment of psychopathy. In terms of the types of cases, all DO/LTO applications require that the offender have committed a SPIO. In the current sample, 64% of the index offences were sexual in nature with the remaining 36% comprising non-sexual violent offences (in cases with multiple types of convictions at index, the presence of at least one sexual conviction meant that the index was coded as sexual in nature). Preliminary analyses also revealed no significant differences between the offenders assessed by prosecution-retained versus court-appointed experts in terms of age, race, mean number of prior adult convictions, mean number of charges before the courts, and prior failure on conditional release (Table 10).

Procedure

Like Study 1, the risk assessment reports were obtained as part of a larger evaluation of Canada's NFS. It is important to note that, although files for all offenders designated between 2006 and 2008 in provinces with an active NFS were obtained, not all files included the risk assessment report. There are no consistent guidelines for what information should be kept within NFS files, therefore, only files from Ontario (21 prosecution-retained and 40 court-appointed), British Columbia (4 prosecution-retained and 26 court-appointed), and Alberta (18 prosecution-retained and 2 court-appointed) included risk assessment reports. Analyses into the differences between cases containing a risk assessment report and those without, found no significant differences in terms of offender age, index offense type, and final DO/LTO designation. All assessments were coded by the principal investigator. Given confidentiality regulations, files were kept in secure cabinets in the offices of Public Safety Canada and were not allowed to be copied or shared with anyone not having advanced

security clearance. With these restrictions in place, interrater coding and analyses were not possible.

Table 10

Comparisons between Cases Assessed by Prosecution and Court-Appointed Experts

Variables	<i>N</i>	Prosecution expert <i>M (SD)/ %</i>	<i>N</i>	Court-appointed expert <i>M (SD)/ %</i>	<i>p</i>	<i>OR (95% CI)/</i> <i>[Cohen's <i>d</i> (95% CI)]</i>
Age at index	41	39.6 (12.2)	67	39.0 (9.6)	.777	[0.06 (-0.33, 0.44)]
Race	41		68			
White vs. other		54.8		59.4	.694	0.82 (0.38, 1.78)
Mean number of prior adult convictions	41	18.2 (15.8)	68	15.1 (11.3)	.224	[0.24 (-0.15, 0.63)]
Mean number of charges at index	41	7.6 (15.6)	68	4.5 (5.0)	.127	[0.30 (-0.09, 0.63)]
Prior failure on conditional release	41	92.7	68	92.8	1.00	0.94 (0.23, 3.80)

Note. *OR* = odds ratio; *CI* = confidence interval; Cohen's *d* = strength of the association between two continuous variables.

Coding Manual

A coding manual (see Appendix E) containing the variables of interest was created for the current study by expanding on the variables used by Lloyd et al. (2010) as well as Viljoen, McLachlan et al. (2010). In terms of communicating psychopathy information, variables from a separate study by Viljoen, MacDougall et al. (2010) were also used. The first section of the coding manual contained items pertaining to the expert conducting the assessment and included credentials, source of assessment request, and gender. The second section focused on the information within the assessment such as length of the report, sources of information (e.g., both interviews and documentation), types of sections included (e.g., summary of criminal history, overview of past treatment), and number and type of risk assessment scales utilized.

The third section of the coding manual contained information on the actual risk assessment scales such as presence of total score, type of risk communication, rationale for combining different risk scales, and final risk judgment. The information coded from type of scale and risk communication was used to determine whether the expert utilized an actuarial (i.e., used an actuarial risk scale) and structured professional judgment (i.e., used a SPJ scale) approach, and whether the expert engaged in unstructured clinical judgment. An expert could appear in all three categories. For example, one expert utilized both actuarial and SPJ risk scales, but also commented that these scores had little value in formulating a final risk judgment, relying instead on their experience to accomplish this task. The use of unstructured clinical judgment was therefore determined by 1) the absence of any risk scale or 2) an explicit statement from the expert indicating that they ignored the information provided from the risk scales in making their final risk judgment.

In the fourth section, variables pertaining to risk, but separate from the risk assessment scales, were coded such as whether a distinction was made between static and dynamic risk factors, the presence of protective factors and incorrect risk factors (e.g., self-esteem; depression and mood disorders), as well as information pertaining to risk management and treatment amenability. Incorrect risk factors were identified based on the Central Eight risk and need factors (Andrews & Bonta, 2010) and by examining meta-analyses on the predictive validity of different risk factors (e.g., Bonta, Law et al., 1998; Hanson & Morton-Bourgon, 2005). Incorrect risk factors were only coded if they are clearly not accepted within the larger risk assessment literature as being predictive of recidivism (e.g., general mental illness; depression; victim of child sexual abuse).

The final section contained items specific to how psychopathy information was communicated and included variables such as how the construct was defined (e.g., characteristics, label) and the conclusions that were drawn (e.g., treatment amenability and risk). Additionally, any incorrect information was also noted. Incorrect information was determined using the information that the experts themselves provided in their assessments. We specifically noted any conclusions that were not consistent with the empirical literature on psychopathy and any scoring or scale description errors (e.g., using mental illness as an exclusion criteria; Hare, 2003). A consensus on the validity of each error was reached by both authors of the published version of this study (i.e., Julie Blais and Adelle Forth) after consulting the psychopathy research that would have been available to the expert at the time of the assessment.

Data Analysis

Descriptive analyses were conducted on the demographic variables of the experts providing the risk assessment reports. Differences between prosecution-retained and court-appointed experts' reports were analyzed using Pearson's chi-square analyses. In instances where the outcome was a continuous variable (e.g., length of the report), independent-samples *t*-tests were used. For all analyses, a measure of the magnitude of the effect was calculated along with the 95% confidence interval. Cohen's *d* was calculated for any mean differences while odds ratios (with 0.5 added to each cell in order to avoid empty cells; Fleiss, 1994) were calculated for comparisons between nominal variables. The standard convention for interpreting *d* values considers values of .20 to be "small," values of .50 to be "medium," and values larger than .80 to be "large" (Cohen, 1988). If the 95% confidence interval for *d* does not include zero, the comparison is statistically significant at the .05 level. If the 95% confidence interval for the odds ratio does not include one, the comparison is statistically significant at the .05 level. Finally, the area under the curve (AUC) was calculated in order to assess the validity of total scale scores in predicting the trial outcome (DO vs. LTO designation).

Results

Reports

Structure. When examining the length of the reports (single spaced pages), assessments completed by court-appointed experts were significantly longer ($M = 30.7$, $SD = 13.8$) than assessments completed by prosecution-retained experts ($M = 24.9$, $SD = 15.8$), $t(109) = -2.04$, $p = .04$, $d = 0.40$, 95% CI [0.01, 0.78]. When examining the length of the risk assessment portion of the reports (includes discussion of risk assessment scales, treatment,

risk management, and overall conclusion), no significant differences were seen between prosecution-retained and court-appointed experts ($M = 4.7$, $SD = 3.4$; $M = 5.4$, $SD = 3.6$, respectively), $t(109) = -1.09$, $p = .28$, $d = 0.21$, 95% CI [-0.17, 0.59]. Both types of experts were equally likely to conduct an interview with the defendant (86% for prosecution, 85% for court-appointed; $\chi^2(1, N = 111) = 0.01$, $p = .57$, $OR = 0.96$, 95% CI [0.33, 2.79]. When reported ($n = 62$), the length of time (hours) spent with the defendant did not differ between the experts (Prosecution: $M = 6.6$, $SD = 3.2$; Court: $M = 5.4$, $SD = 2.2$), $t(60) = 1.74$, $p = .09$, $d = 0.50$, 95% CI [-0.07, 1.06].

Sources of information. Further comparisons of the sources of information of the risk assessment reports can be seen in Table 11. Overall, reports provided by prosecution-retained experts were remarkably similar to reports provided by court-appointed experts. The only significant finding in terms of report components indicated that court-appointed experts were more likely to provide a summary of the offender's correctional history compared with prosecution experts (86.8% and 65.1%, respectively), $\chi^2(1, 111) = 7.29$, $p = .01$, $OR = 3.41$, 95% CI [1.35, 8.57].

Assessment. Table 12 displays results for the method of risk assessment and the specific scales utilized by the experts. Prosecution and court-appointed experts were equally likely to utilize tools to assess risk, psychopathy, and mental health. When examining the mean number of risk assessment scales used (actuarial and SPJ), prosecution-retained experts were more likely to utilize a larger number of scales in one assessment ($M = 3.4$, $SD = 1.3$) compared with court-appointed experts ($M = 2.9$, $SD = 1.1$), $t(109) = 2.18$, $p = .03$, $d = 0.42$, 95% CI [0.04, 0.81]. Despite this difference, the type of risk assessment approach and the specific scales that were used were similar for both types of experts. Actuarial tools were

more likely utilized than SPJ tools, overall. Interestingly, 6 of the 111 assessments (5%) contained some form of unstructured professional judgment. The most commonly used scales, regardless of expert type, included the PCL-R, VRAG, and Static-99.

Although total scores were often not reported, comparisons between experts could be conducted for the VRAG, Static-99, SORAG, and HCR-20 (note that the PCL-R total scores are discussed in the psychopathy section of the results). Mean scores from prosecution-retained experts were higher than mean scores from court-appointed experts for the VRAG ($M = 18.3, SD = 6.4$ vs. $M = 12.2, SD = 10.6$; $t[26] = 1.80, p = .08, d = 0.68, 95\% CI [0.09, 1.44]$); Static-99 ($M = 6.7, SD = 1.8$ vs. $M = 6.2, SD = 1.4$; $t[46] = 1.10, p = .28, d = 0.32, 95\% CI [-0.26, 0.90]$); SORAG ($M = 21.0, SD = 8.2$ vs. $M = 18.4, SD = 12.7$; $t[28] = 0.64, p = .53, d = .24, 95\% CI [-0.49, 0.96]$); and HCR-20 ($M = 28.6, SD = 4.6$ vs. $M = 23.8, SD = 8.1$; $t[11] = 1.31, p = .22, d = .73, 95\% CI [-0.42, 1.84]$), however, none of the comparisons reached statistical significance.

Table 11

Content of Risk Assessment Reports Completed by Prosecution and Court-Appointed Experts

Report elements	Prosecution expert % (n)	Court-appointed expert % (n)	Total % (n)	χ^2	OR (95% CI)
Interviews					
Defendant	86.0 (43)	85.0 (68)	85.6 (111)	0.01	0.96 (0.33, 2.79)
Family	30.2 (43)	25.0 (68)	27.0 (111)	0.37	0.77 (0.33, 1.78)
Health care provider	7.1 (42)	0.0 (68)	2.7 (110)	5.00 ^a	0.08 (0.00, 1.64)
Records					
Law enforcement	92.9 (42)	100.0 (68)	97.3 (110)	5.00 ^a	12.14 (0.61, 241.16)
Mental health	95.1 (41)	86.4 (66)	89.7 (107)	2.10	0.38 (0.09, 1.63)
Correctional	100.0 (41)	98.5 (67)	99.1 (108)	0.62	0.53 (0.02, 13.42)
Court transcripts	92.7 (41)	90.8 (65)	91.5 (106)	0.12	0.83 (0.21, 3.25)
Victim statements	38.1 (42)	37.9 (66)	38.0 (108)	0.00	0.99 (0.45, 2.17)
Social history	36.6 (41)	38.8 (67)	38.0 (108)	0.05	1.09 (0.49, 2.42)
Report components					
Summary of index	100.0 (43)	97.1 (68)	98.2 (111)	1.29	0.31 (0.01, 6.52)
Offender version	89.2 (37)	94.8 (58)	92.6 (95)	1.05	2.13 (0.49, 9.18)
Offending history	97.7 (43)	98.5 (68)	98.2 (111)	0.11	1.59 (0.16, 15.78)
Psychosocial development	93.0 (43)	97.1 (68)	95.5 (111)	1.00	2.30 (0.43, 12.20)
Mental health history	93.0 (43)	94.1 (68)	93.7 (111)	0.05	1.24 (0.29, 5.29)
Summary of correctional history	65.1 (43)	86.8 (68)	78.4 (111)	7.29**	3.41 (1.35, 8.57)
Correctional treatment	72.1 (43)	83.8 (68)	79.3 (111)	2.21	1.98 (0.80, 4.93)
Medical history	60.5 (43)	72.1 (68)	67.6 (111)	1.62	1.68 (0.75, 3.73)

Note. In cases where an interview with the defendant was not conducted, it was due to the defendant refusing to consent to the interview. Analysis for the inclusion of the offender's account of index was restricted to those cases that contained an offender interview ($N = 95$); OR = odds ratio; CI = confidence interval.

^aChi-square approached significance ($p = .05$)

** $p < .01$

Table 12

Risk Assessment Methods and Scales Used by Prosecution and Court-Appointed Experts

Scales	Prosecution expert % (n)	Court-appointed expert % (n)	Total % (n)	χ^2	OR (95% CI)
Test use					
Risk assessment tools	100.0 (43)	100.0 (68)	100 (110)	NA	NA
Psychopathy tools	97.4 (39)	95.2 (62)	96.0 (101)	0.33	0.66 (0.09, 4.68)
Mental health tests	83.7 (43)	72.1 (68)	76.6 (111)	2.00	0.52 (0.20, 1.34)
Intellectual/ cognitive tests	34.9 (43)	19.1 (68)	25.2 (111)	3.47	0.45 (0.19, 1.05)
Type of risk assessment					
Unstructured clinical judgment	2.3 (43)	7.4 (68)	5.4 (111)	1.30	2.45 (0.39, 15.56)
Actuarial	90.7 (43)	92.6 (68)	91.9 (111)	0.13	1.32 (0.36, 4.86)
SPJ	53.5 (43)	52.9 (68)	53.2 (111)	0.00	0.98 (0.46, 2.09)
Scales					
PCL-R	97.4 (39)	95.2 (62)	96.0 (101)	0.33	0.66 (0.09, 4.68)
VRAG	58.1 (43)	41.2 (68)	47.7 (111)	3.04	0.51 (0.24, 1.10)
Static-99	67.4 (43)	63.2 (68)	64.9 (111)	0.21	0.84 (0.38, 1.86)
HCR-20	30.2 (43)	19.1 (68)	23.4 (111)	1.81	0.55 (0.23, 1.32)
SVR-20	16.3 (43)	11.8 (68)	13.5 (111)	0.46	0.68 (0.24, 1.98)
SORAG	48.8 (43)	38.2 (68)	42.3 (111)	1.21	0.65 (0.30, 1.40)
SARA	11.6 (43)	8.8 (68)	9.9 (111)	0.23	0.73 (0.22, 2.43)
ODARA	14.0 (43)	4.4 (68)	8.1 (111)	3.22	0.31 (0.08, 1.20)
RSVP	7.0 (43)	13.2 (68)	10.8 (111)	1.07	1.85 (0.51, 6.70)

Note. OR = odds ratio; CI = confidence interval; NA = not applicable; SPJ = structured professional judgment; PCL-R: Psychopathy Checklist-Revised (Hare, 2003); VRAG: Violence Risk Appraisal Guide (Harris et al., 1993); Static-99 (Hanson & Thornton, 1999); HCR-20: Historical Clinical Risk Management-20 (Webster et al., 1997); SVR-20: Sexual Violence Risk-20 (Boer et al., 1997); SORAG: Sex Offender Risk Appraisal Guide (Quinsey et al., 1998); SARA: Spousal Assault Risk Assessment

Guide (Kropp et al., 1995); ODARA: Ontario Domestic Assault Risk Assessment (Hilton et al., 2004); RSVP: Risk for Sexual Violence Protocol (Hart et al., 2003).

When examining how overall risk was communicated (Table 13), both types of experts were highly likely to include a categorical risk level (e.g., low, moderate, and high), and much less likely to include a level of confidence for that risk rating, a rationale for combining scores from multiple scales, or a limitation to their assessment of risk. When communicating actuarial results, both types of experts were likely to include a total score, categorical risk level, and absolute recidivism rates. For SPJ tools, experts were more likely to include a risk level without including a total score. This is not surprising since there are no formulas or predetermined rules for scoring and totaling SPJ scales.

Most of the differences between the experts were related to whether contextual information was provided in the risk assessment report. For example, Table 14 demonstrates that court-appointed experts were more likely than prosecution-retained experts to provide a specific list of risk factors beyond what would be listed as part of a specific scale (95.6% and 81.4%, respectively), $\chi^2(1, 111) = 5.94, p = .02, OR = 4.48, 95\% CI [1.21, 16.61]$. These experts were also more likely to discuss the possibility of managing the offender's risk in the future (88.2% versus 69.8%), $\chi^2(1, 111) = 5.86, p = .02, OR = 3.15, 95\% CI [1.20, 8.25]$. In contrast, prosecution-retained experts were more likely to provide information on the likely context of future offending compared with court-appointed experts (44.2% and 25.0%, respectively), $\chi^2(1, 111) = 4.43, p = .04, OR = 0.43, 95\% CI [0.19, 0.95]$.

Table 13

Risk Communication by Prosecution and Court-Appointed Experts

Risk communication	Prosecution expert % (n)	Court-appointed expert % (n)	Total % (n)	χ^2	OR (95% CI)
Overall risk level provided	97.7 (43)	94.1 (68)	95.5 (111)	0.78	0.51 (0.08, 3.34)
Level of confidence	2.4 (42)	1.6 (64)	1.9 (106)	0.09	0.65 (0.07, 6.50)
Rationale for combining results from different tools	4.8 (42)	17.2 (64)	12.3 (106)	3.64	3.48 (0.84, 14.51)
Limitations to risk judgment	26.2 (42)	23.4 (64)	24.5 (106)	0.10	0.86 (0.35, 2.08)
Actuarial scales					
Total score	66.7 (39)	63.5 (63)	64.7 (102)	0.11	0.88 (0.38, 2.01)
Percentile rank	38.2 (39)	36.5 (63)	37.3 (102)	0.04	0.92 (0.41, 2.07)
Categorical level	97.4 (39)	88.9 (63)	92.2 (102)	2.44	0.29 (0.05, 1.78)
Absolute recidivism	89.7 (39)	93.7 (63)	92.2 (102)	0.51	1.67 (0.43, 6.60)
SPJ					
Total score	34.8 (23)	16.7 (36)	23.7 (59)	2.55	0.39 (0.12, 1.28)
Categorical level	69.6 (23)	58.3 (36)	62.7 (59)	0.76	0.63 (0.21, 1.86)
Absolute recidivism	0.0 (23)	8.3 (36)	5.1 (59)	2.02	4.91 (0.24, 99.60)

Note. OR = odds ratio; CI = confidence interval; SPJ = structured professional judgment.

Table 14

Specific Elements Present in the Risk Assessment Reports Provided by Prosecution and Court-Appointed Experts

Risk assessment	Prosecution expert % (n)	Court-appointed expert % (n)	Total % (n)	χ^2	OR (95% CI)
Difference between static and dynamic risk factors	53.5 (43)	55.9 (68)	55.0 (111)	0.06	1.10 (0.52, 2.35)
Risk factors	81.4 (43)	95.6 (68)	90.1 (111)	5.94*	4.48 (1.21, 16.61)
Protective factors	25.6 (43)	16.2 (68)	19.8 (111)	1.47	0.57 (0.22, 1.42)
Incorrect factors related to risk	30.2 (43)	27.9 (68)	28.8 (111)	0.07	0.89 (0.39, 2.04)
Context of future offending	44.2 (43)	25.0 (68)	32.4 (111)	4.43*	0.43 (0.19, 0.95)
Seriousness of future offending	34.9 (43)	36.8 (68)	36.0 (111)	0.04	1.08 (0.49, 2.37)
Risk management	69.8 (43)	88.2 (68)	81.1 (111)	5.86*	3.15 (1.20, 8.25)
Recommendation to re-evaluate risk	2.3 (43)	4.4 (68)	3.6 (111)	0.33	1.51 (0.22, 10.66)
Treatment amenability	72.1 (43)	85.3 (68)	80.2 (111)	2.89	2.21 (0.87, 5.59)
Specific treatment recommendations	69.8 (43)	85.3 (68)	79.3 (111)	3.87	2.47 (0.99, 6.17)
Placement recommendation	16.3 (43)	26.5 (68)	22.5 (111)	1.57	1.78 (0.69, 4.61)
Supervision level/intensity	62.8 (43)	73.5 (68)	69.4 (111)	1.43	1.64 (0.73, 3.68)
Recommended designation	16.3 (43)	30.9 (68)	25.2 (111)	2.98	2.20 (0.86, 5.62)

Note. OR = odds ratio; CI = confidence interval.

* $p < .05$

The communication of psychopathy information was examined separately given that the majority of the assessments included a psychopathy section and that the partisan allegiance literature has also tended to focus on the PCL-R. Both types of experts were consistent on how they assessed psychopathy and communicated their results (see Table 15). Almost all assessors utilized the PCL-R (in the remaining cases it was not possible to determine how psychopathy was assessed) and the vast majority of assessors provided a total score. The majority of assessments also provided a specific cut-off score and made a dichotomous decision concerning whether or not the offender met criteria for psychopathy (about ¼ of offenders would meet this criteria). There were no differences between prosecution-retained and court-appointed experts on total PCL-R scores ($M = 23.5$, $SD = 8.1$; $M = 22.3$, $SD = 8.0$, respectively), $t(80) = 0.63$, $p = .53$, $d = 0.15$, 95% CI [-0.30, 0.59]. Restricting the analyses to experts who made a dichotomous diagnostic decision ($n = 60$) also revealed no differences between prosecution-retained and court-appointed experts in diagnosing psychopathy (25.9% and 24.2%, respectively), $\chi^2(1, 60) = 0.02$, $p = 1.00$, $OR = 0.91$, 95% CI [0.29, 2.85].

It is important to note that, beyond discussing the scoring, very little additional information was provided in psychopathy assessments. Only a quarter of assessments contained an actual description of the characteristics of psychopathy or provided information from the scientific literature. One difference between the court-appointed and prosecution-retained experts was that the latter were more likely to provide a relative risk statement (e.g., higher scoring offenders are higher risk than lower scoring offenders; 33.3% and 12.9%, respectively), $\chi^2(1, 101) = 6.07$, $p = .02$, $OR = 0.31$, 95% CI [0.12, 0.81]. It is worth noting that 21% of the psychopathy assessments (completed by 11 separate evaluators) contained an

error in either scoring the scale (only one assessment in which mental illness was used as an exclusion criterion) or interpreting the results. Errors committed by more than one expert included the following statements: a) psychopaths should not be treated or that treatment would make them worse (7 assessments; 5 evaluators), b) psychopathy is highly related to sexual recidivism (6 assessments; 4 evaluators), and c) psychopathy is completely static (3 assessments; 2 evaluators).

Experts were essentially the same in the conclusions they drew from psychopathy information. Less than half of assessments talked about the relationship between treatment amenability and psychopathy, and, of those that did mention this relationship, a large majority stated that higher psychopathy scores would be related to poorer treatment outcomes. Similar findings emerged for the relationship between psychopathy and the risk for violent or sexual recidivism; although less than half reported this information, when it was reported, it was more likely discussed in terms of higher psychopathy scores being related to higher chances of recidivism (see Table 16).

Table 15

Information Provided in the Psychopathy Assessments by Prosecution and Court-Appointed Experts

Description	Prosecution expert % (n)	Court-appointed expert % (n)	Total % (n)	χ^2	OR (95% CI)
Utilized the PCL-R	97.4 (39)	95.2 (62)	96.0 (101)	0.33	0.66 (0.09, 4.68)
Met criteria for psychopathy	23.3 (30)	27.5 (40)	25.7 (70)	0.16	1.22 (0.42, 3.55)
Made a dichotomous decision (yes/no)	69.2 (39)	53.2 (62)	59.4 (101)	2.54	0.52 (0.22, 1.19)
Identified a specific cut-off score	66.7 (39)	54.8 (62)	59.4 (101)	1.39	0.62 (0.27, 1.40)
Scores					
Total psychopathy score given	82.1 (39)	80.6 (62)	84.5 (97)	0.03	0.93 (0.34, 2.55)
Factor information given (score or percentile)	25.6 (38)	12.9 (59)	18.6 (97)	2.65	0.44 (0.16, 1.20)
Categorical risk level reported	20.5 (39)	21.0 (62)	20.8 (101)	0.00	1.01 (0.38, 2.66)
Probabilistic risk statement	0.0 (39)	1.6 (62)	1.0 (101)	0.64	1.93 (0.08, 48.49)
Relative risk statement	33.3 (39)	12.9 (62)	20.8 (101)	6.07*	0.31 (0.12, 0.81)
Communication					
Used label “psychopath”	17.9 (39)	11.3 (62)	13.9 (101)	0.89	0.59 (0.19, 1.76)
Listed characteristics only	20.5 (39)	35.5 (62)	29.7 (101)	2.57	2.06 (0.82, 5.15)
Listed characteristics + Label	20.5 (39)	12.9 (62)	15.8 (101)	1.04	0.58 (0.20, 1.65)
Dramatic language used	2.6 (39)	1.6 (62)	2.0 (101)	0.11	0.63 (0.06, 6.24)
Mention of scientific literature	25.6 (39)	22.6 (62)	23.8 (101)	0.12	0.84 (0.34, 2.10)
Overreliance on one study	2.6 (39)	1.6 (62)	2.0 (101)	0.11	0.63 (0.06, 6.24)
Incorrect information	23.1 (39)	14.5 (62)	20.8 (101)	1.20	0.57 (0.21, 1.55)

Note. OR = odds ratio; CI = confidence interval; PCL-R: Psychopathy Checklist-Revised (Hare, 2003).

* $p < .05$

Table 16

Conclusions Drawn from Psychopathy Assessments by Prosecution and Court-Appointed Experts

Psychopathy information	Prosecution expert % (<i>n</i>)	Court-appointed expert % (<i>n</i>)	Total % (<i>n</i>)	χ^2	OR (95% CI)
Treatment	48.7 (39)	45.2 (62)	46.5 (101)	0.12	0.87 (0.39, 1.92)
Less treatable	78.9 (19)	78.6 (28)	78.7 (47)	0.00	1.00 (0.26, 3.94)
More treatable	21.1 (19)	21.4 (28)	21.3 (47)	0.00	1.00 (0.25, 3.90)
Violence risk	38.5 (39)	33.9 (62)	35.6 (101)	0.22	0.82 (0.36, 1.86)
Higher risk	86.7 (15)	85.7 (21)	86.1 (36)	0.01	0.98 (0.17, 5.74)
Lower risk	13.3 (15)	14.3 (21)	13.9 (36)	0.01	1.02 (0.17, 5.99)
Sexual risk	20.5 (39)	12.9 (62)	15.8 (101)	1.04	0.58 (0.20, 1.65)
Higher risk	100.0 (7)	100.0 (8)	100.0 (15)	NA	NA

Note. OR = odds ratio; CI = confidence interval; NA = not applicable.

Predicting Trial Outcome

The goal of risk assessment and of including psychopathy evidence is to aid the trier of fact in making a final determination. A final consideration is whether the psychopathy scores provided by the experts actually predicted the final trial outcome. PCL-R scores did in fact significantly predict a DO designation ($AUC = .69$, $SE = .06$, $95\% CI = .57, .82$), however, when examining the type of expert, only court-appointed expert scores significantly predicted a DO designation ($AUC = .72$, $SE = .08$, $95\% CI = .57, .87$). Prosecution-retained scores were not a significant predictor of trial outcome ($AUC = .64$, $SE = .11$, $95\% CI = .42, .85$), although the effect size was still moderate. Unfortunately, experts did not consistently provide total scores for other risk scales making it impossible to assess the predictive validity by type of expert, however, total scores across experts for the following scales did not predict designation outcomes: VRAG ($AUC = .50$, $SE = .12$, $95\% CI = .28, .73$); Static-99 ($AUC = .51$, $SE = .09$, $95\% CI = .34, .68$); and SORAG ($AUC = .51$, $SE = .11$, $95\% CI = .28, .73$). The HCR-20 could not be assessed given that scores were only available for two DOs.

Discussion

The goal of Study 2 was to assess the similarities and differences between risk assessment reports submitted by prosecution-retained and court-appointed experts during the course of DO/LTO proceedings. In terms of the risk assessment tools and procedures, both types of experts were equally likely to utilize actuarial and SPJ methods and to assess psychopathy. Although risk assessment scores across all of the cases (analyses were conducted across different samples of offenders and experts as opposed to within individual cases) did not differ between prosecution-retained and court-appointed experts for any of the risk assessment scales, many reports simply did not include total scores and a larger sample

size would be needed to adequately assess assigned scale scores. Both experts were also equivalent in their discussion and communication of psychopathy related information. Although there were more similarities than differences in the experts' reporting practices, court-appointed experts were more likely to provide further information beyond communicating the results of risk assessment scales. Court-appointed experts were more likely to list the actual risk factors present in the case and more likely to discuss the possibility of risk management in the future, both of which are important considerations in SVP and DO proceedings.

The scales that were chosen by the experts were consistent with the scales that are usually used in forensic risk assessment (Lally, 2003, Viljoen, McLachlan, et al., 2010). The most commonly used scales were the PCL-R (Hare, 2003), the VRAG (Harris et al., 1993), and the Static-99 (Hanson & Thornton, 1999). Both prosecution-retained and court-appointed experts were equally likely to utilize either actuarial scales or SPJ scales. This is encouraging given that meta-analyses have demonstrated the superiority of these risk assessment methods over unstructured clinical judgment (Ægisdóttir et al., 2006; Hanson & Morton-Bourgon, 2009). Although there remains a debate within the literature on whether SPJ is equally as predictive of negative outcomes compared with actuarial scales (Heilbrun, Douglas, & Yasuhara, 2009), there is little question that unstructured professional judgment should not be relied upon in risk assessment when appropriate structured alternatives exist. Despite this, six of the assessment reports (completed by five separate evaluators) contained evidence of unstructured clinical judgment (median year of these reports was 2006). These cases were evenly distributed between prosecution-retained and court-appointed experts.

There was a significant difference in terms of the number of scales chosen by the experts; prosecution-retained experts were more likely to utilize a larger number of scales for any individual case compared with court-appointed experts. It may be possible that prosecution-retained experts felt a greater need to defend their risk judgment through the use of scales given that they were speaking on behalf of a specific side. Certainly, the use of multiple risk assessment scales has been advocated by experts, especially within the context of preventative detention hearings (Jackson & Hess, 2007).

Currently, however, there is a paucity of research on how to combine risk assessment scale scores into a meaningful risk judgment. Although studies have begun to demonstrate that combining information from multiple scales can increase predictive accuracy (e.g., Babchishin, Hanson, et al., 2012), this research has tended to be scale specific [e.g., Static-99R and Static-2002R; see Seto [2005] for a greater discussion of the different combining approaches]. Overall, of the assessments where information from different scales was combined, 13 assessments (completed by 5 separate evaluators) also contained information on how this combination occurred. The following methods were chosen: a) took the average risk judgment between the scales ($n = 1$); b) used convergence on the percentile ranks to justify the final risk judgment ($n = 8$); c) took the higher score citing that risk scales tend to underestimate risk ($n = 3$); d) chose to emphasize one scale over the others due to case specific factors ($n = 1$; e.g., expert cited that due to a lack of criminal history, the Static-99 likely underestimated the offender's risk and gave it less weight in making the final judgment). More research in this area is warranted given that experts in this study utilized an average of three risk assessment scales per case with very little indication of how information from each scale was combined and interpreted.

In terms of communicating the risk assessment results, like previous studies have demonstrated (e.g., Heilbrun et al., 2004; Heilbrun et al., 1999; Viljoen, McLachlan et al., 2010), both types of experts utilized categorical risk judgments (e.g., low, moderate, or high). This was true for communicating the results of actuarial scales, SPJ scales, and the final risk judgment. If an actuarial scale was used, both experts were equally likely to provide the absolute recidivism rates associated with the scale score. As with combining risk scores, the literature on communicating risk assessment information is still rather sparse despite the ubiquitous use of risk assessment within forensic contexts (Scurich & John, 2011). Studies to date demonstrate that the preferred method of communication, categorical risk statements, is limited in that there is little consensus on the boundaries and meaning of each category (Hilton et al., 2008; Scurich & John, 2011; Slovic et al., 2000). More recent research has advocated for the use of percentile ranks with confidence intervals, or, at the very least, for experts to define categorical risk statements more precisely by specifying the recidivism rates (or other non-arbitrary indices) associated with each category (Hanson et al., 2012).

Although there were many similarities between the risk assessment reports, there was evidence that court-appointed experts were more likely to discuss a broader range of issues beyond risk assessment compared with the prosecution-retained experts. For example, court-appointed experts provided more detailed information on the offender's correctional history (behaviour within the institution) and were more likely to discuss risk factors and risk management. Given that court-appointed experts do not represent a particular side, it is possible that these assessors felt more comfortable addressing issues relevant to managing the offender's risk in the community (prosecution-retained experts may be reluctant to include this information given that the prosecution is seeking an indeterminate sentence). The

latter considerations are especially important when considering the nature of SVP and DO/LTO proceedings. In both cases, the decision maker must consider the possibility of eventual release into the community. In DO cases, for example, the judge must first consider the LTO designation which could see the offender returning to the community within as little as two years (in fact, as of April 2013, there were 337 LTOs currently supervised in the community; Public Safety Canada, 2013). In order to make these considerations, information on the risk factors to be targeted in treatment and an expert opinion on the possibility of managing the offender's risk if released are paramount. Based on the current sample of reports, assessments provided by court-appointed experts could be seen as being more appropriate for preventative detention hearings given the higher likelihood that this information was provided.

This is not to say, however, that evaluators could not be trained to include information on risk factors and risk management. What appear to be needed are uniform reporting guidelines for risk assessment reflective of the current empirical literature. Although there are currently several books and reviews that outline risk assessment considerations, there is currently no real consensus on what risk assessment reports should contain. Despite this lack of consensus, a few sources have advocated that risk assessment reports should contain an estimation of the offender's risk, identification of risk management strategies to reduce that risk, and proper communication of this information (Conroy & Murrie, 2007; Hanson, 2009; Jackson & Guyton, 2008; Mills et al., 2010).

The limitations of the current assessments in terms of the communication of risk assessment results (e.g., reliance on categories) have already been discussed, however, half of the reports also failed to discuss factors related to offender change (e.g., criminogenic

needs). Criminogenic needs (dynamic risk factors that are significantly related to recidivism) are important for both the prediction of risk and the identification of important treatment targets (Andrews et al., 2006). Dynamic risk factors were only discussed in cases where assessors chose to use a SPJ scale; none of the actuarial scales contained dynamic items (see Table 12). In addition, less than a quarter of assessments mentioned protective factors (none of the assessment scales contained protective factors). In cases where the potential release of the offender is an issue (as in SVP and DO/LTO cases), considerations of dynamic and protective factors in the management of the offender's risk are paramount. The current assessments were completed between 2006 and 2008 and, therefore, it is possible that more current assessments are reflective of advancements in the risk assessment literature. Future studies assessing these potential changes are necessary.

In terms of the communication of psychopathy information, both types of experts were equally likely to utilize the PCL-R, provide a total score, and to provide a diagnostic decision. Consistent with findings from Viljoen, MacDougall et al. (2010), very few experts used the actual label "psychopath." Also consistent with findings from Lloyd et al. (2010), total PCL-R scores did not differ between prosecution and court-appointed experts. Psychopathy information was also equally likely to be used to justify higher risk for both violent and sexual offending. The only significant difference was that prosecution-retained experts were more likely to provide a relative risk statement (e.g., offenders with a particular score are higher risk compared with offenders with a lower score) compared with court-appointed experts. Importantly, beyond providing the total score, very little information about psychopathy was provided by either type of expert. For example, the majority of cases failed to describe psychopathy and made no mention of the scientific literature.

Given the lack of contextual information provided in the psychopathy section of the reports, it is reasonable to question the purpose of including an assessment of psychopathy at all. Although psychopathy, as a personality disorder, could be useful in discussing treatment motivation, treatment compliance, and difficulties in managing the offender in the community, the experts in this study utilized the PCL-R almost solely as another risk assessment tool. In keeping with the evidence for the pejorative labeling effects of psychopathy (e.g., Blais & Forth, 2013; Boccaccini, Turner et al., 2008; Chauhan et al., 2007; Jones & Cauffman, 2008), *if* the PCL-R is only used as a risk assessment scale, then the argument could be made that other scales that show equal predictive validity (e.g., VRAG or HCR-20; Yang et al., 2010) should be used instead. This is especially true when you consider that 20 assessments (completed by 11 separate evaluators) contained an error in the overall conclusions drawn by the experts. Several reviews of cases in the US and Canada have similarly identified errors in psychopathy assessments (Edens, 2001; Zinger & Forth, 1998). In the present cases, two types of errors were most common: a) assuming that the offender could not be treated or that treatment would make them worse (7 of the 19 assessments completed by 5 separate evaluators), and b) overestimating the relationship between psychopathy and violent and sexual recidivism (5 of the 19 assessments completed by 4 separate evaluators). Errors were indicative of a lack of consideration for the psychopathy literature that was available at the time of the assessments (i.e., up to 2008).

A final consideration in this study was whether PCL-R scores were predictive of the final designation (DO or LTO). Although PCL-R total scores did not differ between the experts, only court-appointed experts' scores predicted the final designation. Interestingly, total scores for the VRAG, Static-99, and the SORAG were not predictive of the designation

outcome (combining prosecution-retained and court-appointed assessments). Information from risk scales is often emphasized in assessment reports, however, it is still unclear how this information impacts decision makers. In a recent study by Boccaccini et al. (2013) knowledge of risk scores (e.g., Static-99, PCL-R) had no effect on jurors' perceptions of offender risk. Clearly, further research into the specific effect of risk assessment scores on ultimate decisions is needed. Our findings did indicate that judges put more weight on the PCL-R score of court-appointed experts compared with prosecution-retained experts when making their final designation.

Several limitations of the current study must be noted. First, in terms of the sample, it was not possible to include the assessments provided by defence experts as a comparison group (only seven defence experts' assessments were available). In keeping with the comparisons from the partisan allegiance literature, future studies should include assessment reports from defence-retained experts in order to gain better evidence as to whether court-appointed experts (or neutral assessors) could be a possible solution to partisan allegiance. It would also be beneficial to include a larger sample in order to ensure adequate power for all analyses. Although a priori power analyses were not conducted for the present study, effect sizes combined with 95% confidence intervals are suggested as a means of interpreting null results (Cohen, 1988). The present sample also did not allow for within-case analyses (comparing different expert reports completed for the same case). Although preliminary analyses showed few differences between the cases assessed by prosecution-retained versus court-appointed experts, future studies should aim to obtain all assessments presented by competing experts during the proceedings.

Second, although only one assessment per case was allowed (and each offender was only assessed once during the study timeframe), it was still possible for the same expert to have assessed several different cases (in fact, the 111 assessments were completed by 37 different experts). On average, each evaluator contributed 3 assessments. One of the main obstacles faced by researchers studying risk communication in Canada is that very few different experts take part in these types of assessments (opposing attorneys may even request the services of the same individuals). It is therefore not uncommon for the same expert to be called numerous times within one province. Although the presence of multiple reports by the same expert violates the assumption of independence, it is not a problem that is easily solved. The strength of the current study is that the risk assessment report in its entirety was available therefore allowing for the inclusion of many understudied variables within the risk communication literature (e.g., dynamic risk factors, protective factors, risk management, treatment amenability). However, given the limited number of experts, multiple assessments completed by the same expert was simply unavoidable.

Third, the current study was descriptive in that the presence of information within the risk assessment reports was compared across experts. Although these comparisons are important, future studies should build on these findings by focusing on variables pertaining to the experts themselves (e.g., level of training received on administering the scales) and by expanding the predictive validity analyses to several different outcomes (e.g., recidivism, institutional misconducts), both of which were unavailable for the current study. Finally, interrater reliability could not be assessed in this study. Unfortunately, due to confidentiality and security concerns, only the principal investigator had access to the risk assessment reports. Despite the fact that the majority of the coding was rather straightforward (e.g.,

scoring the presence of items as opposed to scoring actual risk scales) it would be beneficial to obtain consensus coding in future studies.

Conclusion

The current study should be seen as a preliminary inquiry into the similarities and differences between prosecution-retained and court-appointed experts. Whereas past studies have focused solely on the risk assessment portion of the report (e.g., Boccaccini et al., 2012; Rufino et al., 2012), the current study emphasized the importance of considering the report as a whole. Across all comparisons, risk assessment reports between prosecution-retained versus court-appointed experts were more similar than they were different. The current findings did demonstrate, however, that court-appointed experts were more likely than prosecution-retained experts to list risk factors and to discuss managing the offender's risk in the future. This type of information is especially informative for proceedings in which the judge or jury must consider the potential release of the offender into the community.

Given the importance of variables indicative of treatability and risk management, evidenced both by the legislative requirements and the differences between DOs and LTOs seen in Study 1, it is especially important that the majority of assessments included a rating of treatment amenability and recommendations in terms of risk management. Even though less than one fifth of assessments discussed protective factors, this is likely due to the lack of research available into the definition and validity of protective factors (e.g., Maruna, 2001) and the fact that protective factors are rarely included within risk assessment scales (Ullrich & Coid, 2011). Regardless, protective factors are an important consideration in predicting offender desistance in both youth (e.g., Lodewijks, de Ruiter, & Doreleijers, 2010; Rennie &

Dolan, 2010) and adults (e.g., Ullrich & Coid, 2011) and could make a valuable contribution to risk assessment within the context of preventative detention.

Certainly the results from Study 2 identify both strengths of risk assessments in preventative detention hearings (e.g., decreased use of unstructured professional judgment) as well as weaknesses (e.g., errors in conclusions drawn from psychopathy assessments). Of equal importance to how risk assessments are conducted and presented to the court is identifying the information that judges consider in making the final determination. Study 3 therefore examined a sample of transcripts of reasons for sentencing from the DO and LTO hearings from which the risk assessments from Study 2 were taken.

Chapter 4: Study 3 – Examining the Decisions

Purpose

Preventative detention legislation in both the US and Canada specify that an expert assessment is required in making preventative detention decisions. Study 2 has demonstrated that although the field of risk assessment has improved (e.g., moving from unstructured clinical judgment to actuarial and structured professional judgment), risk assessment reports presented within the context of DO and LTO hearings contain limitations (e.g., interpretation and use of psychopathy information). Despite these limitations, assessments provided by experts are the main source of information available to judges when assessing the risk and possible management of offenders. Research has demonstrated that expert evidence influences decisions of review boards for mentally disordered offenders (e.g., McKee et al., 2007), mock juror verdicts for civil commitment (e.g., Krauss & Scurich, in press), and the final designation in DO and LTO proceedings (e.g., Lloyd et al., 2010).

The purpose of Study 3 was to examine the information that judges mention in their reasons for sentencing when justifying the decision of a DO versus a LTO designation, in order to determine the level of importance placed on the elements from risk assessment reports. In addition, a subsample of transcripts was matched to the risk assessment reports from Study 2 in order to make specific comparisons on information relevant to the designation outcome (e.g., perceptions of treatment amenability and risk management). Study 3 also provided a preliminary examination of the factors predictive of the final designation. Finally, a separate section evaluating the presence of psychopathy information was included given that the use of the PCL-R has increased exponentially within the CJS, especially within preventative detention hearings (DeMatteo et al., 2014; Lloyd et al., 2010).

Method

Sample

The present sample represented 86 unique court transcripts of the reasons for sentencing in DO and LTO proceedings completed by 75 individual judges. Transcripts were obtained from British Columbia ($n = 30$), Alberta ($n = 15$), Saskatchewan ($n = 7$), and Ontario ($n = 34$). The number of experts testifying for the purpose of the preventative detention hearing could be determined for 85 of the 86 cases. In total, 36 (42.4%) had only one expert, 42 (49.4%) had two experts, and 7 (8.2%) of the cases had more than two experts (6 cases had 3 experts and one case had 4 experts). Although multiple people within the CJS testify during preventative detention hearings (e.g., parole officers, treatment providers), the term “expert assessment” refers to the assessment provided to the court as part of the legislative requirement. A DO designation was found in 31 of the cases, while the remaining 55 court cases resulted in LTO designations.

Procedure

Court transcripts were obtained from the NFS files provided by coordinators and from the Quicklaw database if the transcript was not present in the materials gathered from the NFS. Quicklaw is a national database of judges’ written and oral reasons for sentencing for federal cases and cases from the *Supreme Court of Canada*. Access to Quicklaw is available by subscription; case information that should not be released to the public (e.g., information about victims or minors) is omitted from the database. It is important to note that Quicklaw does not contain all court cases; therefore, not all of the cases with risk assessment reports from Study 2 have a matching transcript in this study.

Transcripts were coded by the principal investigator and a second coder was used to code a subset of transcripts ($n = 8$; 9%) for interrater reliability. Reliability was assessed using the kappa statistic. The majority of variables showed acceptable reliability with kappa statistics ranging from .58 to 1.00 ($Mdn = .72$). Only two variables failed to reach adequate interrater reliability: a) whether psychopathy was specifically mentioned in the transcript ($\kappa = .24$; percentage agreement = 62.5%) and b) whether the judge listed pertinent risk factors ($\kappa = .50$; percentage agreement = 75.0%). Definitions for psychopathy (e.g., includes any mention of the PCL-R) and risk factors were clarified and these two variables were re-coded for all transcripts.

Coding

Variables were largely the same as those coded for Study 2 (the coding manual can be found in Appendix F). For example, a judge's mention of risk, treatment, and risk management variables was coded as well as any mention of risk assessment scales including the presence of total scores, percentiles, and absolute recidivism rates. The variables concerning psychopathy were also taken directly from Study 2. Additional variables specific to the transcripts were included (e.g., length, presence of multiple experts). When the transcript indicated that more than one expert provided a risk assessment and the judge explicitly stated a preference (e.g., "I accept the testimony and evidence of expert A over expert B"), the judge's preference of one testimony over the other(s) was coded. The judge's overall reliance on the expert evidence generally and specific to psychopathy was also determined on a three-point scale: extreme reliance on the evidence (i.e., judge did not dispute any of the evidence presented by the expert[s]), somewhat relied on the evidence

(i.e., judge accepted some of the evidence and disputed other parts of the evidence), and dismissed the evidence (i.e., judge did not agree with the expert evidence).

Data Analysis

Data analyses were similar to Study 1 and Study 2. Pearson's chi-square analyses were used for categorical variables with odds ratios (with 0.5 added to each cell in order to avoid empty cells; Fleiss, 1994) as the effect size indicator (Cramer's V was calculated as the effect size when the predictor variable had more than two levels; values under .20 are small, between .20 and .30 moderate, and over .30 strong [Field, 2010]). Fisher's exact test was interpreted when expected cell values were less than five. For continuous variables, independent-samples t -tests were calculated with Cohen's d as the effect size indicator. In order to assess the effect of partisan allegiance (i.e., the tendency for the expert to assign a risk score in keeping with the party that retained them), a two-way random effects model intraclass correlation coefficient (ICC; absolute agreement) and a matched pairs t -test were also conducted. Finally, logistic regression analyses (Menard, 2002) were utilized to predict the probability of a DO designation compared to a LTO designation (predictive accuracy was compared using AUCs of the saved predicted probabilities; Field, 2010).

Results

Transcript length ranged from five to 112 pages. Judgments rendered in DO cases were significantly longer ($M = 47.7$, $SD = 26.11$) than LTO cases ($M = 34.1$, $SD = 23.0$), $t(84) = 2.51$, $p = .014$, $d = 0.56$, 95% CI [0.11, 1.01]. Similarly, cases resulting in a joint submission between the prosecution and defence were significantly shorter ($M = 24.7$, $SD = 18.7$) compared with cases without a joint submission ($M = 46.2$, $SD = 24.6$), $t(84) = 4.14$, $p < .001$, $d = 0.93$, 95% CI [0.47, 1.39]. Not surprisingly, joint submissions were also

significantly more likely to occur for LTO designations (52.9%) as opposed to DO designations (0.0%), $\chi^2(1, 86) = 24.66, p < .001, OR = 0.01, 95\% CI [0.00, 0.24]$. In cases where evidence from multiple experts was presented ($n = 49$), a determination was made as to whether the judge preferred one expert's evidence over the other(s). Judges explicitly stated accepting one expert's evidence over the other(s) in 26 of the 49 cases (53.1%; judges preferred 13 prosecution experts; 7 defence experts; 6 court-appointed experts). There was a significant difference in which expert was preferred depending on whether the case resulted in a DO or LTO designation, $\chi^2(2, 26) = 18.24, p < .001, Cramer's V = .84$. More specifically, defence experts were significantly more likely to be preferred when the case resulted in a LTO designation (77.8%; $n = 9$) as opposed to a DO designation (0.0%; $n = 17$) while prosecution experts were more likely preferred in cases resulting in DO designations (70.6%) compared with LTO designations (11.1%). No other comparisons between the experts reached statistical significance.

The degree to which judges relied on the expert evidence was also determined for 83 of the court cases (in three cases, the judge never mentioned the expert assessment; Table 17). In the 26 cases where the judge specified a preference for one expert over the other(s), the judge's reliance on that particular expert was coded (as opposed to the opinion provided by the expert[s] the judge dismissed). Overall, in 77.1% of cases, judges' reliance on expert evidence was extreme (i.e., accepted all information; did not disagree with any portion of the information presented), in 21.7% judges somewhat relied on expert evidence (i.e., accepted some of the evidence and disagreed with some aspects of the evidence), and in less than 2.0% of cases, judges dismissed expert evidence (i.e., did not accept the expert evidence and relied on other information in making their decision). The degree to which judges accepted

expert evidence did not significantly differ depending on the outcome of the case (i.e., DO vs. LTO), $\chi^2(2, 83) = 1.04, p = .595$, Cramer's $V = .11$.

The degree of reliance on testimony related specifically to psychopathy was coded separately. Although 49 of the 86 cases (57%) mentioned psychopathy somewhere in the judgment, the judge's reliance on this evidence could only be coded for 47 of the 49 transcripts. Using the same criteria described for general reliance on expert evidence, judges' reliance on expert evidence concerning psychopathy was coded as extreme in 91.5% of cases ($n = 43$), somewhat in 4.3% of cases ($n = 2$), and dismissed in 4.3% of cases ($n = 2$). Similar to the reliance on experts generally, reliance on psychopathy evidence did not differ between DO and LTO decisions, $\chi^2(2, 47) = 0.10, p = .952$, Cramer's $V = .05$.

Table 17

Judges' Reliance on Expert Testimony Generally and for Psychopathy Evidence

Reliance	Dangerous offender % (<i>n</i>)	Long-term offender % (<i>n</i>)	Total % (<i>n</i>)	χ^2	Cramer's V
General	(31)	(52)	(83)	1.04	.11
Extreme	74.2	78.8	77.1		
Somewhat	25.8	19.2	21.7		
Dismissed	0.0	1.9	1.2		
Psychopathy	(20)	(27)	(47)	0.10	.05
Extreme	90.0	92.6	91.5		
Somewhat	5.0	3.7	4.3		
Dismissed	5.0	3.7	4.3		

Note. Cramer's V = strength of the association between two or more nominal variables.

Risk and Treatment Information

There were several differences in judges' tendency to report risk and treatment information depending on the trial outcome (see Table 18). When considering both the significance of the test and the effect size indicator, judges were more likely to discuss treatment amenability and past treatment outcomes in DO cases (100.0% and 64.5%, respectively) compared with LTO cases (76.4% and 14.5%, respectively), $\chi^2(1, 86) = 8.63, p = .003, OR = 20.01, 95\% CI [1.14, 349.47]$ and $\chi^2(1, 86) = 22.55, p < .001, OR = 9.96, 95\% CI [3.57, 27.81]$, respectively. When looking at the actual treatment amenability rating, DOs were much more likely rated as being low (93.5%) on treatment amenability compared with LTOs (16.7%), $\chi^2(3, 73) = 42.37, p < .001, Cramer's V = .76$. LTOs were also more likely to be distributed among the moderate, high, and unclear categories of treatment amenability compared with DOs. When assessing the possibility of risk management, DOs were much more likely to be rated as having no possibility of future risk management (96.8%) compared with LTOs (0.0%), $\chi^2(2, 76) = 71.95, p < .001, Cramer's V = .97$. Several other comparisons were statistically significant (higher likelihood of being presented in DO decisions), however, the odds ratios did not reach significance: categorical risk statement (OR = 12.87, 95% [0.72, 229.20]), risk factors (OR = 11.27, 95% CI [0.63, 202.36]), and risk management (OR = 14.54, 95% [0.82, 257.25]). This is likely due to the presence of empty cells for these analyses.

When examining the presence of specific elements related to risk and treatment amenability (see Table 19), the majority of the variables were equally likely to be mentioned in both DO and LTO decisions. The only exception was the presence of specific recommendations of supervision level/intensity which was more likely to be presented in

LTO decisions (67.3%) compared with DO decisions (41.9%), $\chi^2 (1, 86) = 5.23, p = .026, OR = 0.36, 95\% CI [0.15, 0.88]$. It is important to note, however, that judges were not likely to mention the majority of these variables with the exception of treatment recommendations (70.9%), placement recommendations (22.1%), and supervision level and intensity (58.1%), consistent with the results from Study 2.

Table 18

Judges' Perceptions of Risk and Treatment Amenability

Risk and treatment amenability information	Dangerous offender % (n)	Long-term offender % (n)	Total % (n)	χ^2	OR (95% CI)/ [Cramer's V]
Categorical risk	100.0 (31)	83.6 (55)	89.5 (86)	5.67*	12.87 (0.72, 229.20)
Risk level assigned	(31)	(46)	(77)	0.68	[.09]
Low (Low-Moderate)	0.0	0.0	0.0		
Moderate	0.0	2.2	1.3		
High (Moderate-High)	100.0	97.8	98.7		
Limitations of risk judgment	0.0 (31)	3.6 (55)	2.3 (86)	1.15	0.34 (0.02, 7.30)
Level of confidence	3.2 (31)	3.6 (55)	3.5 (86)	0.01	1.05 (0.13, 8.36)
Risk factors	100.0 (31)	85.5 (55)	90.7 (86)	4.97*	11.27 (0.63, 202.36)
Protective factors	25.8 (31)	40.0 (55)	34.9 (86)	1.76	0.54 (0.21, 1.39)
Treatment amenability	100.0 (31)	76.4 (55)	84.9 (86)	8.63**	20.01 (1.14, 349.47)
Treatment amenability rating	(31)	(42)	(73)	42.37***	[.76]
Low	93.5 _a	16.7 _b	49.3		
Moderate	3.2 _a	26.2 _b	16.4		
High	0.0 _a	26.2 _b	15.1		
Unclear	3.2 _a	31.0 _b	19.2		
Treatment motivation	41.9 (31)	23.6 (55)	30.2 (86)	3.15	2.30 (0.90, 5.83)
Past treatment	64.5 (31)	14.5 (55)	32.6 (86)	22.55***	9.96 (3.57, 27.81)
Risk management	100.0 (31)	81.8 (55)	88.4 (86)	6.38*	14.54 (0.82, 257.25)
Risk management decision	(31)	(45)	(76)	71.95***	[.97]
Can be managed	3.2 _a	97.8 _b	59.2		
Cannot be managed	96.8 _a	0.0 _b	39.5		
Unclear	0.0	2.2	1.3		

Note. Percentages sharing a common subscript are not statistically different at $\alpha = .05$. OR = odds ratio; CI = confidence interval; Cramer's V = strength of the association between two or more nominal variables.

* $p < .05$, ** $p < .01$, *** $p < .001$

Table 19

Specific Elements Mentioned by Judge in terms of Risk, Treatment, and Management

Risk, treatment, and management variables	Dangerous offender % (n)	Long-term offender % (n)	Total % (n)	χ^2	OR (95% CI)
Difference between static and dynamic risk factors	12.9 (31)	10.8 (55)	11.6 (86)	0.07	1.25 (0.34, 4.52)
Incorrect factors related to risk	12.9 (31)	3.6 (55)	7.0 (86)	2.62	3.50 (0.70, 17.57)
Context of future offending	19.4 (31)	12.7 (55)	15.1 (86)	0.68	1.64 (0.52, 5.23)
Seriousness of future offending	19.4 (31)	7.3 (55)	11.6 (86)	2.82	2.91 (0.80, 10.62)
Specific treatment recommendations	64.5 (31)	74.5 (55)	70.9 (86)	0.97	0.62 (0.24, 1.59)
Placement recommendation	16.1 (31)	25.5 (55)	22.1 (86)	1.00	0.59 (0.20, 1.78)
Supervision level/intensity	41.9 (31)	67.3 (55)	58.1 (86)	5.23*	0.36 (0.15, 0.88)

Note. OR = odds ratio; CI = confidence interval.* $p < .05$

Risk Assessment

Table 20 presents the results for the risk assessment scales mentioned in the transcripts. Risk assessment tools were mentioned in just over half of all reports (55%), while mental health tests and intellectual tests were mentioned in less than half of the transcripts (41.9% and 31.4%, respectively). Although DO judgments were more likely to mention specific risk assessment scales (74.2%) compared with LTO judgments (45.5%), $\chi^2(1, 86) = 3.31, p = .013, OR = 3.31, 95\% CI [1.29, 8.50]$, the type of scale did not differ between the judgments. Consistent with Study 2, the PCL-R, Static-99, and VRAG were the most commonly mentioned scales. Despite the fact that the same scales were mentioned by name, DO judgments were significantly more likely to mention total scores ($OR = 3.21, 95\% CI [1.24, 8.30]$), percentiles ($OR = 3.72, 95\% CI [1.24, 11.19]$), and absolute recidivism rates ($OR = 5.21, 95\% [1.95, 13.93]$) compared with LTO judgments.

Psychopathy

The presence of psychopathy information is presented in Table 21. Overall, judges utilized psychopathy information similarly when summarizing both DO and LTO judgments. Just over half of all transcripts contained psychopathy information (57.0%), reflecting 67.7% of the DO judgments and 50.9% of the LTO judgments. Of these assessments, over half provided information on dichotomous distinctions (57.1%) and total scores or percentiles (53.1%). Less than half of all assessments used the label “psychopath” (46.9%) or provided information on psychopathy characteristics (34.7%). Almost never mentioned were factor scores or percentiles (4.1%), dramatic language (8.2%), and the scientific literature (12.2%). Importantly, approximately one in five transcripts contained incorrect information concerning psychopathy (22%). In terms of significant differences, DO judgments were more

likely to contain a dichotomous decision (OR = 3.96, 95% CI [1.18, 13.32]) and list psychopathy characteristics (OR = 3.79, 95% CI [1.13, 12.70]) compared with LTO judgments. There were inconsistent results for the mention of scientific literature; although DO judgments were significantly more likely to contain this information ($p < .05$), the odds ratio was not statistically significant (OR = 6.11, 95% CI [0.91, 41.10]).

In Study 2, the differences in PCL-R scores between the different types of experts could not be assessed given the small number of defence experts available ($n = 7$). Within the court transcripts, 17 cases mentioned both the prosecution and defence PCL-R scores making it possible to examine the likelihood of partisan allegiance. There were not enough cases with corresponding court-appointed expert scores to be included in the analyses. Overall, the intraclass correlation coefficient was moderate and statistically significant between the prosecution and defence scores, suggesting moderate interrater reliability ($ICC_{A,1} = .68, p < .001, N = 17$). However, using a matched design, prosecution-retained experts' PCL-R scores were significantly higher ($M = 26.89, SD = 6.17$) compared with defence-retained experts' scores ($M = 23.18, SD = 6.44$), $t(16) = 3.68, p = .002, d = 0.59$. Prosecution-retained experts were also significantly more likely to assign scores above the traditional cut-score of 30 (50%) compared with defence-retained experts (0.0%), $\chi^2(1, 17) = 6.68, p = .029, OR = 23.0, 95\% CI [0.94, 561.82]$; however, the OR did not reach statistical significance.

Table 20

Risk Assessment Methods and Scales Mentioned by the Judge

Risk information	Dangerous offender % (n)	Long-term offender % (n)	Total % (n)	χ^2	OR (95% CI)
Tests mentioned					
Risk assessment tools	74.2 (31)	45.5 (55)	55.8 (86)	6.64*	3.31 (1.29, 8.50)
Mental health tests	51.6 (31)	36.4 (55)	41.9 (86)	1.89	1.84 (0.76, 4.45)
Intellectual/ cognitive tests	32.3 (31)	30.9 (55)	31.4 (86)	0.02	1.07 (0.42, 2.72)
Specific risk tools					
PCL-R	65.2 (23)	76.0 (25)	70.8 (48)	0.67	0.61 (0.18, 2.05)
Static-99	60.9 (23)	40.0 (25)	50.0 (48)	2.09	2.25 (0.72, 6.99)
VRAG	60.9 (23)	48.0 (25)	54.2 (48)	0.80	1.64 (0.54, 5.07)
HCR-20	17.4 (23)	28.0 (25)	22.9 (48)	0.76	0.57 (0.15, 2.15)
SVR-20	17.4 (23)	16.0 (25)	16.7 (48)	0.02	1.10 (0.26, 4.67)
SORAG	39.1 (23)	32.0 (25)	35.4 (48)	0.27	1.35 (0.42, 4.29)
SARA	8.7 (23)	8.0 (25)	8.3 (48)	0.01	1.09 (0.17, 6.93)
ODARA	4.3 (23)	8.0 (25)	6.2 (48)	0.27	0.63 (0.07, 5.14)
RSVP	4.3 (23)	4.0 (25)	4.2 (48)	0.00	1.09 (0.10, 11.24)
GSIR	8.7 (23)	0.0 (25)	4.2 (48)	2.27	5.93 (0.27, 130.35)
LSI-R	13.0 (23)	4.0 (25)	8.3 (48)	1.28	2.79 (0.38, 20.62)
Total score	45.2 (31)	20.0 (55)	29.1 (86)	6.09*	3.21 (1.24, 8.30)
Percentile	32.3 (31)	10.9 (55)	18.6 (86)	5.97*	3.72 (1.24, 11.19)
Absolute recidivism	51.6 (31)	16.4 (55)	29.1 (86)	11.95**	5.21 (1.95, 13.93)

Note. OR = odds ratio; CI = confidence interval; PCL-R: Psychopathy Checklist-Revised (Hare, 2003); VRAG: Violence Risk Appraisal Guide (Harris et al., 1993); Static-99 (Hanson & Thornton, 1999); HCR-20: Historical Clinical Risk Management-20 (Webster et al., 1997); SVR-20: Sexual Violence Risk-20 (Boer et al., 1997); SORAG: Sex Offender Risk Appraisal Guide (Quinsey et al., 1998); SARA: Spousal Assault Risk Assessment Guide (Kropp et al., 1995); ODARA: Ontario Domestic Assault Risk Assessment (Hilton et al., 2004); RSVP: Risk for Sexual Violence Protocol (Hart et al., 2003); GSIR: General Statistical Information on Recidivism (Nuffield, 1982); LSI: Level of Service-Revised (Andrews & Bonta, 1995). * $p < .05$, ** $p < .01$

Table 21

Psychopathy Information Mentioned by the Judge

Psychopathy information	Dangerous offender % (n)	Long-term offender % (n)	Total % (n)	χ^2	OR (95% CI)
Given as a reason for sentence	67.7 (31)	50.9 (55)	57.0 (86)	2.29	1.98 (0.80, 4.88)
Dichotomous distinction	76.2 (21)	42.9 (28)	57.1 (49)	5.44*	3.96 (1.18, 13.32)
Specified cut-off	38.1 (21)	17.9 (28)	26.5 (49)	2.52	2.69 (0.76, 9.52)
Scores					
Total (score or percentile)	61.9 (21)	46.4 (28)	53.1 (49)	1.15	1.82 (0.59, 5.62)
Factors (score or percentile)	4.8 (21)	3.6 (28)	4.1 (49)	0.04	1.34 (0.13, 13.85)
Communication					
Used label "psychopath"	52.4 (21)	42.9 (28)	46.9 (49)	0.44	1.44 (0.47, 4.40)
Listed characteristics only	52.4 (21)	21.4 (28)	34.7 (49)	5.07*	3.79 (1.13, 12.70)
Label + characteristics	33.3 (21)	10.7 (28)	20.4 (49)	3.78	3.77 (0.91, 15.64)
Dramatic language used	14.3 (21)	3.6 (28)	8.2 (49)	1.84	3.47 (0.47, 25.67)
Mention of scientific literature	23.8 (21)	3.6 (28)	12.2 (49)	4.57*	6.11 (0.91, 41.10)
Incorrect information	19.0 (21)	25.0 (28)	22.4 (49)	0.24	0.74 (0.20, 2.78)
Treatment	38.1 (21)	25.0 (28)	30.6 (49)	0.97	1.80 (0.55, 5.96)
Future risk	61.9 (21)	57.1 (28)	59.1 (49)	0.11	1.20 (0.39, 3.72)

Note. OR = odds ratio; CI = confidence interval.

* $p < .05$

Comparing Information from Judges and Experts

A matching variable was created by considering the expert report available from Study 2 and the court transcript from the current study. More specifically, the risk assessment report from Study 2 was considered “matched” to a court transcript if a) there was only one expert assessment presented during the sentencing hearing, b) in cases with more than one expert where the judge gave no preference to the expert testimony (weighted each expert the same), and c) if the risk assessment report from Study 2 was completed by the same expert the judge preferred when explicitly stating a preference for one expert over the other(s). This matching procedure resulted in a total of 62 pairs. Odds ratios were calculated to determine the relationship between variables mentioned by the expert and those cited by the judge. Given that the matching procedure resulted in missing information for some of the variables, only variables pertinent to the final decision were analyzed. Also, these variables were dichotomized given missing information: a) risk level (high vs. not high), b) treatment amenability (low vs. not low), c) risk management potential (can be managed vs. cannot be managed), d) psychopathy label (yes vs. no), e) mentioned psychopathy and treatment (yes vs. no), and f) mentioned psychopathy and risk (yes vs. no). Non-significant odds ratios would indicate that the information from the expert assessment essentially resembled the information mentioned by the judge (Table 22).

There was consistency between expert assessments and the judges’ reasons for sentencing in terms of perceptions of offender risk ($n = 49$; OR = 3.92, 95% CI [0.48, 21.20]), treatment amenability ($n = 21$; OR = 0.81, 95% CI [0.81, 0.23, 2.89]), and risk management ($n = 32$; OR = 0.66, 95% CI [0.23, 1.87]). There were, however, significant differences in the mention of certain psychopathy information from the two sources. Judges’

reasons for sentencing were statistically significantly more likely to include the “psychopath” label (56.3%) compared with expert assessments (9.4%; $n = 32$; OR = 10.75, 95% CI [2.92, 39.62]) while expert assessments were more likely to include information on psychopathy and treatment (65.6%; $n = 32$; OR = 0.18, 95% CI [0.06, 0.54]) compared with the reasons for sentencing (25.0%). There was no significant difference for the mention of psychopathy and risk ($n = 16$; OR = 0.60, 95% CI [0.15, 2.45]).

Table 22

Comparisons between Information Mentioned by the Expert Assessment from Study 2 and the Judges' Reasons for Sentencing from Study 3

Variables mentioned	Expert Assessment %	Reasons for Sentencing %	Total <i>n</i>	OR (95% CI)
Risk (high vs. not high)	91.8	98.0	49	3.92 (0.48, 21.20)
Treatment amenability (low vs. not low)	71.4	66.7	21	0.81 (0.23, 2.89)
Risk management (can be managed vs. cannot)	83.7	76.7	32	0.66 (0.23, 1.87)
Psychopathy label (yes vs. no)	9.4	56.3	32	10.75 (2.92, 39.62)
Psychopathy and treatment (yes vs. no)	65.6	25.0	32	0.18 (0.06, 0.54)
Psychopathy and risk (yes vs. no)	68.8	56.3	16	0.60 (0.15, 2.45)

Note. OR = odds ratio; CI = confidence interval.

Predicting the Outcome

All three studies have so far presented information from three separate sources: independent coders (i.e., Study 1), expert assessments (i.e., Study 2), and judges (i.e., Study 3). Given the information provided, it is possible to examine the variables that are more predictive of the final designation outcome (DO vs. LTO). The following variables were taken from Study 1: age at index, presence of an APD/psychopathy diagnosis, prior supervision failure, mean number of prior adult convictions, total LS/CMI scores, and total Static-2002R scores (variables were chosen if they represented statistically significant risk factors and assessment scales). The following variables were taken from Study 2: treatment amenability (low vs. not low), risk management (yes vs. no), total PCL-R scores, total VRAG scores, and total Static-99 scores. The following variables were taken from Study 3: treatment amenability (low vs. not low) and risk management (yes vs. no). The overall risk perception of the judge was not included given the lack of variability (almost all offenders were rated high risk). Variables from each study were run individually (e.g., all variables from Study 1 were entered) and significant variables from each study were then entered into a final logistic regression model.

For all regression analyses, the backward selection method was used (LR method; analyses restricted to cases with information on all variables entered into the model). Results can be found in Table 23. All variables identified from Study 1 were entered. The overall final model was significant, $\chi^2(2, 94) = 7.63, p = .02$ (Nagelkerke $R^2 = .11$), and the Hosmer and Lemeshow test revealed a good fit between the observed data and the model, $\chi^2(8, 94) = 3.63, p = .889$. After controlling for the effects of all variables in the model, only a diagnosis of APD/psychopathy added incrementally to the prediction of a DO designation. When

examining the variables from Study 2, missing information for the Static-99 and the VRAG precluded these variables from inclusion. The remaining variables were entered and the overall final model was significant, $\chi^2(2, 44) = 16.32, p < .001$ (Nagelkerke $R^2 = .42$), with a good fit to the data, $\chi^2(2, 44) = 4.29, p = .117$. Overall, only the expert's rating of low treatment amenability and the lack of management potential added incremental validity to the prediction of a DO designation. The variables from Study 3 resulted in almost perfect prediction meaning that slopes for the variables could not be calculated (Field, 2010); the model from Study 3 could therefore not be assessed. Taking into consideration the judge's decision in terms of treatment amenability and risk management accounted for almost all of the variability in the final designation outcome (Nagelkerke $R^2 = .95$). This is not surprising given that the judges are explicitly stating that DOs have low treatment amenability and cannot be managed in the community in keeping with the legislative requirements.

As a final step the presence of APD/psychopathy, the expert's treatment amenability rating (low vs. no low), and the expert's perception of the possibility of risk management (yes vs. no) were entered into the prediction model. The overall model was statistically significant, $\chi^2(3, 62) = 22.86, p < .001$ (Nagelkerke $R^2 = .43$), and represented a good fit to the data, $\chi^2(4, 62) = 1.68, p = .795$. Only the expert's rating of treatment amenability and risk management were significantly and incrementally predictive of a DO designation, although the presence of an APD/psychopathy diagnosis approached statistical significance for incremental predictive validity, Wald = 3.83, $p = .050$, OR = 0.10, 95% CI [0.01, 1.00]. In order to compare the predictive accuracy of each model, the predicted probabilities for all three models were saved and AUC values were calculated. Both the model from Study 2 ($n = 44$; AUC = .78, $SE = .06$, 95% CI = .65, .88) and the final model ($n = 62$; AUC = .82, $SE =$

.06, 95% CI = .71, .93) showed similar predictive accuracies while the model from Study 1 was the least predictive of the final designation outcome ($n = 94$; $AUC = .59$, $SE = .04$, 95% CI = .50, .67).

Table 23

Logistic Regression Results for Predicting a DO Designation (Compared to a LTO Designation)

Variable	<i>B</i>	<i>SE</i>	Wald	<i>p</i>	Exp(<i>B</i>)	95% CI	
						Lower	Higher
Study 1 ^a							
APD/psychopathy	1.496	0.59	6.35	.012	4.47	1.39	14.31
Study 2 ^b							
Treatment amenability (Low) Management (Yes)	2.473	1.13	4.77	.029	11.86	1.29	109.08
Management (Yes)	-1.754	0.84	4.35	.037	0.17	0.03	0.90
Overall ^c							
Treatment amenability (Low) Management (Yes)	2.24	1.12	3.97	.046	9.38	1.04	84.82
Management (Yes)	-1.75	0.72	5.92	.015	0.17	0.04	0.71

Note. DO = dangerous offender; LTO = long-term offender; APD = antisocial personality disorder.

^aVariables not included in final model: age at index, prior supervision failure, mean number of adult convictions, Level of Service/Case Management Inventory (Andrews et al., 2004) total scores, and Static-2002R total scores. ^bVariables not included in final model: Psychopathy Checklist-Revised (Hare, 2003) total scores. ^cVariables not included in final model: APD/psychopathy.

Discussion

The goal of Study 3 was to compare DO and LTO decisions to a) identify the information that judges rely on when making the final designation, b) compare this information to that mentioned in the risk assessment reports, and c) conduct preliminary analyses into the predictors of the final designation outcome. Overall, more information

pertinent to the final designation was presented in DO decisions as opposed to LTO decisions. In comparing transcripts to the expert assessments from Study 2, judges and experts were consistent in their evaluations of offender risk, treatment amenability, and risk management potential. Experts' opinions concerning treatment amenability and risk management were also influential in predicting the final designation. Finally, consistent with risk assessment reports from Study 2, psychopathy was used almost exclusively as a risk assessment tool with little discussion of psychopathy characteristics or the relationship between psychopathy and treatment. Judges' reasons for sentencing were also more likely to include the "psychopath" label than expert reports.

Overall, results indicated that when summarizing a judgment for a DO designation as opposed to a LTO designation, judges tended to include more information as evidenced by the fact that DO decisions were significantly longer than LTO decisions. Judges were more likely to provide a categorical risk judgment, list pertinent risk factors, and discuss treatment amenability, past treatment outcomes, and risk management in DO decisions. When looking at the legislative requirements, all of these elements are necessary in determining whether a DO designation is appropriate (i.e., offender is high risk, there is no reasonable possibility of treatment success and eventual risk management; Part XXIV, *CCC*). In terms of risk more specifically, DO judgments were also more likely to mention specific risk scales and to provide total scores, percentiles, and absolute recidivism rates. The only element more likely mentioned in LTO decisions was the recommended supervision level and intensity. It could be argued that given the serious consequences of a DO designation (e.g., the majority resulting in indeterminate sentences), judges feel the need to more thoroughly justify their reasons for sentencing. Another variable which may explain these differences is the presence

of a joint submission between the prosecution and defence. Joint submissions were only present for LTO decisions (both sides agreed to the designation) and these cases were significantly shorter and contained almost no information in comparison to DO judgments.

In assessing the use of experts within preventative detention, the current study found that almost half of all cases included only one expert assessment. In the majority of these cases, the expert was court-appointed to complete the evaluation (72%); the remaining cases involved one expert assigned by the prosecution. The presence of one expert is consistent with legislative changes that eliminated the requirement of one defence and one prosecution expert in favour of an assessment completed by any expert (Part XXIV, *CCC*). Despite these changes, the defence can always opt to have their own expert testify on the defendant's behalf. In just over half of all cases, more than one expert testified as part of the preventative detention evaluation. Although the legislative changes were meant to place less emphasis on the adversarial nature of these proceedings, whether this is actually accomplished is still unknown. For example, results from Study 2 demonstrated that court-appointed expert assessments were very similar to prosecution-retained expert assessments with few exceptions. In order to fully evaluate the effect of having a neutral expert, future studies need to include all three types of experts as comparison groups (i.e., defence-retained, prosecution-retained, and court-appointed).

Although it is interesting to identify the information mentioned by judges in the reasons for sentencing, it is also important to compare this information to what was presented in the risk assessment reports. In order to control for extraneous variables, a sample of court transcripts was matched directly to the assessment reports from Study 2. When multiple experts were presented during the hearing and the judge stated preferring one expert over the

other(s), the case was only included if the assessment report available from Study 2 matched the expert the judge preferred. Due to missing data, these analyses focused on the variables pertinent to the legislation and final designation and each variable was dichotomized. Judges were consistent with the expert assessments from Study 2 when determining offender risk, treatment amenability, and risk management. These similarities indicate that the judge is likely relying on the expert assessment when making these determinations.

A separate section of the current study assessed the use of psychopathy. Research has consistently identified an increase in the use of the PCL-R within the CJS to inform decisions of future dangerousness, during sentencing and parole hearings, and for the purpose of civil commitment (i.e., SVP; DeMatteo & Edens, 2006; DeMatteo et al., 2013). In Canada, research has also confirmed that psychopathy is used when assessing the treatment amenability of youth (Viljoen, MacDougall et al., 2010), when assessing the risk of adult offenders (Viljoen, McLachlan, et al., 2010), and to inform preventative detention decisions (Lloyd et al., 2010). Within the current sample of court transcripts, psychopathy information was mentioned in almost 60% of the cases. The results confirm that in the majority of cases, psychopathy was used as another risk assessment tool. The elements more likely to be mentioned overall were a dichotomous decision concerning a psychopathy diagnosis (significantly more likely in DO decisions) and the “psychopath” label, total scores, and the relationship between psychopathy and risk. Less likely to be mentioned were factor scores, psychopathy characteristics (although this was more likely mentioned in DO decisions than LTO decisions), and the relationship between psychopathy and treatment amenability.

The use of psychopathy information was further compared to the presence of this same information within the expert assessments. Although almost all assessments contained

psychopathy information, as mentioned above, only 60% of judgments mentioned psychopathy. This is likely due to the fact that in some assessments, the PCL-R was administered but the offender scored relatively low and no further information was provided. In these cases, the presence of psychopathy did not facilitate the judge's decision and therefore may not have been mentioned. Using the same matching procedure previously discussed, the transcripts were directly compared to the expert assessments in terms of the use of the psychopathy label, and the inclusion of psychopathy and risk and treatment information. Judges were more likely to use the "psychopath" label and were less likely to mention the relationship between psychopathy and treatment compared with expert assessments. There was no difference between the sources of information in terms of mentioning psychopathy and risk. This supports the conclusion that judges are more likely utilizing psychopathy to inform their perceptions of the offender's risk rather than the offender's treatment amenability. The increased use of the "psychopath" label raises concerns for the pejorative effect that it may have on judges' decisions. Research has demonstrated that utilizing the label itself as opposed to using more appropriate terminology (i.e., psychopathic personality disorder) results in more punitive decisions (Boccaccini, Murrie et al., 2008; Vidal & Skeem, 2007).

It is important to note that less than 10% of court transcripts included dramatic language concerning psychopathy, however, almost a quarter of transcripts ($n = 11$; completed by 10 individual judges) included incorrect information. Not surprisingly given the reliance on experts, the errors were consistent with the errors identified in Study 2, including: a) psychopaths cannot be treated, should not be treated, or treatment increases their risk of recidivism ($n = 6$); b) psychopathy is the single most important predictor of

violent/sexual recidivism ($n = 3$); c) confusion between psychopathy and APD; and d) psychopathy is a completely static risk factor. Given the number of errors that occur within preventative detention and the extant literature on the pejorative labeling effect of including psychopathy information at sentencing (e.g., Blais & Forth, 2013; Chauhan et al., 2007; Edens et al., 2005), it is important that the use of psychopathy be justified and appropriate. In a review of psychopathy use within the US court system, DeMatteo et al. (2013) found that challenges to the admissibility of the PCL-R only occurred in 6% of cases (21 of 348) and were usually unsuccessful (21% successful; 4 of 19 unique cases). The majority of the challenges related to the perceived lack of relevance in including the PCL-R assessment. Consistent with Study 2, it can be argued that if the PCL-R is solely used as a risk assessment scale, then it might be appropriate to challenge its admissibility given that several other scales show comparable predictive accuracy for both sexual and violent recidivism (e.g., Static-99 and LSI-R; Hanson & Morton-Bourgon, 2009).

The only other study to examine the use of psychopathy within the context of preventative detention in Canada was Lloyd et al. (2010) which also utilized court transcripts of reasons for sentencing. It is important to note that the court transcripts for the Lloyd et al. (2010) study were collected from January 2002 to April 2007 and, as such, there would have been some overlap with the current sample of transcripts which ranged from January 2004 to June 2010. Regardless, similar to the current findings, Lloyd et al. (2010) found evidence of partisan allegiance with higher PCL-R scores being assigned by prosecution experts compared with defence experts. Although, the $ICC_{A,1}$ values between experts reported in Lloyd et al. (2010) and the current study (.67 and .68, respectively) were smaller than what is reported within the PCL-R manual ($ICC_1 = .86 - .94$; Hare, 2003) and between clinicians and

independent raters ($ICC_{A,1} = .92$; Woodworth & Porter, 2002), they were higher than what has been traditionally reported between experts within preventative detention hearings in the US ($ICC_{A,1} = .44-.52$; Boccaccini et al., 2012). Similarly, the mean difference in PCL-R scores between prosecution-retained and defence-retained experts was just over the standard error of measurement of 3 (Hare, 2003) in the current study ($M_{diff} = 3.71$) while studies from the US have reported mean differences well over the recommended standard error (e.g., average $M_{diff} = 5.69$, Murrie et al., 2009).

Despite the consistent and growing evidence for the validity of the partisan allegiance effect within the context of preventative detention (e.g., Boccaccini, et al., 2012; Murrie et al., 2013; Rufino et al., 2012), it does appear from the current findings that this effect is less pronounced in Canada than it is in the US. However, it is important to note that the majority of research from the US is specifically from the state of Texas. It is possible that the adversarial nature of SVP hearings is more pronounced in Texas than it is across the provinces in Canada, although this would be difficult to measure. It is also possible that the level of training received by Canadian evaluators is greater compared with evaluators from Texas. There is preliminary evidence that the training received by evaluators can reduce the variability in scores between evaluators in Texas SVP trials (Boccaccini, Murrie, Rufino, & Gardner, 2013). Although, in the only study to control for evaluator training (all evaluators received the same training and were randomly assigned to complete an assessment for the prosecution or defence), partisan allegiance effects were still evident (Murrie et al., 2013). More research into the salience of the partisan allegiance effect across different jurisdictions is still needed.

Study 3 also assessed the variables that were predictive of the designation outcome. These variables were taken from several sources. First, variables from Study 1 were included which represented variables coded independently from the trial. Variables were also taken from Study 2 representing the expert assessments presented at trial. Although variables from Study 3 were initially entered into the prediction model, a lack of variability meant that these variables could not be assessed. This is not surprising given that the judges are stating the information which supports the ultimate decision resulting in almost perfect prediction. Of all the variables other than the judges' information entered into the prediction model, no other variables added unique information beyond the experts' assessments of treatment amenability and risk management, although the presence of an APD/psychopathy diagnosis approached a significant incremental effect. Overall, these variables accounted for approximately 40% of the total variability in predicting the designation outcome. These results are consistent with the finding that judges' perceptions of treatment amenability and risk management taken from the reasons for sentencing did not differ from the expert assessments from Study 2.

The results from the prediction model are consistent with the overall finding that judges rely heavily on expert evidence when making their decisions. Almost all of the judges in the current sample relied heavily on expert information both generally and for psychopathy information specifically. This confirms what has been found within the literature in terms of the importance placed on expert testimony when making ultimate decisions such as detaining mentally disordered offenders (e.g., McKee et al., 2007) and deciding on the civil commitment of offenders in the US (e.g., Krauss et al., 2012; Krauss & Scurich, in press). Only one study to date has examined the relationship between variables

presented within court transcripts and DO and LTO outcomes (Lloyd et al., 2010). In the Lloyd et al. (2010) study, treatment amenability was related to the final designation outcome. Additionally, psychopathy was not directly related to the outcome, but rather was related to the treatment amenability rating. This is similar to what was found in the current study; although psychopathy was related to the designation outcome in Study 2, once treatment amenability and risk management were accounted for, psychopathy was no longer related to the final designation (although it approached statistical significance). This was also evidenced by the significant correlation between psychopathy total scores and expert ratings of treatment amenability (low vs. not low; $r_{\text{rho}} = .46, p < .001$). Psychopathy was not related to the expert's opinion regarding risk management. Overall, expert evidence is still the most important source of information facilitating the judges' final decisions.

It is important to note the limitations associated with Study 3. The main limitation of Study 3 was the relatively small number of transcripts available. Given that many of the variables coded do not appear in the majority of transcripts, conducting analyses to compare the presence of this information to the risk assessment reports from Study 2 or including these variables as predictors of the final designation was not always possible. The transcripts also did not represent all of the preventative detention cases within a specific timeframe, but rather a convenience sample based on the offender files received from the NFS and the risk assessment reports from Study 2. In order to more fully examine the weight that judges place on particular information, a larger and more representative sample of court transcripts would be needed. Relatedly, with the 2008 legislative changes, it is important to assess the reasons for sentencing since then (the current sample only included two transcripts after 2008).

A second limitation is the lack of information concerning the examination-in-chief and cross examination of the experts. Although comparing the reasons for sentencing to the written report provided by the experts is useful, this procedure does not allow for the information that may have been added during the experts' actual testimonies. Unfortunately, full trial transcripts are not readily available and would require an inordinate amount of time to code. It is therefore important to keep this limitation in mind when making conclusions concerning the comparisons between reasons for sentencing and the actual risk assessment report.

Conclusion

Overall, judges' reasons for sentencing were significantly longer when discussing DO designations as opposed to LTO designations. This was largely due to more detailed discussions of the variables pertinent to the final designation such as risk and treatment amenability. In terms of psychopathy, judges utilized the PCL-R largely as another risk assessment tool and were less likely to include other pertinent information such as psychopathy characteristics and the influence of psychopathy on treatment. There was also evidence of partisan allegiance with prosecution-retained PCL-R scores being significantly higher compared with defence-retained experts' scores. Finally, experts' ratings of treatment amenability and risk management were the primary predictors of the designation outcome indicating that judges rely on this information in making their final decision. This was further supported by the similarities in judges' perceptions of offender risk, treatment amenability, and risk management compared with expert assessments, and the fact that in the majority of cases, judges' reliance on expert evidence was rated as extreme.

Chapter 5: General Discussion

Preventative detention represents an important shift within the CJS from punishing the offender for a crime that has already been committed to punishing an offender based on the presumed high likelihood that a crime will occur in the future (Lippke, 2008). Given the serious consequences associated with preventative detention (i.e., possibility of indeterminate detention), it is important to continually evaluate the validity and reliability of these sanctions. The purpose of the present research was to evaluate preventative detention legislation in Canada by a) comparing designated offenders to non-designated offenders in terms of risk and treatment amenability, b) examining the risk assessment reports that inform the judges' decisions by comparing prosecution-retained versus court-appointed expert assessments, and c) evaluating the reasons for sentencing to assess the variables most important to the final designation outcome.

In applying the legislative requirements, the judge must be satisfied that the offender's risk is unlikely to be restrained in the future (i.e., high risk of reoffending) and, in making the distinction between a DO and LTO designation, the judge must also assess the treatment amenability (as stated in *R v. McCallum* [2005]) and risk management potential of the offender. Based on these considerations, the judge must reasonably understand and apply information from the risk assessment and treatment literature. Furthermore, given the increased use of the PCL-R, judges should also be familiar with psychopathy research. The main source of information for judges concerning these topics is the forensic risk assessment provided by the expert(s). Although the results from the three studies have already been summarized and discussed, the present discussion will place the results within the larger context of the risk, treatment, and psychopathy literatures in order to identify any limitations

to the current application of preventative detention and to inform future directions in terms of conducting research to improve the assessment of offenders.

Risk Assessment

The field of risk assessment has gone through many changes within the last three decades from the consensus that experts could not predict risk of reoffending with any certainty (e.g., Monahan, 1981; Steadman & Cocozza, 1974) to the development of valid and reliable risk assessment scales that show moderate and significant relationships with reoffending (e.g., Yang et al., 2010). These changes are often referred to as the generations of risk assessment (Bonta, 1996): unstructured clinical judgment (1st generation), actuarial risk scales of static factors (2nd generation), actuarial risk scales of static and dynamic factors (3rd generation), and the assessment of static and dynamic risk factors with a focus on proper implementation and risk management strategies (4th generation). SPJ, which combines the evaluation of both static and dynamic risk factors with the subjective evaluation of the importance of each risk factor would be considered a modified version of the 1st generation of risk assessment (Andrews et al., 2006). There are now several meta-analytical reviews demonstrating the superiority of the later generations of risk assessment compared with unstructured clinical judgment (Ægisdóttir et al., 2006; Grove, Zald, Lebow, Snitz, & Nelson, 2000; Hanson & Morton-Bourgon, 2009).

Despite the advances made within risk assessment, there are still many debates and controversies within the field. For example, although it is widely accepted that actuarial and SPJ methods are superior to unstructured clinical judgment, there is no real consensus on which scales within those methods should be used, with the most commonly used scales showing comparable predictive accuracy (e.g., PCL-R, VRAG, HCR-20; Yang et al., 2010).

There is evidence suggesting that scales utilizing dynamic risk factors show greater predictive accuracy compared with scales that only utilize static risk factors (e.g., Hanson & Morton-Bourgon, 2009). There is also preliminary evidence demonstrating that dynamic risk factors can add incremental validity to the prediction of reoffending among sex offenders after controlling for the effect of static risk factors (e.g., Olver, Wong, Nicholaichuk, & Gordon, 2007). The inclusion of dynamic risk factors can also contribute to the identification of appropriate treatment targets and facilitate an assessment of offender management (Heilbrun et al., 1999; Mills et al., 2010). Placing a larger emphasis on dynamic risk factors identifies an important distinction within the goals of risk assessment: prediction versus reduction or management (Heilbrun, 1997; Monahan & Skeem, 2014). Given that preventative detention requires a consideration of offender change, risk assessment for this purpose should focus on a reduction-oriented approach which emphasizes the importance of dynamic risk factors, treatment amenability, and risk management.

Study 1 considered both static and dynamic risk factors in determining the risk of all three offender groups (DOs, LTOs, and flagged offenders). More specifically, the LS/CMI (utilized as a 3rd generation risk assessment in Study 1) and the Static-2002R (2nd generation risk assessment) were scored independent of the preventative detention hearing. These results can therefore be viewed more objectively than the results contained within the risk assessment reports from Study 2 or the reasons for sentencing of Study 3. In terms of risk, designated offenders scored significantly higher compared with flagged offenders (high risk comparison group) in terms of static (e.g., Static-2002R total scores) and dynamic risk (e.g., several subscales of the LS/CMI such as procriminal attitudes and substance abuse). This would also indicate an increased number of treatment targets for designated offenders.

Risk assessment reports from Study 2 were limited in their inclusion of dynamic risk factors despite the importance of including these factors for the assessment of risk and offender change. Although actuarial risk tools were administered in the vast majority of cases (92%), none of these scales contained dynamic risk factors. Furthermore, a distinction between static and dynamic risk factors was only specified in 55% of assessments. Combined with the low percentage of cases mentioning protective factors (20%), the evidence supports the conclusion that these risk assessments were not consistent with several reviews indicating the importance of including information that could be useful for treatment and risk management concerns (Andrews et al., 2006; Coles & Grant, 1991; Heilbrun, 1997; Heilbrun et al., 1999). Not surprisingly, this was also evident within the reasons for sentencing; judges almost never provided a distinction between static and dynamic factors and the majority of risk scales mentioned contained no dynamic items. It is important to note the judges mentioned protective factors more often than experts (35% and 20%, respectively) indicating that approximately one third of judges did consider elements that may have lowered the offender's risk when making their final decision. In order to be useful to the judge, it appears that risk assessment reports need to contain a larger focus on dynamic risk factors, protective factors, and offender change.

Another challenge within the risk assessment field is how to deal with the ever increasing number of risk scales available. On average, experts from Study 2 utilized three risk assessment scales per assessment. There is little problem when the information from multiple scales converges, however, given that scales are developed using different samples, utilize different items in measuring the same construct, and are even created for different purposes (e.g., assessment of different types of recidivism), it is not uncommon for each

scale to produce different results which can lower predictive accuracy (Barbaree, Langton, & Peacock, 2006; Mills & Kroner, 2006; Vrieze & Grove, 2010¹²). In these cases, there is little direction provided by the literature on how to combine these results into an overall risk judgment. There are certain guidelines when considering static and dynamic scales, however, these guidelines have been scale specific (e.g., combining the Static-99 with a STABLE-2007 assessment; Helmus & Hanson, 2013). Although an earlier study found no evidence that any combining method improved predictive accuracy beyond the accuracy of each individual scale (Seto, 2005), more recently Lehmann et al. (2013) found that averaging the risk ratios of several validated risk scales for sex offenders showed promising results. More specifically, the averaging technique accurately predicted recidivism rates while choosing the lowest risk scale score underestimated recidivism risk and choosing the highest risk scale score overestimated recidivism rates. Despite these promising results, future research in this area is clearly warranted considering that multiple scales are almost always used and have been found to improve predictive accuracy, even among highly correlated measures (Babchishin, Hanson, et al., 2012).

Beyond the issues of including dynamic risk factors and integrating information from multiple scales, another important limitation was evident for the risk assessments from Study 2; only one quarter of all assessments mentioned any limitations of the overall risk judgment provided. Given the number of issues that may limit the generalizability or applicability of risk assessment to any individual offender, this number seems very low. One limitation that should be mentioned is the fact that risk assessment scales use aggregated data to make decisions about individuals which are accurate only to the extent that the offender closely

¹² See Vrieze and Grove (2010) for a detailed discussion of problems in combining information from multiple risk assessment scales for the prediction of recidivism.

resembles the scale construction sample. Additionally, absolute recidivism rates (mentioned in over 90% of risk assessment reports utilizing actuarial tools) are not necessarily stable over time or across different samples of offenders (see Helmus, Hanson, Thornton, Babchishin, & Harris, 2012). An example especially pertinent to the Canadian case is the utility of existing risk assessment scales with Aboriginal offenders. Although there is evidence that static risk scales are predictive of recidivism with Aboriginal offenders (e.g., Static-99/R; Babchishin, Blais, & Helmus, 2012), the same has not been found for scales with dynamic items (e.g., STABLE-2007; Helmus, Babchishin, & Blais, 2012). Furthermore, the absolute recidivism estimates associated with the LSI are not completely accurate with Aboriginal offenders compared with non-Aboriginal offenders in that the recidivism estimates associated with the low risk category underestimate the risk actually posed by Aboriginal offenders (Wilson & Gutierrez, 2013).

Judges from Study 3 mentioned limitations in less than 5% of transcripts indicating a current lack of consideration of broader risk assessment issues. Given the limitations that currently exist within the risk assessment literature (e.g., validity of absolute recidivism rates, sample variability) it is important that judges have this information when deciding on the reasonableness of their decisions. Based on this brief summary of the current issues within risk assessment, it is evident that experts conducting assessments within the context of preventative detention would benefit from more thorough guidelines in order to ensure that assessments are reflective of the current advances and limitations of this ever-growing field of research. This in turn would help to ensure that judges' decisions are made with full knowledge of the limitations associated with risk assessment.

Treatment Amenability

Similar to the advances made within risk assessment, the literature on effective offender rehabilitation has moved from a “nothing works” perspective (e.g., Martinson, 1974) to the identification of principles for the effective rehabilitation of offenders (e.g., RNR; Andrews & Bonta, 2010). For preventative detention decisions, the important consideration is not necessarily whether there are effective treatment programs available but rather if the offender will benefit from this treatment. Individual factors such as treatment readiness (e.g., Ward et al., 2004) and motivation (e.g., Serin et al., 2007) have been proposed as important considerations for treatment success, however, unlike the risk assessment literature, there is a dearth of research on the definition and measurement of these factors. Given that a determination of lack of treatability results in a potential indeterminate sentence, it is important to understand exactly what treatability entails.

Ward et al. (2004) have defined treatment readiness as the presence of both internal and external factors conducive to offender rehabilitation (i.e., multifactor offender readiness model [MORM]). Internal factors include the offender’s beliefs about treatment, experiences with past treatment, and individual goals. External factors are largely within the control of the treatment provider and include where the treatment is delivered and the resources that are available. Within this definition, treatment motivation can be seen as being part of treatment readiness (i.e., an internal factor). Another model to conceptualize internal motivation is the transtheoretical model of change (TMC; Prochaska & DiClemente, 1982) which comprises the following five stages: pre-contemplation (offender is not aware of any problem that needs to be changed), contemplation (offender acknowledges problems but has not taken steps towards change), preparation (offender wants to change, has taken steps towards change, but

the changes themselves are recent and unstable), action (offender is committed to change, has addressed problems in behaviour, attitude, and environment), and maintenance (offender engages in relapse prevention strategies to strengthen changes made in action stage). The goal of TMC is to match treatment activities to the stage of change of the offender (e.g., pre-contemplation activities should include motivational interviewing; Miller & Rollnick, 1991).

A final model, the treatment readiness responsivity and gain model (TRRG), developed by Serin and Kennedy (1997) considers treatment readiness as encompassing both strengths (e.g., higher treatment motivation) and weaknesses or needs (e.g., learning difficulties) both of which are important to treatment readiness. The TRRG is divided into two components: treatability and treatment effectiveness. Treatability focuses on treatment readiness and motivation while treatment effectiveness focuses on treatment gain and generalization. The TRRG also states that readiness and motivation are related to treatment effectiveness which is then related to treatment gain and generalization. The TRRG builds upon the specific responsivity principle of RNR which emphasizes the importance of taking into account individual characteristics which may impede treatment progress (Andrews & Bonta, 2010).

Despite the presence of models that define treatment readiness and motivation, there is little research assessing whether these constructs are actually related to positive treatment outcomes. An initial study by Casey et al. (2007) did find that the factors of the MORM were related to increased treatment engagement and treatment performance. The TMC has also been combined within dynamic risk assessment scales such as the VRS and VRS:SO; studies have found that taking into account offender motivation has led to positive treatment outcomes such as higher retention rates and reduced reoffending (e.g., Olver & Wong, 2009;

Wong, Olver, & Stockdale, 2009). There is also some evidence that intra-individual changes indicative of positive treatment gain are also inversely related to recidivism (Serin et al., 2013).

Despite the limited research on treatment readiness and motivation, consideration of these concepts within preventative detention hearings is important. Although not explicitly stated within the legislation, the distinction between DOs and LTOs requires a decision as to the level of treatability and future risk management of the offender. Study 1 represents the first attempt within the literature to assess DOs and LTOs on indices of treatment readiness and motivation. The results indicated that LTOs were rated more positively on measures of treatment motivation, treatment engagement, and treatment amenability. Although promising, these analyses were limited in that the majority of the indices were coded after the designation and were therefore subject to bias. The only variable to be taken prior to the designation was the expert's rating of treatment amenability (contained within the risk assessment reports of Study 2). This rating is limited in that it is unknown what factors were considered in determining the offender's level of treatment amenability. Future research should identify other indicators from the treatment readiness literature (e.g., mention of offender motivation, summary of past treatment success/failure) that may be present within risk assessment reports. Currently, the lack of contextual information concerning the treatability of the offender is a significant limitation to current risk assessment reports especially within the context of preventative detention hearings.

In terms of the judges' reasons for sentencing, the mention of treatment amenability was coded as well as the mention of treatment motivation and past treatment outcomes. Judges specified a treatment amenability rating in 84% of cases, however, the offender's

treatment motivation and past treatment outcomes were mentioned in less than one third of cases. This raises the important question as to what factors are considered in making the treatment amenability rating. Given that this rating determines the difference between a DO designation and a LTO designation, understanding the decision making process is of considerable importance. The lack of information provided in both risk assessment reports and reasons for sentencing is likely reflective of the limited research on treatment amenability compared with the risk assessment literature. As research on treatment readiness and motivation increases, it will be important to assess whether similar increases are seen within risk assessment reports and preventative detention decisions when justifying a treatment amenability rating.

Psychopathy

Psychopathy as measured by the PCL-R is often included within risk assessment reports for the purpose of preventative detention hearings (DeMatteo et al., 2014). In the current sample of expert assessments, the PCL-R was utilized in 96% of cases. Interestingly, research has found that designated offenders are no more likely to reach the diagnostic cut-off for psychopathy (i.e., score of 30 or above) compared with other high risk offenders (Bonta, Zinger et al., 1998; Zanatta, 1996, 2005). This finding was replicated in Study 1 within the samples of DOs, LTOs, and flagged offenders; there was no significant difference in the percent of offenders reaching the threshold for a psychopathy diagnosis. This is not to say, however, that a psychopathy assessment could not be useful for these types of hearings assuming that the conclusions drawn from the assessment are consistent with the psychopathy literature. Of particular concern are areas dealing with the relationship between

psychopathy and risk, psychopathy and treatment amenability, and how the psychopathy assessment results are communicated to the decision maker.

The relationship between PCL-R scores and risk for violent and sexual recidivism is well established in several meta-analytical reviews (e.g., Guy et al., 2005; Hawes et al., 2013; Kennealy et al., 2010; Walters, 2006). There is little doubt that increased psychopathic traits and behaviours place an offender at increased risk for recidivism. What is problematic from an assessment point of view is exaggerating this relationship. Effect size indicators have demonstrated that the PCL-R is moderately predictive of violent and sexual recidivism, similar to the effect sizes for other valid and reliable risk assessment scales (e.g., HCR-20 and VRAG; Yang et al., 2010). To state that psychopathy is the single most important predictor of recidivism or that the PCL-R is highly predictive of these outcomes is simply inconsistent with the current literature and adds a level of subjectivity to the interpretation of study results (i.e., “highly” predictive is not a well-defined term).

Unlike research on psychopathy and risk, the research on the relationship between psychopathy and poor treatment outcomes is equivocal. Early studies that concluded that psychopaths could not be treated or that treatment actually resulted in increased recidivism rates (e.g., Rice et al., 1992; Seto & Barbaree, 1999) were fraught with methodological limitations (e.g., inadequate comparison groups, inappropriate treatment). As previously discussed, however, more recent research utilizing better methodologies have found positive treatment outcomes when offender motivation is taken into account (e.g., Olver & Wong, 2009). Similar positive findings are evident within the youth psychopathy literature (e.g., Caldwell, Skeem, Salekin, & Van Rybroek, 2006). From this evidence, it would seem that the conclusion that psychopathic offenders cannot be treated is premature and not reflective

of the current literature. It is important to note however that psychopathic offenders are more likely to be unmotivated for treatment and more likely to drop out of treatment (Ogloff, Wong, & Greenwood, 1990; Wong et al., 2007). Therefore, psychopathy may be a useful consideration in assessing an offender's treatment readiness and motivation.

A final consideration is the way in which psychopathy assessment results are communicated. Beyond the obvious cautions of using dramatic language or the "psychopath" label (research has already established the detrimental effects of these practices; Blais & Forth, 2013; Boccaccini, Murrie et al., 2008; Edens et al., 2005), there are more subtle concerns for the omission of important information. More specifically, research has consistently shown that Factor 2 (i.e., behavioural and antisocial features) scores are more strongly related to recidivism compared with Factor 1 (i.e., interpersonal and affective features) scores (e.g., Kennealy et al., 2010; Walters, 2003a) thereby emphasizing the importance of providing scores for each factor. Also, given the relationship between Factor 2 scores and APD, providing factor scores may help determine whether the offender predominantly displays the more prototypic features of psychopathy (i.e., Factor 1 features) versus features more indicative of general antisociality common to many offenders (e.g., Factor 2 features).

Beyond providing total scores and scores for each factor, it seems important that experts also describe the key features of psychopathy and discuss the psychopathy literature in more detail. Being able to support conclusions made using the psychopathy literature would decrease the number of errors that can occur within psychopathy assessments. Within the present research, it was clear that there were serious concerns to the use of psychopathy. Less than 20% of reports contained information on factor scores, less than one quarter of

assessments discussed the psychopathy literature, and less than one third provided any information on the actual characteristics of psychopathy. It is therefore not surprising that errors in the scoring of the PCL-R or the conclusions drawn from the psychopathy assessment were present in 20% of the reports. Judges rely heavily on expert information concerning psychopathy (as evidenced by the results of Study 3) therefore making the rate of errors that much more concerning. Without proper context and information, the decision maker may rely on their own preconceptions of psychopathy when making decisions.

Biases within Risk Assessment

Beyond considering the complexities of the research literature on risk assessment, treatability, and psychopathy, the current research also emphasized the importance of considering bias within risk assessment. The results of the current study support the increasing literature on the existence of partisan allegiance within the context of preventative detention; prosecution-retained experts' PCL-R scores were significantly higher compared with defence-retained experts' PCL-R scores. Preventative detention legislation in Canada currently requires that a risk assessment be conducted by an expert as a way of moving beyond the adversarial nature of the earlier legislation (i.e., an expert representing the defence and an expert representing the prosecution). With these changes, there has been an increase in the number of cases with risk assessments conducted by a court-appointed expert (assumed to be a neutral expert). In Study 3, court-appointed experts completed assessments in over half of the cases (53%) and in 72% of these cases, they were the only expert to complete an assessment.

Whether a court-appointed expert succeeds in providing a neutral assessment has yet to be determined. Study 2 demonstrated that in many ways, court-appointed expert

assessments were similar to prosecution-retained expert assessments. In order to fully examine the utility of court-appointed experts as a means of reducing partisan allegiance, future research must include the defence-retained expert assessments. Of course, this begs the question of whether any of these three groups are actually accurate in their ratings. In order to answer this question, ratings from independent researchers using similar information that would have been available to the actual evaluators are also required. This type of research has been conducted within the partisan allegiance literature and found that although interrater reliability was high between two independent researchers, the interrater reliability was low between independent researchers, defence, and prosecution-retained experts (Rufino et al., 2012).

There is no easy solution to the partisan allegiance effects discussed. Beyond recommending that experts provide evidence of appropriate training for the scales that they administer or provide evidence that the scores presented have shown adequate interrater reliability between two separate raters, there is also the possibility of altering how experts from opposing sides interact and present their findings. More specifically, one possible solution to partisan allegiance is the adoption of concurrent testimony. Concurrent testimony (also known as “hot-tubbing”) refers to the practice whereby opposing experts provide a joint report which is then presented by the panel of experts involved to the decision maker. Although concurrent testimony is allowed in Canada and the US, the practice has mostly been adopted by Australian courts (Arnold & Soriano, 2013). Concurrent testimony is thought to reduce bias through the consideration of the opposing expert’s opinions and the requirement that both experts testify at the same time. There is currently little research into whether this practice could attenuate the effect of partisan allegiance, although some

researchers suggest that the partisan effect may persist even with concurrent testimony (Perillo, Perillo, & Kovera, 2014).

Although partisan allegiance has been identified as a source of bias within forensic risk assessment, other sources of bias may also contribute to reliability and validity issues and should be addressed. Bias can occur at multiple points during the assessment process, from the information that the assessor collects to how the information is then analyzed and integrated, and finally how it is ultimately interpreted. In a recent paper, Neal and Grisso (in press) outline some of these additional biases and suggest ways to identify and measure them within risk assessment reports. The authors first make a distinction between implicit bias (i.e., examiner is not aware of the bias) versus explicit bias (i.e., examiner's bias is deliberate and purposeful). Although explicit bias may be easy to identify (e.g., experts as hired guns), implicit bias is more difficult to identify and remedy. Such examples of implicit bias include: representativeness (e.g., ignoring base rate information); availability (e.g., confirmation bias); and anchoring (e.g., information encountered first is given more weight than information encountered later in an assessment). These types of biases can result in experts only gathering evidence for one hypothesis instead of exploring alternative hypotheses or experts ignoring evidence that does not fully support their conclusions, especially if this evidence was discovered later in the evaluation process.

Although more difficult to assess compared with partisan allegiance, Neal (2014) suggests that implicit bias could be detected through the detailed analysis of the forensic risk assessment report itself. Examples with support from the literature include examining the length of the report (e.g., Heilbrun & Collins, 1995), the sources of information included (e.g., Heilbrun & Collins, 1995), language valence and dominance (e.g., Heilbrun, Marczyk,

& DeMatteo, 2002), presence of alternative hypotheses (e.g., Heilbrun et al., 2002), base rate of evaluator conclusions (e.g., Murrie & Warren, 2005), and recommendation of the ultimate issue (e.g., Melton, Petrila, Poythress, & Slobogin, 2007). From this literature, bias may be suspected in shorter reports (i.e., less evidence supporting the conclusions), reports with dramatic/emotional language, reports that only provide one hypothesis, and reports from experts who often come to the same conclusion and who make specific recommendations concerning the ultimate issue. Preliminary findings confirmed that reports containing strong language (e.g., “I am 100% certain of my conclusion”) were shorter, provided fewer alternative explanations for findings, and had fewer sources of information (Neal, 2014). These findings suggest that examining the report in its entirety may provide a means of identifying implicit biases that would affect the evaluation process similarly to the effect of partisan allegiance. Future studies examining implicit biases would make a valuable contribution to the risk assessment literature.

Improving Preventative Detention Decisions

The results from all three studies allow for conclusions concerning the appropriate application and validity of preventative detention in Canada. In terms of applicability, results from Study 1 confirm that designated offenders are higher risk compared with a sample of high risk flagged offenders. Results from Study 1 also provided preliminary support for the hypothesis that LTOs are viewed more positively in terms of treatment amenability compared with DOs. It therefore seems as though preventative detention under the current legislative requirements is being applied correctly. Despite these findings, there remains the question as to whether preventative detention is really necessary. The LTOs in the current sample represented a lower risk to reoffend once released into the community compared with

flagged offenders and a sample of federal offenders. It is possible that DOs would represent a similarly lower risk after serving a substantial prison sentence as was suggested in the Nicholaichuk et al. (2013) study. It could also be argued, however, that the lower risk posed by LTOs is due to more positive treatment outcomes based on the treatment amenability ratings, or to sample selection biases (i.e., only a subset of LTOs were available for follow-up). Future research which assesses actual treatment progress of both DOs and LTOs is needed before any conclusions can be drawn.

Findings from both Study 2 and Study 3 served to illustrate the limitations involved in preventative detention decisions. In terms of the assessments from Study 2, risk assessment reports continued to rely on categorical risk estimates without proper numerical anchors as is suggested within the literature (e.g., Hanson et al., 2012). Furthermore, information from multiple scales was often combined into a final risk judgment without specifying the method used, or utilizing a method which has not been found to be particularly useful in increasing predictive accuracy (e.g., choosing the higher risk rating or lower risk rating; Lehmann et al., 2013). Of particular importance for future research is the lack of information provided in justifying a treatment amenability rating or risk management decision. Finally, the use of psychopathy information in forming decisions concerning risk and treatment amenability was limited by the general lack of information on psychopathy characteristics, factor scores, and the psychopathy literature. One in five reports also contained errors in the scoring of the PCL-R or in the conclusions that were drawn based on the score provided.

Findings from Study 3 further confirmed the reliance that is placed by judges on the risk assessment report provided by the expert. In the majority of cases, judges were rated as

having extreme reliance on general evidence and evidence specific to psychopathy provided by the expert. It was also determined that the expert's rating of treatment amenability and risk management significantly predicted the final designation outcome. These findings further emphasize the importance of improving risk assessment reports provided to the court especially during DO and LTO hearings. However, it should be noted that significant advances have been made within risk assessment (e.g., moving to more structured risk assessment as opposed to unstructured professional judgment) and the fact that judges rely on risk assessment as opposed to their own views on offender risk is positive. Although it is also promising that judges only used dramatic language when describing psychopathy in less than 10% of cases, it is difficult to assess the underlying stereotypes and erroneous conclusions that judges may hold when processing psychopathy information. These types of errors were explicitly stated in 22% of the cases, however, this number may be an underrepresentation of the errors in judgment that can occur when insufficient information on the psychopathy literature is provided.

Based on the findings from the current research, certain recommendations can be made for improving decision making within preventative detention hearings. The most important recommendation is improving risk assessment generally. Risk assessment is only one type of forensic mental health assessment that is conducted within the broader field of forensic psychology (other examples include competence to stand trial and criminal responsibility evaluations). Unlike other forensic assessments¹³, however, there are no agreed upon practice guidelines for forensic risk assessment which are overseen by a governing body (see Heilbrun & Brooks [2010] for a more detailed discussion). The implementation of

¹³ Mossman et al. (2007) describe specific guidelines for the competency evaluations overseen by the American Academy of Psychiatry and Law (AAPL) from the collection of information to disseminating the results. The guidelines also include example reports with discussion of the various elements.

practice guidelines would help in standardizing risk assessment practices and in ensuring that the most valid and reliable methods for risk assessment are utilized. Furthermore, such guidelines would identify practices that lack empirical support and would therefore encourage specific research to strengthen these practices or develop new strategies for risk assessment. Finally, the establishment of practice guidelines by a recognized institute may serve to specifically regulate risk assessment practices (Heilbrun & Brooks, 2010).

As previously mentioned, certain improvements to current risk assessment practices include placing a larger focus on assessing and discussing dynamic risk factors both in terms of improving the prediction of risk and in identifying appropriate treatment targets. Further research is also required into how to combine information from multiple risk assessment scales when making a final risk judgment. Risk assessment reports should also provide a discussion of current limitations of specific scales (e.g., validity of absolute recidivism rates over time and across different samples) and of risk assessment practices more broadly (e.g., using aggregate data to make decisions concerning individuals). Finally, there should also be a more detailed discussion of treatment amenability and the factors that are considered in making a final determination (e.g., treatment readiness, motivation).

In terms of psychopathy assessments, the first consideration should be whether the assessment itself is necessary. Psychopathy (as assessed by the PCL-R in the majority of cases) adds little to an assessment of risk without a more detailed discussion of how these characteristics relate to pertinent issues such as treatment amenability. Furthermore, any assessment of psychopathy should provide information on factor scores and how these scores impact conclusions concerning risk and treatment (i.e., Factor 2 is more predictive of risk compared with Factor 1). It is also important for psychopathy assessments to be reflective of

the current psychopathy literature. Prevailing assumptions concerning psychopathy are continually being challenged by new research methodologies and current assessments should be reflective of these changes. For example, although it has often been cited that psychopaths are more likely to be instrumentally violent as opposed to reactively violent, new meta-analytic findings do not necessarily support this conclusion (Blais, Solodukhin, & Forth, 2014). Continual training on the psychopathy and risk assessment literature as well as the requirement for re-certification after a certain amount of time has lapsed may be ways to ensure that experts are aware of the most recent advances within the literature.

Beyond improving risk assessment practices, there are other advances to be made within forensic psychology that would help improve preventative detention decisions in Canada. Given that the distinction between a DO and LTO designation relies on an assessment of treatment amenability and future risk management, it seems clear that more research on treatment readiness and motivation is needed. Although there is clear evidence on how offenders should be treated (i.e., RNR; Andrews et al., 2006), the individual factors related to treatment success are still relatively unknown. Despite the creation of models that define treatment readiness and motivation (e.g., MORM and TRRG), more research into whether these factors relate to treatment outcomes is needed. Certainly, recommending that forensic psychology as a field focus more on treatment is not new, but remains an important consideration (Otto & Heilbrun, 2002).

As a final consideration, it is not only important to improve risk assessment and to identify topics that require more research, it is also important to consider the consumer of the information that is produced by both endeavors. The dissemination of work completed within the field of forensic psychology to those individuals that will have to utilize and apply this

information is also important (Grisso, 1987). Given the growing nature of the field of risk assessment (and forensic psychology more broadly), there is a need for the “dissemination, through multiple approaches, of concise and accurate information about the nature of good services, the limitations of such services, and the criteria distinguishing good from poor services” (Heilbrun & Brooks, 2010, p. 243). Taken together, these recommendations emphasize the importance of evidenced-based practice for the quality and transparency of forensic assessments. Improving the practice of risk assessment, encouraging further enquiry into under-researched areas, and ensuring the appropriate dissemination of this information to decision makers, would be beneficial to preventative detention decisions, as well as any decision relying on forensic assessment within the CJS.

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Appendix A

List of Acronyms Used Throughout the Document

APD -	antisocial personality disorder
CCC -	Criminal Code of Canada
CJS -	criminal justice system
CSC -	Correctional Service of Canada
DO -	dangerous offender
HCR-20 -	Historical Clinical Risk Management-20
LTO -	long-term offender
LS/CMI -	Level of Service/Case Management Inventory
MnSOST-R -	Minnesota Sex Offender Screening Tool-Revised
MORM -	multifactor offender readiness model
PCL-R -	Psychopathy Checklist-Revised
PCL:SV -	Psychopathy Checklist: Screening Version
PCL:YV -	Psychopathy Checklist: Youth Version
RNR -	risk, need, and responsivity
RRASOR -	Rapid Risk Assessment for Sexual Offence Recidivism
SORAG -	Sex Offender Risk Appraisal Guide
SPIO -	serious personal injury offence
SPJ -	structured professional judgment
SVP -	sexually violent predator
SVR-20 -	Sexual Violence Risk-20
TRRG -	treatment readiness responsivity and gain model

US - United States

VRAG - Violence Risk Appraisal Guide

VRS - Violence Risk Scale

VRS:SO - Violence Risk Scale: Sex Offender version

Appendix B

PART XXIV: Dangerous Offenders and Long-Term Offenders¹⁴

Definitions:

752. In this Part,

“court” means the court by which an offender in relation to whom an application under this Part is made was convicted, or a superior court of criminal jurisdiction; “serious personal injury offence” means:

- (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
 - (i) the use or attempted use of violence against another person, or
 - (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,
and for which the offender may be sentenced to imprisonment for ten years or more, or
- (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

Application for remand for assessment:

752.1 (1) On application by the prosecutor, if the court is of the opinion that there are reasonable grounds to believe that an offender who is convicted of a serious personal injury offence or an offence referred to in paragraph 753.1(2)(a) might be found to be a dangerous offender under section 753 or a long-term offender under section 753.1, the court shall, by order in writing, before sentence is imposed, remand the offender, for a period not exceeding 60 days, to the custody of a person designated by the court who can perform an assessment or have an assessment performed by experts for use as evidence in an application under section 753 or 753.1.

(2) The person to whom the offender is remanded shall file a report of the assessment with the court not later than 30 days after the end of the assessment period and make copies of it available to the prosecutor and counsel for the offender.

Extension of time

(3) On application by the prosecutor, the court may extend the period within which the report must be filed by a maximum of 30 days if the court is satisfied that there are reasonable grounds to do so. 1997, c. 17, s. 4; 2008, c. 6, s. 41.

Application for finding that an offender is a dangerous offender

¹⁴Adapted from the Department of Justice Canada website:
<http://www.publicsafety.gc.ca/prg/cor/tls/dod-eng.aspx>

753. (1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing

(i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,

(ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or

(iii) any behaviour by the offender, associated with the offence for which he or she has been convicted, that is of such a brutal nature as to compel the conclusion that the offender's behaviour in the future is unlikely to be inhibited by normal standards of behavioural restraint; or

(b) that the offence for which the offender has been convicted is a serious personal injury described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

Time for making application – Application for remand for assessment after imposition of sentence – Sentence for dangerous offender – Sentence for indeterminate sentence

(2) An application under subsection (1) must be made before sentence is imposed on the offender unless

(a) before the imposition of sentence, the prosecutor gives notice to the offender of a possible intention to make an application under section 752.1 and an application under subsection (1) not later than six months after that imposition; and

(b) at the time of the application under subsection (1) that is not later than six months after the imposition of sentence, it is shown that relevant evidence that was not reasonably available to the prosecutor at the time of the imposition of sentence became available in the interim.

(3) Notwithstanding subsection 752.1(1), an application under that subsection may be made after the imposition of sentence or after an offender begins to serve the sentence in a case to which paragraphs (2)(a) and (b) apply.

- (4) If the court finds an offender to be a dangerous offender, it shall
- (a) impose a sentence of detention in a penitentiary for an indeterminate period;
 - (b) impose a sentence for the offence for which the offender has been convicted — which must be a minimum punishment of imprisonment for a term of two years — and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or
 - (c) impose a sentence for the offence for which the offender has been convicted.

(4.1) The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

If application made after sentencing

- (5) If the court does not find an offender to be a dangerous offender,
- (a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find that the offender is a long-term offender or hold another hearing for that purpose; or
 - (b) the court may impose sentence for the offence for which the offender has been convicted.

Application for finding that an offender is a long-term offender – Substantial risk – Sentence for long-term offender – Exception — if application made after sentencing – If offender not found to be long-term offender

753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

- (a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;
- (b) there is a substantial risk that the offender will reoffend; and
- (c) there is a reasonable possibility of eventual control of the risk in the community.

(2) The court shall be satisfied that there is a substantial risk that the offender will reoffend if

- (a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), subsection 163.1(3) (distribution, etc., of child pornography), subsection 163.1(4) (possession of child pornography), subsection 163.1(4.1) (accessing child pornography), section 172.1 (luring a child), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) or 273 (aggravated sexual assault), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

(b) the offender

(i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or

(ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.

(3) If the court finds an offender to be a long-term offender, it shall

(a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and

(b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.

(3.1) The court may not impose a sentence under paragraph (3)(a) and the sentence that was imposed for the offence for which the offender was convicted stands despite the offender's being found to be a long-term offender, if the application was one that

(a) was made after the offender begins to serve the sentence in a case to which paragraphs 753(2)(a) and (b) apply; and

(b) was treated as an application under this section further to the court deciding to do so under paragraph 753(5)(a).

(6) If the court does not find an offender to be a long-term offender, the court shall impose sentence for the offence for which the offender has been convicted.

1997, c. 17, s. 4; 2002, c. 13, s. 76; 2008, c. 6, s. 44.

Long-term supervision – Sentence served concurrently with supervision – Application for reduction in period of long-term supervision – Notice to Attorney General

753.2 (1) Subject to subsection (2), an offender who is subject to long-term supervision shall be supervised in the community in accordance with the *Corrections and Conditional Release Act* when the offender has finished serving

(a) the sentence for the offence for which the offender has been convicted; and

(b) all other sentences for offences for which the offender is convicted and for which sentence of a term of imprisonment is imposed on the offender, either before or after the conviction for the offence referred to in paragraph (a).

(2) A sentence imposed on an offender referred to in subsection (1), other than a sentence that requires imprisonment, is to be served concurrently with the long-term supervision.

(3) An offender who is required to be supervised, a member of the National Parole Board, or, on approval of that Board, the parole supervisor, as that expression is defined in subsection 134.2(2) of the *Corrections and Conditional Release Act*, of the offender, may apply to a superior court of criminal jurisdiction for an order reducing the period of long-

term supervision or terminating it on the ground that the offender no longer presents a substantial risk of reoffending and thereby being a danger to the community. The onus of proving that ground is on the applicant.

Notice to Attorney General

(4) The applicant must give notice of an application under subsection (3) to the Attorney General at the time the application is made.

1997, c. 17, s. 4; 2008, c. 6, s. 45.

Breach of long-term supervision – Where accused may be tried and punished

753.3 (1) An offender who, without reasonable excuse, fails or refuses to comply with long-term supervision is guilty of an indictable offence and liable to imprisonment for a term not exceeding 10 years.

(2) An accused who is charged with an offence under subsection (1) may be tried and punished by any court having jurisdiction to try that offence in the place where the offence is alleged to have been committed or in the place where the accused is found, is arrested or is in custody, but if the place where the accused is found, is arrested or is in custody is outside the province in which the offence is alleged to have been committed, no proceedings in respect of that offence shall be instituted in that place without the consent of the Attorney General of that province.

1997, c. 17, s. 4; 2008, c. 6, s. 46.

New offence – Reduction in term of long-term supervision

753.4 (1) If an offender who is subject to long-term supervision commits one or more offences under this or any other Act and a court imposes a sentence of imprisonment for the offence or offences, the long-term supervision is interrupted until the offender has finished serving all the sentences, unless the court orders its termination.

(2) A court that imposes a sentence of imprisonment under subsection (1) may order a reduction in the length of the period of the offender's long-term supervision.

1997, c. 17, s. 4; 2008, c. 6, s. 47.

Hearing of application – By court alone – Proof of consent

754. (1) With the exception of an application for remand for assessment, the court may not hear an application made under this Part unless

(a) the Attorney General of the province in which the offender was tried has, either before or after the making of the application, consented to the application;

(b) at least seven days notice has been given to the offender by the prosecutor, following the making of the application, outlining the basis on which it is intended to found the application; and

(c) a copy of the notice has been filed with the clerk of the court or the provincial court judge, as the case may be.

(2) An application under this Part shall be heard and determined by the court without a jury.
When proof unnecessary

(3) For the purposes of an application under this Part, where an offender admits any allegations contained in the notice referred to in paragraph (1)(b), no proof of those allegations is required.

(4) The production of a document purporting to contain any nomination or consent that may be made or given by the Attorney General under this Part and purporting to be signed by the Attorney General is, in the absence of any evidence to the contrary, proof of that nomination or consent without proof of the signature or the official character of the person appearing to have signed the document.

R.S., 1985, c. C-46, s. 754; R.S., 1985, c. 27 (1st Supp.), s. 203; 2008, c. 6, s. 48.

Exception to long-term supervision — life sentence – Maximum length of long-term supervision

755. (1) The court shall not order that an offender be subject to long-term supervision if they have been sentenced to life imprisonment.

Maximum length of long-term supervision

(2) The periods of long-term supervision to which an offender is subject at any particular time must not total more than 10 years.

R.S., 1985, c. C-46, s. 755; 1997, c. 17, s. 5; 2008, c. 6, s. 49.

Evidence of character

757. Without prejudice to the right of the offender to tender evidence as to their character and repute, if the court thinks fit, evidence of character and repute may be admitted

(a) on the question of whether the offender is or is not a dangerous offender or a long-term offender; and

(b) in connection with a sentence to be imposed or an order to be made under this

Part.

R.S., 1985, c. C-46, s. 757; 1997, c. 17, s. 5; 2008, c. 6, s. 50.

Presence of accused at hearing of application - Exception

758. (1) The offender shall be present at the hearing of the application under this Part and if at the time the application is to be heard

(a) he is confined in a prison, the court may order, in writing, the person having the custody of the accused to bring him before the court; or

(b) he is not confined in a prison, the court shall issue a summons or a warrant to compel the accused to attend before the court and the provisions of Part XVI relating to summons and warrant are applicable with such modifications as the circumstances require.

- (2) Notwithstanding subsection (1), the court may
- (a) cause the offender to be removed and to be kept out of court, where he misconducts himself by interrupting the proceedings so that to continue the proceedings in his presence would not be feasible; or
 - (b) permit the offender to be out of court during the whole or any part of the hearing on such conditions as the court considers proper.
- R.S., c. C-34, s. 693; 1976-77, c. 53, s. 14.

Appeal — offender – Appeal – Attorney General – Disposition of appeal – Effect of decision

759. (1) An offender who is found to be a dangerous offender or a long-term offender may appeal to the court of appeal from a decision made under this Part on any ground of law or fact or mixed law and fact.

(2) The Attorney General may appeal to the court of appeal from a decision made under this Part on any ground of law.

- (3) The court of appeal may
- (a) allow the appeal and
 - (i) find that an offender is or is not a dangerous offender or a long-term offender or impose a sentence that may be imposed or an order that may be made by the trial court under this Part, or
 - (ii) order a new hearing, with any directions that the court considers appropriate; or
 - (b) dismiss the appeal.

(4) A decision of the court of appeal has the same force and effect as if it were a decision of the trial court.

Appendix C

Study 1 – Coding Manual

A. Case Details

Part I. Basic Case Information

1. Subject ID #: _____
2. Subject Name: _____
(LAST, First and Middle)
3. Alias (as on CPIC): _____
(LAST, First and Middle)
4. Date of Birth: _____
(dd/mm/yy)
5. FPS #: _____
6. Gender: Male (1) Female (2)
7. Race: Caucasian (1) Métis (5)
 Black (2) East Indian (6)
 Asian (3) Hispanic (7)
 Aboriginal (4) Other (8) _____
8. Marital Status: Single (never married) (1)
 Married/Common-law (2)
 Separated/Divorced (3)
 Widowed (4)
9. Province: British Columbia (1) Newfoundland (6)
 Alberta (2) New Brunswick (7)
 Saskatchewan (3) Prince Edward Island (8)
 Manitoba (4) Yukon (9)
 Ontario (5) Nunavut (10)
10. Date of Coding: _____
(dd/mm/yy)
11. Coder Name: _____
(LAST, First)
12. Subject is classified as: Flagged Offender (1)
 Dangerous Offender (2)
 Long-Term Supervision Order Offender (3)

Note: In order to be classified as a Dangerous Offender (DO) or a Long-Term Supervision Order Offender (LTO), the subject MUST have such a designation. A failed application does NOT count.

Part II. DO/LTO Index Offence

13. Date of index offence: _____
(dd/mm/yy)

Note: This refers to the date that the offender committed the criminal offence(s) that resulted in the court designation. If a span of offending is present, use the most recent date that you know (based on official AND unofficial info.) that the offender was offending. If unknown, use the date that the offender was charged with the criminal offence.

	<u>Column A: DO</u>	<u>Column B: LTO</u>
14. Was the subject flagged prior to the index offence?	<input type="checkbox"/> No (0) <input type="checkbox"/> Yes (1)	<input type="checkbox"/> No (0) <input type="checkbox"/> Yes (1)
15. Date of court designation	_____ (dd/mm/yy)	_____ (dd/mm/yy)
16. Date of index offence conviction	_____ (dd/mm/yy)	_____ (dd/mm/yy)
17. Total number of convictions	_____	_____
18. Offence code for MSO	_____	_____
19. Type of MSO	<input type="checkbox"/> Person (1) <input type="checkbox"/> Property (2) <input type="checkbox"/> Public Morals (3) <input type="checkbox"/> Narcotics (4) <input type="checkbox"/> Property with Violence (5) <input type="checkbox"/> Liquor/Traffic (6) <input type="checkbox"/> Public Order (7) <input type="checkbox"/> Probation/Parole Violation (8) <input type="checkbox"/> Sexual Offence (9) <input type="checkbox"/> Other (10)	<input type="checkbox"/> Person (1) <input type="checkbox"/> Property (2) <input type="checkbox"/> Public Morals (3) <input type="checkbox"/> Narcotics (4) <input type="checkbox"/> Property with Violence (5) <input type="checkbox"/> Liquor/Traffic (6) <input type="checkbox"/> Public Order (7) <input type="checkbox"/> Probation/Parole Violation (8) <input type="checkbox"/> Sexual Offence (9) <input type="checkbox"/> Other (10)
20. Violent vs. non-violent offence for MSO	<input type="checkbox"/> Non-violent (1) <input type="checkbox"/> Violent (2)	<input type="checkbox"/> Non-violent (1) <input type="checkbox"/> Violent (2)
21. Total number of years sentenced:	_____ (99 = Indeterminate)	_____
<i>Note: (1) Do not subtract credit for pre-trial/pre-sentence custody.</i>		
22. Number of years under long-term supervision:	N/A	_____

B. Flagging Details

Flagged Offenders: Code all items in this section.

Dangerous/Long-Term Supervision Order Offenders: If the subject has a DO or LTO designation, this information may not be applicable if they were not flagged prior to the offence/charge that led to the court designation. Specifically, there **MUST** be a “Yes” coded for Item A14 (see pg. 2) in order to code this section.

Part I. Basic Flagging Information

1. Date of first flagging: _____
(dd/mm/yy)

Note: This information may not be available in certain provinces (e.g., British Columbia). At minimum, a month and year is required to code this item. If the exact date of flagging is unavailable, use the 15th of the month that the offender was flagged. For example, August 2006 will be coded as 15-Aug-06.

2. Case synopsis/Flag information (notable/particular information about subject, e.g., subject was flagged because ...)

3. Source of Flag:
- NFS Coordinator (1)
 - Crown Attorney (2)
 - RCMP (3)
 - Municipal/Provincial Police (4)
 - Correctional Service of Canada (via Warrant Expiry Package) (5)
 - Other (6) _____
4. Status of offender at flagging:
- In the community (1)
 - In prison (2)

Part II. Flagged Offender - Index Offence

5. Date of index offence: _____
(dd/mm/yy)

Note: This refers to the criminal event that triggered the flag. If the precipitating event was an S. 810 order, use the date the S. 810 order was issued. If the precipitating event was a charge, use actual date of the offence. If the precipitating event was a conviction, use date of the conviction. If the offender was sentenced for the precipitating event prior to the flag date, use the sentencing date. Note that CPIC dates represent sentencing dates.

6. The index offence was a:
- S. 810 order (1)
 - Charge (2)
 - Conviction (3)

	<u>Column A: Charge</u>	<u>Column B: Conviction</u>
7. Total number of charges _____ <i>Note: Use CPIC to code for charges</i>		N/A
8. Total number of convictions N/A		_____
9. Offence code for MSO _____ <i>Note: If the precipitating event is a charge, use the nature of the offence to guide the choice of the MSO</i>		_____
10. Type of MSO	<input type="checkbox"/> Person (1) <input type="checkbox"/> Property (2) <input type="checkbox"/> Public Morals (3) <input type="checkbox"/> Narcotics (4) <input type="checkbox"/> Property with Violence (5) <input type="checkbox"/> Liquor/Traffic (6) <input type="checkbox"/> Public Order (7) <input type="checkbox"/> Probation/Parole Violation (8) <input type="checkbox"/> Sexual Offence (9) <input type="checkbox"/> Other (10)	<input type="checkbox"/> Person (1) <input type="checkbox"/> Property (2) <input type="checkbox"/> Public Morals (3) <input type="checkbox"/> Narcotics (4) <input type="checkbox"/> Property with Violence (5) <input type="checkbox"/> Liquor/Traffic (6) <input type="checkbox"/> Public Order (7) <input type="checkbox"/> Probation/Parole Violation (8) <input type="checkbox"/> Sexual Offence (9) <input type="checkbox"/> Other (10)
11. Violent vs. non-violent offence for MSO	<input type="checkbox"/> Non-violent (1) <input type="checkbox"/> Violent (2)	<input type="checkbox"/> Non-violent (1) <input type="checkbox"/> Violent (2)
12. Court disposition for MSO N/A		<input type="checkbox"/> Prison (1) <input type="checkbox"/> Time Served (2) <input type="checkbox"/> Probation (3) <input type="checkbox"/> Fine/ID Days (4) <input type="checkbox"/> Community Service/Restitution (5) <input type="checkbox"/> Suspended Sentence (6) <input type="checkbox"/> Conditional/Absolute Discharge (7) <input type="checkbox"/> Other (e.g. CSO, Diversion) (8) <input type="checkbox"/> Sentence Pending (9)
13. If sentenced to a period of incarceration for MSO, length of sentence in months. N/A		_____

*Note: (1) Do not subtract credit for pre-trial/pre-sentence custody. (2) Sometimes, the **actual** pre-trial/pre-sentence custody time and the **credited** time (i.e., 2 for 1) are both reported, in addition to the sentence imposed. If this distinction is clear, and it reads as “&/and” and not “minus” (as per the Coding Manual), code the **credited** time to best reflect the full length of the sentence imposed. Example: for a subject who served 6 months of pre-trial/pre-sentence custody time and was credited at 2 for 1 for a total of 12 months, we’re interested in capturing the 12 months, not the actual time served. (3) If the sentence is varied on appeal, use the new sentence length.*

C. Criminal History Information*Part I. First Conviction (as on CPIC but use reliable file info in absence of CPIC)*

1. Date of first conviction (youth or adult) _____
(dd/mm/yy)
2. Offence code for MSO at first conviction _____
3. Type of MSO at first conviction
- Person (1)
 - Property (2)
 - Public Morals (3)
 - Narcotics (4)
 - Property with Violence (5)
 - Liquor/Traffic (6)
 - Public Order (7)
 - Probation/Parole Violation (8)
 - Sexual Offence (9)
 - Other (10)
4. Violent vs. non-violent offence for MSO at first conviction
- Non-violent (1) Violent (2)
5. Court disposition for MSO
- Prison (1)
 - Time Served (2)
 - Probation (3)
 - Fine/ID Days (4)
 - Community Service/Restitution (5)
 - Suspended Sentence (6)
 - Conditional/Absolute Discharge (7)
 - Other (e.g. CSO, Diversion) (8)

Part II. Other Criminal History Information

6. Any evidence of a sexual offence at index offence? No (0) Yes (1)
- Note: In order to assess this item, there must be a sexual offence by NAME (e.g., sexual assault).*

7. Life total of victims of sex offences (convictions only), **including** index offence _____

8. Subject's total number of **ADULT** convictions, **excluding** index offence _____

Note: do not count re-committals for parole violations. Adult convictions refer to convictions that the offender received at 18 years of age and older.

Flagged Offenders: Unless otherwise stated, items in this section refer to the subject's circumstances at the time of FIRST FLAGGING (see Item B1).

Dangerous/Long-Term Supervision Order Offenders: Unless otherwise stated, items in this section refer to the subject's circumstances at INDEX OFFENCE, i.e., at the time that the offender committed the offence that led to the court designation (see Item A13).

Reference Date: _____

(dd/mm/yy)

When coding Section D, coders should regularly refer back to this reference date as most of the items require that the coders assess the offender's circumstances AT THIS POINT IN TIME. Generally, coders will examine the time periods 12 months before and after this reference date.

If information is not explicitly stated, code based on balance of probabilities (i.e., more likely than not given supporting evidence). Note any coding decisions and the reasoning behind the decision on the "Notes" page.

Items 1 through 68 represent the individual items of the Level of Service/ Case Management Inventory and are therefore not included due to copyright issues.

69. Any indication of sexual deviance?

No (0)

Yes (1)

If yes, (a) specify type (check all that apply)

Pedophilia: sexual interest in pre-pubescent children

Hebephilia: sexual interest in pubescent children

Sadism: sexual interest in inflicting pain, suffering or humiliation on others

Voyeurism

Exhibitionism

Paraphilic rape: sexual interest in or preference for non-consent sex over consenting sex

Frotteurism: touching unsuspecting persons in public places, such as buses and subways

Fetishism: non-human objects, such as shoes, underwear

Other e.g., masochism, necrophilia, zoophilia

a) Deviance: b) Source:

Pedophilia (1); _____

Hebephilia (2); _____

Sadism (3); _____

Voyeurism (4); _____

Exhibitionism (5); _____

Paraphilic rape (6); _____

Frotteurism (7); _____

Fetishism (8); _____

Other(9); _____

(b) specify source (indicate all that apply):

Professional diagnosis: e.g., structured for unstructured psychiatric or psychological assessment, DSM-III or DSM-IV criteria)

Specialized testing report: e.g., phallometric assessment, viewing time

Offence history: i.e., was the number and nature of victims explicitly used to justify a diagnosis of deviant sexual interests?

Self-report, i.e., if the offender discloses deviant sexual interests (code this item based on the nature of the deviant sexual interest)

Unclear: e.g., minimal reference

1- Professional diagnosis

2- Specialized testing report

3- Offence history

4- Self-report

5- Unclear information

E. Risk Assessment Scores

Instructions: Unless otherwise stated, information for this section is to be completed based only on the risk assessment scores available from the offender file(s). Note ALL risk assessments found in the offender's file. If there are multiple risk assessments of the same type, note the most recent.

If both the scale score AND categorical risk level are reported, complete both (a) AND (b). If only one is provided (i.e., (a) OR (b)), report that single measure only. Coders should not attempt to generate scores or risk levels if they are not reported.

1. Statistical Information on Recidivism (SIR)

(a) total scale score: _____

(b) categorical risk levels:

- Very Low (score of +6 to +27) (1)
- Low (score of +1 to +5) (2)
- Medium (score of -4 to 0) (3)
- High (score of -8 to -5) (4)
- Very High (score of -30 to -9) (5)

2. Violence Risk Appraisal Guide (VRAG)

(a) total scale score: _____

(b) categorical risk levels:

- 1 (score of -22 or less) (1)
- 2 (score of -21 to -15) (2)
- 3 (score of -14 to -8) (3)
- 4 (score of -7 to -1) (4)
- 5 (score of 0 to 6) (5)
- 6 (score of 7 to 13) (6)
- 7 (score of 14 to 20) (7)
- 8 (score 21 to 27) (8)
- 9 (score of 28 or more) (9)

3. **Primary** Risk Assessments *e.g. CRNA, SPRA* _____ (specify type)

(a) total scale score: _____

(b) categorical risk levels: _____

4. **Secondary** Risk Assessments *e.g., SARA, ODARA* _____ (specify type)

(a) total scale score: _____

(b) categorical risk levels: _____

5. Other **Secondary** Risk Assessments *e.g.*, SARA, _____ (specify type)
ODARA

(a) total scale score: _____

(b) categorical risk levels: _____

6. Other **Secondary** Risk Assessments *e.g.*, SARA, _____ (specify type)
ODARA

(a) total scale score: _____

(b) categorical risk levels: _____

F. Sexual Offending Risk Assessments

Part I. Stable 2000/2000R/2007 information (from file)

1. Stable-2000

(a) total scale score: _____

(b) categorical risk levels:

- Low (score of 0 to 4) (1)
 Moderate (score of 5 to 8) (2)
 High (score of 9 to 12) (3)

2. Stable-2000R

(a) total scale score: _____

(b) categorical risk levels:

- Low (score of 0 to 2) (1)
 Moderate (score of 3 to 7) (2)
 High (score of 8 to 12) (3)

3. Stable-2007

(a) total scale score: _____

(b) categorical risk levels:

- Low (score of 0 to 3) (1)
 Moderate (score of 4 to 11) (2)
 High (score of 12 to 26) (3)

Part II. Static-99 information (from file)

4. Static-99

(a) total scale score: _____

(b) categorical risk levels:

- Low (score of 0,1) (1)
 Moderate-Low (score of 2,3) (2)
 Moderate-High (score of 4,5) (3)
 High (score of 6 and above) (4)

Part III. Static-2002 Information

Instructions: In order to code the Static-2002, the offender MUST have

- an index sexual offence, OR
- at least one conviction for a sexual offence in the past 10 years from index offence (i.e., flagging or designation offence), OR
- be currently treated as a sexual offender.

5. (a) Date of Index Sexual Offence Conviction: _____
(dd/mm/yy)*For a further explanation of how to identify the index sex offence, refer to Coding Rules for Static-2002.**Updated 05.10.12**In order to use the STATIC-2002 to predict recidivism of NFS offenders, the most recent sex offence (regardless of offence name) was coded up to the INDEX DATE as defined by the NFS project (for flagged offenders, this is the flag date; for designated offenders, this is the date of their designation).**All sex offences occurring AFTER the index date were coded as recidivism.**In some cases the index sex offence for Static-2002 may be different from the offence that resulted in the offender being flagged or declared a DO or LTO.*

(b) Age at Release from this Index Sex Offence: _____

Note: If the offender is still in prison for the index sex offence and their release date is not known with certainty, then code item as their age at index sex offence conviction.

STATIC-2002R CODING		
ITEMS	Raw Score	Subscore
<p><u>AGE</u></p> <p>1. Age at Release 18 to 34.9 = 2 35 to 39.9 = 1 40 to 59.9 = 0 60 or older = -2</p>		
<p><u>PERSISTENCE OF SEXUAL OFFENDING</u></p> <p>2. Prior Sentencing Occasions for Sexual Offences: No prior sentencing dates for sexual offences = 0 1 = 1 2, 3 = 2 4 or more = 3</p> <p>3. Any Juvenile Arrest for a Sexual Offence and Convicted as an Adult for a Separate Sexual Offence: No arrest for a sexual offence prior to age 18 = 0 Arrest prior to age 18 and conviction after age 18 = 1</p> <p>4. Rate of Sexual Offending: Less than one sentencing occasion every 15 years = 0 One or more sentencing occasions every 15 years = 1</p>		
<p>Persistence Raw Score (subtotal of Sexual Offending) 0 = 0 1 = 1 2, 3 = 2 4, 5 = 3</p>		
Persistence of Sexual Offending SUBSCORE		
<p><u>DEVIANT SEXUAL INTERESTS</u></p> <p>5. Any Sentencing Occasion For Non-contact Sex Offences: No = 0 Yes = 1</p> <p>6. Any Male Victim: No = 0 Yes = 1</p> <p>7. Young, Unrelated Victims: Does not have two or more victims < 12, one of them unrelated = 0 Does have two or more victims < 12 years, one must be unrelated = 1</p>		
Deviant Sexual Interest SUBSCORE		
<p><u>RELATIONSHIP TO VICTIMS</u></p> <p>8. Any Unrelated Victim: No = 0 Yes = 1</p> <p>9. Any Stranger Victim: No = 0 Yes = 1</p>		
Relationship to Victims SUBSCORE		

GENERAL CRIMINALITY		
10. Any Prior Involvement with the Criminal Justice System No = 0 Yes = 1		
11. Prior Sentencing Occasions For Anything: 0-2 prior sentencing occasions for anything = 0 3-13 prior sentencing occasions = 1 14 or more prior sentencing occasions = 2		
12. Any Community Supervision Violation: No = 0 Yes = 1		
13. Years Free Prior to Index Sex Offence: <ul style="list-style-type: none"> • More than 36 months free prior to committing the sexual offence that resulted in the index conviction AND more than 48 months free prior to index conviction = 0 • Less than 36 months free prior to committing the sexual offence that resulted in the index conviction OR less than 48 months free prior to conviction for index sex offence = 1 		
14. Any Prior Non-sexual Violence Sentencing Occasion: No = 0 Yes = 1		
General Criminality raw score (subtotal General Criminality items) 0 = 0 1, 2 = 1 3, 4 = 2 5, 6 = 3		
General Criminality SUBSCORE		
TOTAL -2 to 13		

NOTES

NFS CPIC Coding Manual – 2012

Offender name: _____
(Last name, First name)

FPS#: _____

Section 1: Follow-up Information

If any information is unavailable or not applicable, leave blank.

group 0 = flagged offender (2004-2008)
 1 = Long-term offender (2006-2008)

For the following questions, if the offender is flagged, INDEX refers to event that led to the flag. If the offender is a LTO, INDEX refers to the date of the designation.

INDEX DATE: _____
(dd/mm/yy)

released Was the subject ever released into the community following INDEX?
0 = No
1 = Yes

doprior Has subject received a DO designation **prior** to INDEX?
0 = No
1 = Yes

doafter Has subject received a DO designation **following** INDEX?
0 = No
1 = Yes

dodate Date of DO designation:

(dd/mm/yy)

dotype Type of offence for DO designation:
1 = Person
2 = Property
3 = Public Morals
4 = Narcotics
5 = Property with violence
6 = Liquor / traffic
7 = Public Order
8 = Probation/ parole
9 = Sexual offence (includes child pornography/ prostitution)
10 = Other

dototal Total number of convictions for DO:

docode PS code for MSO for DO offence:

dosent Number of years sentenced for DO designation (99 = indeterminate):

Itoprior Has subject received a long-term offender designation **prior** to INDEX?
0 = No
1 = Yes

Itoafter Has subject received a long-term offender designation **following** INDEX? (NA for LTO)
0 = No
1 = Yes

Itodate Date of LTO designation:

(dd/mm/yy)

Itotype Type of offence for LTO designation:
1 = Person
2 = Property
3 = Public Morals
4 = Narcotics
5 = Property with violence
6 = Liquor / traffic
7 = Public Order
8 = Probation/ parole
9 = Sexual offence (includes child pornography/ prostitution)
10 = Other

Itotal Total number of convictions for LTO:

Itocode PS code for MSO for LTO offence:

Itosent Number of total years sentenced for LTO offence (prison sentence):

Itosup Number of total years of long-term supervision order (length of supervision order):

Section 2: Recidivism following INDEX

INDEX DATE (Date of flag OR date of designation): _____
(dd/mm/yy)

For the following questions, the end of the follow-up period is February 2012, OR, if the offender is deceased, the end of the follow-up period is date of death.

The release date refers to the date that the offender became "at risk" for recidivism in the community. For flagged offenders, identify the date that the offender was released following the offence that led to the flag. If the offender was in the community at time of flagging, use the date of the flag as the release date.

For long-term offenders, identify the date that the offender was released from the offence that led to the designation.

reldate Date of release from INDEX offence:

(dd/mm/yy)

death If the offender is deceased, date of death:

(dd/mm/yy)

The release date for the index sexual offence may be different from the release date identified above. For example, if an offender was flagged in November 2004 for a violent offence AND also committed a sexual offence in 2006, the index date for the flagging offence is in 2004, however, the index offence needed to code the Static-2002 is in 2006. If the Static-2002 was coded, release date refers to the date that the offender was released from the index sexual offence used to code the Static-2002.

sexindex Date of the INDEX sexual offence used to code the Static-2002

(dd/mm/yy)

Is the date of the index sexual offence OR the release date DIFFERENT from the INDEX date listed at the top if this section?

0 = No: Proceed with coding form

1 = Yes: Complete current form using release date identified above AND complete separate form for index sex offence

Street time: In order to gain a more accurate estimate of time spent "at risk in the community", time spent incarcerated after the INDEX for **being recommitted** to the INDEX sentence must be accounted for (use the suspension date).

If the offender was recommitted after originally being released for the INDEX, count the total number of additional **months** spent incarcerated UNLESS offender is on remand for new offences.

recommit Total number of months spent incarcerated after being recommitted:

NON-VIOLENT RECIDIVISM

For the following questions, identify the date of the first NON-VIOLENT (excludes violent and sexual offences) CONVICTION since release from index to end of follow-up period OR death (whichever comes first) and complete the conviction column. IF the offender was charged with a NON-VIOLENT offence AFTER release but PRIOR to conviction, complete the charge column as well.

<u>CONVICTION</u>		<u>CHARGE</u>	
Congen	0 = No 1 = Yes	chgen	0 = No 1 = Yes
congendate	_____ (dd/mm/yy)	chgendate	_____ (dd/mm/yy)
congennum1 congennum2	Total number of convictions: GEN: _____ TOT: _____	chgennum1 chgennum2	Total number of charges: GEN: _____ TOT: _____
Congentype	1 = Person 2 = Property 3 = Public Morals 4 = Narcotics 5 = Property with violence 6 = Liquor / traffic 7 = Public Order 8 = Probation/ parole 9 = Sexual offence (includes child pornography/ prostitution charges) 10 = Other	chgentype	1 = Person 2 = Property 3 = Public Morals 4 = Narcotics 5 = Property with violence 6 = Liquor / traffic 7 = Public Order 8 = Probation/ parole 9 = Sexual offence (includes child pornography/ prostitution charges) 10 = Other
Congencode	PS code for MSO: _____	chgencode	PS code for MSO: _____
congendisp	Court disposition for MSO: 1 = Prison 2 = Time served 3 = Probation 4 = Fine/ ID days	chgendisp	Result of charge for MSO: 1 = Withdrawn 2 = Stay of proceedings 3 = Dismissed 4 = Acquitted

	5 = Community service/ restitution 6 = Suspended sentence 7 = Conditional/absolute discharge 8 = Other (cond. Sentence) 9 = Sentence pending		5 = Peace bond
Congendesig	Designation given: 0 = DO 1 = LTO		
Congensent	If sentenced, total years: _____		
	(99 = indeterminate)		
Congenito	If sentenced to LTSO, length: _____		
conmonthsnv See note	_____	chmonthsnv See note	_____

NOTE: For “conmonthsnv” AND “chmonthsnv”

Time spent incarcerated for other types of offences prior to the first NON-VIOLENT recidivism event must also be accounted for when estimating the “time at risk”.

If sentenced for other offences **PRIOR** to the first non-violent offence, count the total number of months incarcerated (assume that the offender served 2/3 of each separate sentence) AND any months spent recommitted afterwards if applicable.

E.g., If offender was convicted of a violent offence and sentenced to 2 years less 1 day PRIOR to being convicted for a non-violent offence, the total number of months to be counted is 16 (2/3 of the 2 year sentence).

VIOLENT RECIDIVISM

For the following questions, identify the date of the first VIOLENT (excluding sexual offences) CONVICTION since release from index to end of follow-up period OR death (whichever comes first) and complete the conviction column. IF the offender was charged with a VIOLENT offence AFTER release but PRIOR to conviction, complete the charge column as well.

<u>CONVICTION</u>		<u>CHARGE</u>	
Conviol	0 = No 1 = Yes	chviol	0 = No 1 = Yes
convioldate	_____	chvioldate	_____
	(dd/mm/yy)		(dd/mm/yy)
conviolnum1 conviolnum2	Total number of convictions: VIOL: _____ TOT: _____	chviolnum1 chviolnum2	Total number of charges: VIOL: _____ TOT: _____
Convioltype	1 = Person 2 = Property 3 = Public Morals 4 = Narcotics 5 = Property with violence 6 = Liquor / traffic 7 = Public Order 8 = Probation/ parole 9 = Sexual offence (includes child pornography/ prostitution charges) 10 = Other	chvioltype	1 = Person 2 = Property 3 = Public Morals 4 = Narcotics 5 = Property with violence 6 = Liquor / traffic 7 = Public Order 8 = Probation/ parole 9 = Sexual offence (includes child pornography/ prostitution charges) 10 = Other
Conviolcode	PS code for MSO: _____	chviolcode	PS code for MSO: _____
Convioldisp	Court disposition for MSO: 1 = Prison 2 = Time served 3 = Probation 4 = Fine/ ID days 5 = Community service/ restitution 6 = Suspended sentence 7 = Conditional/absolute discharge 8 = Other (cond. Sentence) 9 = Sentence pending	chvioldisp	Result of charge for MSO: 1 = Withdrawn 2 = Stay of proceedings 3 = Dismissed 4 = Acquitted 5 = Peace bond

Convioldesig	Designation given: 0 = DO 1 = LTO		
Conviolsent	If sentenced, total years: _____ (99 = indeterminate)		
Conviollto	If sentenced to LTSO, length of supervision order: _____		
conmonthsv See note		chmonthsv See note	_____

NOTE: For “conmonthsv” AND “chmonthsv”

Time spent incarcerated for other types of offences prior to the first VIOLENT recidivism event must also be accounted for when estimating the “time at risk”.

If sentenced for other offences **PRIOR** to the first violent offence, count the total number of months incarcerated (assume that the offender served 2/3 of each separate sentence) AND any months spent recommitted afterwards if applicable.

E.g., If offender was convicted of a violent offence and sentenced to 2 years less 1 day PRIOR to being convicted for a non-violent offence, the total number of months to be counted is 16 (2/3 of the 2 year sentence).

SEXUAL RECIDIVISM

For the following questions, identify the date of the first SEXUAL (excluding violent offences) CONVICTION since release from index to end of follow-up period OR death (whichever comes first) and complete the conviction column. IF the offender was charged with a SEXUAL offence AFTER release but PRIOR to conviction, complete the charge column as well.

<u>CONVICTION</u>		<u>CHARGE</u>	
Consex	0 = No 1 = Yes	chsex	0 = No 1 = Yes
consexdate	_____	chsexdate	_____
	(dd/mm/yy)		(dd/mm/yy)
consexnum1 consexnum2	Total number of convictions: SEX: _____ TOT: _____	chsexnum1 chsexnum2	Total number of charges: SEX: _____ TOT: _____
Consextype	1 = Person 2 = Property 3 = Public Morals 4 = Narcotics 5 = Property with violence 6 = Liquor / traffic 7 = Public Order 8 = Probation/ parole 9 = Sexual offence (includes child pornography/ prostitution charges) 10 = Other	chsextype	1 = Person 2 = Property 3 = Public Morals 4 = Narcotics 5 = Property with violence 6 = Liquor / traffic 7 = Public Order 8 = Probation/ parole 9 = Sexual offence (includes child pornography/ prostitution charges) 10 = Other
Consexcode	PS code for MSO: _____	chsexcode	PS code for MSO: _____
Consexdisp	Court disposition for MSO: 1 = Prison 2 = Time served 3 = Probation 4 = Fine/ ID days 5 = Community service/ restitution 6 = Suspended sentence 7 = Conditional/absolute discharge 8 = Other (cond. Sentence) 9 = Sentence pending	chsexdisp	Result of charge for MSO: 1 = Withdrawn 2 = Stay of proceedings 3 = Dismissed 4 = Acquitted 5 = Peace bond

Consexdesig	Designation given: 0 = DO 1 = LTO		
Consexsent	If sentenced, total years: _____ (99 = indeterminate)		
Consexlto	If sentenced to LTSO, length of supervision order: _____		
conmonthssex See note		chmonthssex See note	_____

NOTE: For “conmonthssex” AND “chmonthssex”

Time spent incarcerated for other types of offences prior to the first SEXUAL recidivism event must also be accounted for when estimating the “time at risk”.

If sentenced for other offences **PRIOR** to the first sexual offence, count the total number of months incarcerated (assume that the offender served 2/3 of each separate sentence) AND any months spent recommitted afterwards if applicable.

E.g., If offender was convicted of a violent offence and sentenced to 2 years less 1 day PRIOR to being convicted for a non-violent offence, the total number of months to be counted is 16 (2/3 of the 2 year sentence).

Appendix D

Study 1 – Additional Figures

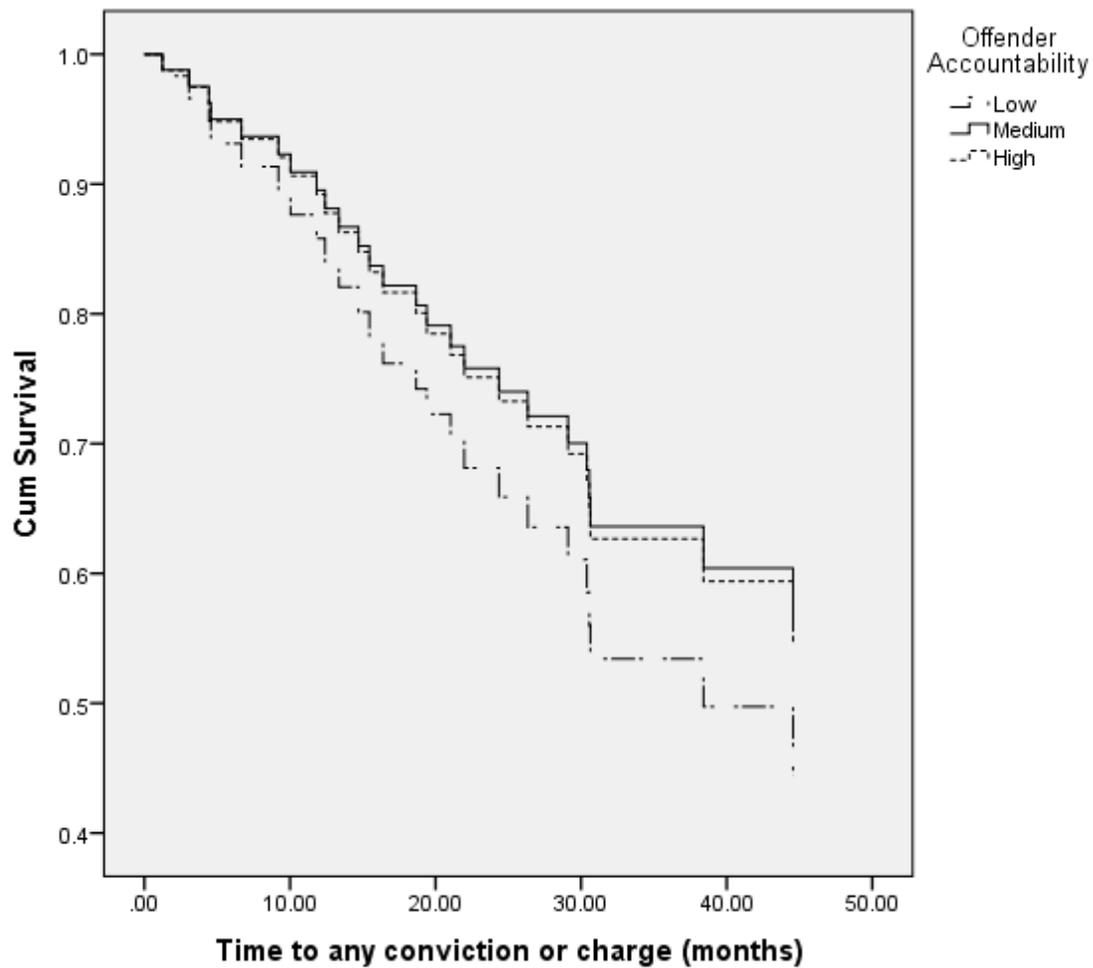


Figure 1D. Survival times (in months) to any new charge or conviction for long-term offenders LTOs by level of offender accountability.

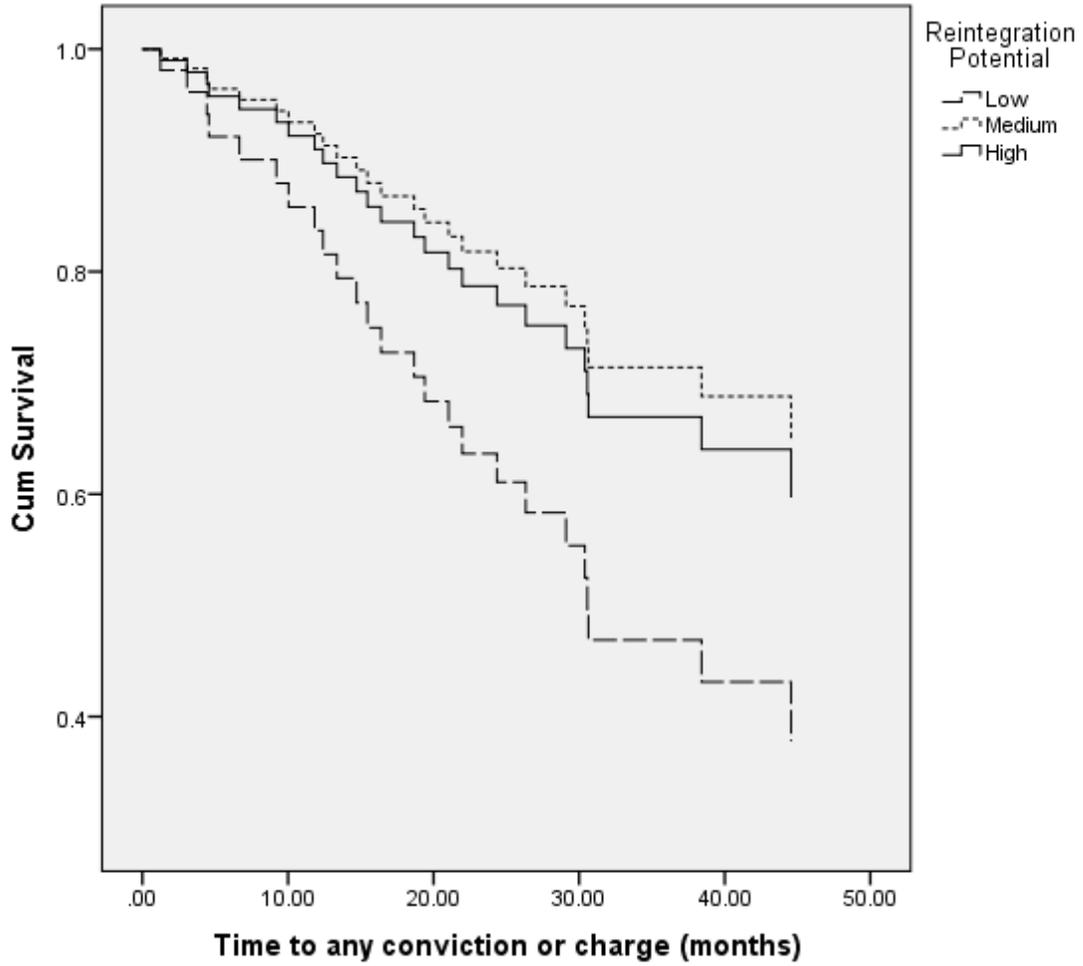


Figure 2D. Survival times (in months) to any new charge or conviction for long-term offenders LTOs) by rating of reintegration potential.

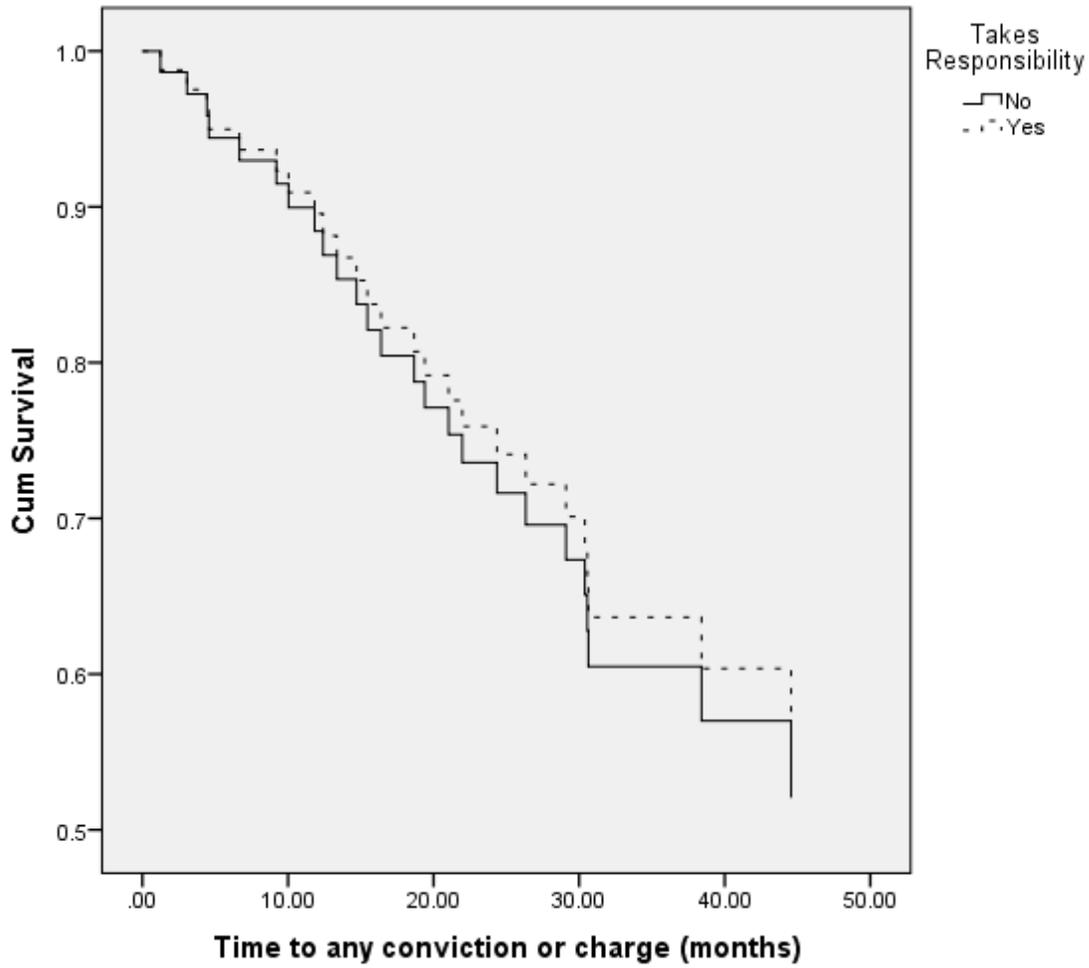


Figure 3D. Survival times (in months) to any new charge or conviction for long-term offenders LTOs) by whether the offender takes responsibility for actions.

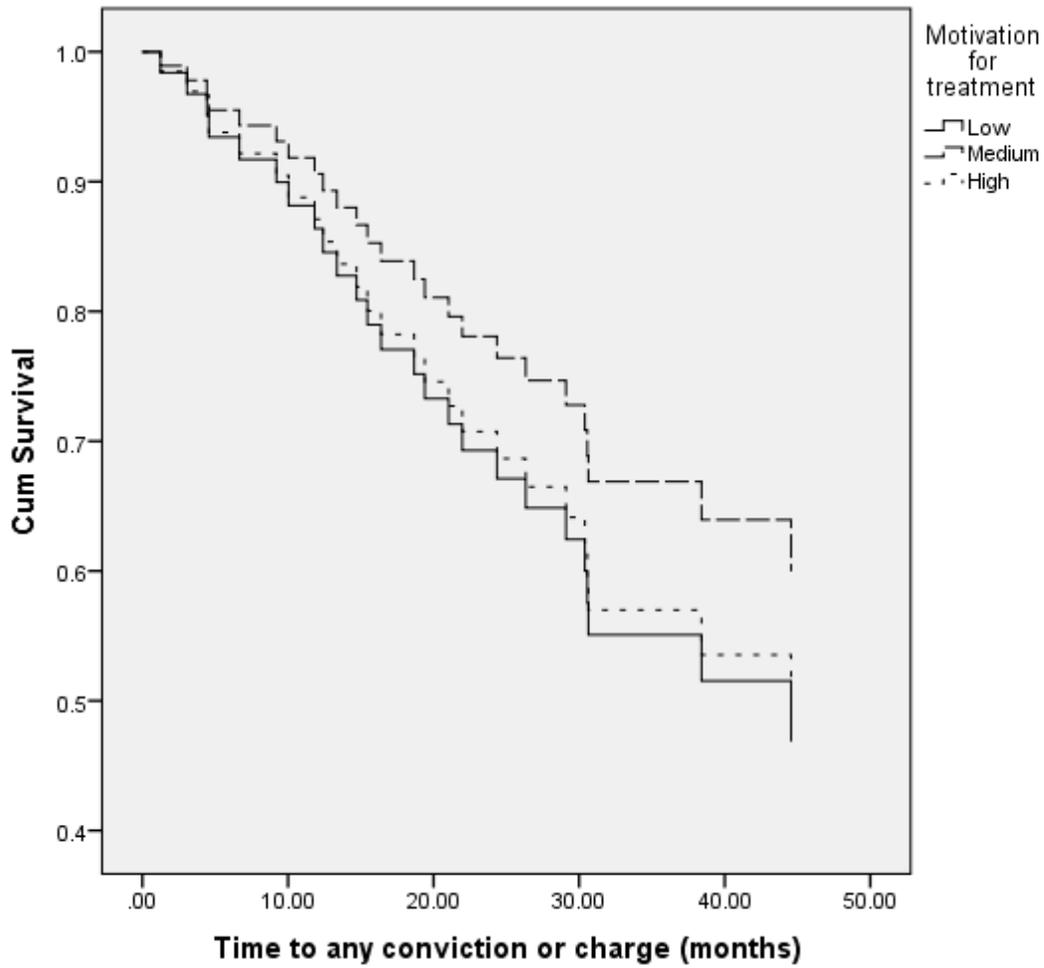


Figure 4D. Survival times (in months) to any new charge or conviction for long-term offenders (LTOs) by motivation for treatment.

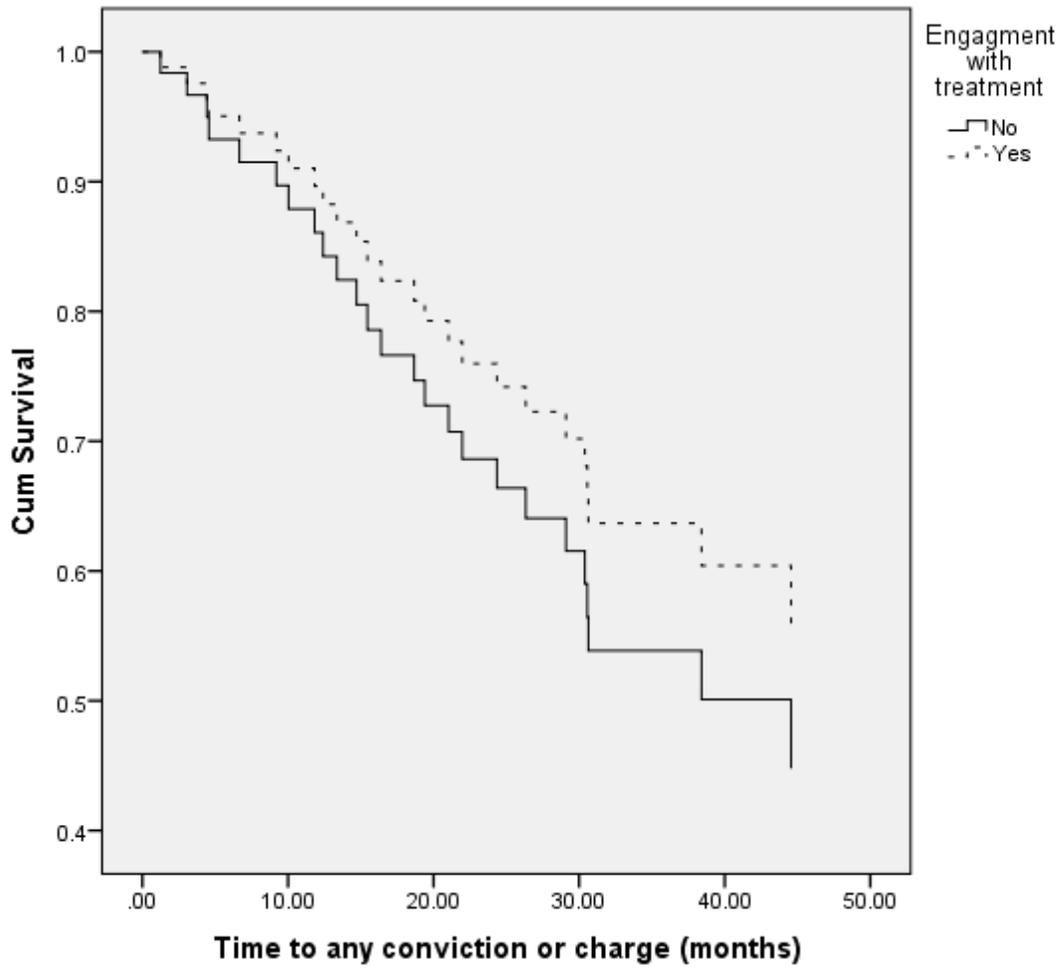


Figure 5D. Survival times (in months) to any new charge or conviction for long-term offenders (LTOs) by rating of treatment engagement.

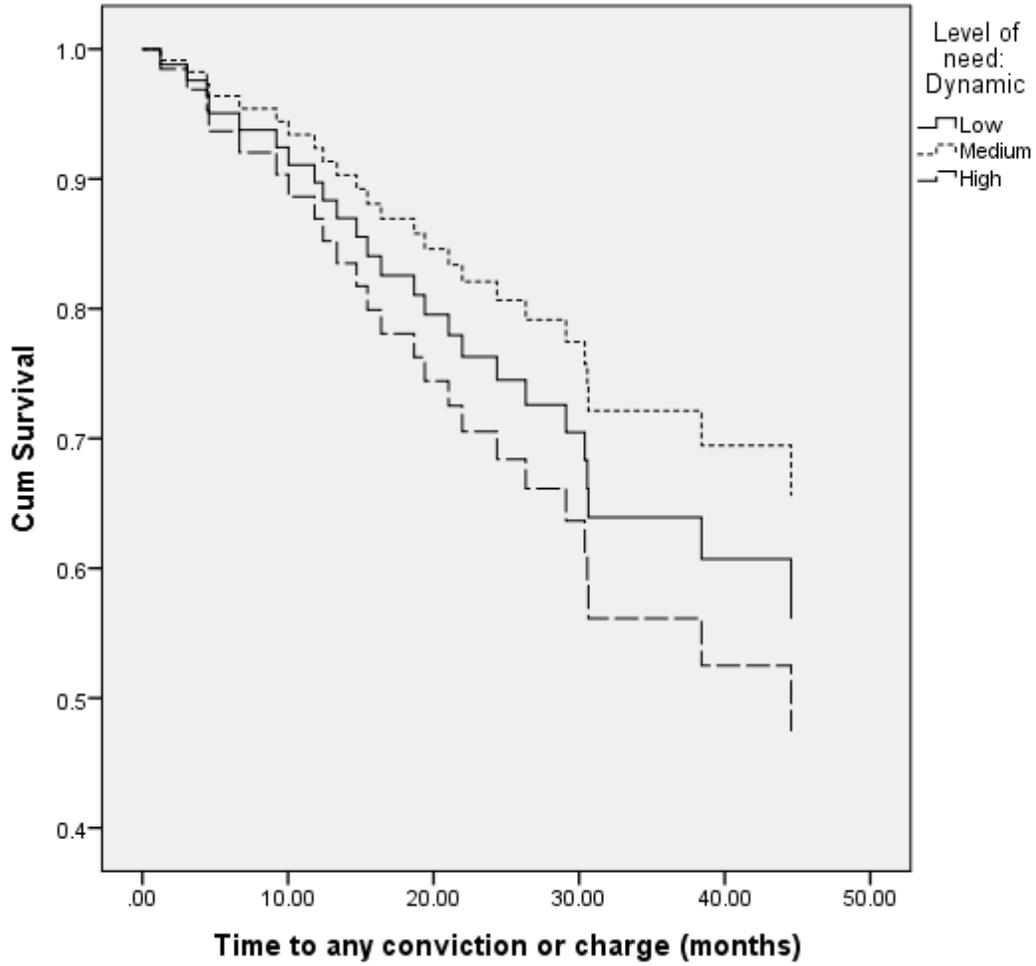


Figure 6D. Survival times (in months) to any new charge or conviction for long-term offenders LTOs) by level of dynamic need.

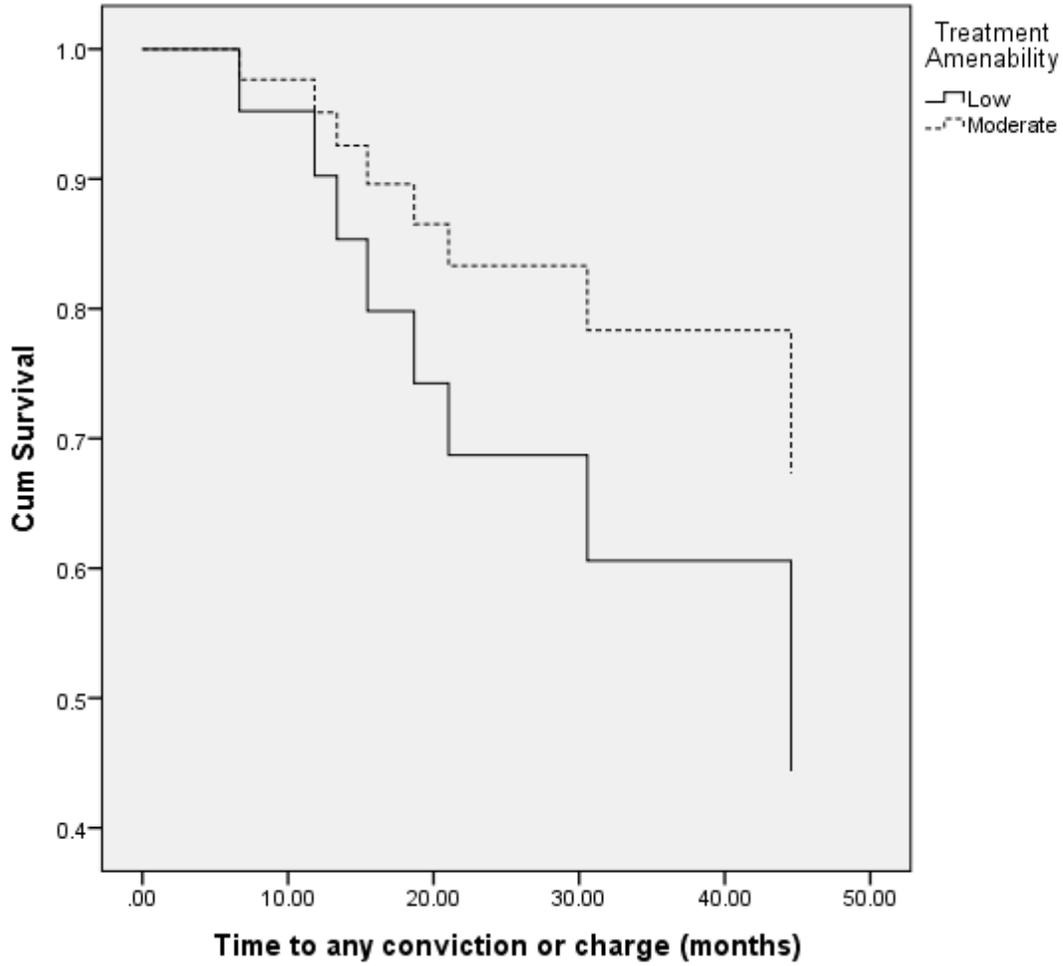


Figure 7D. Survival times (in months) to any new charge or conviction for long-term offenders (LTOs) by rating of treatment amenability.

Appendix E

Study 2 – Coding Manual

A2. Offender Details

1. Case ID #: _____
2. Subject Name: _____
(LAST, First and Middle)
3. Date of Birth: _____
(dd/mm/yy)
4. Date of Coding: _____
(dd/mm/yy)
5. Coder Name: _____
(LAST, First)

B2. Evaluator information

6. Evaluator Name: _____
(LAST, First and Middle)
7. Gender: Male (1)
 Female (2)
8. Credentials Psychiatrist (1)
 Psychologist (2)
 Other: _____ (3)
9. Request: From the Crown (1)
 From the Defence (2)
 Court-Appointed (3)
10. Province: British Columbia (1) Newfoundland (6)
 Alberta (2) New Brunswick (7)
 Saskatchewan (3) Prince Edward Island (8)
 Manitoba (4)
 Ontario (5)
11. Type of assessment: Dangerous Offender hearing (1)
 Long-Term Supervision Order Offender hearing (2)
12. Are the charges sexual in nature? No (0) Yes (1)
13. Date of assessment: _____

C2. Information within the assessment

1. Report length (single spaced) _____ (pages)

2. Sources of Information:

(a) Interview with the subject conducted No (0) Yes (1)

(ai): How many hours of interviews? _____ hours

(aii): If no interview, elaborate on reason:

(b) Interviews conducted with family members No (0) Yes (1)

(c) Interview conducted with probation/ parole officer No (0) Yes (1)

(d) Interview with mental health provide No (0) Yes (1)

Records:

(e) Police or law enforcement records (e.g., arrest records) No (0) Yes (1)

(f) Mental health records (institutional; if applicable) No (0) Yes (1)

(g) Correctional records (prison; probation/parole) No (0) Yes (1)

(h) Court transcripts from previous offences No (0) Yes (1)

(i) Victim information (statements; VIS) No (0) Yes (1)

(j) Social history documents (e.g., work/school records) No (0) Yes (1)

(k) Outside evaluation completed by specialist No (0) Yes (1)

Unless otherwise stated, the items below refer to the present assessment

3. Summary of index offence No (0) Yes (1)

3a. Offender's account included (or was asked for) No (0) Yes (1)

4. Summary of offending history (violent and/ or sexual) No (0) Yes (1)

5. Overview of offender psychosocial development (e.g., childhood; education; family) No (0) Yes (1)

6. Overview of mental health history? No (0) Yes (1)

7. Summary of correctional records (federal and/or provincial)? No (0) Yes (1)

8. Summary of past treatment programs attended? No (0) Yes (1)

9. Actuarial/ structured assessment of risk for violent recidivism (excluding the PCL-R or related psychopathy scales)? No (0) Yes (1)

- | | | | |
|-----|--|-----------------------------------|-----------------------------------|
| 10. | Actuarial/ structured assessment of risk for sexual recidivism? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 11. | Mental health and psychopathology tests (incl. personality tests)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 12. | Overview of medical history? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 13. | Intellectual and cognitive tests? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 14. | Phallometric testing? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | 14a) If yes, specify past or present (or both) testing. | <input type="checkbox"/> Past (0) | <input type="checkbox"/> Pres (1) |
| | | <input type="checkbox"/> Both (2) | |

D2. Risk Assessment Results

SPECIFIC RISK ASSESSMENT TOOLS USED:

1. Violence Risk Appraisal Guide (VRAG)
- (a) total scale score given? No (0) Yes (1)
- (ai) If yes, what was the total score? _____OR _____percentile
- (b) categorical risk levels:
- 1 (score of -22 or less) (1)
 - 2 (score of -21 to -15) (2)
 - 3 (score of -14 to -8) (3)
 - 4 (score of -7 to -1) (4)
 - 5 (score of 0 to 6) (5)
 - 6 (score of 7 to 13) (6)
 - 7 (score of 14 to 20) (7)
 - 8 (score 21 to 27) (8)
 - 9 (score of 28 or more) (9)
 - Not provided (10)
- (c) other statement of risk level (e.g., low/mod/high) No (0) Yes (1)
- (ci) If yes, risk level assigned? _____
- (d) probabilistic risk statement (absolute risk): No (0) Yes (1)
- (e) relative risk statement (likelihood that a high risk offender will recidivate compared to a low risk offender) No (0) Yes (1)
- (f) Any other information (e.g., limitations mentioned; CIs; Research) – specify:

2. **Static-99**
- (a) total scale given? No (0) Yes (1)
- (ai) If yes, total score given? _____OR _____percentile
- (b) categorical risk levels:
- Low (score of 0,1) (1)
- Moderate-Low (score of 2,3) (2)
- Moderate-High (score of 4,5) (3)
- High (score of 6 and above) (4)
- Not provided (5)
- (c) other statement of risk level (e.g., low/mod/high) No (0) Yes (1)
- (ci) If yes, risk level assigned? _____
- (d) probabilistic risk statement (absolute risk): No (0) Yes (1)
- (e) relative risk statement (likelihood that a high risk offender will recidivate compared to a low risk offender) No (0) Yes (1)
- (f) Any other information (e.g., limitations mentioned; CIs; Research) No (0) Yes (1)

3. **Other Risk Assessment** _____ (specify type)
- (a) total scale given? No (0) Yes (1)
- (ai) If yes, total score given? _____OR _____percentile
- (b) categorical risk level (scale dependent) _____
- (c) other statement of risk level (e.g., low/mod/high) No (0) Yes (1)
- (ci) If yes, risk level assigned? _____
- (d) probabilistic risk statement (absolute risk): No (0) Yes (1)
- (e) relative risk statement (likelihood that a high risk offender will recidivate compared to a low risk offender) No (0) Yes (1)
- (f) Any other information (e.g., limitations mentioned; CIs; Research): No (0) Yes (1)

4. **Other Risk Assessment** _____ (specify type)

(a) total scale given? No (0) Yes (1)

(ai) If yes, total score given? _____ OR _____ percentile

(b) categorical risk level (scale dependent) _____

(c) other statement of risk level (e.g., low/mod/high) No (0) Yes (1)

(ci) If yes, risk level assigned? _____

(d) probabilistic risk statement (absolute risk): No (0) Yes (1)

(e) relative risk statement (likelihood that a high risk offender will recidivate compared to a low risk offender) No (0) Yes (1)

(f) Any other information (e.g., limitations mentioned; CIs; Research): No (0) Yes (1)

5. **Other Risk Assessment** _____ (specify type)

(a) total scale given? No (0) Yes (1)

(ai) If yes, total score given? _____ OR _____ percentile

(b) categorical risk level (scale dependent) _____

(c) other statement of risk level (e.g., low/mod/high) No (0) Yes (1)

(ci) If yes, risk level assigned? _____

(d) probabilistic risk statement (absolute risk): No (0) Yes (1)

(e) relative risk statement (likelihood that a high risk offender will recidivate compared to a low risk offender) No (0) Yes (1)

(f) Any other information (e.g., limitations mentioned; CIs; Research): No (0) Yes (1)

7. OVERALL RISK EVALUATION:

- (a) overall categorical risk level: No (0) Yes (1)
- (ai) If yes, category assigned? _____
- (b) statement made regarding level of confidence? No (0) Yes (1)
- (c) was a rationale given for combining results from different risk assessment tools? No (0) Yes (1)
- (ci) if yes, elaborate:
- (d) did evaluator take other information into account when making this risk decision (beyond the risk assessment results)? No (0) Yes (1)
- (di) Mitigating factors: No (0) Yes (1)
- (dii) Aggravating factors: No (0) Yes (1)
- (e) Limitations of overall risk judgement? No (0) Yes (1)
- (ei) Specify:

STATIC DYNAMIC FACTORS

10. Did evaluator clearly differentiate between static and dynamic risk factors? No (0) Yes (1)
- 10a. Listed potential **STATIC** risk factors? No (0) Yes (1)
- List:
11. Listed potential **DYNAMIC** risk factors? No (0) Yes (1)
- List:
12. Listed potential **PROTECTIVE** risk factors? No (0) Yes (1)
- List:
13. Incorrect factors identified as being related to risk (e.g., low self-esteem) No (0) Yes (1)
- Specify:

QUALITATIVE ASSESSMENT OF RISK COMMUNICATION

- | | | | |
|-----|---|--|----------------------------------|
| 14. | Contexts given under which offender is most likely to reoffend (e.g., within dating relationship)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 15. | Seriousness of future offending? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 16. | Possible targets of future offending? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 17. | Possible timeline of future offending? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 18. | Did the evaluator mention the possibility of risk management? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (a) Evaluator stated that risk management in community is possible | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (b) Evaluator stated that offender could not be managed safely in community | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (c) Evaluator listed factors that if targeted, would reduce risk in future OR qualified what strategies should be used in risk management | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (d) Evaluator was unclear/vague regarding risk management | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 19. | Recommendations to re-evaluate risk? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 20. | Were recommendations made concerning the treatment amenability of the subject? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (a) If yes, what level was given? | <input type="checkbox"/> Low (1) | |
| | (b) Rationale for treatment amenability? | <input type="checkbox"/> Moderate (2) | |
| | | <input type="checkbox"/> High (3) | |
| | | <input type="checkbox"/> Treatment resistant (4) | |
| | | <input type="checkbox"/> Not amenable (5) | |
| | | <input type="checkbox"/> Unclear (vague) (6) | |
| 21. | Broader treatment recommendations (e.g., types of programs, level of appropriate treatment)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (a) Specify details: | | |
| 22. | Placement recommendations (specific institutions)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 23. | Recommendations concerning supervision (level/ intensity)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 24. | Was a recommendation made as to designation that would be appropriate for the subject (i.e., DO/ LTSO)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | 24a) Specify: _____ | | |

E2. Psychopathy information

- | | | | |
|----|--|----------------------------------|----------------------------------|
| 1. | Assessment of psychopathy present | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (1a) If yes: did offender meet criteria for psychopathy according to the assessor? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 2. | Identify scale used to assess psychopathy | _____ | |
| 3. | Stated whether or not offender met criteria for a diagnosis of psychopathy based on scale score (i.e., 30 cut off) | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 4. | Psychopathy Checklist-Revised | | |
| | (a) Total scale score or percentile: | _____OR _____percentile | |
| | (b) Factor 1 score or percentile: | _____OR _____percentile | |
| | (c) Factor 2 score or percentile: | _____OR _____percentile | |
| | (d) Facet scores or percentile: | Facet 1: _____OR _____percentile | |
| | | Facet 2: _____OR _____percentile | |
| | | Facet 3: _____OR _____percentile | |
| | | Facet 4: _____OR _____percentile | |
| | (e) dichotomous decision (yes/no psychopath) | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (f) categorical risk level (e.g., low, mod, high): | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (fi) If yes, level assigned? | _____ | |
| | (g) probabilistic risk statement (absolute risk): | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (h) relative risk statement (likelihood that a high risk offender will recidivate compared to a low risk offender) | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| | (i) Any other information (e.g., limitations mentioned; CIs; Research): | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 5. | Stated whether or not the offender was a psychopath (used actual label “psychopath”) | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 6. | Listed ONLY the characteristics of psychopathy and explicitly related them to psychopathy without using the label “psychopath” | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |

7.	Listed characteristics related to psychopathy + used the label “psychopath”	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
8.	Listed the characteristics associated with psychopathy but did not explicitly refer to these characteristics as psychopathy related	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
9.	Any use of dramatic language (e.g., psychopaths are evil; not human)?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
10.	Mention of specific scientific literature/ studies?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
11.	Overreliance on one study?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
12.	Psychopathy evidence explicitly used to make inference about treatability? (a) Difficult to treat because of presence of psychopathy traits (b) More likely to be treated because of the absence of psychopathy traits	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
		(a) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
		(b) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
13.	Psychopathy evidence explicitly used to make inference concerning risk for future violence/ re-offending? (a) Higher risk because of presence of psychopathy traits (b) Lower risk because of the absence of psychopathy traits	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
		(a) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
		(b) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
14.	Psychopathy evidence explicitly used to make inference concerning risk for future sexual offending? (a) Higher risk because of presence of psychopathy traits (b) Lower risk because of the absence of psychopathy traits	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
		(a) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
		(b) <input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
15.	Mentioned predictive validity of PCL-R based on F1 or F2; If yes, specify:	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
16.	Discussion of burnout (specific to psychopathy)?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
17.	Other incorrect information concerning psychopathy?; 17a) Specify:	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)

Appendix F

Study 3 – Coding Manual

T1. Offender Details (Enter 3 to 6)

1. Case ID #: _____
2. Subject Name: _____
(LAST, First and Middle)
3. Date of judgment: _____
(dd/mm/yy)
4. Total number of convictions: _____
5. Offence code for MSO: _____
6. Date of Coding: _____
(dd/mm/yy)
7. Coder Name: _____
(LAST, First)
8. Number of experts:
 - a. Crown: _____
 - b. Defence: _____
 - c. Court appointed: _____

T2. To be filled if more than one forensic assessment was presented to the court

1. Did the judge give more weight to one expert assessment over the others? No (0) Yes (1)
 - (a) If yes, which expert was given more weight (who did the judge believe)?

<input type="checkbox"/> From the Crown (1)
<input type="checkbox"/> From the Defence (2)
<input type="checkbox"/> Court-Appointed (3)
2. What reasons were given by the judge for relying on one expert more than the others?

T3. Judge's reasons for sentencing (if >1 assessment, use information from the assessment relied upon)

1.	Judge's reliance on expert testimony (GENERAL)?	<input type="checkbox"/> Dismissed (1)	
		<input type="checkbox"/> Somewhat (2)	
		<input type="checkbox"/> Extreme (3)	
2.	Judge's reliance on expert testimony (PSYCHOPATHY)?	<input type="checkbox"/> Dismissed (1)	
		<input type="checkbox"/> Somewhat (2)	
		<input type="checkbox"/> Extreme (3)	
3.	Judge's perception of risk (VIOLENT)?	<input type="checkbox"/> Low/ Low moderate (1)	
		<input type="checkbox"/> Moderate (2)	
		<input type="checkbox"/> Moderate/ high (3)	
4.	Judge's perception of risk (SEXUAL)?	<input type="checkbox"/> Low/ Low moderate (1)	
		<input type="checkbox"/> Moderate (2)	
		<input type="checkbox"/> Moderate/ high (3)	
5.	Judge's perception of risk (NOT SPECIFIED)?	<input type="checkbox"/> Low/ Low moderate (1)	
		<input type="checkbox"/> Moderate (2)	
		<input type="checkbox"/> Moderate/ high (3)	
	(b) Did judge give a limitation?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
	(c) Confidence?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
6.	Did Judge list pertinent risk factors considered?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
	(a) If yes, list risk factors mentioned:		
	(b) Incorrect risk factors? If yes:	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
7.	Did Judge list pertinent protective/mitigating factors considered?	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
	(a) If yes, list protective factors mentioned:		
8.	Judge's perception of treatment amenability?	<input type="checkbox"/> Low (1)	
		<input type="checkbox"/> Moderate (2)	
		<input type="checkbox"/> High (3)	
	(a) List any pertinent factors mentioned in terms of amenability:	<input type="checkbox"/> Treatment resistant (difficult to treat) (4)	
		<input type="checkbox"/> Not amenable to future treatment (5)	
		<input type="checkbox"/> Unclear (vague) (6)	
8a.	Judge mentioned treatment motivation:	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)
8b.	Judge mentioned past treatment performance:	<input type="checkbox"/> No (0)	<input type="checkbox"/> Yes (1)

9. Judge's perception of risk management? Can be managed in community (1)
 Cannot be managed (2)
 Can if certain factors are met (3)
 Unclear information (4)
- (a) List factors mentioned in reasoning:

10. What concepts were erroneously/correctly equated with psychopathy?

(a) ERRONEOUS:

(b) CORRECT:

10c. If PCL-R scores were given, write them here by expert (provide all scores given):

- | | | |
|--|---------------------------------|----------------------------------|
| 11. Any use of dramatic language (psychopathy)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 12. Over reliance on one study (psychopathy)? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 13. Discussion of burnout: | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 14. Was psychopathy evidence explicitly mentioned as a reason for the sentencing decision? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 15. Challenges or disagreements arose regarding psychopathy evidence? | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 16. Mentioned factor scores | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 17. Mentioned psychopathy and treatment | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 18. Mentioned psychopathy and risk | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 19. Mentioned label | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 20. Mentioned characteristics | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 21. Made a dichotomous decision | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
| 22. Mentioned the cut-off score (i.e., 30) | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |

RISK ASSESSMENT

- | | | |
|--|---------------------------------|----------------------------------|
| 1. Mentioned any risk scale specifically by name | <input type="checkbox"/> No (0) | <input type="checkbox"/> Yes (1) |
|--|---------------------------------|----------------------------------|

(b) List the scales:

2. Mentioned total scores? No (0) Yes (1)

3. Mentioned percentiles? No (0) Yes (1)

4. Mentioned absolute recidivism rates? No (0) Yes (1)

5. Difference between static vs. dynamic? No (0) Yes (1)

OTHER:

1. Mentioned mental health tools? No (0) Yes (1)

2. Mentioned intellectual tools? No (0) Yes (1)

3. Specified treatment options? No (0) Yes (1)

4. Recommended supervision level/intensity? No (0) Yes (1)