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THE PSYCHOSEXUAL RISK ASSESSMENT IN A COURT-MARTIAL: INSTRUMENTS, TIMING, AND USE AT SENTENCING

A Reference for Defense Counsel

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I. Purpose and Scope

This report addresses the psychosexual risk assessment itself: which instruments actually fit a man whose sexual offending is confined to online conduct, when the evaluation should be conducted relative to testimony at findings, what a defensible report contains, and how the result is placed before a military judge. It is the second of three companion reports. The first sets out the federal authority and the empirical record on recidivism among online sexual offenders and the application of that material at sentencing; the third addresses the Sex Offender Treatment Program at the Naval Consolidated Brig Miramar and the effect of sentence length on access to it. All three are maintained at <https://arizonaforensics.com/online-sex-offense/>.

Two boundaries should be stated at the outset. First, I am a forensic psychologist, not an attorney. The legal authorities discussed here are identified so that counsel can pull and verify them; the characterizations of rule and case law are offered as orientation, not as legal advice, and counsel should confirm each against the current Manual for Courts-Martial and the applicable service rules of practice. Second, nothing here suggests that any individual accused presents a low risk. That is what an evaluation is for, and the value of this material lies in its disciplined use. An overstated risk opinion damages the client more than silence would have.

The sections that follow move in the order the work actually happens. Part II addresses instrument selection, because an instrument chosen for the wrong population produces a number that looks authoritative and means considerably less than it appears to. Part III addresses sequencing — the protocol I use when one expert testifies at findings and also conducts the sentencing assessment, the legal protections that arrangement does and does not enjoy, and the choice between the unsworn statement and the witness stand. Part IV sets out what counsel should require of any evaluation, defense or government. Part V sets out the defects that recur in opposing risk opinions and what to do about each.

II. Risk Assessment in an Online-Only Case

A. The Population Mismatch Problem

Most sexual offense risk instruments in common use were developed and normed on samples of contact offenders. The research set out in the companion report establishes that online-only offenders differ from that population on precisely the dimensions those instruments measure: they are less antisocial, they present a lower risk of subsequent hands-on offending, and they present a relatively low risk of a further exploitation-material offense. An instrument applied outside its development population without acknowledgment of that fact produces a number that looks authoritative and means considerably less than it appears to mean. Osborn and colleagues (2010) demonstrated the point empirically, finding that both Risk Matrix 2000 and Static-99 overestimated risk levels in a sample of internet offenders none of whom sexually reoffended.

The professional standard is explicit. The Association for the Treatment and Prevention of Sexual Abuse, in its position statement on internet-facilitated sexual offending, states that instruments

developed on contact-offense samples should be used cautiously with this population, that several overlapping follow-up studies indicate these individuals present less risk of future hands-on offending than undifferentiated samples of contact offenders, and that they also present a relatively low risk of committing another child pornography offense. Where a government or probation evaluator has applied a contact-sample instrument to an online-only examinee without addressing that limitation, counsel has a specific, documented, and professionally grounded basis for challenge.

B. The CPORT and the CASIC

The Child Pornography Offender Risk Tool is a structured risk checklist for adult males convicted of child pornography offenses, developed by Seto and Eke (2015), with the current scoring guide published by Eke, Helmus, and Seto (2018). The development sample comprised 286 men convicted in Canadian courts, followed a mean of 8.3 years; over 90 percent had possession convictions, 21 percent accessing, 37 percent distribution, and 23 percent production, and 21 percent had a contact sexual offense against a child. Its seven items are younger offender age, any prior criminal history, any contact sexual offending, any failure on conditional release, indication of sexual interest in exploitation material or in prepubescent or pubescent children, more boy than girl content in the exploitation material, and more boy than girl content in other child depictions. A validation study by Eke, Helmus, and Seto (2019) reported areas under the curve of .72 for any sexual recidivism and .74 for child pornography recidivism in combined samples, with the authors noting limited statistical power in the validation sample and reporting that the tool was significantly predictive for the offenders with no known contact offenses.

One development requires particular attention because it changes what may properly be said in a report. Until recently, a CPORT score could be communicated only as a relative rank, because no norms existed; the earlier scoring guidance said so expressly. Lee, Babchishin, Eke, and Seto (2026) aggregated six samples from Canada, Europe, and the United Kingdom comprising 956 individuals and published percentile ranks and absolute recidivism estimates by score, ranging from approximately 3 to 41 percent for any sexual reoffense and 2 to 32 percent for exploitation-material-specific reoffense, with areas under the curve of .728 and .713. Absolute estimates may now be reported, subject to the same group-versus-individual caution that governs any actuarial figure. A report that still asserts that no probability can be attached to a CPORT score is out of date — which is a point counsel may need to make in either direction, since the same correction applies to a defense report.

The CASIC is a six-item companion scale developed by the CPORT authors because the tool's admission-of-sexual-interest item is vulnerable to denial in high-stakes settings such as sentencing (Seto & Eke, 2017). Its items, with development-sample base rates, are never married (54 percent), exploitation material including child sexual abuse videos (64 percent), content including sex stories involving children (31 percent), evidence of interest spanning two years or longer (55 percent), volunteering in a role with high access to children (7 percent), and sexual communication with a minor or an officer posing as one (10 percent). The mean score was 2.21 of 6, with an area under the curve of .71 against admission, and a score of 3 or more permits the CPORT interest item to be scored affirmatively. Every CASIC item but the first is coded from the digital forensic examination rather than from the interview, which makes that report indispensable and makes its absence something the evaluator must disclose rather than work around.

C. Static-99R and Static-2002R

The Static-99R remains the most widely used actuarial instrument for adult male sexual offenders, and Helmus and colleagues (2022) reported a pooled area under the curve of .68 to .69 across 56 studies, with field accuracy notably higher among trained raters than untrained ones. Two points govern its use in an online-only case. First, the reference group is not optional: absolute estimates

differ materially between routine or complete samples and samples preselected for treatment need (Lee & Hanson, 2021), and an evaluator who reports an absolute rate without naming the group has produced a figure counsel cannot evaluate and should not accept. Second, the instrument's development population was contact offenders. The developers have indicated that a solicitation offender who attempted to meet a minor in person, including an undercover officer, can be scored, while cautioning that few such offenders appeared in the development samples and that it is unclear whether the probability estimates apply; a dual offender with a contact offense in his history can be scored confidently, because such offenders comprised most of the development samples. For a defendant with no history of contact or attempted contact offending, the honest position is the one Seto states — it is not yet clear how to proceed — and the instrument should never be permitted to do work its development sample does not support.

Counsel should also insist on current reporting conventions. Risk levels are now communicated in common-language terms — Level I Very Low, Level II Below Average, Level III Average, Level IVa Above Average, Level IVb Well Above Average (Hanson et al., 2017) — rather than the older low, moderate, and high labels, and the 2021 Evaluators' Workbook supersedes the 2016 edition. A report using superseded conventions is usually a report that has not been updated in other respects either.

D. Dynamic and Protective Instruments

The STABLE-2007 measures stable dynamic risk and is the instrument that earns its keep at sentencing, because the elevated items translate directly into treatment recommendations the court can impose. Its items organize into domains addressing significant social influences, intimacy deficits, sexual self-regulation, offense-supportive attitudes, cooperation with supervision, and general self-regulation. Webb, Craissati, and Keen (2007) found that its predecessor significantly predicted probation failure and risky sexual behavior among child pornography offenders over an eighteen-month follow-up — during which no new sexual offenses were observed at all, which is itself a data point.

The SVR-20 Version 2 (Boer, Hart, Kropp, & Webster, 2017) is a structured professional judgment guide producing a summary rating rather than a score or a probability; counsel should confirm that an evaluator using it is working from the 2017 item set rather than the superseded 1997 edition, as reproduction of the older item names is a reliable indicator that the evaluator has not consulted the current manual. The SAPROF addresses protective factors across internal, motivational, and external domains and is used alongside a risk instrument rather than instead of one; its external and motivational items — social network, intimate relationship, professional care, living circumstances, external control, work, leisure, financial management, treatment motivation, attitudes toward authority — are the ones a court can act upon through conditions of release, and they should be drafted with that use in mind.

One further instrument is worth knowing. Paquette and Cortoni (2020) developed and validated the Cognitions of Internet Sexual Offending scale, a 31-item measure of offense-supportive cognition built on a sample of 241 men and specifically designed for this population rather than adapted from contact-offender work; it discriminates men with online sexual offenses from those with contact sexual and non-sexual offenses. Where offense-supportive attitudes are contested, it is a population-appropriate alternative to instruments borrowed from contact samples.

E. Aggravating and Mitigating Case Features

A credible evaluation addresses the features of the particular collection and the particular conduct, and does so whether or not they help. In an exploitation-material case those features include whether the material depicts children or adolescents; whether it contains sadistic elements; whether boy content predominates, which is a scored CPORT item; whether the collection was sorted and

organized; the duration over which interest is documented; whether there was solicitation, attempted contact, or actual contact; whether there was distribution and, if so, whether it was passive or active; and whether there was production and, if so, whether covert or a recording of contact offenses. An evaluation that works through this list and reaches a favorable conclusion is far more useful to a court than one that reaches the same conclusion without mentioning the list.

III. Sequencing the Evaluation: Timing, Role, and Disclosure

A. The Problem to Be Solved

Counsel in a court-martial frequently needs one psychologist to do two things that pull against each other. At findings, the defense may want expert testimony on a general subject — false confessions, forensic interview methodology, memory, alcohol and blackout. At sentencing, the defense may want a psychosexual risk assessment. An expert who has already evaluated the accused carries clinical knowledge of him onto the stand at findings, and that knowledge is a target. But an evaluation cannot responsibly be assembled in the interval between findings and sentencing, which in this forum is frequently measured in hours.

The protocol below resolves both halves of the problem. It is the approach I use and recommend.

B. The Protocol

1. Several weeks before trial, the accused completes the intake questionnaires and psychological testing — in my practice the Personality Assessment Inventory — administered remotely and returned to my office.
2. I do not open the questionnaires, score the testing, or review any of it. It sits unexamined.
3. At findings, I testify only to the research literature. I have not interviewed the accused and I have reviewed nothing concerning him, so there is nothing about him on which I can be cross-examined.
4. After I step down from the witness stand, I interview the accused, review the questionnaires, and score and interpret the testing.
5. The completed assessment goes to counsel, who decides whether and how to use it at sentencing.

The protocol works because the statement made at findings is true rather than clever. The expert has no clinical knowledge of the accused because he has none — not because the engagement was structured to keep adverse information away from him, which is a different thing entirely and is addressed in Part III.J. Nothing is withheld from the evaluation. The deferral is of timing, not of scope: everything the evaluator would ordinarily review, he reviews, once the findings testimony is complete.

It also solves the logistical problem, which is the reason sentencing evaluations in this forum are so often thinner than they should be. Test administration, the return of questionnaires, and scoring consume weeks of calendar time that the post-findings window does not contain. Front-loading the data collection means that when the verdict comes in, the remaining work is the interview, the scoring, and the writing.

C. What the Protocol Buys Counsel

- Funding can be sought properly. An expert request supported by a risk evaluation justification petition and an affidavit from the evaluator is a stronger application than a late request made after findings. Templates for the petition and sample affidavits are maintained on my site under the Courts-Martial heading; counsel who want them should contact my office for access.
- The findings testimony stays clean without the sentencing case being sacrificed to keep it that way.

- Counsel retains the choice of how to use the expert. Having the evaluation in hand does not oblige counsel to disclose it — the asymmetry developed in Part III.H.

D. Saying It Correctly on the Stand

The protocol's protection lives in the accuracy of a single sentence, and the phrasing matters more than counsel expects. "I have not conducted an evaluation" is true but brittle, because a prepared trial counsel does not ask that question. He asks whether the accused has completed psychological testing at the expert's direction, whether the expert presently holds test data concerning the accused, and whether the expert has been retained to conduct a psychosexual risk assessment in the case. The honest answer to each is yes. An expert who has said "I have not conducted an evaluation" and then concedes those three points has not lied, but a panel of members will hear parsing — and credibility is the only thing an expert carries into the room.

The remedy is to state the position affirmatively on direct rather than defend it on cross. A formulation that holds: "I have not interviewed the accused, and I have not reviewed any test data concerning him. Testing was administered several weeks ago at my direction, and I have deliberately not looked at it, so that what I tell this court today rests on the published research and nothing else." Volunteered, that is a demonstration of methodological discipline. Extracted on cross, the identical facts read as evasion. The information is the same; only the order changes, and the order is what the members remember.

Counsel should also prepare the follow-up, which is why an expert would decline to look at material already in his possession. The answer is worth giving plainly: so that the findings testimony rests only on research that would apply in any case, and not on anything particular to this accused.

E. The Testing-Interval Caveats

Front-loading the data collection creates one forensic problem, and it must be addressed in the report rather than left for opposing counsel to find. The interval between administration and interview now spans the verdict.

The consequence for the testing is concrete. Instruments administered before trial were completed by a man contesting the charges; the interview is conducted with a man who has just been convicted. On the Personality Assessment Inventory the mood-sensitive scales — depression, anxiety, anxiety-related disorders, suicidal ideation, stress — describe a period that ended at the verdict, and the validity and impression-management indicators carry a materially different incentive before trial than after conviction. An evaluator who reports those scales as though they described the examinee's present state has overstated what the data support.

The consequence for self-report is the same in kind. Questionnaire responses about sexual history, sexual interest, and the offense account, given while the examinee was maintaining innocence, are not the responses the same man gives after findings. That bears directly on the CPORT sexual interest item and on the CASIC items, and on the treatment of denial generally.

Four measures address this, and all four belong in the report itself:

1. Date-stamp the administration of every instrument and the date of the interview, and state the interval expressly.
2. Address the interval in the limitations section, identifying which findings speak to the pre-trial period and which speak to the time of interview.
3. Re-canvass in the post-findings interview the content that matters most to scoring — sexual interest, sexual history, and the offense account — and state in the report that this was done and what, if anything, changed.

The cross-examination question to expect is a simple one: Doctor, your testing predates the conviction by six weeks, does it not? A report that has already answered it in writing turns that question into nothing.

F. Legal Protections and Their Limits

Counsel should understand precisely what protects an expert from being made to disclose a sentencing assessment during the findings phase, because the protections are genuine but narrower than they are commonly assumed to be. There is no rule that makes an expert uncompellable.

- Privilege. Military Rule of Evidence 502 protects confidential communications made to facilitate legal services, and its definition of a representative of the lawyer — a person employed by or assigned to assist a lawyer in providing professional legal services — reaches a defense-retained expert. But the privilege belongs to the accused, not to the expert, and it is asserted by counsel on the accused's behalf. A witness on the stand holds no personal privilege to refuse. If the military judge overrules the assertion and directs an answer, the answer is given.
- Scope of cross-examination. M.R.E. 611(b), which parallels its federal counterpart, confines cross-examination to the subject matter of the direct and to matters affecting credibility, while permitting the military judge to allow inquiry into additional matters as if on direct. An objection lies where the direct concerned interview methodology and the question concerns a risk assessment — but the rule commits that question to the judge's discretion, and it is a ruling rather than a bar.
- Relevance. Under M.R.E. 401 and 403, an accused's risk of future offending has no bearing on whether the charged act occurred. On the merits this is the strongest of the three, and it is the argument most likely to keep the subject out of the findings phase altogether.

What none of these do is prevent the question from being asked, and none of them licenses an evasive answer. If trial counsel asks whether the expert has evaluated the accused and the military judge permits the question, the truthful answer is the one that gets given. The protocol in Part III.B has its value precisely here: it makes the truthful answer the helpful one.

Two practical consequences follow. First, counsel should litigate the scope of the expert's findings-phase testimony in advance. A motion in limine defining the subject matter, with a ruling on whether trial counsel may inquire into the existence or the contents of a defense-retained evaluation, is far better than discovering the military judge's view in the middle of cross-examination. Second, in a members case there is a compounding risk: an answer of "yes, I evaluated him" followed by a sustained objection to everything after it invites the panel to supply its own answer, and in many cases the same members will sit for sentencing.

G. The Dual Role in Courts-Martial

In a court-martial the combination of roles is not an irregularity to be avoided. It is the ordinary structure, and the military justice system is built to accommodate it.

The accused's access to a forensic psychologist runs through a request to the convening authority for expert assistance. The governing standard is the three-part necessity showing of *United States v. Gonzalez*, 39 M.J. 459 (C.M.A. 1994), restated in *United States v. Gunkle*, 55 M.J. 26 (C.A.A.F. 2001), and *United States v. Anderson*, 68 M.J. 378 (C.A.A.F. 2009): why the assistance is needed, what it would accomplish for the accused, and why defense counsel are unable to gather and present the evidence themselves. The assistance is confidential, protected as attorney work product under R.C.M. 701(f), and it is available without regard to the accused's indigency (see *United States v. Warner*, 62 M.J. 114 (C.A.A.F. 2005)). Counsel should also note R.C.M. 703 on the

production of witnesses and evidence and Article 46, UCMJ, which entitles the defense to equal opportunity to obtain witnesses and evidence.

Two practical consequences follow. The first is that a convening authority ordinarily approves one expert, not two. The expert begins as a confidential member of the defense team and may later be designated to testify, and counsel should plan on that single expert rather than on a division of labor the system is unlikely to fund. The second is that the real tradeoff is not impartiality but confidentiality. While the expert remains a consultant, the work is protected; designation as a witness converts the relationship and opens it to disclosure. The decision point is therefore not whether one person may occupy both roles — the forum permits it — but when to designate, and that choice is best made with the completed evaluation in hand.

The professional standard does not bar the combination either. The Specialty Guidelines for Forensic Psychology direct practitioners to be alert to roles that may threaten impartiality and to disclose them; they do not prohibit serving in more than one capacity, and they contemplate that in some settings the combination is unavoidable. Managing it well means three things. Keep the roles sequentially distinct and document when each began — which the protocol in Part III.B does by its own structure. State in the report which role the expert occupied at which stage, so the sequence appears in the evaluator's own record rather than emerging for the first time on cross-examination. And ensure the opinion rests on scored instruments, the digital forensic record, and collateral sources, so that the answer to the inevitable question — whether prior participation in the defense case shaped the assessment — is a demonstrable one rather than an assurance.

Civilian federal practice is different on this point, and counsel who move between the two systems should not carry an assumption from one into the other. Funding there more often permits a separate testifying expert and a separate evaluator, and where that is genuinely available it remains the tidier arrangement. It is not, however, the standard against which a court-martial evaluation should be judged, and an evaluator who declines a military dual-role engagement on the theory that it is improper has misread the forum.

H. The Asymmetry: Why a Confidential Evaluation Carries No Downside

There is a feature of this arrangement that counsel new to the area frequently miss, and it is the reason a risk assessment should be sought early rather than weighed as a gamble. A defense-retained evaluation is a one-way option. If the assessment comes back favorable, counsel uses it at sentencing. If it comes back unfavorable, counsel does not, the report is never offered, and nothing is disclosed. The evaluation can help the accused; structurally, it cannot hurt him.

This is not a trick played on the court, and counsel should be able to say why if asked. The defense never represents that a favorable assessment exists where it does not. It simply declines to offer evidence, which it is entitled to do, and the government retains its own burden and its own ability to seek an evaluation. This is the ordinary operation of privilege and work product, and it is the reason the confidential expert consultant exists as a category at all.

The protections are set out in Part III.F, and so are their limits. The essential point is that they end at designation, and they end completely. Once the expert is listed as a witness, the government may contact and interview the expert, and the basis of the opinion — including records reviewed, items scored, and data that cut against the conclusion — becomes fair territory on cross-examination. Designation should be a deliberate decision made with the completed report in hand, not a reflex.

Three limits deserve emphasis. First, an R.C.M. 706 board is not this. A sanity board is ordered by the convening authority or the military judge and its results go to the parties; it is not confidential defense work product, and counsel should never conflate a board with a defense-retained

evaluation. Second, placing the accused's mental condition in issue may open the door to a government examination, and counsel should think that consequence through before doing so. Third, where the same expert has already testified at findings, the sentencing evaluation remains separate work product, but counsel should consider in advance how cross-examination at sentencing may reach back to the earlier testimony.

One condition makes the whole structure work, and it connects directly to Part III.J. The asymmetry operates on the use of the report, not on its contents. Counsel controls whether the evaluation is offered; the evaluator controls what it says. An evaluator who understood that only a favorable report would ever see daylight, and who shaded the opinion accordingly, would destroy the very thing that gives a favorable report its value — because the opinion that reaches the court has to withstand a cross-examination conducted by someone with the same records and a contrary motive. Keeping those two controls separate is what makes the arrangement both proper and useful.

Finally, an unfavorable evaluation is not a wasted expenditure, and counsel should not treat it as one. It tells counsel not to advance a mental-health or low-risk theory that the government would dismantle, and not to place the client before a government evaluator. It informs plea negotiation while there is still time for that to matter. It frequently identifies elevated dynamic items that support a different and sometimes better mitigation theory — amenability to treatment, and a supervision package addressed to named targets — even where the risk figure itself is unhelpful. And it eliminates the possibility of being surprised at sentencing by something the defense could have known months earlier. That is also the answer to a convening authority, or to counsel, who asks why an evaluation should be funded before anyone knows how it will come out.

I. Delivering the Result: The Unsworn Statement or the Stand

Where the completed assessment is favorable, counsel has two routes to put it before the sentencing authority, and the choice should be made case by case rather than by habit.

The first is to include the report in the accused's unsworn statement. Under R.C.M. 1001 the accused may not be cross-examined on an unsworn statement, which may be oral, written, or both, and the right to make one is broadly construed (*United States v. Johnson*, 62 M.J. 31 (C.A.A.F. 2005)). A written report fits the format limitation that *United States v. Cunningham*, 83 M.J. 367 (C.A.A.F. 2022), enforces. On this route the expert never takes the stand at all, so there is no cross-examination of anyone.

The costs are real and counsel should weigh them rather than assume the route is free. The right to make an unsworn statement is not wholly unconstrained (*United States v. Barrier*, 61 M.J. 482 (C.A.A.F. 2005)); the military judge retains gatekeeping authority and may instruct members on how to consider the material rather than preclude it; and the government may rebut any statement of fact contained in it. Counsel should also expect trial counsel to argue that presenting an expert opinion through an unsworn statement evades the reliability showing that M.R.E. 702 and the Houser factors would otherwise require. That argument has some force. A military judge persuaded by it may discount the report substantially without necessarily saying so, and an assessment that has never been tested by cross-examination is worth less to many judges than one that has.

The second route is for the evaluator to take the stand at sentencing and defend the report. This costs a cross-examination and buys weight. It also allows the deferral described in Part III.B to be brought out on direct as an affirmative matter: the evaluator can explain that he declined to review any case-specific material until his findings testimony was complete, which establishes both that

the earlier testimony was uncontaminated and that the assessment itself was conducted without reference to the trial strategy. That is a difficult combination for trial counsel to attack.

The working rule: use the unsworn statement where the report is clean, the sentencing authority is a military judge, and the marginal weight is not worth handing trial counsel a cross-examination. Take the stand where the report can withstand cross-examination and the added credibility will matter to the sentence.

J. What Cannot Be Engineered

The protocol in Part III.B defers the evaluator's review; it does not narrow it. That distinction is the whole of the matter, and there is one variant of the sequencing question that crosses it. The variant is to structure the engagement so that the evaluator never learns adverse information about the accused — the criminal history, the full forensic examination, the collateral records — on the theory that an uninformed evaluator can render a low-risk opinion that an informed one could not. That will not work, for four reasons in ascending order of consequence.

1. The instruments require the very records at issue. Nearly every CASIC item and several CPORT items are coded from the digital forensic examination and the criminal history. An evaluator who has not seen them cannot score the instruments and is obliged to say which items could not be coded and why.
2. The omission is discoverable and it is the first thing asked. Cross-examination in this area opens with what the evaluator reviewed and proceeds immediately to what was available and not requested. There is no satisfactory answer to the second question.
3. It is the precise attack the government has been trained to make. Turner and colleagues list failure to conduct case-by-case assessments and failure to consider risk-increasing factors among the standard grounds for refuting a defense risk report. A deliberately thin file does not avoid that attack; it supplies it.
4. An opinion whose information base was selected to produce a result is not an opinion. The Specialty Guidelines require the evaluator to consider information relevant to the referral question and to disclose the limits of what was reviewed, and an expert who commits to a conclusion before conducting the assessment has abandoned the basis on which courts receive expert testimony at all.

There is also a practical point that counsel should weigh. Correspondence proposing such an arrangement is itself a potential exhibit, and it would do more damage than any adverse clinical finding it was meant to avoid.

None of this is a counsel of despair, because the favorable finding in this case category does not depend on the evaluator's ignorance. It comes from the data. The base rates set out in the companion report on the research are low on the merits, and a fully informed evaluation of an online-only accused with no criminal history, no solicitation, no communication with minors, and no evidence of contact offending ordinarily arrives at a favorable place honestly — with the instruments scored, the adverse features addressed, and the limitations stated. That opinion survives cross-examination. The other kind does not, and when it fails it takes the sentencing argument down with it.

IV. What to Require of an Evaluation

Whether counsel is reviewing a report obtained by the defense or one produced by the government or probation, the following elements should be present. Their absence is not a matter of style.

1. A stated referral question, and an opinion confined to it. The ultimate issues — guilt, credibility, whether the offense occurred — are for the trier of fact.

2. An enumerated list of records reviewed, with the digital forensic examination identified specifically, and a statement of which items could not be coded because a record was unavailable.
3. Validity indicators reported before any clinical scale.
4. Instruments selected with reference to the examinee's population, and any contact-sample instrument accompanied by a statement of the population limitation.
5. A named reference group for every absolute actuarial estimate.
6. Risk communicated as a group rate over a defined follow-up period, never as this individual's probability.
7. Current editions and conventions — the 2017 SVR-20 V2 item set, the 2021 Evaluators' Workbook, the 2025 ATSA guidelines, common-language risk categories, and CPORT norms rather than rank-only reporting.
8. The aggravating features of the case addressed explicitly, with the weight each received.
9. Contrary evidence addressed rather than omitted. An opinion that acknowledges nothing cutting the other way reads as advocacy and will be treated as such.
10. Any diagnosis supported by the full criterion set. Possession of material is not by itself a sufficient basis for a paraphilic diagnosis; duration, distress or impairment, and action upon the interest must each be established.
11. Named, individualized treatment targets drawn from elevated dynamic items, and protective factors framed so that they can be converted into conditions of supervision.
12. Stated limitations, stated conditions under which the opinion would change, and a date. The opinion speaks as of the report date.

V. Recurring Defects in Opposing Risk Opinions

The following defects appear repeatedly in reports produced by other evaluators in this case category. For each one found, counsel should be prepared to state what the report says, why it is wrong, what the correct statement would have been, and what difference it makes to the conclusion. A critique that establishes methodological impropriety without showing its effect on the opinion does not help the court and does not help the client.

- A group recidivism rate presented as this individual's probability of reoffending.
- No reference group named, or a sample preselected for treatment need used without justification, which inflates the absolute estimate.
- A contact-offense instrument applied to an online-only examinee with no acknowledgment of the population mismatch — the defect the ATSA position statement addresses directly.
- New offending and pseudo-recidivism combined into a single figure.
- A paraphilic diagnosis resting on possession of material rather than the full diagnostic criterion set.
- Scored items unsupported by the record cited, or coded from the charging document rather than the disposition.
- Charges conflated with convictions, or offenses conflated with sentencing occasions — an error that moves actuarial scores directly.
- Denial treated as a risk factor, without acknowledgment that denial has not shown a consistent relationship to recidivism in the general body of research.
- Viewing time, polygraph, or penile plethysmograph results presented as though they establish offending.
- Age not weighted, or an unstratified table used with an older examinee, when sexual recidivism risk declines materially with advancing age.
- Superseded editions used without acknowledgment.

- A reference list that does not match the citations in the text, or secondary sources presented as primary. This is inexpensive to check and effective to raise.

VI. Summary

The instruments that fit this population are not the instruments in general use. The Child Pornography Offender Risk Tool, with the CASIC companion scale, is the only validated static measure developed for offending confined to exploitation material, and since 2026 it carries published norms rather than rank-only reporting. Contact-sample instruments may be reported with the population limitation stated, and never as the load-bearing measure in an online-only case.

The timing of the evaluation is a decision, not an administrative detail. Front-loading the data collection and deferring review until after findings testimony is complete allows one expert to do both jobs honestly, which is the ordinary structure in a court-martial and one the forum is built to accommodate. That protocol carries a forensic obligation of its own: the interval between administration and interview now spans the verdict, and the report must say so and account for it.

The legal protections around a defense-retained evaluation are real but narrower than they are commonly assumed to be. There is no rule that makes an expert uncompellable. What there is, while the expert remains a consultant, is privilege, work product, and the ordinary limits on the scope of cross-examination — and a confidential evaluation that can be used or withheld at counsel’s election, which is why it should be sought early rather than weighed as a gamble.

I am available to consult on individual cases, to review risk assessments produced by other evaluators, and to conduct psychosexual risk assessments in this case category, including by remote protocol in advance of trial. Counsel is welcome to contact my office directly.

Go forth, do good . . .

References

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