

# Scoring the Static-99 with New York State Statutes: 2008



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**New York State Division of Criminal Justice Services  
Office of Sex Offender Management**

## How to Use This Guide

This guide is intended to aid professionals using criminal histories from New York State in accurately and consistently scoring the Static-99. Statutes which could conceivably be construed as sexual or violent in nature are included for scoring items 3, 4, 5 and 7 and are listed chronologically by penal code in Table 1. The rater is cautioned to look closely at the behavior and score only when there is sufficient defensible evidence that a crime was sexual or violent in nature. Table 2 is the Conviction and Sentencing table and can be used to aid in scoring items 3-7. ***This guide is not intended to replace the full Static-99 Coding Manual. Users must review the entire Static-99 Coding Manual prior to scoring cases.*** It is also strongly recommended that persons coding the instrument attend training conducted by a trainer certified by the authors of the Static-99.

A few reminders:

- If a particular crime is not listed, it has not been determined to count as a violent or sexual crime for the purposes of this instrument.
- When a “Yes” appears in the table, attempts to commit (as defined by statute) any of these crimes count (as do completed offenses).
- One should always have a description of the behavior underlying a crime (such as a police report) if there is a possibility the crime could be interpreted in multiple ways (e.g. endangering the welfare of a child).
- You should be confident that you can defend your rationale for scoring. It is possible you will have to testify as to your scoring in the future.
- On the sentencing table, a sex offense would still count on item #5 as a charge/arrest even if it does not count as a conviction or sentence.

Questions regarding this portion of the manual can be directed to: New York State Office of Sex Offender Management (518) 457-5628 or via email at [static99@dcjs.state.ny.us](mailto:static99@dcjs.state.ny.us).

As laws continually change, users are encouraged to visit <http://public.leginfo.state.ny.us/menuf.cgi> for updates to the Penal laws of New York State.

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<b>Table 1: New York State Sexual and Violent Offenses</b> Includes all Subsections, Classes and Attempts	<b>Category A or B Sex Offense? Item #5</b>	<b>Non-Contact Sex Offense? Item # 7</b>	<b>Non-Sexual Violence? Item # 3 and 4</b>	<b>Caveats/Comments</b>
§120.00 Assault in the third degree.	N/A	No	Yes	
§120.01 Reckless assault of a child by a child day care provider.	N/A	No	No	
§120.02 Reckless assault of a child.	N/A	No	Yes	
§120.03 Vehicular assault in the second degree.	N/A	No	No	
§120.04 Vehicular assault in the first degree.	N/A	No	No	
§120.04-a Aggravated vehicular assault.	N/A	No	No	
§120.05 Assault in the second degree.	N/A	No	Yes	Check for PL § 130.91
§120.06 Gang assault in the second degree.	N/A	No	Yes	Check for PL § 130.91
§120.07 Gang assault in the first degree.	N/A	No	Yes	Check for PL § 130.91
§120.08 Assault on a peace officer, police officer, fireman or emergency medical services professional.	N/A	No	Yes	
§120.10 Assault in the first degree.	N/A	No	Yes	Check for PL § 130.91
§120.11 Aggravated assault upon a police officer or a peace officer.	N/A	No	Yes	
§120.12 Aggravated assault upon a person less than eleven years old.	N/A	No	Yes	
§120.13 Menacing in the first degree.	N/A	Possibly	Yes	Look at Behavior
§120.14 Menacing in the second degree.	N/A	Possibly	Yes	Look at Behavior
§120.15 Menacing in the third degree.	N/A	No	Yes	
§120.16 Hazing in the first degree.	N/A	No	Possibly	Look at Behavior
§120.17 Hazing in the second degree.	N/A	No	Possibly	Look at Behavior
§120.18 Menacing a police officer or peace officer.	N/A	No	Yes	
§120.20 Reckless endangerment in the second degree.	N/A	No	No	No Intent
§120.25 Reckless endangerment in the first degree.	N/A	No	No	No intent
§120.30 Promoting a suicide attempt.	N/A	No	No	
§120.45 Stalking in the fourth degree.	N/A	No	Yes	Threats Implied
§120.50 Stalking in the third degree.	N/A	No	Yes	Threats Implied
§120.55 Stalking in the second degree.	N/A	No	Yes	

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§120.60 Stalking in the first degree.	N/A	No	Yes	Check for PL § 130.91
§125.10 Criminally negligent homicide.	N/A	No	No	No intent
§125.11 Aggravated criminally negligent homicide.	N/A	No	No	No intent
§125.12 Vehicular manslaughter in the second degree.	N/A	No	No	No intent
§125.13 Vehicular manslaughter in the first degree.	N/A	No	No	No intent
§125.14 Aggravated vehicular homicide.	N/A	No	No	No intent
§125.15 Manslaughter in the second degree.	N/A	No	No	No intent; subsection 1; Check for PL § 130.91
§125.20 Manslaughter in the first degree.	N/A	No	Yes	Check for PL § 130.91
§125.21 Aggravated manslaughter in the second degree.	N/A	No	No	
§125.22 Aggravated manslaughter in the first degree.	N/A	No	Yes	
§125.25 Murder in the second degree.	N/A	No	Yes	Subsection 5 only Check for PL § 130.91
§125.26 Aggravated murder.	N/A	No	Yes	Check for PL § 130.91
§125.27 Murder in the first degree.	N/A	No	Yes	Check for PL § 130.91
§130.20 Sexual misconduct.	A	No	No	
§130.25 Rape in the third degree.	A	No	No	
§130.30 Rape in the second degree.	A	No	No	
§130.35 Rape in the first degree.	A	No	No	
§130.40 Criminal sexual act in the third degree. (Formerly Sodomy 3)	A	No	No	
§130.45 Criminal sexual act in the second degree. (Formerly Sodomy 2)	A	No	No	
§130.50 Criminal sexual act in the first degree. (Formerly Sodomy 1)	A	No	No	
§130.52 Forcible touching.	A	No	No	
§130.53 Persistent sexual abuse.	A	No	No	
§130.55 Sexual abuse in the third degree.	A	No	No	
§130.60 Sexual abuse in the second degree.	A	No	No	
§130.65 Sexual abuse in the first degree.	A	No	No	
§130.65-a Aggravated sexual abuse in the fourth degree.	A	No	No	

<b>Table 1: New York State Sexual and Violent Offenses</b> Includes all Subsections, Classes and Attempts	<b>Category A or B Sex Offense? Item #5</b>	<b>Non-Contact Sex Offense? Item # 7</b>	<b>Non-Sexual Violence? Item # 3 and 4</b>	<b>Caveats/Comments</b>
§130.66 Aggravated sexual abuse in the third degree.	A	No	No	
§130.67 Aggravated sexual abuse in the second degree.	A	No	No	
§130.70 Aggravated sexual abuse in the first degree.	A	No	No	
§130.75 Course of sexual conduct against a child in the first degree.	A	No	No	
§130.80 Course of sexual conduct against a child in the second degree.	A	No	No	
§130.85 Female genital mutilation.	B	No	No	
§130.90 Facilitating a sex offense with a controlled substance.	A	No	No	
§130.91 Sexually motivated felony.	A/B	Possible	Possible	Look at concurrent charges and behavior.
§130.95 Predatory sexual assault.	A	No	No	
§130.96 Predatory sexual assault against a child.	A	No	No	
§135.05 Unlawful imprisonment in the second degree.	A or N/A	No	Yes	May be able to count as both non-sexual violence and sex offense.
§135.10 Unlawful imprisonment in the first degree.	A or N/A	No	Yes	May be able to count as both non-sexual violence and sex offense.
§135.20 Kidnapping in the second degree.	A or N/A	No	Yes	May be able to count as both non-sexual violence and sex offense. Check for PL § 130.91
§135.25 Kidnapping in the first degree.	A or N/A	No	Yes	May be able to count as both non-sexual violence and sex offense. Check for PL § 130.91
§135.45 Custodial interference in the second degree.	N/A	No	No	In very rare circumstances could be sexual.

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§135.50 Custodial interference in the first degree.	N/A	No	No	In very rare circumstances could be sexual.
§135.60 Coercion in the second degree.	N/A	No	Possibly	Subsection 1 only
§135.65 Coercion in the first degree.	N/A	No	Possibly	Subsection 1 only
§140.05 Trespass.	A or N/A	Yes	No	A, If Voyeuristic
§140.10 Criminal trespass in the third degree.	A or N/A	Yes	No	A, If Voyeuristic
§140.15 Criminal trespass in the second degree.	A or N/A	Yes	No	A, If Voyeuristic
§140.17 Criminal trespass in the first degree.	A or N/A	Yes	No	A, If Voyeuristic
§140.20 Burglary in the third degree.	A or N/A	Possibly	No	A If sexually motivated Check for PL § 130.91
§140.25 Burglary in the second degree.	A or N/A	Possibly	Yes	A If sexually motivated NSV if confrontation with a victim: subsection 1, b, c & d; Check for PL § 130.91.
§140.30 Burglary in the first degree.	A or N/A	Possibly	Yes	A If sexually motivated NSV if confrontation with a victim: subsections 2, 3 & 4; Check for PL § 130.91.
§150.01 Arson in the fifth degree.	N/A	No	No	Relates to Property Only
§150.05 Arson in the fourth degree.	N/A	No	No	Relates to Property Only
§150.10 Arson in the third degree.	N/A	No	No	Relates to Property Only
§150.15 Arson in the second degree.	N/A	No	Yes	Check for PL § 130.91
§150.20 Arson in the first degree.	N/A	No	Yes	Check for PL § 130.91
§160.05 Robbery in the third degree.	N/A	No	Yes	Check for PL § 130.91
§160.10 Robbery in the second degree.	N/A	No	Yes	Check for PL § 130.91
§160.15 Robbery in the first degree.	N/A	No	Yes	Check for PL § 130.91

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§205.30 Resisting arrest.	N/A	No	No	See p. 28 & 32 of manual.
§215.50 Criminal contempt in the second degree.	N/A	No	Possibly	See p. 28 of manual- must be a violation of DV Order of Protection.
§215.51 Criminal contempt in the first degree.	N/A	No	Possibly	See p. 28 of manual- must be a violation of DV Order of Protection.
§215.52 Aggravated criminal contempt.	N/A	No	Yes	
§230.03 Patronizing a prostitute in the fourth degree. (repealed 11/1/07)	B	No	No	
§230.04 Patronizing a prostitute in the third degree.	B	No	No	
§230.05 Patronizing a prostitute in the second degree.	A	No	No	(prostitute is <14)
§230.06 Patronizing a prostitute in the first degree.	A	No	No	(prostitute is <11)
§230.20 Promoting prostitution in the fourth degree.	B	No	No	
§230.25 Promoting prostitution in the third degree.	B	No	No	
§230.30 Promoting prostitution in the second degree.	B	No	No	(prostitute is <16) Check for PL § 130.91
§230.32 Promoting prostitution in the first degree.	B	No	No	(prostitute is <11) Check for PL § 130.91
§230.33 Compelling prostitution.	B	No	No	(prostitute is <16) Check for PL § 130.91
§230.34 Sex trafficking.	B	No	Possible	Check fo Concurrent Category A Offenses
§235.05 Obscenity in the third degree.	B	Yes	No	
§235.06 Obscenity in the second degree.	B	Yes	No	
§235.07 Obscenity in the first degree.	B	Yes	No	
§235.21 Disseminating indecent material to minors in the second degree.	A/B	Yes	No	B - monetary motive in subsections 1 & 2 ; A – sexual motive in subsection 3.
§235.22 Disseminating indecent material to minors in the first degree.	A	Yes	No	Check for PL § 130.91

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§240.20 Disorderly conduct.	N/A	N/A	Yes	Subsection 1 only); details of crime are necessary to discern.
§240.25 Harassment in the first degree.	A or N/A	Possibly	Yes	May be sexual or violent--details of crime are necessary to discern
§240.26 Harassment in the second degree.	A or N/A	Possibly	Possibly	May be sexual or violent--details of crime are necessary to discern
§240.30 Aggravated harassment in the second degree.	A or N/A	Possibly	Possibly	May be sexual or violent--details of crime are necessary to discern
§240.31 Aggravated harassment in the first degree.	A or N/A	In very rare cases	Possibly	May be violent--details of crime are necessary to discern
§240.35 Loitering.	B	No	No	If subsection 3
§240.37 Loitering for the purpose of engaging in a prostitution offense.	B	No	No	
§245.00 Public lewdness.	A	Yes	No	Category B if offender was mentally impaired (p. 14)
§245.01 Exposure of a person.	A	Yes	No	Category B if offender was mentally impaired (p. 14)
§245.02 Promoting the exposure of a person.	B	No	No	
§245.11 Public display of offensive sexual material.	B	Yes	No	
§250.45 Unlawful surveillance in the second degree.	A	Yes	No	
§250.50 Unlawful surveillance in the first degree.	A	Yes	No	
§250.55 Dissemination of an unlawful surveillance image in the second degree.	B	Yes	No	

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§250.60 Dissemination of an unlawful surveillance image in the first degree.	B	Yes	No	
§255.25 Incest in the third degree.	A	No	No	
§255.26 Incest in the second degree.	A	No	No	
§255.27 Incest in the first degree.	A	No	No	
§260.10 Endangering the welfare of a child.	A	Possibly	No	May be sexual-details of crime are necessary to discern
§260.20 Unlawfully dealing with a child in the first degree.	A	Yes	No	May be sexual-details of crime are necessary to discern
§260.32 Endangering the welfare of a vulnerable elderly person in the second degree.	A Subsection 4	No	Yes Subsection 1	May be sexual or violent--details of behavior of crime are necessary to discern
§260.34 Endangering the welfare of a vulnerable elderly person in the first degree.	N/A	No	Yes	Subsection 1 only
§263.05 Use of a child in a sexual performance.	A/ B	Yes	No	Category A if identifiable victim was present. If pre-existing images, category B. Check for PL § 130.91
§263.10 Promoting an obscene sexual performance by a child.	A/B	Yes/No	No	Category A if identifiable victim was present. If pre-existing images, category B. Look at behavior to discern whether contact offense. Check for PL § 130.91
§263.11 Possessing an obscene sexual performance by a child.	B	Yes	No	

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§263.15 Promoting a sexual performance by a child.	A/B	Yes	No	Category A if identifiable victim was present. If pre-existing images, category B. Check for PL § 130.91
§263.16 Possessing a sexual performance by a child.	B	Yes	No	
§265.01 Criminal possession of a weapon in the fourth degree.	N/A	No	No	See p. 32 of manual
§265.02 Criminal possession of a weapon in the third degree.	N/A	No	No	See p. 32 of manual
§265.03 Criminal possession of a weapon in the second degree.	N/A	No	No	See p. 32 of manual
§265.04 Criminal possession of a weapon in the first degree.	N/A	No	No	See p. 32 of manual
§265.08 Criminal use of a firearm in the second degree.	N/A	No	Yes	
§265.09 Criminal use of a firearm in the first degree.	N/A	No	Yes	

<b>Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Criminal Court</b>	<b>Conviction? Item #3, 4, 5, and 7</b>	<b>Sentence? Item # 6</b>	<b>Caveats/Comments</b>
<b>Acquittals</b> <ul style="list-style-type: none"> <li>NY CPL § 330.10 Disposition of defendant after verdict of acquittal</li> </ul>	No	No	Can count as the Index Offense or as charges for #5, prior sex offenses.
<b>Arrests:</b> Any arrest of a sexual nature can count as the Index Offense; or as a Prior Sex Offense (#5), but only for charges if there has been a disposition favorable to the defendant This includes but is not limited to: ACOD, charges dismissed or no true bill, acquittal, indictment or verdict set aside, etc.	No	No	
<b>Alford Plea<sup>1</sup></b> Definition: A guilty plea that a defendant enters as part of a plea bargain, without actually admitting guilt. This plea is not considered compelled within the language of the Fifth Amendment if the plea represents a voluntary, knowing, and intelligent choice between the available options <the defendant -- realizing the strength of the prosecution's evidence and not wanting to risk receiving the death penalty -- entered into an Alford plea>. North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160 (1970).	Yes	Yes	
<b>Adjournment in Contemplation of Dismissal (ACOD)</b> <ul style="list-style-type: none"> <li>NY CPL § 170.55 Adjournment in contemplation of dismissal</li> </ul>	No	No*	*If condition imposed would be conviction/sentence
<ul style="list-style-type: none"> <li>NY CPL § 170.56 Adjournment in contemplation of dismissal in cases involving marihuana</li> </ul>	No	No*	*If condition imposed would be conviction/sentence
<ul style="list-style-type: none"> <li>NY CPL § 210.46 Adjournment in contemplation of dismissal in marihuana cases in a superior court</li> </ul>	No	No*	*If condition imposed would be conviction/sentence.
<ul style="list-style-type: none"> <li>NY CPL § 210.47 Adjournment in contemplation of dismissal in misdemeanor cases in a superior court</li> </ul>	No	No*	*If condition imposed would be conviction/sentence
<ul style="list-style-type: none"> <li>NY CPL Article 215 – Adjournment in contemplation of dismissal for purposes of referring selected felonies to dispute resolution</li> </ul>	Yes	Yes	Fine, other sanction possible.

<sup>1</sup> Black's Law Dictionary (8th ed. 2004).

Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Criminal Court	Conviction? Item #3, 4, 5, and 7	Sentence? Item # 6	Caveats/Comments
<b>Appeals</b> NY CPL Article 470 <sup>2</sup> Determination of appeals by intermediate appellate courts; corrective action upon reversal or modification			
<ul style="list-style-type: none"> <li>§ 470.20(1) reversal of judgment, new trial ordered</li> </ul>	No	No	
<ul style="list-style-type: none"> <li>§ 470.20(2) accusatory instrument dismissed</li> </ul>	No	No	
<ul style="list-style-type: none"> <li>§ 470.20(3) judgment affirmed, counts dismissed; may be resentenced</li> </ul>	Yes	Yes	Adjust conviction counts if necessary; do not count as not a new sentence.
<ul style="list-style-type: none"> <li>§ 470.20(4) resentence ordered; reduction in sentence</li> </ul>	Yes	Yes	
<ul style="list-style-type: none"> <li>§ 470.20(5) instrument or counts may be dismissed</li> </ul>	Possibly	Possibly	Adjust both if necessary.
<ul style="list-style-type: none"> <li>§ 470.20(6) sentence modified (reduced; interest of justice), judgment upheld</li> </ul>	Yes	Yes	
<b>Conditional Discharge</b> <ul style="list-style-type: none"> <li>NY PL § 65.05 Sentence of conditional discharge</li> </ul>	Yes	Yes	See p. 44.
<b>Consecutive Sentences</b> <ul style="list-style-type: none"> <li>NY PL §70.25 Concurrent and consecutive terms of imprisonment</li> </ul>	Yes	Yes	Sentences handed down on the same sentencing date count as one sentence, even if they are consecutive (p. 43).
<b>Consent Decrees</b>	Yes	Yes	
<b>Dismissals</b> <ul style="list-style-type: none"> <li>NY CPL § 190.75 Grand jury; dismissal of charge</li> <li>NY CPL § 290.10 Trial order of dismissal</li> </ul>	No	No	
<b>Expunged Records</b>	Yes	Yes	
<b>Failure to Register as a Sex Offender</b> <ul style="list-style-type: none"> <li>Correction Law § 168-t</li> </ul>	No	Yes	Count <i>only</i> for #6, prior sentencing dates.
<b>Fines</b> <ul style="list-style-type: none"> <li>NY PL § 80.00 Fine for felony</li> <li>NY PL § 80.05 Fines for misdemeanors and violation</li> </ul>	Yes*	Yes*	*Must accompany a criminal charge eligible for probation or incarceration.

<sup>2</sup> May count as charges for #5, prior sex offenses; if counts are dismissed, adjust #5 accordingly. If sentences are modified, do not count as a new sentencing date.

Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Criminal Court	Conviction? Item #3, 4, 5, and 7	Sentence? Item # 6	Caveats/Comments
<b>Incompetent to Stand Trial</b> <ul style="list-style-type: none"> <li>NY CPL Article 730 - Mental Disease or Defect Excluding Fitness to Proceed</li> </ul>	No	No	Can count as the Index Offense or as charges for #5, prior sex offenses.
<b>Interim Probation Supervision (IPS)<sup>3</sup></b> <ul style="list-style-type: none"> <li>NY CPL § 390.30 Scope of pre-sentence investigation and report</li> </ul>	Yes	Yes	
<b>Intermittent Imprisonment</b> <ul style="list-style-type: none"> <li>NY PL § 85.00 Sentence of intermittent imprisonment</li> </ul>	Yes	Yes	Modification or revocation of this sentence does not change the score.
<b>Juvenile Offender</b> <ul style="list-style-type: none"> <li>NY PL § 60.10 Authorized disposition; juvenile offender</li> </ul>	Yes	Yes	
<b>Mental Disease or Defect<sup>4</sup></b> [not responsible by reason of] <ul style="list-style-type: none"> <li>NY CPL § 330.20 Procedure following verdict or plea of not responsible by reason of mental disease or defect</li> </ul>	Yes	Yes	Can count as the Index Offense or as charges for #5, prior sex offenses.
<b>Motion to Dismiss Indictment</b> [if granted] <ul style="list-style-type: none"> <li>NY CPL §210.20: dismiss or reduce</li> <li>NY CPL §210.25: defective</li> <li>NY CPL §210.30: insufficiency of grand jury evidence</li> <li>NY CPL §210.35: defective grand jury proceeding</li> <li>NY CPL §210.40: furtherance of justice</li> </ul>	No	No	Can count as the Index Offense or as charges for #5, prior sex offenses.

<sup>3</sup> This is not the same as “Probation Before Judgment” (p. 41) but is similar to “Adjudication Withheld” (p. 37) and “Court Supervision” (p. 38), which count only as a conviction. Although IPS is not legally or technically considered a sentence, we recommend that it be counted as a sentence for the purposes of scoring the instrument for two reasons: a) because the offender can receive conditions of supervision along with interim probation supervision which results in a restriction of liberty; and b) the offender will either receive a sentence to probation or incarceration, both of which count as sentences and therefore once the offender is sentenced, the Static-99 score will not change (all things being equal; no new charges or convictions.)

<sup>4</sup> Being found not responsible by reason of mental disease or defect counts because in these proceedings it has been found beyond a reasonable doubt that the act was committed by the offender.

Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Criminal Court	Conviction? Item #3, 4, 5, and 7	Sentence? Item # 6	Caveats/Comments
<b>Motion to Dismiss Information</b> <ul style="list-style-type: none"> <li>NY CPL § 170.30 Motion to dismiss information, simplified information, prosecutor's information or misdemeanor complaint</li> <li>NY CPL § 170.35 Motion to dismiss information, simplified information, prosecutor's information or misdemeanor complaint; as defective</li> <li>NY CPL § 170.40 Motion to dismiss information, simplified traffic information, prosecutor's information or misdemeanor complaint; in furtherance of justice</li> <li>NY CPL § 170.50 Motion in superior court to dismiss prosecutor's information</li> </ul>	No	No	Can count as the Index Offense or as charges for #5, prior sex offenses.
<b>Motion to Set Aside Sentence</b> [if granted] <ul style="list-style-type: none"> <li>NY CPL § 440.20 Motion to set aside sentence; by the defendant</li> <li>NY CPL § 440.40 Motion to set aside sentence; by the people</li> </ul>	Yes	Possibly; review case	If the defendant is resentenced, it counts, but <i>not</i> as a <i>new</i> sentence.
<b>Motion to Set Aside Verdict</b> [if granted] <ul style="list-style-type: none"> <li>NY CPL § 330.50 Motion to set aside verdict</li> </ul>	No	No	Can count as the Index Offense or as charges for #5, prior sex offenses.
<b>Motion to Vacate Judgment</b> [if granted] <ul style="list-style-type: none"> <li>NY CPL § 440.10 Motion to vacate judgment</li> </ul>	No	No	
<b>Nolo Contendere</b> <sup>5</sup> Definition: nolo contendere [Latin "I do not wish to contend"] NO CONTEST. -- Often shortened to nolo. [Cases: Criminal Law 275. C.J.S. Criminal Law §§ 398-407, 417.]	Yes	Yes	Not applicable in New York State.
<b>Parole</b> . <sup>6</sup> <ul style="list-style-type: none"> <li>NY CPL § 410.91 Sentence of parole supervision</li> </ul>	Possibly	Possibly	Release to parole from incarceration does not count.

<sup>5</sup> Black's Law Dictionary (8th ed. 2004).

<sup>6</sup> In rare instances, an offender can be sentenced directly to parole. This statute is also used to reflect parolees whose supervision is transferred into New York State. In those cases, it should be counted as a charge and conviction depending on the criminal history report. Be careful not to double count the original out of state conviction and sentence along with PL § 410.91 – count either the original offense or the occurrence of PL § 410.91 but not both.

Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Criminal Court	Conviction? Item #3, 4, 5, and 7	Sentence? Item # 6	Caveats/Comments
<b>Parole Revocations</b> that meet the criteria presented in the <i>Coding Rules</i> . <ul style="list-style-type: none"> <li>NY CL § 259-i(3) Revocation of presumptive release, parole, conditional release and post-release supervision</li> </ul>	No	No	See pages: 16 (generally); 29 (#3), 34 (#4), 36 & 41 (#5), 45 (#6), and 47 (#7).
<b>Probation:</b> <ul style="list-style-type: none"> <li>NY PL § 65.00 Sentence of probation</li> </ul>	Yes	Yes	
<b>Probation Revocations</b> that meet the criteria presented in the <i>Coding Rules</i> . <ul style="list-style-type: none"> <li>NY CPL § 410.70 Hearing on violation</li> </ul>	Yes	Yes	See pages: 16 (generally); 29 (#3), 34 (#4), 36 & 41 (#5), 45 (#6), and 47 (#7).
<b>Sealed Records</b> <ul style="list-style-type: none"> <li>NY CPL § 160.50 Order upon termination of criminal action in favor of the accused</li> </ul>	No	No	
<b>Sentences to Imprisonment</b> (NY PL Article 70) <ul style="list-style-type: none"> <li>NY PL § 70.00 Sentence of imprisonment for felony</li> <li>NY PL § 70.15 Sentences of imprisonment for misdemeanors and violations</li> </ul>	Yes Yes	Yes Yes	
<b>Split Sentences to Jail and Probation</b> <ul style="list-style-type: none"> <li>NY PL § 60.01(2)(d) Authorized dispositions generally; and</li> <li>NY PL § 65.00 Sentence of probation</li> </ul>	Yes	Yes	
<b>Suspended Sentence</b>	Yes	Yes	
<b>Termination of Prosecution</b> <ul style="list-style-type: none"> <li>NY CPL § 180.85 Termination of prosecution</li> </ul>	No	No	Can count as the Index Offense or as charges for #5, prior sex offenses.
<b>Time Served</b>	Yes	Yes	
<b>Unconditional Discharge</b> <ul style="list-style-type: none"> <li>NY PL § 65.20 Sentence of unconditional discharge</li> </ul>	Yes	Yes	
<b>Youthful Offender:</b> <ul style="list-style-type: none"> <li>NY CPL Article 720 Youthful Offender Procedure</li> <li>NY PL § 60.02 Authorized disposition; youthful offender</li> </ul>	Yes Yes	Yes Yes	

Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Family Court	Conviction? Item #3, 4, 5, and 7	Sentence? Item # 6	Caveats/Comments
<p><b>Juvenile Offenses: Two Basic Coding Rules</b></p> <p>1) Adjudications count as convictions for the purposes of scoring an assessment instrument even though the Family Court Act does not treat them as convictions for other purposes (#3, #4, #5 and #7).</p> <p>2) Dispositions that resulted in either an order of probation or placement count as a sentence (#6), including PINS petitions. However, the behavior <i>must be sexual in nature</i> to score #5 prior sex offenses, and #7 any convictions for a non-contact offense.</p>	<p>Yes</p> <p>Yes</p>	<p>Yes</p> <p>Yes</p>	<p>See page 18: placement for sexual aggression counts as a charge and conviction for a sexual offense.</p> <p>Dispositional hearings are counted as convictions when they result in an order of probation, a restrictive placement, or placement in a secure facility.</p>
<b>Family Court Act Article 3: Juvenile Delinquency</b>			<p>Motions to dismiss petitions, if granted, may serve as the Index Offense or be counted as arrests for #5.</p> <p>Equivalent to alternative measures.</p>
<b>FCA § Part One: Jurisdiction and Preliminary Procedures</b>			
<ul style="list-style-type: none"> <li>§ 315.1 Motion to dismiss; defective petition [if granted]</li> </ul>	No	No	
<ul style="list-style-type: none"> <li>§ 315.2 Motion to dismiss in furtherance of justice [if granted]</li> </ul>	No	No	
<ul style="list-style-type: none"> <li>§ 315.3 Adjournment in contemplation of dismissal</li> </ul>	Yes	Yes	
<b>FCA § Part Five: The dispositional hearing</b>			
<ul style="list-style-type: none"> <li>§ 353.1 Conditional discharge</li> </ul>	Yes	Yes	
<ul style="list-style-type: none"> <li>§ 353.2 Probation</li> </ul>	Yes	Yes	
<ul style="list-style-type: none"> <li>§ 353.3 Placement</li> </ul>	Yes	Yes	
<ul style="list-style-type: none"> <li>§ 355.3 Extension of placement<sup>7</sup></li> </ul>	No	No	
<p><b>Sealed Records<sup>8</sup></b></p> <ul style="list-style-type: none"> <li>See FCA § 375.2. Motion to seal after a finding</li> </ul>	Yes	Yes	<p>Finding of Delinquency.</p>

<sup>7</sup> Extensions of placement should not be counted as a disposition or a sentence unless it is clear that the extension was the result of non-consensual sexual behavior while in placement.

<sup>8</sup> Sealed records count as convictions for the purposes of scoring an assessment instrument even though the New York Family Court Act does not treat them as convictions for other purposes (future sentencing, criminal history reports, professional licensing, etc.).

Table 2: New York State Criminal Procedural and Penal Law Conviction or Sentence Type: Family Court	Conviction? Item #3, 4, 5, and 7	Sentence? Item # 6	Caveats/Comments
<b>Family Court Act, Article 7: Proceedings Concerning Whether a Person is In Need of Supervision</b>			
<b>FCA § 712 Definitions</b>			
<b>FCA § 754 Disposition on adjudication of person in need of supervision<sup>9</sup></b> 1. Upon an adjudication of person in need of supervision, the court shall enter an order of disposition: (a) Discharging the respondent with warning; (b) Suspending judgment...; (c) Continuing the proceeding and placing the respondent...; (d) Putting the respondent on probation...	No Yes Yes Yes	No Yes Yes Yes	See pages 18, 28, 32, 40.  <b>Must be criminal behavior above a minimum level of seriousness. Do not count status offences (truancy, underage drinking).</b>
<b>FCA § 756 Placement</b>	Yes	Yes	
<b>FCA § 756-a Extension of placement<sup>10</sup></b>	No	No	
<b>FCA § 762 Staying, modifying, setting aside or vacating order</b>	Possibly	Possibly	
<b>FCA Non-Compliance § 773 to § 779</b> <ul style="list-style-type: none"> <li>• § 773. Petition for transfer for incorrigibility</li> <li>• § 776. Failure to comply with terms and conditions of suspended judgment</li> <li>• § 777. Failure to comply with terms of placement at home</li> <li>• § 778. Failure to comply with terms of placement in authorized agency</li> <li>• § 779. Failure to comply with terms of probation</li> </ul>	Possibly	Possibly	Sanctions for failure to comply should not be considered a new sexual offense unless they were clearly in response to sexual behavior.

<sup>9</sup> Detention prior to a fact-finding or dispositional hearing does not count.

<sup>10</sup> Extensions of placement should not be counted as a disposition or a sentence unless it is clear that the extension was the result of non-consensual sexual behavior while in placement.