- Many sex offender civil commitment statutes' mental abnormality requirement requires a consideration of the volitional functioning of a respondent. For example, the State of Florida's SVP law, Chapter 394, Part V, Florida Statute. FLA. STAT. § 916.32(5) (Supp. 1998) indicates a mental abnormality is defined as a "mental condition affecting a person's emotional or volitional capacity which predisposes the person to commit sexually violent offenses." New York's Article 10 statute 10.03e, considers volitional capacity in their statute, "Dangerous sex offender requiring confinement" means a person who is a detained sex offender suffering from a mental abnormality involving such a strong predisposition to commit sex offenses, and such an inability to control behavior, that the person is likely to be a danger to others and to commit sex offenses if not confined to a secure treatment facility.

- Forensic mental health professionals (FMHP) are asked to examine offenders and to consider their emotional and volitional functioning. Often, FMHP’s equate diagnoses such as paraphilias and personality disorders to one’s emotional or volitional impairment.

- The goal of this paper/presentation is to examine neuropsychological and neurological assessments in examining volitional impairment and to address their admissibility in court.

- There are some neuropsychological tests that may have more relevance to behavioral impulsivity and volitional impairments than other tests. The tests that are most relevant are called executive functioning tests assessing prefrontal cortex brain functioning. Executive functions are related to the cognitive processes that deal with behavioral regulation and control, inhibition, mental flexibility, problem solving, reasoning, working memory, impulse control, risk taking, planning, abstract thinking, and concept formation, for example.

Such tests that may be considered are the Stroop Test, Wisconsin Card Sorting Test, Iowa Gambling Test, Continuous Performance Test, and Category Test. These tests focus on problem solving, concept formation, impulse control and inhibition, and mental flexibility.

- Recent research has addressed executive functioning in sex offenders. Joyal and Colleagues (2013) examined whether different subgroups of sex offenders showed different cognitive
profiles when individual neuropsychological tasks are used. It was clear from the analysis that sex offenders as a group present significant wide-ranging cognitive impairments compared to the general population. They found that there were different cognitive performances observed when sex offenders against children, sex offenders against adults, and non-sex offenders were considered separately. The authors summarize, “If confirmed, results of this study suggest that more specific neuropsychological assessments might help identify different risk factors associated with sexual offending, such as general delinquency (anti-sociality, impulsivity, and risk taking) or low social competence (asociality and poor higher order executive functioning).

This author argues that specific neuropsychological tests are relevant to assessing volitional capacity in sex offenders, especially in the areas of inhibition, impulsive problem solving, and perseverative responding.

The author will present the legal admissibility issues under the USSC holding in Daubert, as to whether these tests can and have been tested, (b) have been subjected to peer review and publication, (c) have documented known or potential rate of error, and (d) have general acceptance within the relevant scientific community.

The author will address the application of these neuropsychological tests to the legal mental abnormality statutory criteria of assessing volitional capacity that predisposes the offender to commit violent sex offenses.

**Learning Goals and Objectives:**

- To be exposed to functional neuroanatomy and neuropsychological tests that assess executive functioning and potential factors related to volitional capacity.
- To review literature on the neuropsychological assessment of sex offender groups.
- To review the Daubert admissibility requirement germane to the relevance and of neuropsychological assessment in the assessment of volitional capacity and serious difficulty controlling sex offending behaviors.
Analysis of Florida’s 14-Year, Statutorily Mandated Efficacy Study of Civil Commitment of SVPs

Gregory DeClue, Ph.D., ABPP

For 14 years, Florida Statutes required a long-term study of the efficacy of Florida’s Sexually Violent Predator Program (SVPP). Data collection stopped in 2013, and the law was changed so that no further study was authorized. More than half of the men declared by SVPP to be dangerous sexual predators have been released from confinement. Over 90% of these men are not detected to sexually recidivate within 5 years after their release, and by 10 years after release their detected-sexual-recidivism rate is no greater than that of randomly selected sex offenders. The Static-99R was more accurate than the Static-99, but it had a smaller effect size than in the development samples. All of the www.static99.org comparison groups over-predict detected sexual recidivism for these people. We illustrate how to check the accuracy of individual SVP evaluators’ risk predictions. Florida’s completed 14-year efficacy study does not show that civil commitment reduces detected sexual recidivism.

Learning Goals and Objectives:
- Participants will be able to state why the State confines some sex offenders after they have completed their prison sentences.
- Participants will be able to state the percentage of released “SVPs” who have been detected to sexually recidivate within 5 years of their release from confinement.
- Participants will be able to say that the Static-99R leads to more accurate risk predictions with Florida’s released “SVPs.”