

Vermont Department of Corrections

Administrative Rule on Determination of High Risk and Failure to Comply with Treatment for Purposes of Sex Offender Internet Registry

1. AUTHORITY: 13 VSA Chapter 167, Subchapter 3, Sex Offender Registration; Title 13, §5401 to 5412; Act No. 157 of the 2003-2004 legislative session. The law requires sex offenders convicted in the State of Vermont after July 1, 1996, as well as those convicted in any state before July 1, 1996 who were supervised in the community by the Commissioner of Corrections as of July 1, 1996, to register with the Sex Offender Registry. The Sex Offender Registry has been established at the Vermont Criminal Information Center (VCIC) in the Department of Public Safety

1.1 The law also requires, for purposes of the Sex Offender Internet Registry, that the Department of Corrections determine if an offender is high risk and in compliance or non-compliance with Department of Corrections' treatment expectations.

2. PURPOSE: To establish the process for the designation of high risk offenders and determination of offenders' compliance or lack of compliance with DOC sex offender treatment expectations.

3. DEFINITIONS

3.1 Commissioner: Commissioner of Corrections.

3.2 DOC: The Department of Corrections.

3.3 Department: The Department of Public Safety (includes VCIC)

3.4 Risk: statutorily defined as the degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual offense.

3.5 High Risk: statutorily defined as a high degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual offense.

3.6 Designation of High Risk: indicates the Department of Corrections' belief that the offender poses a high degree of dangerousness to others.

3.7 Sex Offender: "Sex offender" means sex offender as defined in Vermont statute; reflected in 13 VSA chapter 167, subchapter 3, §5401 (10) as follows:

3.7.1. A person who is convicted of any of the following offenses:

- a. sexual assault as defined in 13 VSA §3252;
- b. aggravated sexual assault as defined in 13 VSA §3253;
- c. lewd and lascivious conduct as defined in 13 VSA §2601;
- d. sexual activity by a care giver as defined in 13 VSA §6913(d);
- e. an attempt to commit any offense listed in this subdivision.

3.7.2. A person who is convicted of any of the following offenses against a victim who is a minor:

- a. any offense listed in subdivision (3.7.1) above;
- b. kidnapping as defined in 13 VSA §2405(a)(1)(D);
- c. lewd and lascivious conduct with a child as defined in 13 VSA §2602;
- d. white slave traffic as defined in 13 VSA §2635

- e. sexual exploitation of children as defined in 13 VSA §2822-2828 chapter 64;
- f. procurement or solicitation as defined in 13 VSA §2632(a)(6);or
- g. an attempt to commit any offense listed in this subdivision; except that for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is under the age of 18.

3.7.3 A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction within the United States, including a state territory, commonwealth, the District of Columbia or military court, for a sex crime the elements of which would constitute a crime under subdivision (10) (a) or (b) of this section if committed in this state.

3.7.4 A visitor to Vermont who is in this state for a period of at least 10 consecutive days or 30 days during any calendar year and who has been convicted in any jurisdiction of the United States, including a state, territory, commonwealth, the District of Columbia, or military, federal or tribal court, for a sex crime the elements of which would constitute a crime under this section if committed in this state.

3.8 Sex Offender Internet Registry: The sex offender registry is posted to the internet maintained by the Vermont Crime Information Center (VCIC) at the Department of Public Safety.

3.9 Sex Offender Review Committee: A committee of five (5) people appointed by the Commissioner of Corrections to determine if referred cases meet the designation of high-risk established in statute for purposes of internet registration.

3.10 Sex Offender Treatment Programs: Treatment programs that are contracted by DOC to provide sex offender treatment.

4. DEPARTMENT OF CORRECTIONS DESIGNATION OF A HIGH-RISK SEX OFFENDER

The Department of Corrections (DOC) may designate an offender as high risk, as defined in 13 VSA § 5401(16). For purposes of the Sex Offender Internet Registry, the Department must determine, by a preponderance of the evidence, that the offender poses a high degree of dangerousness to others. The DOC will assure that the assessment instruments used to determine sex offender risk reflect current best practice. This determination is made through the following processes for different categories of offenders:

4.1 Offenders who are incarcerated: No later than 24 weeks prior to an offender's anticipated release date, DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.1.1 In making this initial referral to the Committee, DOC staff shall utilize current objective risk assessment instruments to identify or exclude a sex offender as high risk. DOC staff may also consider other appropriate factors relevant to the offender's risk to re-offend.

4.1.2 "Other appropriate factors" may include, but are not limited to, offender's age, physical conditions (such as sickness, age, etc.,) pattern of sexual offending, nature of sex offense(s), pattern of cooperation while under correctional supervision and recent behavior, recent threats, or expressions of intent to commit additional offenses.

4.2 Offenders under Community Supervision:

4.2.1 Offenders Sentenced in Vermont : Within 2 weeks and no later than 4 weeks of assignment DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.2.2 Offenders transferred to community supervision through the Interstate Compact. Within 2 weeks and no later than 4 weeks of receiving all necessary paperwork DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.2.2.1 In making this initial referral to the Committee, DOC staff shall utilize current objective risk assessment instruments to identify or exclude a sex offender as high risk. DOC staff may also consider other appropriate factors relevant to the offender's risk to re-offend.

4.2.2.2 "Other appropriate factors" may include, but are not limited to, offender's age, physical conditions (such as sickness, age, etc.) pattern of sexual offending, nature of sex offense(s), pattern of cooperation while under correctional supervision and recent behavior, recent threats, or expressions of intent to commit additional offenses.

4.3 Sex offenders moving to Vermont: If a sex offender convicted in another state but residing in Vermont is required to register with the Department of Public Safety, the Department of Public Safety may refer an offender to the Sex Offender Review Committee for a determination of whether the offender should be classified as high risk for purposes of the Sex Offender Internet Registry.

4.3.1 The Department of Public Safety will forward all necessary paperwork regarding the out of state conviction(s) including, but not limited to, affidavits and record checks.

4.3.2 Within 2 weeks and no later than 4 weeks of receiving all necessary paperwork, the Sex Offender Review Committee, will make a determination of high risk

4.4 Sex Offender Review Committee Review: No later than 4 weeks after receipt of the referral from DOC staff, the Sex Offender Review Committee will make a determination as to whether a sex offender will be designated as high risk for purposes of the Sex Offender Internet Registry. The Committee will utilize the objective risk assessment instruments, and any other appropriate factors it deems relevant, in its determination.

4.4.1 The Committee must determine by a preponderance of the evidence that the offender poses a high degree of dangerousness to others. “Dangerousness” includes the probability that the offender will commit a new sexual offense. The Committee, in its written decision, must make specific findings of fact to support its designation of an offender as high risk for purposes of the Sex Offender Internet Registry.

4.4.2 Written notification of the offender’s designation of high risk will be sent to the DOC staff, the offender, and the Department of Public Safety no later than 5 work days after such a determination has been made. This shall serve as notification to the Department of Public Safety that a sex offender has been designated high risk for purposes of the sex offender internet registry.

4.4.3 Written notification of the Committee’s decision – in cases where an offender has been determined to be high risk – will be sent to the victim of the offender upon request of the victim.

4.5 Administrative appeal process. An offender shall have an opportunity to appeal any determination made by the Committee.

4.5.1 An offender must make a written appeal to the Committee no later than 30 days of receipt of the Committee’s decision.

4.5.2 No later than 30 days after receipt of such appeal, the Committee will conduct a hearing to determine the designation of high risk. The offender shall receive at least a 7 work day notice of the time, date and location of the hearing. The hearing shall be conducted pursuant to policies established by the Committee for such purposes, which shall give the offender and his or her attorney an opportunity to be heard and present relevant evidence. Such hearings may be conducted via video or telephone conferencing.

4.5.3 The Committee shall issue a written decision no later than 14 days after the hearing. A copy of this decision shall be forwarded to the offender, the Department of Public Safety, the victim - if written notice

was provided under Section 5.4.3 above, and the offender's supervising caseworker within 5 work days of such decision. This decision shall serve as notification to the Department of Public Safety that a sex offender has been designated high risk for purposes of the Sex Offender Internet Registry.

4.6 Petitioning to change a high-risk designation. An offender who has been designated high risk and who has exhausted his or her administrative remedies may petition the Sex Offender Review Committee for a change in his or her high-risk designation once every two (2) years, from the date the administrative remedies have been exhausted. Upon receipt of the petition, the Committee shall follow the same process and time frames as provided in subsections 5.4 and 5.5.

4.7 Superior Court review. Upon exhausting his or her administrative remedies, an offender who is designated as high-risk may appeal to superior court as provided in 13 VSA § 5411b(b).

5. SEX OFFENDER REVIEW COMMITTEE:

The DOC Commissioner shall designate all members of the Sex Offender Review Committee.

5.1 The Committee shall consist of five (5) members, composed of at least the Director of the DOC sex offender treatment program, the DOC Program Executive, a member from the Vermont Criminal Information Center, the Director of DOC or other Victim Service's and a Vermont Sex Offender Treatment Provider.

5.1.1 Each member shall serve a one-year term, which the DOC Commissioner may renew.

5.2 The Committee shall make its determinations based upon a majority vote.

5.3 The Committee may adopt procedures for its operation as necessary to comply with statute and DOC policy.

6. NON-COMPLIANCE WITH DOC-RECOMMENDED SEX OFFENDER TREATMENT

The Department of Corrections will assure that compliance criteria are based on current best practice. Non-compliance standards only apply to offenders who did not comply with treatment or were ineligible for treatment AFTER March 1, 2005.

6.1 Non-compliance with sex offender treatment is defined as:

6.1.1 Refusing treatment recommended by the DOC; or

6.1.2 Being ineligible for treatment by failing to meet the DOC sex offender treatment program admissions criteria; or

6.1.3 Failing to remain in and/or complete a sex offender treatment program recommended by the DOC.

6.2 Determination of Treatment Non-compliance.

6.2.1 Offenders released from confinement. DOC staff shall determine if the offender is in compliance with a treatment program recommended by DOC no less than 90 working days prior to release. DOC staff will forward the non-compliance status of an offender to the Department of Public Safety along with the **Notification of Requirement to Register Form** and the **Vermont Sex Offender Registry Registration Form**.

6.2.2 Offenders under DOC supervision, but not incarcerated.

6.2.2.1 Newly Sentenced: Newly sentenced offenders in the community who are initiating contact with a treatment provider will be given up to 60 days for the treatment provider to determine if the individual is engaged and in compliance with the recommended treatment.

6.2.2.2 Currently on Community Supervision: Within 30 days of this rule taking effect, all supervising caseworkers of offenders currently on community supervision will determine the level of compliance with recommended treatment for those who have not already been assessed.

6.2.2.3 DOC staff will forward the non-compliance status of an offender to the Department of Public Safety no later than 5 work days after such a determination.

6.3 Achieving Treatment Compliance: An offender who has previously been determined to be in non-compliance with a sex offender program recommended by the DOC can come into compliance. This would occur upon successful participation in a sex offender treatment program (recommended by the DOC) for a minimum of 12 consecutive months. Upon meeting this requirement, the offender can request a change in status. Within 30 days of meeting the treatment compliance requirement, the offender must submit a letter from his/her sex offender treatment provider verifying the treatment compliance requirement. The offender shall submit this letter to the DOC.

6.3.1 No later than two (2) weeks after receipt of such a letter, the DOC shall make a written determination of whether an offender has come into compliance.

6.3.2 If an offender's status has changed while under DOC supervision, the DOC shall forward to the Department of Public Safety a written notice of the change in status no later than 5 work days after such a determination has been made.

6.4 Offenders no longer under any DOC supervision. An offender who has been determined to be in non-compliance with a DOC-recommended sex offender treatment

program, and is no longer under DOC supervision, may petition the Sex Offender Review Committee to change his or her non-compliance status only upon his or her completion of a treatment program recommended by the DOC. The process shall be as follows:

6.4.1 An offender must first complete a sex offender treatment program recommended by the DOC.

6.4.2 Upon completion of such a program, if the offender requests a change in status, he or she shall submit a letter to the Sex Offender Review Committee from his or her sex offender treatment provider verifying the treatment compliance requirement.

6.4.3 No later than 30 days after receipt of such a letter, the Sex Offender Review Committee shall make a written determination of whether the offender has come into compliance.

6.4.4 Within 5 work days of such decision, the Sex Offender Review Committee shall send written notification to the offender and the Department of Public Safety.

6.5 Superior Court review. Upon exhausting his or her administrative remedies, an offender who is determined to be in non-compliance with a sex offender program recommended by the DOC may appeal the Department's determination to superior court as provided in 13 VSA §5411b(b).