



# KANSAS DEPARTMENT OF CORRECTIONS

 <p><b>INTERNAL MANAGEMENT POLICY AND PROCEDURE</b></p>	<p><b>SECTION NUMBER</b></p> <p style="font-size: 1.2em;"><b>11-116A</b></p>	<p><b>PAGE NUMBER</b></p> <p style="font-size: 1.2em;"><b>1 of 5</b></p>
	<p><b>DECISION MAKING: Administration of the Sex Predator Commitment Act</b></p>	
<p><b>Approved By:</b></p>  <p style="text-align: center;"><b>Secretary of Corrections</b></p>	<p><b>Original Date Issued:</b> <span style="float: right;"><b>04-27-16</b></span></p> <p><b>Replaces Version Issued:</b> <span style="float: right;"><u><b>N/A</b></u></span></p> <p style="font-size: 1.2em; color: blue;"><b>CURRENT VERSION EFFECTIVE: 04-27-16</b></p>	

<b>APPLICABILITY:</b>	<input checked="" type="checkbox"/> <b>ADULT Operations Only</b>	<input type="checkbox"/> <b>JUVENILE Operations Only</b>	<input type="checkbox"/> <b>DEPARTMENT-WIDE</b>
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## POLICY STATEMENT

The Department of Corrections will establish processes to ensure all offenders who it appears may meet the criteria of a sexually violent predator as defined in K.S.A. 59-29a02 and amendments thereto are screened pre-release by a multi-discipline team, and written notice is given to the Attorney General ninety (90) days prior to the anticipated release of the offender, except that in the case of offenders who are returned to prison for no more than ninety (90) days as a result of revocation of post-release supervision, written notice shall be given as soon as practicable following the offender's readmission to prison.

This policy does not alter or abrogate any provisions related to registration of offenders; and is not intended to determine the classification/custody level of offenders in KDOC custody, nor direct the management of those identified as sex offenders per IMPP 11-115A or 14-124A.

## DEFINITIONS

**Anticipated Date of Release:** The date the KDOC anticipates the offender releasing from incarceration, based on laws and policies related to good time and program credit, or based on a decision by the Prisoner Review Board when applicable.

**Clinical Services Report (CSR):** A forensic evaluation conducted by a contract provider to the KDOC that reviews an offender's history to assess whether s/he meets criteria as a sexually violent predator, per statute. This may include information from criminal history, criminal complaints, prosecutors' affidavits, actuarial or other assessments of risk/need, any past CSRs, disciplinary reports, treatment records, mental health records, information about behavior, or other relevant clinical or factual information.

**Multidisciplinary Team (MDT):** A team established by the Secretary or designee which may include individuals from other state agencies and from the community, persons with relevant education and experience; and, shall include the CSR writer in each case; to review available records of each offender referred to the team, within thirty (30) days, to assess whether or not the offender meets the definition of a sexually violent predator, as established in K.S.A. 59-29a02; and to notify the Attorney General of its assessment.

**Prosecutor Review Committee:** A committee appointed by the Attorney General to review the records of each person referred to the Attorney General, to assist the Attorney General in the determination of whether or not the person meets the definition of a sexually violent predator.

**Sexually Violent Offense:** Includes Rape, Indecent liberties with a child, Aggravated Indecent liberties with a child, Criminal Sodomy, Aggravated Criminal Sodomy, indecent solicitation of a child, Aggravated indecent solicitation of a child, sexual exploitation of a child, aggravated sexual battery, aggravated incest; also included is any conviction for a felony offense in effect at any time prior to May 19, 1994, that is comparable to a sexually violent offense, or any federal or other state conviction for a felony offense that under the laws of this state would be a sexually violent offense; an attempt, conspiracy or criminal solicitation; any act which either at the time of sentence for the offense or subsequently during civil commitment proceedings pursuant to the SVP act has been determined beyond a reasonable doubt to have been sexually motivated (one of the purposes for which the defendant committed the crimes was for the purpose of the defendant's sexual gratification).

**Sexually Violent Predator:** Any person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality (a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to commit sexually violent offenses in a degree making such person a menace to the health and safety of others) or personality disorder (per DSMV) which makes the person likely to engage in repeat acts of sexual violence (a person's propensity to commit acts of sexual violence is of such a degree as to pose a menace to the health and safety of others).

## **PROCEDURES**

### **I. Admission**

- A. Upon admission, offenders' histories shall be examined by staff at the Reception & Diagnostic Unit (RDU) to see if there is a conviction history that warrants a review to determine whether or not the offender meets the definition of a sexually violent predator.
  - 1. This information shall be entered into OMIS by RDU staff. A distinction shall be made whether the sex offense that meets the criteria as a sexually violent offense is the offender's current/index offense or a past offense.
    - a. OMIS information shall be reviewed at each subsequent admission to ensure they are current and accurate.
  - 2. Since there are differences in the definition of "sex offender" (in terms of management within KDOC per IMPP 11-115A) and "sexually violent predator" (as outlined with K.S.A. 59-29a01), there may be some offenders who are managed as sex offenders whose offense history does not warrant a review by the MDT committee. Conversely, there may be some offenders whose conviction histories warrant a review by the MDT committee but who do not meet the definition to be managed as a sex offender while being supervised by KDOC.

### **II. Impact on Custody/Classification**

- A. The potential of civil commitment as a sexually violent predator under K.S.A. 59-29a01 may be used when determining an offender's custody/classification level while incarcerated. The custody/classification impact may change when PRC decides whether to file or not.

### **III. Screening Process in Advance of Anticipated Release**

- A. Offenders who are within one (1) year of being released from incarceration shall be screened by the Director of Sex Offender Management or designee to determine if they should be evaluated by a forensic psychologist to determine if they meet criteria as a sexually violent predator.
  - 1. Except, offenders who have less than a year to serve total will be screen as soon as identified, and processed for review as quickly as possible.
- B. A list of offenders being screened shall be maintained by the Director of Sex Offender Management or designee. This list will be disseminated to KDOC staff, including Classification Administrators and Office of Victim Services, on a monthly basis.

- C. If the Prisoner Review Board (PRB) makes a decision to release an offender on a specified date or upon completion of a specified condition, and that offender was identified at admission as one to be screened as a potentially sexually violent predator, the PRB shall notify the Director of Sex Offender Management or designee as soon as the decision is published. The Director of Sex Offender Management shall routinely review the PRB docket, and notify the PRB if an offender on the docket is on the list of offenders to be screened. The Director shall process the case for further review per this policy once the decision is processed.

#### **IV. Review process**

- A. Before the offender's anticipated release date, a CSR shall be completed by a forensic psychologist (including an updated CSR if new information reflects the need since a past MDT review). The CSR will be submitted to the Director of Sex Offender Management for dissemination to the rest of the MDT.
- B. The MDT will determine whether the offender, based on the forensic evaluation, and any other relevant information, should be sent to the Attorney General for further review.
- C. For those the MDT determines meet criteria as a sexually violent predator, the offender's name shall be sent to the Attorney General with the CSR, ninety (90) days prior to the anticipated release date whenever possible, or as soon as possible when a shorter time frame is all that's available.
- D. Once the PRC has determined whether the Attorney General will pursue civil commitment, and notifies the Director of Sex Offender Management, The Director will notify Classification Administrators, R3 Coordinators, Victim Services, PRB, and forensic psychologists. This information, which indicates the offender's potential of civil commitment, will be entered into OMIS as well.
- E. Once KDOC is notified that the PRC will pursue civil commitment, a detainer will be entered by the Director of Sex Offender Management or designee.

#### **V. Sexually Violent Predator Commitment Proceedings**

- A. For those offenders who will be pursued for civil commitment, the Attorney General's office will coordinate transportation to the county jail where the commitment will be sought in court. Those responsible for transporting the offender to the county jail will coordinate transfer with the facility where the offender is housed.
- B. After transfer to the county jail, a probable cause hearing will be held.
  - 1. If probable cause is found by trial or stipulation (i.e. probable cause that the offender meets the criteria of a sexually violent predator), the offender will be transferred/released to Larned State Security Hospital (LSSH) for a sexually violent predator evaluation.
  - 2. If probable cause is not found, the offender will be returned to a KDOC correctional facility if s/he has not reached his/her release date yet, or released to the community to begin post-release supervision (unless s/he discharges his/her sentence, in which case s/he will be released to the community).
- C. LSSH will evaluate the offender and determine whether in their opinion the offender meets SVP criteria.
  - 1. If LSSH determines the offender meets SVP criteria, the offender will be returned to the county jail where a trial will be held.

2. If LSSH determines the offender does not meet SVP criteria, this will be submitted to the judge overseeing the case who may then order the offender's release from the detainer. At that point, the offender shall be returned to a KDOC facility if s/he has time to serve on the incarceration portion of his sentence; or released to begin post-release supervision (unless s/he discharges his/her sentence, in which case s/he will be released to the community).
- D. A trial will be held to determine if the offender meets SVP criteria. This may be a jury trial or a bench trial.
1. If a trial or stipulation determines the offender meets SVP criteria, the offender will be sent to the Sexual Predator Treatment Program (SPTP) for long-term care and treatment, following completion of the offender's incarceration portion of his/her sentence (if the sentence has not run out by the time the determination occurs).
  2. If the trial determines the offender does not meet SVP criteria, the offender shall be returned to a KDOC facility if s/he has time to serve on the incarceration portion of his sentence; or released to begin post-release supervision (unless s/he discharges his/her sentence, in which case s/he will be released to the community).
- E. At each stage of the process, OMIS will be updated to reflect the current status of offenders, as they progress through the process. The Director of Sex Offender Management or designee will inform facility and/or parole staff and the Office of Victim Services when an offender is being released from the process, and not pursued as a sexually violent predator.

#### **VI. Subsequent Admissions & Ongoing Review**

- A. Upon readmission for a parole revocation, offenders will be reviewed by the Director of Sex Offender Management to determine if their behavior since the last review warrants an updated MDT review, including an updated CSR.
1. Parole and RDU staff are encouraged to bring any case that suggests sexually motivated behavior related to a revocation to the attention of the Director immediately upon the revocation or readmission.
- B. If at any time during incarceration or post-release supervision the offender's records or behavior indicates further screening or review is needed, parole or facility staff should notify the Director of Sex Offender Management for such review to take place.

#### **VII. Multi-Discipline Team (MDT)**

- A. The Secretary or designee shall establish a Multi Discipline Team whose membership shall include at a minimum the Director of Sex Offender Management, one or more clinicians, a Victim Services representative, and the CSR writer.
- B. The Director of Sex Offender Management shall administer the work of the MDT, providing them information as necessary to screen cases; convening them by email, phone or in person as needed to review cases and make decisions on referrals; and processing their decisions by sending the case to the Kansas Attorney General, or not, and tracking information related to these decisions as described in this policy.

**NOTE:** The policy and procedures set forth herein are intended to establish directives and guidelines for staff and offenders and those entities that are contractually bound to adhere to them. They are not intended to establish State created liberty interests for employees or offenders, or an independent duty owed by the Department of Corrections to employees, offenders, or third parties. Similarly, those references to the standards of various accrediting entities as may be contained within this document are included solely to manifest the commonality of purpose and direction as shared by the content of the document and the content of the referenced standards. Any such references within this document neither imply accredited status by a Departmental facility or organizational unit, nor indicate compliance with the standards so cited. The policy and procedures contained within this document are intended to be compliant with all applicable statutes and/or regulatory requirements of the Federal Government and the state of Kansas. This policy and procedure is not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

#### **REPORTS REQUIRED**

None.

#### **REFERENCES**

K.S.A. 59-29a01 et seq.  
IMPP 11-115A, IMPP 14-124A

#### **ATTACHMENTS**

None.