



Department of Corrections

INTERNAL MANAGEMENT POLICY & PROCEDURE

Applicability: ADULT Operations Only JUVENILE Operations Only DEPARTMENT-WIDE

IMPP #: 11-115A

PAGE #: 1 of 12

DECISION MAKING: Sex Offender Program, Management and Supervision

Original Date Issued: 11-02-15 Replaces IMPP Issued: 11-07-19 **CURRENT EFFECTIVE DATE: 11-30-20**

Approved By:  Secretary

Next Scheduled Review: November 2021

POLICY

Sex offenders under the custody and supervision of the Secretary of Corrections must be identified, treated, managed and supervised in accordance with policies and procedures outlined in this policy.

Sex offenders must be assessed for risk/need related to sex offending and receive programming during incarceration and/or during post-release supervision based on assessed risk/need. Residents managed as sex offenders due to a current or prior conviction, a finding of sexual motivation by a court, or by Override Panel decision or Due Process Hearing must be notified of that in writing and be advised that they are to be managed as sex offenders.

Nothing in this IMPP is intended to alter or abrogate any provisions of Kansas statutory law relating to sexually violent predators or the registration of sex offenders.

DEFINITIONS

Contact: Can include a visit, including limited-contact, non-contact video visit, as defined by visitation policies, or contact by phone, email or regular mail.

Due Process Hearing: A hearing conducted under established procedures detailed in this policy to determine whether or not a resident will be managed as a sex offender.

Immediate Family: Parents, step-parents, siblings, spouses of siblings, half-siblings, step-siblings, children, spouses of children, step-children, grandchildren, step-grandchildren, great grandchildren, great step-grandchildren, spouse, parents of spouse, grandparents, or any person who filled the role of a parent de facto with respect to the resident as confirmed by the warden upon review of the social history.

Polygraph: An instrument that records certain physiological changes in a person undergoing questioning in an effort to ascertain truth or deception.

Resident: For purposes of this policy is a person who is in the legal custody of the Secretary of Corrections. This term refers to both persons incarcerated in a Kansas Department of Corrections correctional facility and persons under post-incarceration supervision.

Safety Plan: A written detailed explanation of events. For sex offender management, a sex offender must complete a safety plan detailing the minors who are to be at the event and the supervising agent for those minors. A safety plan must identify all potentially high-risk situations and how those situations are to be handled.

Sex Offender: A resident who is to be managed by the KDOC as a sex offender and be bound by rules related to sex offenders, unless an override removes any or all of those conditions, and who must be identified as any resident who:

- Has a current conviction for which s/he is incarcerated that is a sex offense;

- Has a past conviction for a sex crime, felony or misdemeanor, as an adult;
- Has a current or past journal entry that is marked with the Sexually Motivated Indicator [SMI];
- Has a past adjudication for a sex crime as a juvenile;
- Has multiple past municipal ordinance violations that are sex crimes, and which, after a due process hearing under this policy, is/are determined to be sexually motivated;
- Has a charge for a sex crime, currently or in the past, and for which charge the prosecutor's affidavit is available; and who, after a due process hearing under this policy, is determined to be managed as a sex offender because the charged behavior was sexually motivated; or
- Whose sexual behavior during incarceration or while in the community following incarceration has been documented by a disciplinary conviction or revocation of post-incarceration supervision, and which then leads to the resident receiving an override to be managed as a sex offender.

EXCEPTIONS: Residents with convictions under K.S.A. 21-6419, Selling Sexual Relations; 21-6420(a) and (b)(1), Promoting the Sale of Sexual Relations; 21-6421, Buying Sexual Relations; and/or 21-5426, Aggravated Human Trafficking unless there is a finding under (b)(2) or (b)(4) of a purpose of sexual gratification must not be managed as sex offenders.

The override panel can override a resident out of being managed as a sex offender. Upon a new admission, a resident granted an override out of being managed as a sex offender in a previous incarceration must be reviewed by the Sex Offender Specialist or designee to determine whether the override remains in place based on behavior in the facility or community.

Sex Offender Program (SOP): A curriculum that relies on a cognitive-behavioral approach, teaching strategies for avoiding sexual offending and related behaviors, with emphasis on skill-building activities to assist with cognitive, social, emotional and coping skills development, with a goal of increasing the value participants place on pro-social thoughts and choices.

Sex Offender Program Provider: A person with the skills and training to deliver sex offender programming in the facilities and in the community.

Sexually Motivated Indicator (SMI): A finding by a court reflected in a journal entry, that the crime(s) for which the resident was incarcerated (past or current) was/were committed for the express purpose of sexual gratification.

Sexually Violent Predator (SVP): A person who has been adjudicated under K.S.A. 59-29a02, *et seq.*

Victim: Any person who suffers direct or threatened physical, emotional or financial harm as the result of the commission or attempted commission of a crime against a person.

Victim's Family: Consistent with K.S.A. 74-7335, "Victim's family" means spouse, surviving spouse, children, parents, legal guardian, siblings, stepparent or grandparents.

PROCEDURES

I. Admission

- A. At admission, residents who are to be managed as sex offenders as defined above must be identified by review of conviction or adjudication documents and a criminal history check. An entry must be made in OMIS during the admission process reflecting that resident is to be managed as a sex offender. The resident must be notified in writing that s/he is to be managed as a sex offender, and of the basis for this decision.
 1. If a due process hearing is required before the resident can be managed as a sex offender per the definition section of this policy, the due process hearing must be conducted at RDU whenever possible; if information is gained after the resident is transferred from RDU, the facility must contact the Sex Offender Specialist in Reentry in Central Office, and the two together must ensure a due process hearing is conducted.
- B. A resident not identified as a sex offender at admission may be identified as a sex offender:

1. By the Sex Offender Specialist in Reentry in Central Office, if additional information, such as a journal entry, is received indicating the resident is to be managed in keeping with this policy; or
 2. By an override for sexual behavior occurring during incarceration or while on post-incarceration supervision.
- C. Once a resident has been identified as one to be managed as a sex offender, s/he must continue to be managed as a sex offender unless/until the resident receives an override from being managed as one.
1. If a resident had a previous override not to be managed as a sex offender and is now readmitted, RDU must forward that case to the Sex Offender Specialist in Reentry, who must review the case and determine whether to maintain or rescind the override.
 - a. If the override is removed:
 - (1) A note must be made in OMIS indicating this fact and the reason(s) therefor; and
 - (2) An email must be sent to the Classification Administrator where the resident is housed, who must notify the resident of the change, directly or through a designee, and this notification must be noted in TOADS.
- D. Sex offenders must be screened related to housing, employment, and programming per PREA, in accordance with IMPP 10-139D, both at admission and on an ongoing basis during incarceration.
- E. Any resident (whether managed as a sex offender or not) who meets the criteria listed in K.S.A. 59-29a02(e)(1)-(10) must be flagged at admission in OMIS, Screen 18, as a resident to be screened by the Multi-Discipline Team under the Sex Predator Act within 12 months of release (or less, if the sentence is less than 12 months), per IMPP 11-116A.
- F. In addition to the Level of Services Inventory-Revised (LSIR) and mental health assessment completed at RDU for all residents per IMPP 11-102, a sex offender must be assessed for level of risk/need related to sex offending behavior, using evidence-based assessment instruments and strategies, to determine his/her sex offender programming needs. Based on this assessment, a recommendation must be made regarding programming that indicates either:
1. Sex Offender Programming during incarceration, or not.
 - a. If a resident is identified as low risk so as not to need sex offender programming, and later sexual conduct suggests the resident is higher risk than found at admission, the resident must be reassessed, and his/her sex offender program needs adjusted if/as reflected by the reassessment.
- G. When completing the offender program plan (OPP) for sex offenders under IMPP 11-107, RDU staff must reflect Sex Offender Program on the offender program plan.

II. Management During Incarceration

- A. After transferring from RDU to a correctional facility, the resident must meet with his/her assigned unit team counselor to develop and implement a case plan per IMPP 11-106A. When working with a sex offender to involve him/her in programs, the following rules and concepts must apply:
1. Address sex offender program based on RDU assessment, ensuring a referral and placement is timely made.
 - a. If the Sex Offender Clinical Director concludes, upon referral, that the resident does not need SOP, SOP must be removed from the resident's OPP, without requiring an override.

- b. Facility staff must work with SOP staff to review referrals, or screen sex offenders off a waiting list for SOP, before transferring the resident to a facility providing Sex Offender Programming whenever possible.
 2. Address other program needs of sex offenders, with the understanding that sex offenders cannot receive program credit for SOP, if SOP is required, cannot receive program credit for any eligible program until after SOP is successfully completed.
 - a. If a sex offender is identified at RDU as low risk so as not to need SOP, that sex offender is eligible for program credit for eligible programs without the requirement that s/he first complete SOP.
 3. Before a sex offender is enrolled in work release, a parenting program, a substance abuse program, Job Readiness, IFR, or a Thinking for a Change group, including residents with mental illness, s/he must be screened by the Sex Offender Specialist or designee.
 - a. It is not necessary or advisable to seek an override from "managed as" for a sex offender to go into one of these designated programs. Rather, the sex offender can be screened for appropriateness for placement.
 - b. The sex offender who is required to complete SOP must not enroll in work release before completing SOP, consistent with IMPP 15-101A.
- B. Residents who require Sex Offender Program during incarceration must be referred to Sex Offender Program in a timely manner, so the Sex Offender Program can be completed before release.
 1. Each facility must establish a method for unit team counselors to make web-based referrals to the sex offender program no later than 18 months pre-release, or immediately if the sentence is less than 18 months but more than eight (8) months. This must be done in collaboration with the SOP Clinical Director and SOP and Program Administrator. The facility must screen residents for referral to ensure they are suitable to be housed at a facility where SOP is provided. The Sex Offender Clinical Director or designee must screen the resident for programming readiness and placement.
 2. If a resident refuses during incarceration, the unit team counselor, informs the Sex Offender Clinical Director addresses readiness and using motivational interviewing, EPICS, and other tools to attempt to engage the resident in programming, must inform the resident that s/he must not be awarded good time credit per K.A.R. 44-6-115a. This must be documented in TOADS in a contact note, and the resident must have good time credit withheld.
 3. Once a resident is placed in the sex offender program, the program provider and unit team counselor must stay in communication. Track progress, address disciplinary reports or other behavior issues that impact programming, and to address progress.
 4. The program provider must provide the unit team counselor a progress report halfway through the program and must complete a discharge summary within 10 business days of conclusion of SOP, providing a copy to the assigned unit team counselor.
 5. When a sex offender successfully completes the sex offender program (SOP), this must be reflected in the sex offender's case plan.
 - a. The discharge summary and any relapse prevention or successful living plan completed during SOP must be consulted to guide case planning and case management, including release planning.
 - b. If the sex offender previously completed a program for which program credit can be awarded, program credit must be awarded for that past program during the current incarceration.
- C. Other Sex Offender Management Issues.

1. Visits and Other Contacts.
 - a. A sex offender whose sex offending victims were over 18 years of age (adult victims only) is to be permitted contact visits, video visits, telephone contact, mail contact, photos and email contact with immediate family without going through the override process.
 - b. A sex offender who has had a minor victim at any time may be approved for contact with a minor immediate family member who is not the sex offender's victim, only after further review.
 - (1) Such review may be requested through an override request, which identifies the minor, the caretaker (with contact information for the caretaker), clarifies the minor is not the sex offender's victim.
 - (2) After the review process, the sex offender can be approved for contact visits, video visits or other contact (mail, including photos of the approved minor which are not sexually explicit, email and phone contact).
 - (3) A resident whose only conviction(s) with a minor victim involved unlawful voluntary sexual relations under K.S.A. 21-5507 (or any earlier version of the "Romeo and Juliet" statute) is not require such further review but may request contact through the override process.
2. No Contact with Victims or Victims' Families.
 - a. Except as indicated below, a sex offender is prohibited from contact with his/her victim(s) by any means including visits, telephone, email or regular mail, regardless of age.
 - b. Consideration for contact with victim or victim's family must not occur unless:
 - (1) The victim(s) or family member, or a minor victim/family member's parents or guardians, seek such contact through the KDOC Victim Services division;
 - (2) A current recommendation by the Sex Offender Clinical Director does not preclude contact with one (1) or more known victims; and,
 - (3) If the victim resides with the victim's family member seeking the contact, there are no indications that the request by the family member is being made to circumvent the prohibition on contact with the victim, and/or the family member is told clearly that contact with the family member must not result in contact with the victim (e.g., handing the phone to the victim, passing mail to the victim).
 - c. If (1) through (3) above are satisfied, Victim Services must review the request with facility staff as needed, and upon a recommendation by Victim Services to approve the visit, the facility may allow the visit.
 - (1) If the victim allowed visits is a minor, all limits that apply to minor visitors must apply.
 - (2) Approval of victim contact for visits during incarceration is not binding upon release to post-release supervision; after release, Parole must determine whether to approve victim contact after consultation with KDOC Victim Services.
3. Disallowed Property

- a. Sex offenders must not be permitted to own, borrow, view, transport, or have in their possession or assigned living quarters the following:
 - (1) Sexually explicit material;
 - (2) If the resident has had minor victims, any photograph or image in any form of persons under the age of 18, unless the sex offender has been approved, per Section II.C.1.b. above, to receive photos by mail of a specific minor, provided the photo is not sexually explicit; or
 - (3) Any other item of property, including photographs, that has been identified by the program provider as related to the sex offender's sexual offending behavior.
- b. A sex offender who possesses these prohibited materials during incarceration may be subject to discipline pursuant to K.A.R. 44-12-1002, Violation of published internal management policies and procedures or of published orders, with reference to this IMPP, and such violation must constitute a class I offense.
 - (1) If possession of property results in a disciplinary report for a sex offender, a copy of the material leading to the write-up must be retained with the disciplinary report and made available to the Director of Reentry or the Attorney General's Office, if/as necessary related to proceedings under the Sexually Violent Predator Act, either by imaging (if the image is clear) or retaining the hard copy as evidence.

4. Sexual Victimization and Abusiveness (PREA)

- a. Sex offenders must be reviewed on an ongoing and periodic basis to ensure that job assignments, housing and program placements are not contributing to any sexual victimization and/or abusiveness pursuant to IMPP 10-139D.

D. Sex Offender Incarcerated on a Parole Revocation

1. If a sex offender is revoked during post-release supervision and the conduct leading to the revocation involved sexual acting out, sexual preoccupation, or any other behavior that suggests this resident has elevated his/her risk to sexually reoffend, the parole officer and/or the unit team counselor must notify the Sex Offender Specialist in Reentry in Central Office.
 - a. The Reentry Director or designee must determine whether to process the resident through MDT again.

III. Release Planning

A. Residence planning for sex offenders must be in accordance with IMPPs 14-124A and 11-117.

1. Consideration must be given to the following:
 - a. Results of any completed risk assessment(s);
 - b. Recommendations from the Sex Offender Program Provider, including information in the discharge summary;
 - c. Recommendations from the Clinical Services Report, if one was completed for the resident to be reviewed under the Sexually Violent Predator Act;
 - d. Registration requirements;
 - e. Any special sentencing guidelines (e.g., lifetime supervision and lifetime electronic

- f. Any imposed special conditions, (e.g., orders of no return, no-contact orders, or electronic monitoring); and
- g. Details of the residence and residence provider, including:
 - (1) Relationship of residence provider to resident;
 - (2) Proximity to victim(s) and/or their families' home, work, or school;
 - (3) Minors in the home; and
 - (4) Proximity to daycares, schools, or other areas where children may congregate.
- 2. All residence plans must be investigated fully, including a conversation with the residence provider. Denials must not be made solely on the basis of having minors in the home or in the neighborhood. All options must be considered where the following interventions can be used:
 - a. Developing safety plans (addressing what to do when minors are around).
 - b. Allowing contact with certain minors (i.e., those within the home).
- 3. The state of Kansas has no restrictions on the location of a registered sex offender's residence in relation to schools, playgrounds, child daycare centers, etc.

IV. Post Release

- A. Residents managed as sex offenders must be identified and supervised during post-release supervision in accordance with IMPP 14-124A.

V. Sex Offender Program

- A. Residents managed as sex offenders must be assessed at admission to determine programming needs.
- B. SOP must be provided to those residents who are assessed as needing SOP.
 - 1. Programming must include delivery of a curriculum that relies on a cognitive-behavioral approach, teaching strategies for avoiding sexual offending and related behaviors, with emphasis on skill-building activities to assist with cognitive, social, emotional and coping skills development, with a goal of increasing the value participants place on pro-social thoughts and choices.
 - 2. The curriculum must include orientation, readiness, motivational engagement, cognitive restructuring, emotional regulation, social skills, and relapse prevention.
 - 3. Programming may also include completion of a sex history during the core curriculum/program, and advanced skills practice and maintenance polygraphs thereafter.
- C. As often as possible, the sex offender who is assessed as needing SOP must complete the program during incarceration, moving to Advanced Practice once released to post-release.
- D. SOP in the facility and in parole can be supplemented as necessary with non-traditional strategies for non-traditional residents (including low functioning, high rates of psychopathy), with clinical interventions, with referrals to SOP, and with any other interventions as deemed necessary by the provider.
- E. During incarceration, the program provider must provide updates to unit team staff in the form of a brief entry in TOADS (emailing the unit team counselor when the entry has been made), describing

the attendance, participation and progress; once when the resident is half-way through the program; and otherwise if a specific event warrants doing so.

- F. When a sex offender completes SOP, a discharge summary must be completed within 10 business days of the date the resident completes SOP.
- G. Sex offenders may be placed in a group for ongoing advanced Practice in the community as soon as possible after release when clinically indicated.
- H. In the community, SOP progress must be reviewed by the clinical supervisor, parole supervisor and parole officer.
 - 1. If a decision is made to suspend requirements, this must be documented, and the Clinical Director or designee must be notified to make an entry in OMIS.
 - 2. Sex offenders whose obligation has been suspended must be reviewed thereafter to ensure a return to programming if/when necessary, as follows:
 - a. If at any time a concern arises known to Parole or the provider indicating the resident needs to be reviewed again, based on behavior.
 - b. For any sex offender who falls into the categories listed below, the provider must track these cases and ensure they are reviewed every four (4) months with parole to determine whether further review or change in program status is needed. If no issues arise within 12 months, contact can be reduced to every six (6) months, and thereafter ended if no issues arise.
 - (1) The sex offender has lifetime parole or a sentence discharge date two (2) years or further away;
 - (2) The sex offender was rated as high in likelihood for being filed on under the Sexually Violent Predator Act through the Multi-Discipline Team;
 - (3) The sex offender has a paraphilia diagnosis;
 - (4) The sex offender has multiple sex offense sentencing dates (i.e., multiple sexual offenses, not just multiple counts resulting from one sentencing occasion); or
 - (5) Any other circumstances that the Clinical Director and Parole believe warrant ongoing review.
- I. Certain situations may require the use of a non-KDOC provider for SOP in the community, which is to be approved in advance by Parole Director, in consultation with the Clinical Director as needed. These situations are to be governed by IMPP 14-124A.

VI. Sex Offender Overrides

- A. A Sex Offender Override Panel is established to process and decide override requests presented pursuant to this IMPP.
 - 1. The Sex Offender Override Panel must consist of no less than four (4) members appointed by the Secretary of Corrections or designee.
 - a. The panel consists of the Director of Reentry, a qualified clinician, and representatives from Facilities Management, Parole Services, and the Prisoner Review Board.
 - b. The Director of Victim Services or designee is a nonvoting member and must attend panel meetings to give input for consideration in panel decisions.

2. Each voting member of the Sex Offender Override Panel is to have one (1) vote and decisions must be made by majority vote of the membership with the Deputy Secretary of Facilities Management (facilities) or Deputy Secretary of Juvenile and Adult Community-Based Services (parole) making the decision in the case of a split vote.
- B. Written requests may be submitted to modify the method of management as a sex offender, including, but not limited to, the following:
1. To change the resident's "managed as" status.
 - a. A resident may ask that s/he no longer be managed as a sex offender.
 - b. Any staff person may ask that a resident become managed as a sex offender due to sexually deviant behavior during incarceration.
 - c. Any staff person may ask that an override from "managed as" status from an earlier incarceration be rescinded.
 - (1) Per Section I.C.1. above, if a resident is admitted who had an override from being managed as a sex offender in a previous incarceration, that override must be referred to the Sex Offender Specialist or designee to review to determine if it can be rescinded.
 2. To be approved for contact/video visit with a minor who is a member of the sex offender's immediate family (not a victim – see Section II.C.2. above regarding contact with victims) while incarcerated.
 - a. IMPP 14-124A addresses when a resident is allowed contact with a minor family member while on post-release supervision. The decision by the panel during incarceration does not control the decision during post-release supervision, and the resident must be notified by the panel.
 3. To be approved for mail (including photos), email (including J-Pay video), or phone contact with a minor immediate family member while incarcerated.
- C. Procedure for an Override Request
1. The override request form (Attachment A) must be completed by the unit team counselor or parole officer assigned the case and must include all relevant information necessary for the Override Panel to consider the request.
 - a. Relevant information to review and reference includes the sex offender evaluation at admission, the RDU report, program records, SOP records, any existing CSR, and disciplinary reports. Those items do not have to be attached but must be referenced when relevant to the request.
 - b. If the resident is an interstate compact, other risk information not available in OMIS needs be included, including an LSIR score from the sending state if available.
 - c. The unit team counselor or parole officer must include any recommendation s/he may have concerning the override request, whether the request was initiated by the resident or staff.
 3. The override request must be reviewed at the facility or parole office level, and by the warden/parole director or designee, and must be forwarded to the Director of Reentry.
 4. Upon receipt of an override request, the Director of Reentry or designee must review the request determine if the request is appropriate under this policy.

- a. If the request is not appropriate under this policy, it must be returned to the facility or parole office so noting.
 - b. If the request is appropriate under this policy, the Director of Reentry or designee must:
 - (1) Gather any additional information needed for the Override Panel to consider the request; and
 - (2) Place the request on the list for the next scheduled monthly meeting of the Override Panel.
5. Each request reviewed by the Override Panel must be either disapproved or approved by the Panel.
- a. The Director of Reentry or designee must reflect the Panel's decision in OMIS.
 - b. The resident must be notified in writing of the decision.
6. The decision of the Override Panel is final and not subject to appeal or review.
7. No additional request for the same override can be made for the same issue unless there is a change in circumstances.
- a. If the same issue is raised by a subsequent override request based on changed circumstances, the new circumstances must be specifically described, and the form must reflect that this is a renewed request.
 - b. The warden or parole director must determine if there is a sufficient change in circumstance to forward the renewed request to the Director of Reentry.
 - c. If the resident-initiated request does not contain new information, the decision maker on that case must advise the resident in writing that it is not being considered by the Sex Offender Override Panel due to no new information.

VII. Notification to Resident to be Managed as Sex Offenders and Due Process Hearing

- A. Resident must be informed, both verbally and in writing, that they are managed as sex offenders per this policy.
 1. If the conviction requiring such management is not the current commitment offense, notification must include the name of the conviction offense, the year and jurisdiction of the offense if in Kansas, or the state of conviction if not in the state of Kansas.
 2. Residents managed as sex offenders due to a finding by the Sex Offender Override Panel must be notified in writing by letter originated by the Director of Reentry, routing through the warden/parole director.
- B. If a resident is entitled to a due process hearing before being managed as a sex offender per the definition section of this policy, the following procedure must be followed:
 1. The resident must be served, no less than 72 hours before the scheduled hearing, with the Due Process Hearing Notice (Attachment B).
 2. The resident must complete and submit to the hearing officer, at least 48 hours before the scheduled hearing, the Offender Request for Witness form (Attachment C).
 3. The Director of RDU or designee who serves as the hearing officer for the hearing must determine which witnesses are to be allowed to testify, taking into consideration the following factors:

- a. the need to keep the hearing within reasonable time limits;
 - b. the need to prevent any risk of retaliation or reprisal;
 - c. the need to prevent the undermining of authority;
 - d. the need to prevent disruption;
 - e. the need to avoid irrelevant, immaterial, or unnecessary testimony and evidence;
 - f. the need to reduce or prevent security hazards that could be presented in individual cases;
 - g. the need to prevent the creation of undue risk to personal or facility safety;
 - h. the availability of staff to escort, monitor and otherwise manage persons coming into the facility to serve as in-person witnesses;
 - i. the need for the prompt, efficient and effective resolution of the question of whether to manage a resident as a sex offender, with accurate and complete fact-finding consistent with the level of process required by law;
 - j. any victim concerns of which the RDU Director or designee serving as the hearing officer becomes aware, including consultation with KDOC Victim Services; and
 - k. any other security or administrative issue that arises related to the admission of the witness' testimony.
4. At least 24 hours prior to the scheduled hearing, the hearing officer must respond to the resident's request for witnesses:
- a. indicating which witnesses are allowed to testify; and
 - b. documenting on the Offender Request for Witness (Attachment C) any decision to deny a witness request, indicating the reason(s) for the denial.
5. A hearing must be held on the date/at the time indicated.
- a. Witnesses must be permitted to testify by written statement provided by the resident, by telephone, or in person.
 - b. The resident must be solely responsible for notifying and producing the resident's witnesses, and no arrangements or costs are the responsibility of the KDOC.
 - c. The consideration of any documentation offered by the resident must be in the discretion of the person designated as the hearing officer.
 - d. In instances where there is no conviction of a sex offense, the resident is permitted to present evidence in regard to whether the behavior documented in the prosecutor's charging affidavit actually occurred, whether such behavior was sexually motivated, or both.
 - e. In instances of a municipal court conviction of a sex offense, the resident is permitted only to submit evidence in regard to whether the behavior involved an underlying conviction were sexually motivated.
6. Within 24 hours after the hearing, the Director of RDU or designee who served as the hearing officer must provide to the resident a written decision, setting forth the hearing officer's determination to manage him/her as a sex offender or not.

- a. This is a final decision and no appeal must be allowed.
- b. Any resident determined to be managed as a sex offender under this due process procedure must have the same option as any other resident managed as a sex offender to seek modification of some or all of the decision through the override process based on changed circumstances. The new circumstances must be specifically described on the Override Request Form.

NOTE: The policy and procedures set forth herein are intended to establish directives and guidelines for staff, residents 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, residents or offenders, or an independent duty owed by the Department of Corrections to employees, residents, 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 are not intended to establish or create new constitutional rights or to enlarge or expand upon existing constitutional rights or duties.

REPORTS

None.

REFERENCES

42 U.S.C. 15601, *et seq.*
K.S.A. 21-6419; 21-6420; 21-6421; 21-5426; 21-5507; 59-29a02, *et seq.*; 74-7335.
K.A.R. 44-6-115a; 44-7-104; 44-12-211; 44-12-212; 44-12-313; 44-12-601
IMPP 10-111; 10-113D; 10-139D; 11-102; 11-106A; 11-107; 11-116A; 11-117; 14-103A; 14-124A; 15-101A

HISTORY

11-02-2015 Original
04-18-2016 Policy Memorandum – Issuance #16-04-006
09-16-2016 Rev. 1
03-16-2017 Policy Memorandum – Issuance #17-03-001
08-23-2018 Rev. 2
11-08-2019 Rev. 3

ATTACHMENTS

Attachments	Title of Attachments	Page Total
A	Sex Offender Override Request	3 pages
B	Due Process Hearing Notice	1 page
C	Resident Request for Witness	1 page

SEX OFFENDER OVERRIDE REQUEST

RESIDENT NAME AND KDOC #: _____

KDOC FACILITY/PAROLE OFFICE: _____

SEX OFFENSE CONVICTION/DISCIPLINARY BEHAVIOR: _____

REQUEST INITIATED BY: _____ **OFFENDER** _____ **STAFF**

THIS IS A REQUEST TO:

- Relieve resident identified from being managed as a sex offender.
- Manage resident as a sex offender for KDOC purposes who is not already classified as a sex offender.
- Relieve resident already identified as a sex offender per KDOC policy regarding:
- Contact visits with minors (facility)
- Other contact with minors (facility) (mail, including photos of minor, email, phone contact)

Name, Age (DOB), and Relationship of Minor to Resident:

NOTE: The only minors with whom contact can be considered are children or siblings. Any request beyond that cannot be considered, including for nieces and nephews.

Has paternity been established for each child; and if so, have parental rights been terminated?

NOTE: If no paternity or parental rights, do not submit this request.

Name and phone number for caretaker of minor, and relationship of the caretaker to the child (for instance, mother, grandmother, aunt, etc.):

NOTE: Failure to include current accurate contact information for the caretaker(s) results in automatic denial of this request.

Was this minor ever victimized by this resident?

NOTE: If you are requesting any form of contact with a minor, and you have any convictions for sex offenses involving a minor, you must answer the questions attached. We cannot process this request unless the attached questions are answered fully and truthfully.

1. Why is this request being initiated?
2. What has changed since the evaluation completed at RDU?
3. Any observed behavior that merits comment?
4. Any Disciplinary Reports of a sexual nature?
5. Has this resident completed SOTP/SOP?
If so, when: _____ Was it un/successful? _____
6. Counselor comments/recommendations:

Counselor/Parole Officer's Name _____ Date _____

Contact Phone for Counselor/PO:

Warden/Regional Parole Director recommendation: Approve Disapprove
Comments:

Signature of Warden/Regional Parole Director Date

Sex Offender Override Committee Decision

Approve Approve with Conditions Disapprove

Comments/Conditions:

Date Signature of Committee Chair

**ADDITIONAL QUESTIONS FOR REQUESTS FOR CONTACT WITH A MINOR
BY A SEX OFFENDER WITH A CONVICTION/S INVOLVING MINOR VICTIMS**

1. Outline your history of sex offense convictions involving minor victims.
2. Outline your history of findings by any child protective services agency that substantiated sex abuse on your part.
3. Describe to us the risk that you might pose to the minor(s) with whom you are requesting contact.
4. Describe to us the safety plan that we can put in place that can offset the risk you might pose to the minors with whom you are requesting contact.
5. Describe to us what you have done to reduce the risk you might pose to the minors with whom you are requesting contact.
6. Does the caretaker of the minor(s) support you having contact with this minor(s)? How do you know if they do or do not? If they do not, why not?
7. Tell us whether the caretaker of each minor is aware of the risk you pose, and how that caretaker can protect the minor from the risk you pose.
8. Is the caretaker of the minor(s) with whom you are requesting contact fully aware of the extent and duration of your sexually abusive behaviors?
9. Describe to us why it is in the interest of the minor(s) with whom you request contact for that contact to occur.
10. Describe to us the type of contact you had with the minor(s) in the past, including how often, and the last time you had contact with the minor(s).
11. Do you understand that even if you are allowed contact during incarceration, this does not mean you would be allowed any or the same level of contact upon your release?

Due Process Hearing Notice

Resident Name & KDOC #: _____ Date: _____

You are hereby notified that KDOC proposes to manage you as a sex offender per IMPP 11-115A for the reason indicated below.

You are being granted a due process hearing on _____ at _____.
Date Time

NOTE: The hearing can be set 72 hours after this notice is served. **Date/time served:** _____

____ KDOC proposes to manage you as a sex offender based on the attached prosecutor's affidavit in the case captioned on the affidavit, which indicates your actions were sexually motivated, where you were charged with the sex crime indicated below, even though you were not convicted of this crime.

_____ per _____
Original Charge Statute
_____ Convicted of
Case Number

____ KDOC proposes to manage you as a sex offender based on the municipal court conviction(s) listed below, which suggest your actions were sexually motivated. You can have the opportunity to present your version of the facts only on the question of whether your actions were sexually motivated, with any supporting evidence that you believe we can consider in determining whether your actions were sexually motivated.

(List municipal court case names/numbers/courts):

You can have the opportunity to tell us any mitigating circumstances that we can consider, with supporting evidence, before making a final decision. You cannot be permitted to tell us these convictions did not occur or that they were in and of themselves invalid.

You can find a Resident Request for Witness form attached. **You must complete and return this form within 24 hours of receiving this notice, so we receive it 48 hours before the scheduled hearing. You can receive a response about your request for witnesses within 24 hours after we receive it, so you have it 24 hours before the scheduled hearing.** It is your responsibility to have your witnesses present, in person, by phone, or through written statement, if approved. The KDOC cannot subpoena witnesses or be responsible for witnesses being present or available.

_____ Date _____ Printed Name/Title of Designated Hearing Officer

_____ Signature of Designated Hearing Officer

Served on resident on _____ at _____ by _____
Date Time Staff Serving

Resident Request for Witness

Witnesses Requested – YOU MUST COMPLETE THIS FORM AND PROVIDE IT TO THE HEARING OFFICER WITHIN 24 HOURS, SO IT CAN BE 48 HOURS BEFORE THE HEARING

Resident Name & KDOC #: _____ Date: _____

_____ I waive my right to request witnesses.

_____ I request the following person(s) testify, in the manner indicated, on the topic indicated:

- a. Witnesses to testify by written statement. ***I can have written statements available at the time of the hearing.***

Name Position (*what are they to you*) Topic of Testimony

- b. Witnesses to testify by phone, who can be available at the number indicated, on the topic indicated:

Name Position (*what are they to you*) Topic of Testimony

- c. Witnesses to testify in person, who can be present at the facility, on time for the hearing, on the topic indicated:

Name Position (*what are they to you*) Topic of Testimony

Received from resident on _____ at _____ by _____
Date Time Staff Receiving

Response of RDU Director of Designee Who is Serving as Hearing Officer – THIS MUST BE COMPLETED AND SERVED ON THE RESIDENT WITHIN 24 HOURS, SO IT CAN BE 24 HOURS BEFORE THE HEARING

The following witnesses are approved to testify in the form indicated on the topic indicated:

The following witnesses are disapproved to testify for the reason(s) indicated:

Date Printed Name and Position of Designated Hearing Officer

Signature of Designated Hearing Officer

Served on the resident on _____ at _____ by _____
Date Time Staff Serving