Minnesota Department of Corrections

Policy:	**205.200**	**Title: Sex Offender Civil Commitment Screening**
Issue Date:	**2/13/12**	
Effective Date:	**2/13/12**	

AUTHORITY: Minn. Stat. §244.05, subd. 7

PURPOSE: To identify offender cases to be forwarded to the office of the county attorney of the county of criminal conviction for review as a sexually dangerous person or sexual psychopathic personality.

APPLICABILITY: Minnesota Department of Corrections (DOC); all facilities, the risk assessment/community notification (RA/CN) unit, and offenders with a sex, sex-related, or sexually motivated offense(s).

POLICY: The commissioner of corrections makes a preliminary determination whether a petition to commit an offender as a sexually dangerous person (SDP) or sexual psychopathic personality (SPP) may be appropriate. This determination is based on a recommendation from the screening committee and a recommendation from a legal counsel. When the commissioner determines a petition may be appropriate, the department forwards the determination along with a summary of the reasons for the determination to the county attorney in the county where the offender was convicted. The determination is forwarded to the county attorney no later than twelve months before the offender's release date, or when new information is received, as soon as practicable.

DEFINITIONS:

Actuarial instrument – reports an individual's statistical risk based upon identified characteristics correlated with sexual recidivism.

Forward a case – the commissioner of corrections makes a preliminary determination whether a petition to commit an offender as a sexually dangerous person or sexual psychopathic personality under Minn. Stat. § 253B.185 may be appropriate, and if the commissioner determines such a petition may be appropriate, the RA/CN unit forwards that determination along with a summary of the reasons for the determination to the county attorney in the county where the offender was convicted.

Harmful sexual conduct - as defined in Minn. Stat. § 253B.02, subd. 7a. as sexual conduct that creates a substantial likelihood of serious physical or emotional harm to another person.

> Conduct described by the following offenses is harmful sexual conduct:
> 609.342 (criminal sexual conduct in the first degree);
> 609.343 (criminal sexual conduct in the second degree);
> 609.344 (criminal sexual conduct in the third degree); or
> 609.345 (criminal sexual conduct in the fourth degree).
>
> If the conduct was motivated by the person's sexual impulses or was part of a pattern of behavior that had criminal sexual conduct as a goal, conduct described in the following offenses is harmful sexual conduct:
> 609.185 (murder in the first degree);
> 609.19 (murder in the second degree);
> 609.195 (murder in the third degree);

609.20 (manslaughter in the first degree);
609.205 (manslaughter in the second degree);
609.221 (assault in the first degree);
609.222 (assault in the second degree);
609.223 (assault in the third degree);
609.24 (simple robbery);
609.245 (aggravated robbery);
609.25 (kidnapping);
609.255 (false imprisonment);
609.365 (incest);
609.498 (tampering with a witness);
609.561 (arson in the first degree);
609.582, subd. 1 (burglary in the first degree);
609.713 (terroristic threats); or
609.749, subd. 3 or 5 (harassment and stalking).

High risk behavior -

1. Documentation that an offender, while on supervision in the community, did not control his/her sexual impulses, resulting in criminal behavior or behavior that violated conditions of supervision; and/or
2. The offender's offense history indicates he/she was under the influence of an intoxicating substance at the time he/she committed most sexual offenses and his/her behavior on supervision indicates he/she was not able or willing to abstain from intoxicating substances while residing in the community; and/or
3. The offender's documented offense history indicates he/she was not following a prescribed therapy for the treatment of a diagnosed mental illness or cognitive impairment at the time he/she committed the sexual offense(s) and documented behavior on supervision indicates he/she was not able or willing to follow a prescribed therapy for a continuing illness/impairment while residing in the community; and/or
4. The offender has a history of several release violations for non-sex related behavior that have resulted in his/her return to incarceration; and/or
5. The offender's behavior on release is unusually difficult to assess in regard to significance in the SPP/SDP screening process and a review by the committee and legal counsel provides for the most comprehensive review of the case.

When 2, 3, or 4 are the sole basis for recommending review of release violators, the RA/CN unit director may determine review is not necessary, when the most recent review by the screening committee and legal counsel have determined a course of harmful sexual conduct is not evident in the case.

Legal counsel – a contracted retired judge or attorney knowledgeable in the legal requirements of the civil commitment process.

Sex offender - an offender subject to predatory offender registration (excluding those with no sex offense) or an offender with a history of sex, sex related, or sexually motivated offenses.

Sex offense – sex related convictions, charges, arrests, self-reports, or allegations resulting in some form of intervention indicating a professional determination that the allegations were substantiated by credible evidence.

Sexually dangerous person (SDP) - as defined by Minn. Stat. § 253B.02, subd. 18c and *In re Linehan*, 594 N.W.2d 867,876 (Minn. 1999): a person who:

1. Has engaged in a course of harmful sexual conduct;
2. Has manifested a sexual, personality, or other mental disorder or dysfunction;
3. Cannot adequately control his or her sexual impulses; and
4. Is highly likely to engage in acts of harmful sexual conduct.

It is not necessary to prove the person has an utter lack of power to control his/her sexual impulses.

Course of harmful sexual conduct – two or more incidents of harmful sexual conduct. The conduct need not consist only of convictions, but may also include conduct for which the offender was not convicted. (*In re Jackson*, 658 N.W.2d 219, 226 (Minn. App. 2003), *review denied* (Minn. May 20, 2003).

A sexual, personality, or other mental disorder or dysfunction - any documented history or current diagnostic and statistical manual (DSM) diagnosis of any sexual, personality, or other mental disorder or dysfunction

Cannot adequately control sexual impulses –

1 A documented pattern of incidents in which the offender did not control his/her sexual impulses, resulting in criminal sexual behavior or criminal behavior motivated by those sexual impulses. Also, sexual behavior (or behavior motivated by sexual impulses) violating conditions of supervision that were established by a court, corrections agency, social service agency, or law enforcement agency may also document the existence of a pattern of behavior indicating inadequate control of sexual impulses. The recency of the offense, level of aggression used in the offense(s), and/or denial/minimizing of sexual behavior may also be considered relevant factors.
2. The offender's offense history indicates he/she was under the influence of an intoxicating substance at the time he/she committed the majority of sexual offense(s) and there is indication he/she is not able or willing to abstain from intoxicating substances in the future.
3. The offender's offense history indicates he/she was not following a prescribed therapy for the treatment of a diagnosed mental illness or cognitive impairment at the time he/she committed the sexual offense(s) and there is the indication the condition continues to exist and he/she is not able or willing to follow a prescribed therapy in the future.

Likely to engage in acts of harmful sexual conduct – determined by actuarial scores. This policy provides instruction on the use of additional risk factors and protective factors.

Sexual psychopathic personality (SPP) – a person is a sexual psychopathic personality if he or she:

1. Has engaged in a habitual course of misconduct in sexual matters;
2. Has an utter lack of power to control his or her sexual impulses; and
3. Is, therefore, dangerous to others.

(Minn. Stat. § 253B.02, subd 18b and *In re Kindschy*, 634 N.W.2d 723, 732 (Minn. App. 2001), *review denied* (Minn. Dec. 19, 2001))

SDP/SPP review packet -

1. Minnesota Sex Offender Screening Tool-3.1 (MnSOST-3.1) and STATIC-99R, if available.
2. Criminal complaint: include all complaints.
3. Annual reviews: place in reverse chronological order.
4. Initial program review team (PRT) minutes/PRT action report.

5. Initial PRT/report: all PRT reports and any prior case summaries.
6. Pre-sentence investigation reports – all available reports.
7. Discipline information: assaultive, chemical, and/or sexual in nature, and treatment refusals/terminations.
8. Psychological information: admission assessment, psychiatry initial assessment, assessment diagnostic plans (ADPs), evaluations from other sources, hospital/clinical summaries/discharges from community resources, sex offender (SO) and chemical dependency (CD) evaluations from non-DOC sources.
9. DOC treatment information:
   a) Chemical dependency (CD) treatment: intake CD assessment, assessment summary, 30-day treatment progress ratings, and discharge summary; and
   b) Sex offender (SO) treatment: initial assessment, 30-day or quarterly progress ratings, discharge summary, and program participation summary.
10. Sentencing worksheet: all offenses.
11. Release violations: hearings and release unit (HRU) reports, uniform case reports, other agent reports, and adjustment summaries.

SDP/SPP screening committee (screening committee) – comprised of three members appointed by the DOC commissioner. The presence of two members constitutes a quorum. All actions taken by the screening committee are determined by majority vote.

PROCEDURES:

A. Sixteen to 17 months prior to release or at intake if less than 16 to 17 months to release: a sex offender treatment professional from the RA/CN unit scores the MnSOST-3.1 and STATIC-99R on all offenders with a sex, sex-related, or sexually motivated offense history. These scores are entered in the correctional operations management system (COMS).

B. Fifteen months or more prior to release or as soon as practicable if intake is less than 15 months to release:
   1. The case manager forwards a SDP/SPP review packet (cover sheet attached) to the RA/CN unit if:
      a) The offender has any sex, sex-related, or sexually motivated offenses in his/her history; or
      b) The case manager has special concerns about the offender, but the offender does not have a sex, sex-related, or sexually motivated offense history.

   2. If the case manager has an offender on his/her caseload with a history of sex, sex-related, or sexually motivated offense(s) and there is not a MnSOST-3.1 or a STATIC-99R score in COMS, the case manager must contact the risk assessment coordinator at the RA/CN unit to arrange an assessment and/or seek clarification regarding SDP/SPP review.

C. Fourteen months or more prior to release or as soon as practicable if intake is less than 14 months to release:
   1. The screening committee reviews the SDP/SPP review packet and available information to determine whether or not a SDP/SPP review report by a psychologist is required for further review and decision. All actions taken by the screening committee are determined by majority vote. All decisions are documented in COMS.

   2. For those cases determined by the screening committee to not require a report from a RA/CN unit psychologist, the RA/CN unit staff sends an e-mail to the case manager

reporting no recommendation will be made to the commissioner to forward the case. The case manager must ensure the offender is informed of the decision.

3. When the screening committee determines a report from a RA/CN unit psychologist is required.
   a) The RA/CN unit staff sends an e-mail to the case manager with an attached memo to the offender explaining the process. The case manager gives the memo to the offender.

   b) The RA/CN unit psychologist conducts an interview with the offender, if the offender consents.

   c) The facility provides an appropriate interview room upon the request of the psychologist.

   d) The RA/CN unit psychologist produces a SDP/SPP review report utilizing the information obtained through the following:
      (1) Offender interview;
      (2) File review, including sex offender treatment reports from the DOC and community-based treatment programs;
      (3) Collateral information from other sources; and
      (4) Actuarial scores utilizing the MnSOST-3.1 and STATIC-99R, or other instruments as appropriate.

   e) A RA/CN unit psychologist attends the screening committee meetings to respond to questions regarding the SDP/SPP review report.

4. The screening committee and the legal counsel meet on a regular basis to review the SDP/SPP review reports and make separate recommendations to the commissioner or designee whether or not to forward the case.
   a) The decision by the screening committee is made by majority vote. The screening committee uses the following information in making a recommendation:
      (1) The actuarial scores table (attached);
      (2) The screening committee considers idiosyncratic factors in conjunction with MnSOST-3.1 or STATIC-99R scores;
      (3) All sex offenses, as defined in this policy;
      (4) Diagnostic information; and
      (5) Consideration of documented protective factors such as:
         (a) An intervention followed by or in conjunction with a period of six years when the offender did not re-offend or engage in high risk behavior and had access to potential victims;
         (b) An incapacitating illness or physical condition that decreases motivation or ability to sexually re-offend (e.g., later stages of terminal illness);
         (c) Advanced age; and
         (d) Lengthy mandated supervision.

   b) The legal counsel makes a recommendation based upon the information contained in the SDP/SPP review report and any additional information made available during the meeting of the screening committee.

D. Thirteen months or more prior to release or as soon as practicable if intake is less than 13 months to release:

1. The commissioner or designee reviews the recommendations of the screening committee and legal counsel and makes a determination whether or not to forward the case.

2. When the commissioner or designee determines to not forward the case:
   a) The RA/CN unit staff sends an e-mail to the case manager reflecting the commissioner or designee decision.

   b) The case manager ensures the decision is given to the offender.

   c) The RA/CN unit staff ensures the decision is documented in the RA/CN unit offender file, the SDP/SPP database, and COMS.

3. When the commissioner or designee determines to forward the case:
   a) The RA/CN unit staff forwards the case with copies of appropriate supporting documents from the RA/CN file. The letter must be signed by the commissioner or designee.

   b) RA/CN unit staff ensures a copy of the letter to the county attorney is provided to the case manager and records unit where the base file is maintained.

   c) RA/CN unit staff ensures a copy is filed in RA/CN unit file, and the determination is entered into COMS and RA/CN SDP/SPP database.

   d) The RA/CN unit staff forwards the documents to the county attorney via certified U.S. Mail-return receipt requested or appropriate electronic method.

E. Upon assignment of a risk level by the end of confinement review committee (ECRC) – the risk assessment coordinator screens each offender assigned a risk level by the ECRC.

1. If the offender's case was previously forwarded, the RA/CN unit faxes notification of the level assignment to the county attorney who received the SDP/SPP referral. The RA/CN unit also mails a letter along with ECRC documents.

2. If the screening committee previously reviewed the offender and the case was not forwarded and no new information has been developed, no further action is required.

3. If the screening committee previously reviewed the offender and the case was not forwarded and new information has been developed, the screening committee reviews the case again.

4. If the offender is assigned risk level 3 and was previously reviewed by the screening committee and legal counsel, and the commissioner did not forward the case, the RA/CN unit director reviews the case.
   a) The RA/CN unit director determines if new information has been developed since the screening committee and legal counsel reviewed the case requiring another review by the screening committee and legal counsel.

b) If the RA/CN unit director determines another review is necessary, the RA/CN unit director places the case on the agenda for review by the screening committee and legal counsel. If the screening committee and legal counsel recommend not forwarding the case, the RA/CN unit director informs the commissioner of the recommendation.

c) If the RA/CN unit director discovers no new relevant information, the RA/CN unit director informs the commissioner regarding the referral status of the case.

5. When an offender is assigned risk level 3, was previously reviewed by the screening committee, the offender's case was not forwarded, there is no new relevant information, but the case was not previously reviewed by legal counsel, the case must be reviewed by legal counsel. If legal counsel recommends not to forward the case, the RA/CN unit director informs the commissioner regarding the referral status of the case.
   a) If a SDP/SPP review report has been completed within the past 12 months, a RA/CN unit psychologist reviews the offender's base file and contacts the offender's caseworker for an update of any significant changes since completion of the latest SDP/SPP review report and provides an update of the offender's activities since the last review. If deemed necessary by the RA/CN unit psychologist, an interview with the offender is conducted.

   b) If a SDP/SPP review report has not previously been completed or the SDP/SPP review report is more than 12 months old, a RA/CN unit psychologist produces a SDP/SPP review report in the manner described in Procedure C.

6. When an offender is assigned risk level 3, was previously reviewed by the screening committee, there is new relevant information, and the case was not previously reviewed by legal counsel, the case must be reviewed by the screening committee and legal counsel.
   a) The screening committee reviews the new relevant information and makes a recommendation to the commissioner or designee whether or not to forward the case.

   b) Legal counsel reviews the SDP/SPP review report, and makes a recommendation whether or not to forward the case.

   c) If the screening committee and legal counsel recommend not forwarding the case, the RA/CN unit director informs the commissioner of the recommendation.

F. Review of interstate (compact and non-compact) and federal cases:
1. The risk assessment coordinator screens all interstate and federal offenders assigned risk levels by the ECRC. The screening committee reviews offenders with a sex, sex-related, or sexually motivated offense in their history.

2. The screening committee reviews available information including case file and ECRC documents and determines whether a SDP/SPP review report by a psychologist is required.

3. For those cases determined by the screening committee to not require a report from a RA/CN unit psychologist, the risk assessment coordinator updates the unit file, the RA/CN SDP/SPP database, and COMS.

4. When the screening committee determines a report from a RA/CN unit psychologist is required, the RA/CN psychologist produces a SDP/SPP review report utilizing information obtained through file review, collateral information from other sources, and actuarial scores (MnSOST-3.1 and STATIC-99R, or other instruments as appropriate).

5. Review of the SDP/SPP review report takes place as prescribed in Procedure C.

6. A RA/CN unit psychologist attends the screening committee meetings to respond to questions regarding the SDP/SPP review report.

7. The commissioner or designee reviews the recommendations of the screening committee and legal counsel and makes a determination whether or not to forward the case.
   a) When the commissioner or designee determines to not forward the case, RA/CN unit staff ensures the decision is documented in the RA/CN unit offender file, RA/CN SDP/SPP database and COMS.
   b) When the commissioner or designee determines to forward the case:
      (1) The RA/CN unit staff forwards the case to the county of proposed or current residence of the offender with copies of appropriate supporting documents from the RA/CN unit file. The letter must be signed by the commissioner or designee.
      (2) RA/CN unit staff ensures a copy is filed in the RA/CN unit file, and the determination is entered into the RA/CN SDP/SPP database and COMS.
      (3) The RA/CN unit staff forwards the documents to the county attorney via certified U.S. Mail with return receipt requested or appropriate electronic method.

G. Review of offenders returned to incarceration status: when a sex offender is re-incarcerated, the RA/CN unit risk assessment supervisor reviews the file to determine whether the case needs further review by the screening committee.

1. If the screening committee has not previously reviewed the offender, and he/she meets the criteria established for initial SDP/SPP review, the screening committee reviews the case.

2. If the screening committee previously reviewed the offender, a SDP/SPP review report was not requested, and this occurred prior to December 6, 2005, the case must be reviewed by the screening committee.

3. If the screening committee previously reviewed the offender, a SDP/SPP review report was requested, and this occurred prior to December 6, 2005, the case must be reviewed by the screening committee and legal counsel.

4. If the screening committee previously reviewed the offender, and the offender's release violation behavior includes an allegation, self-report, charge, or conviction for a new criminal sex offense or sex related offense, or engaged in relevant high risk behavior, the RA/CN unit director forwards the case to the screening committee, unless the exception noted in the definition section of this policy applies.

5. If the screening committee and legal counsel previously reviewed the offender, and the offender's release violation behavior does not include an allegation, self-report, charge, or conviction for a new criminal sex offense or sex related offense, or engaged in high risk behavior, the RA/CN unit director does not forward the case to the screening committee.

The RA/CN unit risk assessment coordinator enters the information in COMS as "Not forward to psychologist, by policy." A copy of this decision must be placed in the RA/CN unit file.

6. If the offender has previously been forwarded to the county attorney and/or Attorney General's Office (AGO) for possible civil commitment consideration, the county attorney must be informed of the offender's violation behavior, including a copy of the violation report and the hearing revocation notes. The risk assessment coordinator enters the information into COMS as "No action-previously referred" and "by policy."

H. Responding to civil commitment information requests by the county attorney:

1. The central office RA/CN unit support staff coordinates and tracks all civil commitment information requests.

2. The RA/CN support staff notifies and coordinates with all correctional facilities in gathering information:

   a) Each correctional facility records supervisor must ensure the following offender information is copied and certified copies (attached) are forwarded to the RA/CN support staff:

      (1) Base file;
      (2) Confidential file;
      (3) Medical file;
      (4) Mental health/psychology files;
      (5) Case manager personal file;
      (6) Education file;
      (7) SO and CD treatment files, along with the corrections program therapist personal files; and
      (8) Inner Faith Initiative program files and staff personal files.

   b) The RA/CN unit support staff provides the name of the offender to the Minnesota Sex Offender Program (MSOP) - DOC site contact person, who makes the request for records to the MSOP-DOC site clinical supervisor. The clinical supervisor provides any file material to the MSOP-DOC site contact who forwards the information to the RA/CN unit support staff.

   c) The RA/CN unit staff provides the name of the offender to the office of special investigations (OSI) along with the name and address of the county attorney and a date the attorney needs the information. The OSI staff forwards any material and certification (attached) directly to the attorney. If there is no data held by OSI, OSI staff must notify the RA/CN unit staff by e-mail regarding the absence of OSI information.

3. The staff who compiles and copies the above files must complete the records request form (attached) and the form must accompany the forwarded files.

4. Staff must make every effort to expedite civil commitment information requests that have been identified as a "rush" request.

5. The RA/CN unit staff sends the records via Federal Express or an appropriate electronic method of sending the records.

REFERENCES: Policy 205.220, "Predatory Offender: Registration, Community Notification, Victim Notification, Level 3 Website, and Risk Level Reduction Request"
Minn. Stat. §253B.02
Minn. Stat. §253B.185
Minn. Stat. §609.342
Minn. Stat. §609.343
Minn. Stat. §609.344
Minn. Stat. §609.345
Minn. Stat. §609.185
Minn. Stat. §609.19
Minn. Stat. §609.195
Minn. Stat. §609.20
Minn. Stat. §609.205
Minn. Stat. §609.221
Minn. Stat. §609.222
Minn. Stat. §609.223
Minn. Stat. §609.24
Minn. Stat. §609.245
Minn. Stat. §609.25
Minn. Stat. §609.255
Minn. Stat. §609.365
Minn. Stat. §609.498
Minn. Stat. §609.561
Minn. Stat. §609.582, subd. 1
Minn. Stat. §609.713
Minn. Stat. §609.749, subd. 3 or 5
In re Linehan, 594 N.W.2d 867,876 (Minn. 1999)
In re Jackson, 658 N.W.2d 219, 226 (Minn. App. 2003), review denied (Minn. May 20, 2003)
In re Kindschy, 634 N.W.2d 723, 732 (Minn. App. 2001), review denied (Minn. Dec. 19, 2001))

SUPERSESSION: Policy 205.200, "Sex Offender Civil Commitment Determination," 1/3/12.
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: SPP/SDP Review Packet Cover Sheet (205.200C)
Records Request Certification-MCF (205.200B)
Records Request Certification-OSI (205.200E)
Records Request Certification-CO Records (205.200D)
Screening Committee Guidelines (205.200A)
SPP/SDP Offender Interview form (205.200F)

/s/
Richard Crawford, Deputy Commissioner
Community Services

David R. Crist, Deputy Commissioner
Facility Services