

501 KAR 6:200. Comprehensive sex offender presentence evaluation procedure.

RELATES TO: KRS 17.550-17.991

STATUTORY AUTHORITY: KRS 17.554(2), 17.564

NECESSITY, FUNCTION, AND CONFORMITY: KRS 17.554(2) authorizes the Sex Offender Risk Assessment Advisory Board to establish a comprehensive sex offender presentence evaluation procedure for court-ordered evaluations of sex offenders. KRS 17.564(1) authorizes the board to promulgate administrative regulations necessary to carry into effect the purposes of KRS 17.500 to 17.580 and 17.991. This administrative regulation establishes the evaluation procedure to ensure the quality of court-order comprehensive sex offender presentence evaluations.

Section 1. Definitions.

- (1) "Amenability to treatment" means the offender is free from organic or psychological impairment that would prevent the offender from engaging meaningfully in sex offender treatment and he is, at least minimally, receptive to the treatment process.
- (2) "Appropriate setting" means a secure institutional setting or a community-based setting.
- (3) "Approved provider" is defined by KRS 17.550(3).
- (4) "Board" is defined by KRS 17.550(1).
- (5) "Clinically adjusted" means a change in the risk level recommendation based on facts or evidence which indicate to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender.
- (6) "Comprehensive sex offender presentence evaluation" means a comprehensive mental health evaluation by an approved provider that includes a focus on the clinical data necessary to address the four (4) areas of assessment listed in KRS 17.554(2).
- (7) "Nature of required sex offender treatment" means the treatment management issues including recommendations for the focus of treatment, special treatment considerations, further evaluation, and restrictions to minimize the risk of recidivism.
- (8) "Risk of recommitting a sex crime" means a designation of high or not high risk based on the finding of the instrument used or other clinically relevant data that suggests sexual reoffense is more likely than not.
- (9) "Sex offender" is defined by KRS 17.550(2).

Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures.

- (1)
 - (a) An approved provider shall conduct a comprehensive mental health evaluation following the professional standards of care in the area of his certification or licensure.
 - (b) The evaluation shall include a face-to-face interview and a review of collateral information. The face-to-face interview may be conducted by videoconferencing if it allows the approved provider to see the offender at all times during the interview.
 - (c) If the results of initial mental health screening procedure dictate, additional appropriate psychological testing addressing cognitive functioning, mental illness, and severe characterological impairment shall be employed as circumstances allow.
- (2) Risk of recommitting a sex crime shall be determined in the following manner:
 - (a) If applicable, an actuarial instrument shall be used which is appropriate to the sex offender. An actuarial instrument shall be appropriate for use if:
 1. The instrument's developmental sample or subsequent study samples contained individuals with characteristics similar to the offender being evaluated; and
 2. The instrument's reliability and validity has been demonstrated through research. The results of the instrument may be clinically adjusted at the discretion of the approved provider.

- (b) If an actuarial instrument is not appropriate, an empirically guided approach shall be used. An empirically-guided approach shall mean that the approved provider shall consider risk factors that research has demonstrated to be associated with risk for recidivism.
- (3) The threat to public safety shall be determined in the following manner:
- (a) The approved provider shall consider the following domains in assessing the sex offender's immediate threat to public safety and in arriving at a recommendation regarding an appropriate treatment setting:
1. The sex offender's amenability to treatment;
 2. The degree of threat of harm or actual force employed in the index offense and in prior offenses;
 3. The nature and duration of the offending;
 4. The sex offender's psychological adjustment;
 5. The sex offender's social and occupational adjustment; and
 6. The sex offender's statements or indications of harm directed to another.
- (b) The approved provider shall make a recommendation as to the appropriate setting in which treatment, if indicated, should be provided for the sex offender.
- (4) To assess amenability, the approved provider shall address the following factors. The sex offender shall:
- (a) Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation;
- (b) Exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he will be referred;
- (c) Acknowledge involvement in the sex offense for which he is charged;
- (d) Consider his involvement in the sex offense to be a problematic behavior that he does not want to repeat; and
- (e) Verbalize a willingness to enter and fully participate in treatment.
- (5) In assessing the nature of required sex offender treatment, the approved provider shall address management issues including:
- (a) Recommendations for the focus of treatment;
- (b) Special treatment considerations;
- (c) Further evaluation; and
- (d) Restrictions to minimize the risk of recidivism.

Section 3. Evaluation Report.

- (1) An approved provider shall prepare a comprehensive sex offender presentence evaluation report to the court in the form of a bifurcated document.
- (2) The first section of the report shall consist of information prepared specifically for the court and shall contain the following headings:
- (a) Identifying information including:
1. Name;
 2. Social Security number;
 3. Date of birth;
 4. Age; and
 5. Indictment number or county;
- (b) Referral information, including reason for referral, informed consent, and procedures;
- (c) Information sources; and
- (d) Summary, conclusions, and recommendations.
- (3) The second section shall include the following information from which the summary and conclusions were reached:

- (a) Criminal justice information, including index offense, prior sex offense, or other legal history;
 - (b) Psychosocial history including:
 - 1. Family of origin;
 - 2. Education;
 - 3. Military;
 - 4. Occupational;
 - 5. Financial;
 - 6. Sexual;
 - 7. Relationship;
 - 8. Mental health; and
 - 9. Medical;
 - (c) Behavioral observations and mental status;
 - (d) Psychological testing;
 - (e) Diagnosis impressions;
 - (f) Treatment considerations; and
 - (g) The statutory factors found in KRS 17.554(2).
- (4) The report shall be entitled "Comprehensive Sex Offender Presentence Evaluation."
- (5) An approved provider shall place his signature at the end of the recommendation report if he:
- (a) Conducted the comprehensive sex offender presentence evaluation; or
 - (b) Reviewed and approved the evaluation.
- (6) If the approved provider previously provided treatment to the sex offender, he shall not perform a sex offender presentence evaluation for the offender.

Section 4. Recordkeeping.

- (1) An approved provider shall:
 - (a) Transmit all comprehensive sex offender presentence evaluation information to the board; or
 - (b) Maintain the information for a period of fifteen (15) years.
 - (2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board:
 - (a) Upon request; or
 - (b) At the death of the approved provider.
- (25 Ky.R. 2057; Am. 2875; eff. 6-16-99; 26 Ky.R. 2310; 27 Ky.R. 763; eff. 9-11-2000; 35 Ky.R. 190; 1455; eff. 1-5-2009; 38 Ky.R. 1791; 1951; eff. 7-6-2012.)