

**JUSTICE AND PUBLIC SAFETY CABINET**  
**Department of Corrections**  
**Sex Offender Risk Assessment Advisory Board**  
**(Amended at ARRS Committee)**

**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) requires 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 intellectual disability or psychological disturbance that would prevent the offender from engaging meaningfully in sex offender treatment and he is at least minimally able to participate in 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 compelling evidence which indicates to an approved provider that the probability of recidivism ranges are inappropriate for a sex offender, such as a risk factor being in an acute phase of severity.
- (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) "Evidence based standards of care" means standards and practices that:
  - (a) Are based on the best available clinical scientific research or evidence for treatment of sex offenders;
  - (b) Take into account the offender's current clinical state and factors that may influence treatment gain; and
  - (c) Are generally accepted by reasonable providers within the sex offender treatment field.
- (8) "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.
- (9) "Responsivity factors" means factors that impact an offender's ability to begin, engage in, and complete treatment and can interfere with the ability of the offender to respond to treatment.
- (10) "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.
- (11) "Sex offender" is defined by KRS 17.550(2).
- (12) "Stages of change" means the change process occurs gradually over time and includes levels or stages as follows:

- (a) Precontemplation, in which the individual does not intend to make a change in the behavior;
- (b) Contemplation, in which the individual has an awareness of the problem and may consider the pluses and minuses of change;
- (c) Preparation, in which the individual intends to take action within one (1) month and may make small behavioral changes;
- (d) Action, in which the individual modifies the problem behavior for one (1) to six (6) months; and
- (e) Maintenance, in which the behavior change extends from six (6) months and the individual works to prevent relapse.

## Section 2. Comprehensive Sex Offender Presentence Evaluation Procedures.

- (1)
  - (a) An approved provider shall conduct a comprehensive mental health evaluation following evidence based standards of care.
  - (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) The approved provider shall assess the following factors for amenability:
  - (a) The sex offender shall Not exhibit symptoms of a psychological disturbance that may significantly inhibit treatment participation;
  - (b) The sex offender shall exhibit a level of intellectual functioning sufficient to complete the task assigned in the treatment program to which he will be referred;

- (c) Whether the sex offender will receive a benefit from treatment designed for sex offenders with intellectual developmental disorder, if the sex offender has an intellectual developmental disorder;
  - (d) Whether the sex offender acknowledges involvement in the sex offense for which he or she is convicted;
  - (e) Whether the sex offender considers[ his or her involvement in the sex offense to be a problematic behavior that he or she does not want to repeat; and
  - (f) The level of acknowledgment and current stage of change expressed by the sex offender[.
- (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, including:
    - 1. Recommendations to address identified responsivity factors; and
    - 2. Other issues that impact the offender's ability to engage in treatment;
  - (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) Standardized assessment or 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 or her signature at the end of the recommendation report if the approved provider:
  - (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 maintain the evaluation records for the period of time required for the approved provider to maintain patient files by the licensing or certifying body under which the approved provider has professional status.
  - (2) The original or a copy of all comprehensive sex offender presentence evaluation information shall be provided to the board upon request.
- (25 Ky.R. 2057; Am. 2875; eff. 6-16-1999; 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; 48 Ky.R. 943, 1740; eff. 3-1-2022.)

CONTACT PERSON: Amy V. Barker, Assistant General Counsel, Justice & Public Safety Cabinet, 125 Holmes Street, Frankfort, Kentucky 40601, phone (502) 564-3279, fax (502) 564-668, email [Justice.RegContact@ky.gov](mailto:Justice.RegContact@ky.gov).