

TO: Senator Sears and Judiciary Committee Members

FROM: Robert Hofmann, Commissioner of Corrections

Subject: Response to Committee Questions on Michael Jacques

Date: September 10, 2008

I am writing in response to the questions posed in your letter of September 3, 2008, concerning the case of Michael Jacques and testimony at the Senate Judiciary Committee hearings at the beginning of August. I should note at the outset that as highlighted on pages 18 and 62 (Appendix 8) of the Department's handouts to the legislature on August 7th, Vermont statutes, including but not limited to 28 V.S.A. §§ 601(10) and 204(d) constrain the Department regarding the nature and extent of the information that may be disclosed in connection with this matter. In particular, this limits our ability to respond to your questions 1, 3, & 7.

1. Could you please clarify for the Committee who was on the treatment team that met in 2003-2004 to discuss Mr. Jacques' possible discharge from probation and verify that its decision was not to support his discharge? We are also interested in whether the treatment team's decision is viewed by the Department as advisory or if it has any authority to make a decision that Mr. Kearney should have followed. What was the team's understanding of what Mr. Kearney was going to do?

Sex Offender Treatment for Mr. Jacques ended in December of 2000.

The treatment team recommendation for any case is advisory.

There was a treatment team meeting concerning Mr. Jacques in 2002. After that meeting a petition was filed in court for a condition requiring polygraph examination. The court denied the petition.

The case was transferred to the Chelsea office in January 2003 and assigned to PO Kearney.

I can not confirm that any treatment team meetings occurred after this transfer.

2. Mr. Kearney testified that he has completed several trainings regarding management of sex offenders. Does the training offered by the Department include a discussion of the length of time sex offenders should be supervised? My understanding is that it has included advocacy for very lengthy periods of supervision.

The training for staff who supervise sex offenders includes discussion of length of time for both treatment and for supervision of sex offenders in the community. The

discussion of length of supervision time centers on continual analysis of objective risk factors and generally includes consideration of:

- Offender demonstration of learning from treatment;
- Results from randomized, unannounced field checks;
- Verification of residence, employment and other environmental risk factors, such as proximity to risk-related situations;
- Risk assessment;
- Offending characteristics and profiles of the sex offender's patterns.

The training conveys that it is important to continue supervision after treatment completion, for at least six months, with review of offender progress.

3. In 1997, Mr. Jacques' probation officer, Paul McNaughton, asked Judge Suntag to increase Jacques' probation conditions. In his request, McNaughton provided a long list of Jacques' false statements, leaving no doubt that Jacques was a chronic deceiver and misrepresenter of facts. By 2004, Jacques' new probation officer, Mr. Kearney, was describing him as a model case who could now be trusted. What happened that changed the Department's view of Jacques during this time? Did McNaughton's opinion of Jacques change, and if so, why? Did anyone at the Department other than McNaughton and Kearney have an opportunity to provide input about Jacques' supposed transformation between 1997 and 2004? If so, how did they account for Jacques' change from a habitual liar and chronic sex offender to a model prisoner?

During the period after 1997 to 2004, Mr. Jacques actively participated in treatment, achieved stable employment and housing. There was also considerable input from the treatment provider. In 2000 his treatment provider wrote that Jacques had achieved maximum benefit from the mandated treatment.

4. Mr. Kearney's statement regarding the August 23rd document does not appear to be factual, given the court transcript. What does Mr. Rideout state regarding this question? How can his testimony be reconciled with the court transcript? What is the Department's view of this question?

The apparent inconsistency between this testimony and the court documents and transcript is very disconcerting. The court transcript and signed petition unequivocally indicate Mr. Kearney supported a discharge by the judge.

Mr. Rideout confirmed that he signed the petition for discharge.

5. Mr. Kearney testified that he did not think it was important to report to the court the 2005 conviction of Mr. Jacques in New Hampshire for violation of the sex

offender registry in that state. What is the Department's view of this failure to report?

The court specifically asked to be advised of any violations. As I indicated in my August testimony, the NH Sex Offender Registry conviction should have been reported to the court. To exclude the NH violation from the court record was a serious mistake given the nature of the underlying violent offense.

6. During the October 18, 2004 probation hearing, Mr. Kearney indicates, as evidenced by the following exchange, that he felt compelled by DOC policy to petition for Mr. Jacques' release from probation. Would you please provide the committee with copies of the policies in place at that time, as well as the policies currently in place with respect to when the Department should seek the discharge of sex offenders from probation?

- Program Completion summary memorandum, (Appendix 1)
- Directive 425.02 – Directive detail – in force since 1998. (Appendix 2)

This directive requires assessment prior to requesting discharge from probation, continuation under supervision, or transfer the offender case to Response Supervision status, for payment of restitution or fines owed.

The directive also defines program completion requirements for offenders under field supervision. It provides for the establishment of presumptive completion dates for intensive treatment, aftercare periods for demonstration of compliance with conditions, fulfillment of any obligations, and allows for continued supervision as a result of violation behavior or assessed risk.

- Interim revision memo - sex offender release and supervision practices (August 11, 2008) is attached (Appendix 3)

The memorandum to staff removes sex offenders from eligibility for any discretionary release to the community, until such time as the review of DOC policies is completed. Also attached is my memo to all staff with changes to current directives from July 21, 2008. (Appendix 4)

7. When Mr. Jacques violated the terms of his probation in 1997 by not living where he was required to live, but with another relative who had a small child, why didn't the Department request an additional condition of probation that Mr. Jacques not reside with children?

The probation officer (McNaughton) in his letter to the court of March 12, 1997 requested that Judge Suntag impose a list of conditions, including one prohibiting residence with any person under age 16. This petition was granted on March 12, 1997. On August 13, 1997, McNaughton received an affidavit from Edwin Van Dijk indicating that Jacques was no longer living where he was authorized.–

Mr. McNaughton requested a violation of probation on these conditions on August 18, 1997. On September 10, 1997 McNaughton swore an affidavit to the court that Jacques had violated this condition by living with his girlfriend and her young daughter, age 3, by changing residence without notifying his probation officer, and by not living where he was directed. The violation was heard on November 3, 1997, and Jacques pled guilty to the violation. Judge Fisher sentenced him to four additional days of work crew.

In June of 1998, Jacques married the girlfriend.

In the hearing on the October 18, 2004 petition for discharge from probation, Judge Davenport presiding, testimony of Denise Jacques concerning the 1997 violation, is as follows:

p. 47-48

Q. [Mr. Griffin] Now, at this point, you – Michael had not been given permission to actually live with you?

A. [Ms. Jacques] He had not been given permission to live with me and he had not actually physically taken up residence with me.

Q. You were spending a lot of time together, but he wasn't living with you?

A. Correct.

Q. After the violation was filed and Michael got the four days on work crew, did you then get permission from Paul McNaughton that you could –

A. I believe that we got permission right here in this courtroom the day that we came to court because of the violation.

Additional Questions from the Committee

1. In response to Ms. Suzen Wood's testimony to the Committee on August 28, 2008, why does DOC recommend the parole of a sex offender who has been designated by DOC as a high-risk to reoffend? Although 28 V.S.A. § 501 says that an offender is "eligible" for parole, the statute certainly does not require the Department to recommend it, especially if the offender is not likely to meet the requirements of 28 V.S.A. § 502a(b)(2) that there is "a reasonable probability that the inmate can be released without detriment to the community or to the inmate."

The offender in question was on furlough, in the community, and had been since October, 2007. The initial consideration of a positive parole recommendation was made because of his progress in treatment, his employment, and his compliance

with the conditions of release. The department withdrew the recommendation after serious consideration of the concerns expressed by Ms. Wood.

Title 28 § 1b provides the context for this and all cases of offenders released to community supervision. This law sets the policy framework for Corrections in Vermont: the incarceration and preparation of offenders for reintegration and participation in the open community.

Title 28 § 1. Purposes

(b) The department shall formulate its programs and policies recognizing that almost all criminal offenders ultimately return to the community, and that the traditional institutional prisons fail to reform or rehabilitate, operating instead to increase the risk of continued criminal acts following release. The department shall develop and implement a comprehensive program which will provide necessary closed custodial confinement of frequent, dangerous offenders, but which also **will establish as its primary objective the disciplined preparation of offenders for their responsible roles in the open community.** The department shall ensure that the comprehensive program required by this subsection includes a process by which each offender sentenced to any term of imprisonment other than for life without parole, within 30 days after receiving his or her sentence, shall begin to develop and implement a plan preparing for return to the community.

(Added 1971, No. 199 (Adj. Sess.), § 20; amended 2005, No. 63, § 17.)

Based upon these principles, if the offender:

- Behaves himself or herself;
- Participates in treatment;
- Accomplishes the goals and expectations in the case plan;
- And fulfils the obligations of the sentence imposed by the court;

then the offender case planning will target for release at the minimum term of sentence (or up to 90 days prior, under recent statute).

In many states, the release decision is taken out of the hands of corrections, and given entirely to, for example, the courts, with determinate sentencing – no minimum, no maximum – just the sentence. In other states, the release decision is taken out of the hands of the judges, and sentences are mandatory, so the release decision actually falls to the prosecutor, who chooses the charge to pursue, and thus the sentence mandated for that charge. In still others, all discretion is placed in a parole board, which may override the sentence and mandate release. Vermont statute since 1947 has required an indeterminate sentencing system, with a minimum and a maximum term that must be

substantively different. Thus, Vermont has taken a balanced approach to providing discretion and authority over the release decision to all parties in the criminal justice system – the prosecutor, in charging and reaching a plea; the court, in sentencing; corrections, in determining whether to hold beyond minimum sentence; and the parole board, in determining whether to parole.

Most of the information that informs the high risk designation was available to the court, the prosecutor, and the defender, at sentencing, and this information is already reflected in the minimum and maximum sentence. The key additional information that DOC subsequently provides is the history after sentencing, including institutional behavior and progress in treatment.

Mandating holding all sex offenders, or all sex offenders designated as high risk, to their maximum would lift some of the weighty release decisions from Corrections, but might have significant unintended and unforeseen consequences on community and facility safety. Participation in treatment is voluntary and the absence of a minimum term would remove the fundamental incentive for participation, and the most important security tool for ensuring appropriate institutional behavior. It is likely that fewer offenders would choose to participate in treatment, and treatment has been linked to recidivism reduction in Vermont, international and national research studies.

2. How many offenders have been designated by the Department as high-risk in accordance with 13 V.S.A. § 5411b? What were the sentences for each offender so designated, and what is their current status? Please provide information as to when each of these offenders was released from incarceration into community supervision, and the basis for the release.

The criteria for designating an offender as a High Risk Sex Offender for posting on the Internet Sex Offender Registry are statutory.

The High Risk Sex Offender Review Committee of the Department of Corrections has designated a total of 95 sex offenders as high risk in accordance with 13 V.S.A. § 5411b. Of these, 49 are currently incarcerated, and 46 are currently in the community. A list of the 46 offenders in the community is attached as Appendix 5, including the offense, sentence, and current legal status.

Attached as Appendix 6 is the current Administrative Rule on Determination of High Risk and Failure to Comply with Treatment for Purposes of Sex Offender Internet Registry.

3. Please describe the community supervision and treatment plans for sex offenders designated as high-risk in accordance with 13 V.S.A. § 5411b.

In accordance with directive 425.02 – Program Completion (Appendix 2), all sex offenders who have participated in incarcerative treatment receive an additional 36

months of outpatient treatment upon release. For two years the treatment occurs once weekly, followed by one year of less frequent treatment.

As part of the supervision plan after release, many offenders are polygraphed regularly, and Community Correctional Officers are assigned to conduct alcohol-sensor and drug testing; law enforcement, community and victim notification; and face to face visits in the probation office, at home, and in collateral locations (work, etc.). Mobility and access limitations are implemented in accordance with conditions. Case planning may include referral for substance abuse or mental health treatment, and employment and training services as appropriate.

For sex offenders placed on probation, supervision is directed at ensuring compliance with all court conditions. Non-compliant offenders are held accountable within the boundaries of the conditions set by the court (for probation), by the commissioner (for furlough), or the parole board (for parole). Refusal to participate in ordered treatment is grounds for violation.

As described to the legislature last spring, the department is restructuring the resources of the field offices to provide more intensive supervision of high risk offenders on probation.

4. How many sex offenders does Vermont DOC currently have in custody who have been transferred from other jurisdictions. From which jurisdiction was each offender transferred, and what was the basis for the transfer?

As of September 4, 2008, Vermont has some form of community supervision

Sex Offender Cases under Interstate Compact		
Community Supervision September 8, 2008		
State	From Vermont	To Vermont
NH	10	5
NY	8	3
MA	5	
CT	3	2
NJ	3	
FL	3	4
ME	2	1
CA	2	
NC		1
SC	1	
DE	1	
LA	1	
PA	1	
OR	1	
NV	1	
IL	1	
GA	1	
KY	1	
Totals	45	16
Probation	42	12
Parole	3	4

jurisdiction over 16 sex offenders who have been transferred from other states by the Interstate Compact on Adult Offender (community) Supervision. This

compact¹ allows transfers to and from states. Vermont currently has 45 offenders with a sex offense who have been transferred out to other jurisdictions through the Compact.

There is a separate compact for incarcerated prisoners who may be transferred to one of Vermont's correctional facilities for a variety of reasons; they may have Vermont roots or may need some form of protective custody. Vermont has more offenders serving time or being supervised in other states than offenders we have received from other states.

5. Why has the Department not provided information regarding treatment status on 115 sex offenders to VCIC?

The department has reviewed all offenders on the Public Sex Offender Registry indicated by the website as having a *Treatment Status Not Available*. This review included those offenders from other states, those who had maxed out, and those who are currently under supervision.

The department identified 59 offenders whose information had not been updated over the past four years. DOC has conducted a special review of these cases and is providing updated information on the status of 54 of these offenders to the Registry. Thirty-nine were compliant, and fifteen were non-compliant. Information on the remaining five is being tracked down.

The remaining offenders referenced in your question were released from supervision prior to the effective date of the 2005 law and are not subject to this provision. We are actively working to provide to the Registry as much information as we can.

The DOC has issued an Interim Procedure (see Memorandum on Interim Procedure dated September 9, 2008, Appendix 7) to ensure that sex offender's treatment status, compliant or non-compliant, is known by the Vermont Criminal Information Center (VCIC) so that the Internet Registry can be as accurate as possible. It is also to ensure that offenders whose sentence for a sex offense has expired are aware of their responsibilities in regards to the Internet Registry.

6. Do you know what the Sunshine Project is? Do you have any information regarding the Sunshine Project?

The department is not aware of nor involved in any such named project.

¹ Persons on probation or parole from other states may be supervised in Vermont if they have family, employment or educational opportunities here. There are rules governing the transfer of persons on probation or parole to another state which have the effect of federal law; these delineate which offenders must be accepted for supervision by the receiving state.

Appendix 1: Program Completion Memorandum (August 12, 2008)**Department of
Corrections****Memo**

To: Robert Hofmann, Commissioner
From: Lisa Menard, Director- Policy Development
Date: August 12, 2008
Re: Program Completion Directive

At your request I reviewed the Program Completion directive again. The purpose of this rather complicated directive is to advise staff the best level of supervision once the case reaches its presumptive release date. Although the directive sets timelines for presumptive completion it does not require the case be recommended to the Court for discharge.

Per directive the presumptive completion date for offenders participating in community-based sex offender treatment is 42 months. The directive instructs the probation officer to complete a reassessment at this point and that if none of the factors below are present in the case then “the CSS shall discharge the case from the assigned “risk management program.”²”

Reasons to continue a case in “Risk Management Program”

1. Pending violation of probation or new criminal charges
2. Offender has not fulfilled specific court requirements or conditions related to criminogenic needs or has not completed program completion criteria for the assigned risk management program
3. A history of violation behavior or new criminal convictions during participation in the program
4. Substantial non-compliance with, or resistance to, supervision
5. Offender’s current situation indicates a significant risk to public safety that can be met in his/her current program

The directive also states that after the probation officer completes the mandatory assessment in accordance with this directive, there are three options available. They are:

1. Request a discharge from probation, or
2. Continue the offender in the risk management program, or
3. Transfer the offender to the probation program in the CRSU³ (now “responsive supervision” officer) if the offender owes fines, fees or restitution; if other

² The risk management program is not a legal status but rather a status of supervision and treatment for a specific type of offender. This type of supervision, includes, but is not limited to, conversations with the offender, his family and support groups regarding his offense(s) and risk factors as well as knowledge of and monitoring the offender’s relapse prevention plan.

conditions of probation preclude discharge from probation, if a request for discharge has been denied by the court.

In summary, it is my opinion, and that of the Field Services Executive, that the directive requires assessment of the best level of supervision to include discharge, but does not require a recommendation to the Court for discharge.

Clearly in the case of Michael Jacques the options available were:

1. Recommend discharge to the Court
2. Oppose discharge so as to continue on probation. Factors present (as listed on page 1) that could have been considered were:
 - Offender's current situation indicates a significant risk to public safety that can be met in his/her current program or possibly, though less compelling;
 - A history of violation behavior or new criminal convictions during participation in the program.

³ Per the directive transferring a case to Court and Reparative Services Unit (CRSU) should not be done for the purpose of receiving a lower level of supervision. The purpose of the CRSU was to provide "monitoring" of compliance with conditions. This means that if it came to a probation officer's attention they would address any violation behavior but would not be offering supervision for purposes of risk management.

Appendix 2: Directive 425.02 – Program Completion (in force since 1998)

**STATE OF VERMONT
AGENCY OF HUMAN SERVICES
DEPARTMENT OF CORRECTIONS**

Directive: 425.01

Subject: Program Completion
Effective Date: September 28, 1998 **Review and Re-Issue Date:**
Supersedes: 2/15/96 APA Rule Number:
Recommended for approval by: **Authorized By:**

Signature	Date	Signature	Date
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Authority:
VSA, Title 28, Section 102 & 103
Purpose:

Applicability/Accessibility
All DOC staff.

Directive
In its Sentencing Options Manual, the Department defines the duration of the programs and services offered in the risk management track. This directive:
Establishes the presumptive completion dates from risk management probation and parole programs, intermediate sanction programs and furlough re-integration program.
Establishes a process to assess offenders who have reached presumptive release dates to determine if they should remain in their assigned risk management program.
Superintendents of Community Correctional Service Centers and CRSU Supervisors/Managers will ensure that all staff are trained in this directive and will establish procedures to ensure that program completion assessments are being completed in a timely manner.

Assessing Offenders in all Risk Management Programs When They Reach Their Presumptive Release Date:

During the month an offender reaches his/her presumptive release date from the risk management program, the assigned Correctional Services Specialist (CSS) will assess the case. The assessment will serve two purposes:

4.3.1.1 To determine if there are factors present in the case that indicate a need for the offender to continue in the assigned risk management program.

4.3.1.2 To determine if the offender has addressed his/her criminogenic needs while in the program.

4.3.2 In completing the assessment, the CSS will review the case history against the criteria listed below. If none of these factors are present, the CSS shall discharge the case from the assigned risk management program. If a CSS feels there is a compelling reason to keep the offender in the assigned risk management program beyond the presumptive completion date, the CSS will staff the case with the supervisor who will approve or deny the request.

4.3.2 After assessing the offender's case, the CSS will complete the Program Completion Assessment Form, (425.02-A). The form will be kept in the file. ,

Re-assessing Offenders Continued in a Risk Management Program:

If the offender is continued in the assigned risk management program, he/she will be reassessed at least every three months using the process described above.

Criteria for Retaining an Offender in Current Risk Management Program:

If either of the two criteria listed below can be applied to the offender's case, the offender must be retained in the current risk management program.

4.5.1.1 Pending violations of probation/parole/furlough/SCS or new criminal charges.

4.5.1.2 Offender has not fulfilled specific court/parole board/DOC requirements or conditions related to criminogenic needs or has not completed program completion criteria for the assigned risk management program.

4.5.2 If any of the three criteria listed below can be applied to the offender's case, the Supervisor/Manager may authorize continuing the offender in the assigned risk management program:

4.5.2.1 A history of violation behavior or new criminal convictions during participation in the program.

4.5.2.1 Substantial non-compliance with or resistance to supervision.

4.5.2.3 Offender's current situation indicates a significant risk to public safety that can be met in his/her current risk management program.

4.6 Assessing Offenders In Risk Management Programs Prior to Presumptive Release

Date:

4.6.1 The CSS may assess offenders in risk management programs before they reach their presumptive completion date if he/she believes the offender has completed the risk management program, case plan objectives and/or court requirements in an exemplary manner. Offenders who have violations of conditions or new crimes pending cannot be assessed prior to reaching their presumptive release date.

4.7 Risk Management Probation:

4.7.1 Offenders assigned to the Risk Management Probation Program will remain in the program for at least six months and no longer than 18 months, irrespective of the length of the suspended sentence. Except where the above rule applies, the presumptive completion date for offenders in the Risk Management Probation Program occurs at one half of the minimum suspended sentence (or one half the entire sentence if a flat sentence).

4.7.2 After completing the assessment in accordance with this directive (pg. 2, Assessing All Offenders In All Risk Management Programs When They Reach Their Presumptive Release Date), there are three options available:

4.7.2.1 Request a discharge from probation; or

4.7.2.2 Continue the offender in the Risk Management Probation Program; or

4.7.2.3 Transfer the offender to the probation program in the CRSU if the offender owes' fines, fees or restitution, if other conditions of probation preclude discharge from probation, if a request to discharge a case has been denied by the court.

4.8 Transferring Cases to the Probation Program in CRSU:

4.8.1 Because offenders in the probation program do not receive supervision, probation cases should be transferred to CRSU for only two reasons:

4.8.1.1 A petition to discharge the case from probation has been filed and rejected by the court.

4.8.1.2 The offender has fines, restitution, financial or technical obligations which prevents the supervising CSS from requesting a discharge from probation.

4.8.2 Probation cases should not be transferred to the probation program in a CRSU for the purpose of receiving supervision at a lower level than they received in the Risk Management Probation Program. Monitoring of conditions is the only service provided in the probation program in the CRSU. It is recommended that when transferring a case, which has been in Risk Management Probation, to the probation program in a CRSU that conditions requiring active supervision by a CSS be struck via a modification of probation order.

Risk Management Probation Program for Sex Offenders:

The presumptive completion date for sex offenders in the Risk Management Probation Program will be 42 months. The intensive clinical portion of the program is designed to be two years in duration and the maintenance portion is a year for completion.

During the intensive phase, the offender will participate in a weekly specialized sex offender group. Completion of five treatment goals will be required before completion of the intensive clinical phase. The treatment goals are as follows:

4.9.2.1 Accept responsibility and modify cognitive distortions,

4.9.2.2 develop victim empathy,

4.9.2.3 control sexual arousal,

4.9.2.4 improve social competence, and

4.9.2.5 develop relapse prevention skills.

4.9.3 The treatment provider will submit a written assessment of the offender's progress to the department after the first 12 months of treatment and every six months thereafter. In the report, the treatment provider will assess the offender's progress with the criteria described above. In the written assessment report (after two years of treatment), the service provider will describe the offender's progress with treatment goals.

The Probation Program for Domestic Abusers:

The presumptive release date for offenders in the probation program for domestic abusers follows the same rules as the Risk Management Probation/Parole Program, except that an offender cannot be discharged from the Domestic Abuser Probation Program until they have completed the Domestic Abuse Education Program as defined in the "Vermont Department of Corrections Statewide Standards for Domestic Abuse Intervention."

Parolees on Risk Management Parole:

The presumptive completion date for high and medium high parolees supervised by the CCSC is one year from the parole date. Procedures for assessment described in the Risk Management Probation Program section above will apply except as it applies to requesting a discharge as parolees must remain on the department's caseload until their sentence expires.

Sex Offenders on Risk Management Parole:

Sex offenders supervised under risk management parole will be supervised in the same manner as probationers, as outlined above in the section discussing sex offenders on risk management probation. .

Intensive Domestic Abuse Program (IDAP):

The presumptive release date for offenders placed in IDAP is 15 months from entry. For other program completion issues, offenders in IDAP are treated the same as offenders in other risk management intermediate sanctions programs.

Risk Management Intermediate Sanctions:

The presumptive release date for risk management intermediate sanctions programs is nine months. The intensive phase of the intermediate sanctions program is six months. All offenders who complete the intensive phase of the program will be in an aftercare phase for three months. When an offender has completed the risk management intermediate sanctions program, his/her case will be transferred to other risk management programs as follows:

4.15.1.1 For Offenders on Pre-approved Furlough:

4.15.1.1.1 If the offender has not reached his/her minimum sentence, he/she will be placed in the FR program and remain in that program until paroled.

4.15.1.1.2 After the offender is paroled, he/she will be placed in the Risk Management Probation/Parole Program and remain in that program for at least one year after being paroled.

4.15.1.2 For Offenders on Supervised Community Sentence:

4.15.1.2.1 If an offender has not reached his/her minimum sentence, he/she will be placed in the FR Program until they reach their minimum release date.

4.15.1.2.2 Once an offender who has completed the Risk Management Intermediate Program reaches their minimum sentence, the CSS can either request a discharge from SCS or recommend that the offender be placed on parole. If an offender is not discharged from SCS after reaching his/her minimum sentence, he/her will be transferred to the risk management probation and parole program. The presumptive release dates for the risk management parole program will apply.

Assessment Criteria for the Risk Management Intermediate Sanction Program:

The Director of Correctional Services will establish and publish program completion criteria for each of the risk management intermediate sanctions programs. The general criteria for completion of risk management intermediate sanctions programs are:

4.16.1.1 The offender must have been in the intensive phase of the program for at least six months (12 months for IDAP).

4.16.1.2 The offender must have participated successfully in the program for three consecutive months prior to being considered for program completion. Successful participation must include:

4.16.1.2.1 Attending a substantial proportion of scheduled meetings and activities offered in the program.

4.16.1.2.2 Acting appropriately in scheduled meetings and activities.

4.16.1.2.3 Completing assignments and other specific program expectations placed on them as part of their participation in the program.

4.16.1.2.4 Meeting goals for criminogenic needs established in the case plan. (This includes Restart requirements.)

4.16.1.3 The offender must not have a new crime, rule infraction or program violation pending.

The Furlough Reintegration Program (FR):

4.17.1 The presumptive release date for offenders on furlough reintegration is six months.

Recommendation for Parole on Offenders in the Furlough Reintegration Program:

An offender who reaches his/her minimum release date during the FR program may be recommended for parole if the CSS believes that the offender meets the eligibility criteria outlined in title 28, chapter 7, section 501, "Eligibility For Parole." If the Board does not parole the offender, he/she will remain in the FR program at least until they reach his/her presumptive release date.

Transfer of Offenders to Other Risk Management Program Who Have Successfully Completed the FR Program but who are not Paroled by the Board:

4.20.1 An offender who has completed the FR program successfully and who has been denied parole by the board will automatically be retained in the FR program for six (6) additional months after denial of parole (unless paroled during that time). After six months, the case will be reassessed. If the offender meets the criteria for completion of the FR Program, the case will be to the Risk Management Probation and Parole Program. The offender will remain in this program until paroled. Once paroled the program completion criteria for parole will be in effect.

Completion Criteria for the FR Program:

Must have a suitable residence and job

Must have been free of DRs, violations of furlough for at least three consecutive months prior to the assessment/re-assessment.

Must not have any crimes pending

Must have completed all conditions of furlough related to his/her criminogenic needs.

Completion Criteria in Program Description:

In each program description, the program will articulate the specific requirements for completion of the local program. (See Program Descriptions Format and Instructions).

Training Method

5.1

Quality Assurance Processes

6.1

Financial Impact:

References

Responsible Director and Draft Participants

Appendix 3: Interim revision memo - sex offender release and supervision practices (August 11, 2008)

Memo

To: All Staff

From: Robert D. Hofmann, Commissioner

Date: August 11, 2008

Re: Interim revision memo - sex offender release and supervision practices

In order to provide further direction to my memo of Friday, 7/18/08, attached is an interim revision memo regarding offenders convicted of a sex offense, or the affidavit of the underlying offense supports any elements of a sex offense, which will be in effect until a review of pertinent directives is completed and revised directives are issued.

Additionally, I have received questions from our colleagues which I include because you may find the answers beneficial. If you have other questions, please don't hesitate to ask.

Q: If an offender is returned from pre-approved furlough, conditional re-entry or reintegration furlough status by a field office on a "notice of suspension" and they are serving a sentence for a sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense, can we allow them back into the community without going through a central staffing?

A: If the violation is sustained through a due process hearing, the offender would then be under the same requirements as referenced in this Interim Revision Memo and would need to be referred to a special central sex offender review team.

Q: We currently have sex offenders at our facility who are past their minimum release date and the only release obstacles appear related to finding housing. Many of these inmates are at a virtual standstill in developing any residence that shows promise. What are the Central Office expectations from us with regards to these offenders and the case staffing requirement outlined in the interim procedure? Is there certain paperwork that needs to be filed?

A: If the offender is in compliance with their case-plan and the only outstanding issue is securing a residence these offenders should be referred to the special central sex offender review team so that a determination regarding release can be made in advance.

Q: What about Interstate Compact cases requesting transfer to VT?

A: We must follow the rules of the Compact for all transfer requests. The process includes an investigation request. All aspects of the proposed plan will be investigated and the investigating officer will recommend any special conditions that would be imposed on an offender currently residing in Vermont supervised for a similar offense.

Q: Do we continue to release to probation those offenders serving a split sentence?

A: These cases should be reviewed by co-case managers at least 90 days prior to release. If the offender is in compliance with conditions of probation, the court order (mitt, probation order) must be followed, and thus they must be released. If they are not in compliance (treatment completion, satisfactory residence if ordered), a violation of probation should be filed with the court.

Q: How do we request a staffing for these offenders?

A: Co-case managers should send requests and all supporting information (assessments, affidavit, criminal record check, presentence investigation, treatment summary, institutional and community supervision history, victim information and proposed release plan at a minimum) to the Assistant Director of Classification Management.

Thank you for your efforts on this difficult set of issues.

Appendix 4: Memo from Rob Hofmann to all DOC staff (July 21, 2008)

Department of Corrections

Interim Revision Memo

To: All Staff
From: Robert D. Hofmann, Commissioner
Date: July 21, 2008

Effective immediately, following are changes to current administrative directives.

Directive 371.15 - Conditional Re-entry: This directive is no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry status or for a positive recommendation from the Department to parole status without a central office case staffing. A central case-staffing request and all supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Direction 371.26 - Reintegration Furlough: This directive is no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry or reintegration status, and shall not receive a positive recommendation from the Department to parole status without a central office case-staffing. A central case-staffing request and all supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Directive 371.05 - Offender Responsibility Planning: Attachment 2, ORP Case Plan Instructions for Staff: Offender summary section, third bullet regarding projected movement date, and Department of Corrections Expectations section, are no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry status or for a positive recommendation from the Department to parole status without a central office case-staffing. A central case-staffing request and all supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Directive 371.08 - Classification of Offenders Convicted of Listed Offenses: Section 2.1, Section 4.3, and Section 4.6 of this directive are no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry status or for a positive recommendation from the Department to parole status without a central office case-staffing. A central case-staffing request and all supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Directive 371.12 - Program Participation Requirements for Offenders Convicted of Listed Offenses: Section 4.3, level summary table, of this directive is no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry status or for a positive recommendation from the Department to parole status without a central office case-staffing. A central case-staffing request and all

supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Directive 371.24 - Classification of Offenders Convicted of Non-Listed Offenses: Section 2.1 and Section 4.2 of this directive are no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry status or for a positive recommendation from the Department to parole status without a central office case-staffing. A central case-staffing request and all supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Directive 371.25 - Parole Reviews and Recommendations: Section 4.5 and Appendix I of this directive are no longer applicable to offenders serving a sentence in a correctional facility for a conviction of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. At this time these offenders are not eligible for release to the community on conditional re-entry status or for a positive recommendation from the Department to parole status without a central office case-staffing. A central case-staffing request and all supporting documentation must be sent to the Assistant Director of Classification Management at least 90 days prior to the anticipated release date.

Directive 425.02 - Program Completion: This directive is no longer applicable to offenders convicted of any sex offense, or if the affidavit of the underlying offense provided by the court after adjudication contains information that describes any elements of a sexual offense. Department staff will not recommend or support a discharge from probation for the above referenced offenders.

Appendix 5: High Risk Sex Offenders in the Community

Offenders Determined High Risk for Placement on the Internet Registry					
Offender	Date Determined	Current Status (8/19/08)	Charge	Sentence	Date of Release
MB	4/7/2006	Probation	L&L w/Child	Period of Incarc.	4/7/2006
JC	7/14/2005	Parole	Sexual Assault/Minor	2y-12Y	10/11/2002
JC	4/19/2007	Reentry	Sexual Assault/Minor	2Y-10Y	8/12/2008
TC	7/27/2006	Reentry	Sexual Assault/Burglary	5Y-20Y	4/11/2008
WC	4/19/2007	Reentry	Sexual Assault	6M-3Y	6/5/2007
FC	1/25/2006	Probation	Offense Not Available	18 M/Split	7/2/2007
RM	6/21/2007	Reentry	Lewd & Lascivious	32M - 7Y	6/2/2008
RM	8/1/2005	Probation	Sexual Assault/VAPO	Split	2/23/2004
MM	7/17/2008	Probation	Prob. Acts/L&L w/Child	Split	1/20/2005
EN	7/14/2005	Probation	Agg. Sex. Assault/VAPO	Split	9/7/2007
PP	6/30/2005	Probation	L&L (Sex Off. Reg. Viol/FIPO/FP)	Split	3/18/2008
HP	7/14/2005	Probation	Att. Kid/Proh. Acts	Standard	12/17/2004
PR	12/21/2006	Reentry	L&L 2Cts, (DC, BURG, AGG. Assault, SA)	5Y-16Y	5/7/2008
JS	9/21/2006	Probation	Sex. Assault/Minor	Standard	8/5/2008
ET	9/21/2006	Reentry	Sex. Assault/Minor 2Cts.	14M-20Y	2/12/2008
ST	7/27/2006	Reentry	L&L w/Child	2-10Y	3/18/2008
SW	3/1/2007	Probation	Lewd Act	Split	3/25/2007
LW	8/23/2007	Probation	L&L w/Child	Standard	10/8/2007
CW	6/21/2007	Probation	Att.Sex. Assault/Agg. Assault	Split	6/6/2008
RW	11/16/2006	Reentry	Sex. Assault/Minor - 4Cts	4-25Y	10/11/2007
RA	2/2/2006	Deceased			
JR	7/14/2008	Meets Criteria - Review 1 Year			
SA	2/2/2006	Incarcerated			
DA	12/15/2005	Released to US Marshalls - 5/06			
FB	8/11/2005	Satisfactory Discharge 8/07			
LC	3/16/2006	Max from Jail 3/06			
MD	7/14/2005	Discharged from Supervision			
KF	8/11/2005	Satisfactory Discharge 11/07			
PG	10/19/2006	Max from Jail 4/07			
JG	7/14/2005	Incarc. 7/08			
TG	10/19/2006	Released to Virginia 7/07			
LG	10/19/2006	Max from Jail 8/07			
JG	6/30/2005	Incarcerated 7/08			
PG	7/14/2005	Satisfactory Discharge 9/07			
RH	7/27/2006	Max from Jail 8/06			
MH	7/14/2005	Satisfactory Discharge 5/06			
AJ	8/11/2005	Unsatisfactory Discharge 12/05			
EJ	8/11/2005	Max from Jail 6/07			
MM	6/30/2005	Satisfactory Discharge 4/08			
LN	5/18/2006	Max from Jail 3/07			
TP	2/23/2006	Max from Jail 4/06			
DR	2/2/2006	Max from Jail 4/06			
MS	6/30/2005	Parole Expired 2/06			
JV	1/17/2008	Incarcerated 7/08			
PW	8/1/2005	Satisfactory Discharge 4/08			
SZ	5/18/2006	Max from Jail 8/07			

Appendix 6: # 05-013 Administrative Rule on Determination of High Risk and Failure to Comply with Treatment for Purposes of Sex Offender Internet Registry (6/18/2005)

1. AUTHORITY: 13 VSA Chapter 167, Subchapter 3, Sex Offender Registration; Title 13, §5401 to 5412; Act No. 157 of the 2003-2004 legislative session. The law requires sex offenders convicted in the State of Vermont after July 1, 1996, as well as those convicted in any state before July 1, 1996 who were supervised in the community by the Commissioner of Corrections as of July 1, 1996, to register with the Sex Offender Registry. The Sex Offender Registry has been established at the Vermont Criminal Information Center (VCIC) in the Department of Public Safety

The law also requires, for purposes of the Sex Offender Internet Registry, that the Department of Corrections determine if an offender is high risk and in compliance or non-compliance with Department of Corrections' treatment expectations.

2. PURPOSE: To establish the process for the designation of high risk offenders and determination of offenders' compliance or lack of compliance with DOC sex offender treatment expectations.

3. DEFINITIONS

3.1 Commissioner: Commissioner of Corrections.

3.2 DOC: The Department of Corrections.

3.3 Department: The Department of Public Safety (includes VCIC)

3.4 Risk: statutorily defined as the degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual offense.

3.5 High Risk: statutorily defined as a high degree of dangerousness that a sex offender poses to others. Dangerousness includes the probability of a sexual offense.

3.6 Designation of High Risk: indicates the Department of Corrections' belief that the offender poses a high degree of dangerousness to others.

Sex Offender: "Sex offender" means sex offender as defined in Vermont statute; reflected in 13 VSA chapter 167, subchapter 3, §5401 (10) as follows:

3.7.1. A person who is convicted of any of the following offenses:

sexual assault as defined in 13 VSA §3252;

aggravated sexual assault as defined in 13 VSA §3253;

lewd and lascivious conduct as defined in 13 VSA §2601;

sexual activity by a care giver as defined in 13 VSA §6913(d);

an attempt to commit any offense listed in this subdivision.

3.7.2. A person who is convicted of any of the following offenses against a victim who is a minor: any offense listed in subdivision (3.7.1) above;

kidnapping as defined in 13 VSA §2405(a)(1)(D);

lewd and lascivious conduct with a child as defined in 13 VSA §2602;

white slave traffic as defined in 13 VSA §2635

sexual exploitation of children as defined in 13 VSA §2822-2828 chapter 64;

procurement or solicitation as defined in 13 VSA §2632(a)(6);or

an attempt to commit any offense listed in this subdivision; except that for purposes of this subdivision, conduct which is criminal only because of the age of the victim shall not be considered a criminal offense if the perpetrator is under the age of 18.

3.7.3 A person who takes up residence within this state, other than within a correctional facility, and who has been convicted in any jurisdiction within the United States, including a state territory, commonwealth, the District of Columbia or military court, for a sex crime the elements of which would constitute a crime under subdivision (10) (a) or (b) of this section if committed in this state.

3.7.4 A visitor to Vermont who is in this state for a period of at least 10 consecutive days or 30 days during any calendar year and who has been convicted in any jurisdiction of the United States,

including a state, territory, commonwealth, the District of Columbia, or military, federal or tribal court, for a sex crime the elements of which would constitute a crime under this section if committed in this state.

Sex Offender Internet Registry: The sex offender registry is posted to the internet maintained by the Vermont Crime Information Center (VCIC) at the Department of Public Safety.

3.9 Sex Offender Review Committee: A committee of five (5) people appointed by the Commissioner of Corrections to determine if referred cases meet the designation of high-risk established in statute for purposes of internet registration.

3.10 Sex Offender Treatment Programs: Treatment programs that are contracted by DOC to provide sex offender treatment.

4. DEPARTMENT OF CORRECTIONS DESIGNATION OF A HIGH-RISK SEX OFFENDER

The Department of Corrections (DOC) may designate an offender as high risk, as defined in 13 VSA § 5401(16). For purposes of the Sex Offender Internet Registry, the Department must determine, by a preponderance of the evidence, that the offender poses a high degree of dangerousness to others. The DOC will assure that the assessment instruments used to determine sex offender risk reflect current best practice. This determination is made through the following processes for different categories of offenders:

4.1 Offenders who are incarcerated: No later than 24 weeks prior to an offender's anticipated release date, DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.1.1 In making this initial referral to the Committee, DOC staff shall utilize current objective risk assessment instruments to identify or exclude a sex offender as high risk. DOC staff may also consider other appropriate factors relevant to the offender's risk to re-offend.

4.1.2 "Other appropriate factors" may include, but are not limited to, offender's age, physical conditions (such as sickness, age, etc.) pattern of sexual offending, nature of sex offense(s), pattern of cooperation while under correctional supervision and recent behavior, recent threats, or expressions of intent to commit additional offenses.

4.2 Offenders under Community Supervision:

4.2.1 Offenders Sentenced in Vermont : Within 2 weeks and no later than 4 weeks of assignment DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.2.2 Offenders transferred to community supervision through the Interstate Compact. Within 2 weeks and no later than 4 weeks of receiving all necessary paperwork DOC staff will refer, in writing, sex offenders on their caseloads who they evaluate as high risk to the Sex Offender Review Committee (Committee) described in Section (5.4) below.

4.2.2.1 In making this initial referral to the Committee, DOC staff shall utilize current objective risk assessment instruments to identify or exclude a sex offender as high risk. DOC staff may also consider other appropriate factors relevant to the offender's risk to re-offend.

4.2.2.2 "Other appropriate factors" may include, but are not limited to, offender's age, physical conditions (such as sickness, age, etc.) pattern of sexual offending, nature of sex offense(s), pattern of cooperation while under correctional supervision and recent behavior, recent threats, or expressions of intent to commit additional offenses.

4.3 Sex offenders moving to Vermont: If a sex offender convicted in another state but residing in Vermont is required to register with the Department of Public Safety, the Department of Public Safety may refer an offender to the Sex Offender Review Committee for a determination of whether the offender should be classified as high risk for purposes of the Sex Offender Internet Registry.

4.3.1 The Department of Public Safety will forward all necessary paperwork regarding the out of state conviction(s) including, but not limited to, affidavits and record checks.

4.3.2 Within 2 weeks and no later than 4 weeks of receiving all necessary paperwork, the Sex Offender Review Committee, will make a determination of high risk

4.4 Sex Offender Review Committee Review: No later than 4 weeks after receipt of the referral from DOC staff, the Sex Offender Review Committee will make a determination as to whether a sex offender will be designated as high risk for purposes of the Sex Offender Internet Registry. The Committee will utilize the objective risk assessment instruments, and any other appropriate factors it deems relevant, in its determination.

4.4.1 The Committee must determine by a preponderance of the evidence that the offender poses a high degree of dangerousness to others. "Dangerousness" includes the probability that the offender will commit a new sexual offense. The Committee, in its written decision, must make specific findings of fact to support its designation of an offender as high risk for purposes of the Sex Offender Internet Registry.

4.4.2 Written notification of the offender's designation of high risk will be sent to the DOC staff, the offender, and the Department of Public Safety no later than 5 work days after such a determination has been made. This shall serve as notification to the Department of Public Safety that a sex offender has been designated high risk for purposes of the sex offender internet registry.

4.4.3 Written notification of the Committee's decision – in cases where an offender has been determined to be high risk – will be sent to the victim of the offender upon request of the victim.

4.5 Administrative appeal process. An offender shall have an opportunity to appeal any determination made by the Committee.

4.5.1 An offender must make a written appeal to the Committee no later than 30 days of receipt of the Committee's decision.

4.5.2 No later than 30 days after receipt of such appeal, the Committee will conduct a hearing to determine the designation of high risk. The offender shall receive at least a 7 work day notice of the time, date and location of the hearing. The hearing shall be conducted pursuant to policies established by the Committee for such purposes, which shall give the offender and his or her attorney an opportunity to be heard and present relevant evidence. Such hearings may be conducted via video or telephone conferencing.

4.5.3 The Committee shall issue a written decision no later than 14 days after the hearing. A copy of this decision shall be forwarded to the offender, the Department of Public Safety, the victim - if written notice was provided under Section 5.4.3 above, and the offender's supervising caseworker within 5 work days of such decision. This decision shall serve as notification to the Department of Public Safety that a sex offender has been designated high risk for purposes of the Sex Offender Internet Registry.

4.6 Petitioning to change a high-risk designation. An offender who has been designated high risk and who has exhausted his or her administrative remedies may petition the Sex Offender Review Committee for a change in his or her high-risk designation once every two (2) years, from the date the administrative remedies have been exhausted. Upon receipt of the petition, the Committee shall follow the same process and time frames as provided in subsections 5.4 and 5.5.

4.7 Superior Court review. Upon exhausting his or her administrative remedies, an offender who is designated as high-risk may appeal to superior court as provided in 13 VSA § 5411b(b).

5. SEX OFFENDER REVIEW COMMITTEE:

The DOC Commissioner shall designate all members of the Sex Offender Review Committee.

5.1 The Committee shall consist of five (5) members, composed of at least the Director of the DOC sex offender treatment program, the DOC Program Executive, a member from the Vermont Criminal Information Center, the Director of DOC or other Victim Service's and a Vermont Sex Offender Treatment Provider.

5.1.1 Each member shall serve a one-year term, which the DOC Commissioner may renew.

5.2 The Committee shall make its determinations based upon a majority vote.

5.3 The Committee may adopt procedures for its operation as necessary to comply with statute and DOC policy.

6. NON-COMPLIANCE WITH DOC-RECOMMENDED SEX OFFENDER TREATMENT

The Department of Corrections will assure that compliance criteria are based on current best practice. Non-compliance standards only apply to offenders who did not comply with treatment or were ineligible for treatment AFTER March 1, 2005.

6.1 Non-compliance with sex offender treatment is defined as:

6.1.1 Refusing treatment recommended by the DOC; or

6.1.2 Being ineligible for treatment by failing to meet the DOC sex offender treatment program admissions criteria; or

6.1.3 Failing to remain in and/or complete a sex offender treatment program recommended by the DOC.

6.2 Determination of Treatment Non-compliance.

6.2.1 **Offenders released from confinement.** DOC staff shall determine if the offender is in compliance with a treatment program recommended by DOC no less than 90 working days prior to release. DOC staff will forward the non-compliance status of an offender to the Department of Public Safety along with the **Notification of Requirement to Register Form** and the **Vermont Sex Offender Registry Registration Form**.

6.2.2 Offenders under DOC supervision, but not incarcerated.

6.2.2.1 Newly Sentenced: Newly sentenced offenders in the community who are initiating contact with a treatment provider will be given up to 60 days for the treatment provider to determine if the individual is engaged and in compliance with the recommended treatment.

6.2.2.2 Currently on Community Supervision: Within 30 days of this rule taking effect, all supervising caseworkers of offenders currently on community supervision will determine the level of compliance with recommended treatment for those who have not already been assessed.

6.2.2.3 DOC staff will forward the non-compliance status of an offender to the Department of Public Safety no later than 5 work days after such a determination.

6.3 Achieving Treatment Compliance: An offender who has previously been determined to be in non-compliance with a sex offender program recommended by the DOC can come into

compliance. This would occur upon successful participation in a sex offender treatment program (recommended by the DOC) for a minimum of 12 consecutive months. Upon meeting this requirement, the offender can request a change in status. Within 30 days of meeting the treatment compliance requirement, the offender must submit a letter from his/her sex offender treatment provider verifying the treatment compliance requirement. The offender shall submit this letter to the DOC.

6.3.1 No later than two (2) weeks after receipt of such a letter, the DOC shall make a written determination of whether an offender has come into compliance.

6.3.2 If an offender's status has changed while under DOC supervision, the DOC shall forward to the Department of Public Safety a written notice of the change in status no later than 5 work days after such a determination has been made.

6.4 Offenders no longer under any DOC supervision. An offender who has been determined to be in non-compliance with a DOC-recommended sex offender treatment program, and is no longer under DOC supervision, may petition the Sex Offender Review Committee to change his or her non-compliance status only upon his or her completion of a treatment program recommended by the DOC. The process shall be as follows:

6.4.1 An offender must first complete a sex offender treatment program recommended by the DOC.

6.4.2 Upon completion of such a program, if the offender requests a change in status, he or she shall submit a letter to the Sex Offender Review Committee from his or her sex offender treatment provider verifying the treatment compliance requirement.

6.4.3 No later than 30 days after receipt of such a letter, the Sex Offender Review Committee shall make a written determination of whether the offender has come into compliance.

6.4.4 Within 5 work days of such decision, the Sex Offender Review Committee shall send written notification to the offender and the Department of Public Safety.

Superior Court review. Upon exhausting his or her administrative remedies, an offender who is determined to be in non-compliance with a sex offender program recommended by the DOC may appeal the Department's determination to superior court as provided in 13 VSA §5411b(b).

**Appendix 7: Memo on Interim Procedure (9/9/2008)
(complete procedure is available)**

To: All Staff

From: Lisa Menard, Director- Policy Development

Date: September 9, 2008

Re: Interim Procedure - #255.01 Sex Offender Registry and Internet Registry
Determinations

Attached you will find an Interim Procedure #255.01, *Sex Offender Registry and Internet Registry Determinations*. This interim procedure is effective September 09, 2008. Please replace any copies you have of the previous directive dated August 29, 2005.

While all staff should be familiar with Departmental Directives, this Interim Procedure is most applicable to: Probation and Parole Officers, Caseworkers, Casework Supervisors, Living Unit Supervisors, District Managers and Facility Superintendents. Superintendents and District Managers should ensure that these staff members read this interim procedure and begin utilizing it upon its effective date.

The purpose of this interim procedure is to ensure that a sex offender's treatment status, compliant or non-compliant, is known by the Vermont Criminal Information Center (VCIC) so that the Internet Registry can be as accurate as possible. It is also to ensure that offenders whose sentence for a sexual offense has expired are aware of their responsibilities in regards to the Internet Registry.

The following changes have been made:

- Section 6- now requires supervisory approval and signature when an over or under-ride of the high risk designation is recommended. A signature line was added to the pertinent form.
- Section 8 a & b- adds an attachment so that compliance with treatment can be documented and sent to the Vermont Criminal Information Center.
- Section 8 d- differentiates the responsibilities of offenders who have been determined compliant or non-compliant AND are no longer under DOC supervision.
- Section 8 d - adds an attachment that sex offenders need to complete in order to be considered for compliance status.
- Section 8 d- added direction regarding compliance status for offenders who have completed their sentence for a sexual offense but remain under supervision for a non-sexual offense.

As always, if you have any questions please e-mail or call me.