

1.4.B.9 Sexual Behavior Issue Review

I Policy Index:



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Office of Primary Responsibility: DOC Administration

II Policy:

The Department of Corrections (DOC) will assess all offenders received within a DOC institution to identify those with sexual behavior issues.

III Definitions:

Offender:

For the purposes of this policy, any offender in the custody of the Department of Corrections adult institutional system or a parolee under parole or suspended sentence supervision of Parole Services.

Sexual Behavior Issue:

A history of sexually abusive or violent behavior, including sexually abusive or violent behavior while incarcerated, or factual basis of a crime for which the offender was charged or convicted/adjudicated that involves sexual violence or sexual abuse. An acquittal of a sex offense by itself cannot be the basis for determining a sexual behavior issue does not exist. A "sex offense" is any crime listed within SDCL § 22-24B-1, or any crime defined by law as a sex offense within the jurisdiction from which the crime was committed.

Sexual Behavior Issue Assessment:

A clinical interview with an inmate as part of a sexual behavioral issue review, to include review of the following: pre-sentence investigation, psychosexual reports, Minnesota Sex Offender Screening Tool – Revised (MnSOST-R), Static 99, ABLE screening, results of sexual behavior, monitor or specific issue polygraph examinations and STOP file information.

Sexual Behavior Issue Review:

A review hearing conducted by at least three (3) staff who are trained to determine if an offender has a current or past sexual behavior issue.

Sexual Behavior Issue Review Staff:

At least one case manager or unit manager (may be from the admission and orientation (A&O) unit) and at least one sex offender management program (SOMP) staff member.

Sex Offender:

For the purpose of this policy, a sex offender is any adult offender convicted or adjudicated of a felony sex crime, as listed in SDCL § [22-24B-1](#), regardless of the offense date or date of conviction; or an offender serving a current prison term as a condition of a suspended imposition of sentence for the commission of a sex crime; or an offender identified as having a Sexual Behavior Issue (SBI) by SOMP staff (designated by sexual behavior code of 2); or an offender convicted of any offense requiring sex offender registration.

Sexual Violence or Sexual Abuse:

Behavior ranging from battery, mutilation, torture, assault to intentional, unwanted sexual conduct. Can be verbal, written, visual or physical. A person under the age of sixteen (16) cannot consent to sexual behavior with an adult, therefore by definition, any sexual conduct with a person under the age of sixteen (16) is unwanted sexual conduct, which constitutes sexual abuse.

Special Treatment of Perpetrators (STOP) Program:

The sex offender treatment program offered by the DOC to inmates meeting program criteria who are housed in an adult facility. This consists of therapy, educational treatment and relapse prevention. Usually inmate participation is required for one (1) year.

Working Day:

A standard workweek day, Monday through Friday, except for recognized state holidays, recognized national holidays and any other special holidays declared by the Governor of South Dakota or the President of the United States.

IV Procedures:**1. Information and Criteria:**

- A. New admission inmates will have their records and available information/documentation reviewed while housed in the admission and orientation (A&O). A&O unit staff will determine if there is sufficient information to support the inmate may have a history of committing sexual abuse or sexual violence. Inmates meeting the criteria will be referred for a sexual behavior issue (SBI) assessment (See *Sources of Records to Be Reviewed*, [Attachment 1](#)).
- B. For the purpose of this policy, inmates convicted or adjudicated of a sex offense are sex offenders. Sex offenders are not subject to the SBI review process. Sex offenders are determined to have a sexual behavior issue and are subject to programming and conditions as required by Sex Offender Management Program (SOMP) staff (See DOC policy 1.4.A.3 [Sex Offender Management Program](#)).
- C. Information and documentation that supports an inmate meets the criteria for having a sexual behavior issue may be discovered any time while the inmate is in DOC custody or released to parole supervision. Information that may support the existence of a sexual behavior issue includes the following:
 1. LSI-R assessment;
 2. Pre-sentence investigation (PSI);
 3. Psychosexual assessment;
 4. MnSoST-R;
 5. STATIC 99;
 6. ABEL screen;
 7. clinical interview;

8. polygraph reports;
 9. P-SCAN;
 10. mental health assessment;
 11. STOP status; and
 12. NCIC III/criminal history.
- D. Unit staff will document all information supporting referral for an SBI assessment in COMS. Information collected by staff will be provided/forwarded to SOMP staff for inclusion/documentation in the inmate's SOMP file.

2. Sexual Behavior Issue Assessment:

- A. If sufficient information exists supporting an inmate has sexual behavior issues, the information will be reviewed by SOMP staff. Staff will determine:
1. If the information is sufficient to refer the inmate for an SBI assessment (See *Sexual Behavior Issue Referral (Attachment 2)*):
 - a. Inmates found to meet the criteria will be scheduled for an SBI assessment by the SOMP clinical consultant.
 2. If additional investigation and fact gathering is necessary.
 3. If insufficient information exists or no cause can be found to support the inmate meets the SBI criteria or requires SBI assessment.
 - a. The referral process will be terminated.
- B. Only one referral and SBI assessment will be completed based upon the same set of information.
- C. If new or additional information is discovered at a later date which supports an inmate may have a sexual behavior issue, SOMP staff will refer the inmate for an SBI assessment.
- D. If new or additional information is discovered which contradicts initial findings that the inmate has a sexual behavior issue, the inmate may be referred to SOMP staff for a second review and/or SBI assessment. If the SOMP staff review or assessment is not complete when the information is received, the process may be suspended or terminated.
- E. The purpose of the SBI assessment is to:
1. Establish a clinical basis that the inmate has sexual behavioral issues, thereby designating the inmate a "sex offender". All sex offenders will be assigned a sexual behavior code of 2Y or a 2N; or
 2. Establish a clinical basis for determining the inmate does not have sexual behavioral issues. The inmate will NOT be assigned a sexual behavior code of 2.
 - a. Inmates completing the SBI assessment but found not to have a sexual behavior issue by SOMP staff, will be assigned a sexual behavior code of 1n.
 - b. If the inmate refuses the SBI assessment or fails to adequately participate in the assessment, SOMP staff will notify the inmate's unit staff that the inmate will be assigned a sexual behavior code of 2 Y.

F. Inmates housed in the A&O unit of a DOC institution who are referred for an SBI assessment should have the review completed before transfer to general population. Classification may be suspended until the assessment is complete.

1. If the SBI assessment is not completed prior to transfer from A&O, the inmate must remain at the institution and is not eligible for transfer to placement at a minimum custody facility or contact facility until the assessment is complete.
2. If an inmate refuses the assessment, he/she will be assigned a sexual behavior code of 2Y and assigned housing consistent with housing deemed appropriate for sex offenders.

3. Notice:

- A. If, after the SBI assessment is completed and all information has been reviewed by SOMP staff, it is determined the inmate has a sexual behavioral issue, the inmate will be provided a *Notice of Right to Sexual Behavior Review* (See [Attachment 3](#)).
1. SOMP staff will ensure the inmate signs the notice. If the inmate refuses to sign, the refusal will be documented with the notice by SOMP staff.
- B. Inmates served a *Notice of Sexual Behavior Issue and Right to Review* may complete a *Request for Sexual Behavior Issue Review* (See [Attachment 4](#)).
- C. If the inmate fails to request a SBI review within five (5) working days of being served (not counting the day which the notice was served), the inmate shall waive his/her right to a review and will be assigned a sexual behavior code of 2Y or 2N.

4. Sexual Behavior Issue Review:

- A. The SBI review will be scheduled no sooner than forty-eight hours and no later than thirty (30) days from when the notice was served to the inmate. Inmates have the following rights:
1. To call witnesses. All witnesses must be identified within the *Request for Sexual Behavior Issue Review* form (See [Attachment 4](#)).
 - a. It is the inmate's responsibility to arrange for the presence of witnesses at the SBI review.
 - b. Staff may limit the number of witnesses if the testimony will be repetitive or if the witness' presence presents a safety or security risk.
 - c. The DOC is not financially responsible for any costs associated with witness testimony.
 2. To request reasonable time to prepare a defense and to obtain documents not in his/her possession. Inmates will be charged .05 cents per sheet for requested documents.
 3. To waive his/her right to review by checking the appropriate line on the *Request for Sexual Behavior Issue Review* form and returning the completed form to his/her case manager.
 - a. If the inmate waives his/her right to an SBI review, the inmate may be assigned a sexual behavior code of 2Y or 2N.
- B. The following procedural guidelines will be followed for all SBI reviews:

1. The inmate will be notified in writing of the date, time and place set for the review (See [Attachment 5](#)).
 2. The inmate is responsible for providing advance notice to SBI review staff of all requested records or documents and witness testimony. The DOC is not financially responsible for the collection of documentation to be presented by the inmate.
 3. Reasonable efforts will be made to give inmates time to arrange for the presence of witnesses and obtain documents. Staff has authority to hold a review upon determination an inmate's request for a delay is excessive.
 4. Under no circumstances will a victim of the inmate's crime be permitted to attend the hearing in-person; however, a victim may offer relevant testimony by telephone or in a pre-recorded or written statement, if approved by SOMP staff.
 - a. Staff will not permit an inmate to directly question victims. Any questions intended for the victim will be directed through the review staff.
 5. The proceedings of the SBI review will be recorded and maintained for three (3) years following discharge of the inmate.
 6. SOMP staff is responsible for disclosing to the inmate the information considered by staff that supports the inmate meets the criteria to make determination he/she has a sexual behavior issue. After SOMP staff has presented the information/documentary evidence, the inmate will have an opportunity to present their case.
 - a. Documentary evidence may include any relevant documents, records and assessments. Other evidence that may be introduced includes testimony (written or oral) or physical evidence.
 7. The inmate may ask questions.
 8. Hearsay evidence may be allowed but must be supported by other evidence.
 9. The inmate may retain private counsel at his/her own expense. Inmates with a disability will be provided necessary accommodations as deemed appropriate, based upon their disability (See DOC policy 1.1.E.7 [Americans with Disabilities Act \(ADA\)](#)).
- C. Staff may consider introduction of reliable confidential information. This information will be available to the inmate; however, the source of the confidential information will not be disclosed if staff determines such disclosure may subject the informant/witness to risk of harm. Reliability standards that apply to the use of confidential witnesses shall apply.
- D. The SBI Review may be held remotely/electronically, including receipt of witness testimony. The inmate will be permitted to attend the review and to be heard.

5. Decision of the Sexual Behavior Issue Review Staff:

- A. SBI Review staff will document the findings of the SBI review and the basis for the finding on the *Disposition of Sexual Behavior Issue Review* form (See [Attachment 6](#)).
- B. SBI review staff must determine by preponderance of the evidence, the following:
 1. A clinical basis exists supporting the inmate has sexual behavior issues, and

2. The inmate has not offered credible explanation or evidence that would avoid a finding/determination the inmate has sexual behavior issues; or
 3. No clinical basis exists which supports the inmate has a sexual behavior issue or the inmate has presented sufficient evidence to support they do not have a sexual behavior issue.
- C. An affirmative finding by SBI review staff that the inmate has a sexual behavior issue will result in the inmate being designated a "sex offender" and may subject the inmate to specified/required programming directives, restrictions, obligations and conditions.
1. SOMP staff will determine whether an inmate with a sexual behavior issue will be referred to the Special Treatment of Perpetrators (STOP) program. If the inmate is recommended for STOP, he/she will be assigned a sexual behavior code of 2Y. If STOP is not recommended, the inmate will be assigned a sexual behavior code of 2N.
 2. An inmate's Individual Program Directive (IPD), parole plan, housing status/placement, visitation, (contract or no contract) work/job assignments, programming requirements and allowable personal property all may be affected by a determination the inmate has a sexual behavior issue.
- D. The SBI review staff will ensure:
1. Each inmate's SBI review is documented in the Comprehensive Offender Management System (COMS), along with the findings.
 2. The original, signed *Disposition of Sexual Behavior Issue Review* form (See [Attachment 6](#)), any record/recording of the proceedings, and copies of documents and information presented during the hearing must be forwarded to Central Records for retention in the inmate's legal file, if not already documented in COMS.
 3. The inmate is provided with a copy of the *Disposition of Sexual Behavior Issue Administrative Review* form within five (5) working days of the completed review.
 4. A copy of the *Disposition of Sexual Behavior Issue Review* form is saved to COMS. If the inmate is required to completed STOP, the inmate's IPD will be updated.
 5. A copy of the *Disposition of Sexual Behavior Issue Administrative Review* form is included in the inmate's SOMP file.

6. Administrative Remedy:

- A. If an inmate does not agree with the findings of the SBI review, he/she may appeal the decision in accordance with DOC policy 1.3.E.2 [Administrative Remedy for Inmates](#).
- B. If a parolee does not agree with the finding/determination of the SBI review, he/she may appeal the decision and impact on programming or other requirements to the Parole Board.

V Related Directives:

SDCL §§ [22.24B-1](#), [22-24B-1.1](#) and [37-24-1\(2\)](#).

DOC policy 1.1.E.7 – [Americans with Disabilities Act \(ADA\)](#)

DOC policy 1.3.E.2 – [Administrative Remedy for Inmates](#)

DOC policy 1.4.A.3 – [Sex Offender Management Program](#)

VI Revision Log:

March 2004: New policy.

Removed revisions from August 2004 to August 2009.

August 2010: Revised formatting of Section I. **Deleted** reference to “except after a sex offender specific evaluation has occurred at the request of the DOC, e.g. psycho-sexual evaluation, etc.” from ss (D of Identification of Possible Unconvicted Sex Offenders). **Deleted** SDCL 22-22 in policy and in Section V. **Added** SDCL 22-24B1, 22-24B-1.1 and § 37-24-1(2) to policy and/or Section V.

Added hyperlinks.

October 2011: Reviewed with no changes.

September 2012: Added “If the Panel determines the existing” and “Supports the offender may be” in Section 3 A. **Added** “information/facts supporting the offender has a history of” in Section 5 A. 1.

Added “work/job assignments” to Section 5 D. **Added** e. & f to Section 6 C. 4.

May 2014: Extensive changes to the policy. **Deleted** reference to “Unconvicted Sex Offender and **Replaced** with Sexual Behavior Issue.

September 2014: Deleted B. “If a parolee does not agree with the finding/determination of the SBI Review staff, he/she may appeal the decision to the Board of Pardons and Paroles within thirty (30) days of receiving the decision.” in Section 6.

July 2016: Updated the definition of “Sex Offender” Various changes to language, format and procedures contained with in the policy.

August 2017: Added definition of “Sexual Behavior Issue Review” Added a. to Section 1. C. 1.

Deleted “assessment” and **Replaced** with “review” in Section 1. **Added** 3. and 4. to Section 2 A.

Deleted B. 1-4 in Section 2. **Added** 1. – 2. to Section 5 c.

August 2018: Added “Inmates will be charged .25 cents for copies of requested documents” in Section 4 A. 2.

February 2020: Added B. to Section 1. **Added** “ the information will be reviewed by SOMP staff” in Section 2 A. **Added** “Classification may be suspended until the assessment is complete” in Section 2 F. **Added** “(not counting the day which the notice was served” in Section 3 C. **Added** “if approved by SOMP staff” in Section 4 B. 4. **Added** 8. in Section 4 B. **Added** “Inmates with a disability will be provided necessary accommodations as deemed appropriate, based upon their disability” in Section 4 B. 9.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

02/19/2020

Date

Attachment 1: Sources of Records to Be Reviewed

1. NCIC III/criminal history.
2. Judgment/sentencing papers.
3. Pre-Sentence Investigation (PSI) – if available in the institutional file.
4. Police report(s) – if available in the institutional file.
5. Victim's statement(s) – if available in the institutional file.
6. Official statement from the court/States Attorney's Office – if available in the institutional file.
7. Psychological evaluation – if available in the institutional file.
8. Psychosexual evaluation – if available in the institutional file.
9. Interview with the offender/offender self-report.
10. Reports and records of current and past incarcerations and detentions – if available in the institutional file or the computer system.
11. SOMP Assessment.

Attachment 2: Sexual Behavior Issue Referral

The **Sexual Behavior Issue Referral** form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\Sexual Behavior Issue Hearing Referral.doc>

South Dakota Department of Corrections Policy Distribution: Public	Attachment: SBI Referral Please refer to DOC policy 1.4.B.9 Sexual Behavior Issue Review	
SEXUAL BEHAVIOR ISSUE REFERRAL		
NAME: [REDACTED]	ID #: [REDACTED]	
CURRENT OFFENSE: [REDACTED]		
SENTENCE: [REDACTED]	PAROLE DATE: [REDACTED]	DISCHARGE DATE: [REDACTED]
REASON FOR REFERRAL: (Check all that apply)		
<input type="checkbox"/> Evidence of a history of sexually abusive or sexually violent behavior.		
<input type="checkbox"/> Crime charged with or convicted/adjudicated of involves sexual violence or sexual abuse.		
<input type="checkbox"/> Other		
VICTIMS OF SEXUALLY ABUSIVE OR SEXUALLY VIOLENT BEHAVIOR: [REDACTED]		
CURRENT OR PAST SEX OFFENSE CHARGES AND CONVICTIONS/ADJUDICATION: [REDACTED]		
STAFF MAKING REFERRAL: [REDACTED]	DATE: [REDACTED]	
Note: Attachments to this report may include but are not limited to law enforcement reports, victim statements, NCIC report, jail or institutional reports, PSI, psychological evaluation, psychosexual evaluation, information collected from offender interview and self reported information, SOMP assessment, and other relevant documentation.		
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Attachment 3: Notice of Right to Sexual Behavior Issue Review

The *Notice of Right to Sexual Behavior Issue Review* form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\Notice of Right to Sexual Behavior Issue Reveiw.doc>

South Dakota Department of Corrections Policy Distribution: Public	Attachment: Notice of Right to SBI Review Please refer to DOC policy 1.4.B.9 Sexual Behavior Issue Review
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NOTICE OF RIGHT TO SEXUAL BEHAVIOR ISSUE REVIEW

The Department of Corrections will offer the opportunity for an Sexual Behavior Issue Review to any offender who has never been convicted/adjudicated of a sex offense (felony, misdemeanor or juvenile) but has been identified for a sexual behavior issue assessment and is designated a sex offender (Coded 2Y or 2N).

DOC has identified information, evidence, and/or facts which support you may have a history of sexually abusive and/or sexually violent behavior. The DOC may suspend your current classification supervision status until a Sexual Behavior Issue Review is completed.

An affirmative finding that you have a sexual behavior issue may impact your individual program directive (IPD), parole, programming requirements, housing status/placement, visitation, work/job assignments and allowable personal property.

You must notify Sex Offender Management Program (SOMP) staff in writing if you wish to request a Sexual Behavior Issue Hearing by properly completing the attached form. You have a right to attend the review in person and you may call witnesses and present documentary evidence in your defense.

If SOMP staff does not receive a written request for an review (see attached form) from you within five (5) working days of you being provided with this Notice, you will waive your procedural rights to a review.

Offender Name (Print & Sign) _____ DOC # _____ Date _____
(Staff Name & Signature if inmate refuses to sign)

I, _____ (print name and title) hereby
certify that on this _____ day of _____ 20 _____

I served the foregoing **Notice of Right to Sexual Behavior Issue Review**
to offender: _____ DOC # _____

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Attachment 4: Request for Sexual Behavior Issue Review

The *Request for Sexual Behavior Issue Review* form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\UNCONVICTED SEX OFFENDER ADMINISTRATIVE REVIEW REQUEST.doc>

South Dakota Department of Corrections Policy Distribution	Attachment: Request For Sexual Behavior Issue Review Please refer to DOC policy 1.4.B.9 Sexual Behavior Issue Review
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REQUEST FOR SEXUAL BEHAVIOR ISSUE REVIEW

If you choose not to complete this form and return it to Sex Offender Management staff within five (5) working days of being served the Notice of Hearing, you will waive your procedural rights to a review.

Name: _____ DOC #: _____

Current Housing Location: _____

_____ I am requesting a Sexual Behavior Issue Review.

_____ I waive my right to a Sexual Behavior Issue Review.

****If you are requesting to be present at the Sexual Behavior Issue Review, please answer the following questions:**

_____ I would like to have witnesses to attend the review. List the names and addresses of the witnesses:

Name: _____ Address: _____

Name: _____ Address: _____

_____ I am requesting _____ days to obtain documents and/or witnesses for the review.

_____ I am requesting the assistance of an interpreter for the review.

_____ I am requesting the assistance of a staff representative (unit staff member/parole agent).

Confidential information may be disclosed by witness testimony or documentary evidence during the Sexual Behavior Issue Review process. By requesting the review, you are releasing all relevant confidential information and agreeing to its disclosure to the review staff.

_____ Offender Signature _____ Date _____

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Attachment 5: Notice of Time and Place for Sexual Behavior Issue Review

The *Notice of Time and Place for Sexual Behavior Issue Review* form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\notice of time and place for unconvicted sex offender administrative review.doc>

South Dakota Department of Corrections Policy Distribution: Public	Attachment: Notice of Time and Place for Sexual Behavior Issue Review Please refer to DOC policy 1.4.B.9 Sexual Behavior Issue Review
NOTICE OF TIME AND PLACE FOR SEXUAL BEHAVIOR ISSUE Review	
To: _____ Offender Name	_____ DOC Number
You are scheduled for a Sexual Behavior Issue Review on (date & time): _____	
at the following location: _____	
I, _____ (print name/employee title) hereby certify that on this _____ day of _____, 20____.	
I have been served the foregoing Notice of Time and Place for Sexual Behavior Issue Review.	
_____	_____
Offender Name	DOC Number
_____	_____
Offender Signature	Date
(Case Manager/Parole Agent signature if offender refuses to sign)	
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Attachment 6: Disposition of Sexual Behavior Issue Review

The *Disposition of Sexual Behavior Issue Review* form is located at:

<M:\DOC\DOC Policies\Agency\DOC Policies\Attachment Templates\DISPOSITION OF UNCONVICTED SEX OFFENDER ADMINISTRATIVE REVIEW.doc>

South Dakota Department of Corrections Policy Distribution: Public	Attachment: Disposition of Sexual Behavior Issue Review Please refer to DOC policy 1.4.B.9 Sexual Behavior Issue Review
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DISPOSITION OF SEXUAL BEHAVIOR ISSUE REVIEW

Offender Name: _____ DOC #: _____

Date of Disposition: _____

Review staff has determined a clinical basis exists to support you have a sexual behavior issue. A sexual behavior code of 2Y will be added to your IPD and you may be required to complete sex offender programming.

a. Based on the following information, SBI review staff conclude you have a history of sexually violent and/or sexually abusive behavior: _____

b. Additionally, review staff have concluded you have not offered any credible explanation that avoids the conclusion you have a history of sexually violent and/or sexually abusive behavior.

Based on review of the evidence, facts and/or information presented, review staff has determined you DO Not have a sexual behavior issue.

_____ Signature of Review Staff	_____ Printed Name of Review Staff
_____ Signature of Review Staff	_____ Printed Name of Review Staff
_____ Signature of Review Staff	_____ Printed Name of Review Staff

NOTICE:
If a parolee does not agree with the decision of the hearing staff, he/she may appeal the decision to the Parole Board within thirty (30) days of receiving the decision, unless he/she waived/forfeited their right to be present at the hearing.

If an inmate does not agree with the decision of the hearing staff, he/she may appeal the decision through the administrative remedy process unless he/she waived/forfeited their right to be present at the hearing (see DOC policy 1.3.E.2 *Administrative Remedy for inmates*).

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