



Idaho Sexual Offender Management Board

◦ **PROPOSED RISK-BASED
SEX OFFENDER
REGISTRATION LEVELS**

Introduction

- In 1998 Idaho implemented procedures that added a second “level” to sex offender registration. Offenders determined to be potentially high risk to reoffend were classified as Violent Sexual Predators by the Sexual Offender Classification Board. The designation imposed increased registration reporting requirements and public notification
- 2009 Idaho Supreme Court opinion ruled on *Smith v. Idaho* that the state’s existing Violent Sexual Predator designation procedures were constitutionally unsound. The SOCB discontinued VSP reviews at that time.



Introduction

- 2010 ICJC VSP/SORNA subcommittee suggested risk-based registration tiers were preferable over implementing Federal crime-based Sex Offender Registration and Notification Act (SORNA)
- SORNA was not implemented in 2011 as part of modifications to sex offender registration laws when VSP procedural language was removed from statute.



Introduction

- 2011 Senate Judiciary and Rules Committee was not in favor of eliminating the VSP designation altogether. Existing VSP's were “grand-fathered” in
- Alternative measures were requested to identify risk to community posed by convicted sexual offenders
- It was suggested that the just-enacted SOMB could develop procedures for a risk-based registration level process



Introduction

- The Sex Offender Management Board is proposing a 5-level registration and notification system
- The following is an overview of the concept being developed by the SOMB

Level Determination

- All offenders will be classified as Level 4, excluding offenders whose conviction places them in Level 5 (defined later)
- Approximately 6 months after placement on probation or release to community the SOMB will begin procedures to modify the level classification based upon crime of conviction offense category combined with static/dynamic risk variable point values
- Protective variable factors will also be considered and may reduce point values

Level Determination

- Level assignments may remain at Level 4, or may be raised or lowered by the SOMB, according to the scoring matrix
- Offenders will be responsible for providing required information to SOMB for level modification consideration or they will remain at Level 4; prison/probation or parole information may be utilized and provided by the IDOC
- Offenders already in the community and no longer under IDOC supervision can petition for level modification. They will be required to provide information for SOMB consideration or they will remain at Level 4

Level Determination

- Offenders will have 90 days to challenge the level determination in writing
 - Additional information may be presented for SOMB consideration
 - SOMB to meet with offender and his legal representation
 - SOMB will make decision to uphold or modify
- Offenders may seek judicial review of SOMB's determination after a level challenge



Sex Offense Categories

- All crimes that require registration as a sex offender have been placed into offense categories to assist with the risk level determination



Sex Offense Categories

- Category A
 - Indecent exposure
 - Inducing minor to patronize prostitute

Sex Offense Categories

- Category B

- Detention for prostitution
- Sexual exploitation by medical provider
- 18-5707(2)(a) Possession sexually exploitative material
- 18-5707 Possession sexually exploitative material (code repealed)
- Enticing child over internet
- Inducing minor into prostitution
- 18-6101(2) Rape – victim 16/17, offender ≤ 3 years older
- 18-6108(2) Male Rape – victim 16/17, offender ≤ 3 years older

Sex Offense Categories

- Category C

- Assault with intent to commit...
- Battery with intent to commit...
- Sexual abuse of a child
- 18-1507(2)(b), (c) or (d) Sexual exploitation of a child
- Sexual battery of 16/17 year old
- 2° Kidnapping of unrelated minor
- Sexual contact with prisoner
- 18-6101 Rape
- 18-6101(1) Rape excluding 18 yo offender
- 18-6108 Male Rape
- 18-6108(1) Male Rape excluding 18 yo offender
- Incest
- Crime against nature
- Video voyeurism
- Racketeering – kidnapping minor
- Sex trafficking

Sex Offense Categories

- Category D
 - Sexual abuse/exploitation vulnerable adult
 - Lewd conduct
 - 18-6101(3), (4), (5), (6), (7), (8) or (9) Rape
 - 18-6108 (3), (4), (5), (6) or (7) Male Rape
 - Sexual penetration with foreign object

Sex Offense Categories

- Category E

- Ritualized abuse of a child
- Murder in perpetration of rape
- 1° Kidnapping for rape, L&L, infamous crime
- Recidivists (excludes only multiple convictions of video voyeurism on adult and any category A offense. However, conviction for a category A offense plus conviction for any category B, C, D or E offense qualifies as recidivist.)



Static, Dynamic and Protective Risk Variables

- Best practices indicate static, dynamic and protective variables are predictors of future risk
 - Static = **Historical** information such as criminal, substance abuse, mental health, familial, childhood; will not change through treatment
 - Dynamic = Current **behavior**, such as mental health, substance abuse, beliefs and attitudes, social/societal; potentially changeable through treatment
 - Protective = Stability and **pro-social** behaviors, treatment completion, productive in society; can be developed as a person ages and matures



Static Variables

- Historical variables that won't change include:
 - Major mental illness
 - Family instability
 - Treatment/supervision failure
 - Substance abuse
 - Past criminal behavior
 - Violence during offense
 - Level of planning involved in offending behavior



Dynamic Variables

- Active behaviors include:
 - Psychotropic medication compliance
 - Treatment/supervision compliance
 - Sexual preoccupation
 - Current substance abuse
 - Poor impulse control
 - Negative emotional regulation
 - Beliefs and attitudes



Protective Factors

- Can counter-balance static and dynamic risk variables
- Community stability and pro-social behaviors such as:
 - Positive completion of community supervision
 - Sexual and/or substance abuse treatment completion
 - Time in community without criminal behavior
 - Long term stable relationship and/or employment
 - Positive social reinforcements

Scoring Matrix – Category A

| Offense Category | Number of Static/Dynamic Variables Met (Criminal History/Psychological Components) | Registration Level (Based on <u>Assessed</u> Risk to Reoffend) | Term of Registration |
|------------------|--|--|----------------------|
| A | Up to 9 | 1 | 10 Years |
| | | | 5 Minimum |
| A | 10 - 24 | 2 | 20 Years |
| | | | 10 Minimum |
| A | 25 - 44 | 3 | 30 Years |
| | | | 15 Minimum |
| A | 45 - 69 | 4 | 40 Years |
| | | | 20 Minimum |
| A | 70 or more | 5 | Life |
| | | | No Minimum |

Scoring Matrix – Category B

| Offense Category | Number of Static/Dynamic Variables Met (Criminal History/Psychological Components) | Registration Level (Based on <u>Assessed</u> Risk to Reoffend) | Term of Registration |
|------------------|--|--|----------------------|
| B | Up to 14 | 2 | 20 Years |
| | | | 10 Minimum |
| B | 15 – 34 | 3 | 30 Years |
| | | | 15 Minimum |
| B | 35 – 59 | 4 | 40 Years |
| | | | 20 Minimum |
| B | 60 or more | 5 | Life |
| | | | No Minimum |

Scoring Matrix – Category C

| Offense Category | Number of Static/Dynamic Variables Met (Criminal History/Psychological Components) | Registration Level (Based on <u>Assessed</u> Risk to Reoffend) | Term of Registration |
|------------------|--|--|----------------------|
| C | Up to 19 | 3 | 30 Years |
| | | | 15 Minimum |
| C | 20 – 44 | 4 | 40 Years |
| | | | 20 Minimum |
| C | 45 or more | 5 | Life |
| | | | No Minimum |

Scoring Matrix – Categories D & E

| Offense Categories | Number of Static/Dynamic Variables Met (Criminal History/Psychological Components) | Registration Level (Based on <u>Assessed</u> Risk to Reoffend) | Term of Registration |
|--------------------|--|--|----------------------|
| D | Up to 24 | 4 | 40 Years |
| | | | 20 Minimum |
| D | 25 or more | 5 | Life |
| | | | No Minimum |
| E | Static/Dynamic Variables not a factor | 5 | Life |
| | | | No Minimum |

Example

- Offender convicted of Category B offense meets up to 14 of the Static/Dynamic variables:
 - Level will be 2 if protective variables are not met; Can petition for reduction in level after 5 years continuous time in community
- The same offender meets 15-34 Static/Dynamic variables:
 - Level will be 3 if protective variables are not met; Can petition for level reduction after 7½ years continuous time in community

Example

- The same offender meets 35 – 59 Static/Dynamic variables:
 - Level will be 4 if protective variables are not met; can petition for level reduction after 10 years continuous time in community
- The same offender meets 60 or more Static/Dynamic variables:
 - Level will be 5 if protective variables are not met; can petition for level reduction after 20 years continuous time in community

Level Reduction

- Level 2, 3 and 4 offenders may petition the SOMB for reduction in level after maintaining continuous time in community for period that equals at least $\frac{1}{2}$ the assigned level's minimum registration time
- Level reduction petitions can be submitted once per year thereafter
- Limited to reduction of two levels from first modification from Level 4; no further reduction will be considered



Level Reduction

- Level assignment will revert to Level 4 if offender returns to prison for a new non sex-related conviction; level review process will start over when offender returns to community
- Level 5 offenders are eligible for reduction in level after 20 years in community only if placed in that level by matrix; Category E offenders are not eligible for reduction

Registration Duration

- Minimum and maximum registration time
 - Required to register for the assigned level's maximum time after release to the community, but can petition for release from registration after continuous minimum time in the community
- The SOMB will assume responsibility for release from registration determinations from the courts



Registration Duration

- Level 1:
 - 10 year maximum, may petition for removal from registry after 5 years in community
- Level 2:
 - 20 year maximum, may petition for removal from registry after 10 years in community
- Level 3:
 - 30 year maximum, may petition for removal from registry after 15 years in community



Registration Duration

- Level 4:
 - 40 year maximum, may petition for removal from registry after 20 years in community
- Level 5:
 - Lifetime maximum, not eligible for removal from registry

Release From Registration

- Existing statutory provisions (18-8310, I.C.) for release from registration will be modified to turn decision-making responsibility over to the SOMB
 - SOMB will consider same protective factors as utilized for level reduction petitions
 - There will always be exceptional cases
 - Prosecuting attorney and ISP Central Registry may submit evidence to SOMB rebutting assertions in petitions

Registration Requirements

- Level 1:
 - Annual in-person registration with sheriff of county of residence; no picture on ISP website or information released to public; address verification every 4 months; police address check if verification card is undeliverable
- Level 2:
 - Annual in-person registration; picture on ISP website; address verification every 4 months; police address check if verification card is undeliverable

Registration Requirements

- Level 3:
 - Annual in-person registration; picture on ISP website; address verification every 4 months; one police address check per year
- Level 4
 - Bi-annual in-person registration; picture on ISP website; address verification every 3 months between registration; two police address checks per year



Registration Requirements

- Level 5 and VSP's:
 - Quarterly in-person registration; picture on ISP website; monthly address verification between registrations; two police address checks per year; electronic monitoring for offenders under IDOC supervision



Case Scenario

Sam is a 32 year old male Gymnastics teacher who pled guilty to Sexual Abuse of a Child under 16 for sexual contact with a 14 year old female student.

Sam's father was abusive to his mother and drank alcohol frequently. Sam began using alcohol at the age of 13 and continued this behavior until he was arrested for this offense. Sam sporadically used marijuana and has experimented with manufactured substances. He was adjudicated for Petit Theft and destruction of property as an adolescent. He has had some driving violations, but no adult



Case Scenario – cont.

When he was arrested for this offense, Sam had provided alcohol and perhaps marijuana to the victim. Recently divorced from his wife of 10 years, Sam had been living in an apartment near the school for approximately 1 year.

Sam has demonstrated that he is willing to participate in treatment goals as prescribed by the IDOC clinicians, although there were some disciplinary issues while incarcerated. At his parole hearing he was granted parole upon completion of the sex offender treatment program and, having successfully

Case Scenario – cont.

done that, was released onto parole 4 months ago as a Registration Level 4 offender. He is now residing in a transitional home for sexual offenders and is required to comply with the sex offender agreement of supervision. To this date he has received primarily positive feedback from both the treatment provider and supervising parole officer.

The SOMB is now conducting the level modification review. Sam's offense is a Category C offense. After

Case Scenario – cont.

reviewing the static and dynamic variables, he receives a total of 6 points. Sam is now considered a Registration **Level 3** offender. He will be expected to register annually. His picture will be posted on the ISP website. He will be required to respond to quarterly address verification cards and the local police will conduct 2 address checks per year for 30 years. He may petition the court for removal from registration after 15 years in community, or petition the SOMB for reduction in level after 7½ years.

Questions to Consider

- Should full board review challenges to first level modification determination?
 - Special subcommittee or hearing officer?
- Retain VSP designation?
- Heightened reporting requirements for Level 5?
 - Picture in newspaper upon registration once a week for three weeks?
 - Maintenance polygraphs after discharge?
 - Identifier on drivers license?