

"I was just given a new sex offense case: now, what do I do?"

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**THE WORLD OF DEFENDANTS** charged with a sex offense and convicted sex offenders is a high-intensity, quickly changing population (laws, ordinances, technology, risks presented, and mental health) of persons to supervise. Due to the issues listed above, this population can be overwhelming and can present unusual supervision challenges for new officers or officers who may have little or no experience in this area. Coupled with the challenges presented by this population, officers need to be aware of the cost to society should a violation occur during the course of supervision. As a result, it is important for officers to constantly assess and reassess risks throughout the term of supervision.

Due to the possible risks to all parties involved, including the defendant or offender, the public, the court system, as well as our respective offices, we felt compelled to generate a list of things officers may want to consider when formulating their supervision plan. This list is designed to meet the needs of both defendants and offenders. It is by no means all-inclusive; however, it does provide a fairly good starting point to begin the journey of effective supervision. We feel this will prompt officers to review all aspects of the risks presented and assist them in meeting the needs of this population of clients as well.

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## **Pretrial Services Interview and Information Gathering for Possible Release**

In pretrial services a defendant charged with a sex offense comes to us either via summons or following arrest on a criminal complaint or an indictment. When the defendant is arrested, the officer who is responsible for the interview process begins the assessment of the defendant by reading the charging document, compiling criminal history, and, time permitting, contacting the AUSA handling the case. From the interview of the defendant and contact with the AUSA and collateral resources such as family, friends, and employer, the officer attempts to identify risks

in the following areas:

1) The living environment the defendant will be returning to.

- Do children reside at the residence?
- Does the defendant have access to computers or the Internet in the residence?
- Are there parks, schools, or daycare providers within close proximity to the residence?
- If the defendant is charged with an offense included in the Adam Walsh Act, are there resources in the home for location monitoring equipment?
- Does the defendant utilize gaming devices, and what type of cell phone is used?
- Does the defendant have adequate support in the home (i.e., parent, spouse, or sibling who can serve as a third-party custodian for the court)?

2) The methods the defendant used to obtain and store pornographic images and the types of images the defendant is allegedly interested in (gender, age, etc.). Talk with the U.S. Attorney or case agent for information.

3) The nature of the defendant's employment. Explore this with the defendant and collateral sources.

- Do the job requirements put the defendant in the presence of children or allow the defendant to have access to them?
- Do the defendant's job responsibilities require him to have access to a computer while in the work environment and after work hours?
- Do the defendant's job responsibilities require travel to areas or businesses frequented by children?

4) The defendant's possible danger to himself. Make a determination by asking about suicidal ideations or a previous history of mental health symptoms and/or care.

After carefully reviewing these areas, the officer will make a determination about whether the defendant possesses non-appearance or danger risks. If risks are identified, the officer is required to recommend the least restrictive conditions of release necessary to reasonably assure the safety of the community and the defendant's appearance in court as required. Below are some of the types of conditions used with this population of defendants:

- Computer restrictions
- Third-party custodian
- Association restrictions
- Third-party risk
- Specialized treatment for defendants charged with a sex offense
- Residence restrictions
- Location monitoring (type and level, such as curfew and home confinement)
- Sex Offender Registration (if the defendant has a prior sex offense conviction)

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## **Pretrial Supervision**

***1) Meet with the defendant immediately after release and conduct the Post-Release***

## ***Intake Interview.***

The purposes of this interview are to establish a rapport with the defendant, obtain additional information, and establish initial expectations of the roles and responsibilities of the officer and the defendant. The intake interview sets the tone for the entire period of supervision. To facilitate understanding and cooperation, officers encourage questions, offer assistance, and maintain a neutral, approachable, and non-judgmental demeanor. During the interview with the defendant, the officer:

- a) reviews the requirements of each condition of release and clarifies the potential consequences of any noncompliance with release conditions;
- b) provides specific information about the boundaries of any travel restrictions, which may include areas frequented by persons under the age of 18, and how to seek permission to travel;
- c) when applicable, advises the defendant of any third-party custodian's legal obligations;
- d) identifies any additional collateral sources of information related to the defendant's supervision (e.g. family members, significant others, treatment providers);
- e) when applicable, begins installation of location monitoring equipment and thoroughly explains the requirements of this program;
- f) when applicable, makes a referral to specialized treatment for defendants charged with a sex offense and/or mental health treatment and has the defendant sign a release of information and/or Prob 45;
- g) informs the defendant that a home assessment will be conducted, describes what that entails, and clarifies that additional home contacts may also be made during the course of supervision.

## ***2) State and Local Sex Offender Registration Requirements***

If the defendant has a prior sex offense conviction, the officer must require the defendant to comply with SORNA and state or local sex offender registry requirements. To verify compliance, the officer needs to contact the local sex offender management registration office.

If the current offense is the defendant's only sex offense, the officer must ensure that the defendant remains in compliance with all state or local sex offender registry requirements. Depending on the jurisdiction in which the defendant resides, he or she may be subject to registration requirements upon conviction or sentencing.

## ***3) Personal Home Assessment***

The personal home assessment is the primary strategy for verifying residence. However, with this population of defendants, home inspections are the preferred supervision technique, as they force the defendant to maintain an appropriate level of awareness and provide a supervision presence to encourage compliance.

The officer should verify the home as the residence of the defendant by viewing personal items, rental agreements, or mail addressed to the defendant at that location. The officer also verifies the identity of anyone else living in the residence and notes the proximity of the residence to schools, parks, or daycare centers.

The officer should conduct a physical walkthrough of the residence, including attached or unattached storage areas or garages. During this walk-through a plain-view observation should be conducted, looking for items such as computer equipment, unauthorized electronic media, gaming systems, pornography, or inappropriate clothing.

## ***4) Danger to Another Person, Identify Third-Party Risks:***

Defendants charged with a sex offense may require the officer to make additional assessments of the potential danger to the community. In assessing potential risk to another person, the officer should pay special attention to:

- The defendant's living situation: Are there children present? Does the defendant have access to minors? Are there computers in the residence or indicators of grooming tools such as children's toys or games?

If an officer determines that the defendant presents a danger to another person, 18 U.S.C. §3154(5) requires the officer to notify the court and the U.S. attorney's office of the danger and suggest any modification of release conditions or other action that might reduce the danger.

Once such a danger is identified, the officer first should personally contact the assistant United States attorney and the court and follow this notification with a letter. The letter should describe in detail the apparent risk factors and recommend a course of action. Such action may include:

- 1) adjusting supervision activities to minimize the danger;
- 2) recommending that the judicial officer modify the release condition to preclude the individual from the employment or activity that results in the danger;
- 3) giving a confidential warning to the person at risk or another party who can eliminate or reduce the danger; or
- 4) permitting the defendant to inform the person of the factors that create the danger, followed by officer verification that the warning has been made.

In determining what recommendation to make to reduce danger, officers should also consider the possible jeopardy to the defendant's employment.

*Officers must obtain court approval before taking an action other than adjusting supervision activities in accordance with current conditions.* Officers are then to closely monitor the defendant's compliance with any actions ordered by the court.

### **5) Verify employment—third-party risk?**

This population of defendants may present a different set of risks to potential employers than other defendants. Potential risk factors include but are not limited to computer use, Internet access, access to minors, residential service or repair, working with minors, and the work site's proximity to such facilities as schools, daycare centers, or playgrounds. If a risk is identified, the officer follows the steps listed in the third-party risk section above.

### **6) Defendant/Community Observation**

Observing the area in which the defendant resides gives the officer a better understanding of potential third-party risks. It could reveal that the defendant lives near a vulnerable party or children. Also, such observation could reveal that the defendant lives near a daycare or a school. Monitoring the offender's patterns of behavior can also help assess possible increased risk to the community and whether the offender is being truthful about reported activities.

### **7) Refer for Treatment**

This population of defendants may have risks associated with substance abuse addiction or mental illness; thus, conditions to address these risks are often contained in the order setting conditions of release. Officers should be cautioned about making a referral to traditional sex offender treatment services, as disclosure of deviant behavior that may have led to the instant offense will conflict with the right against self-incrimination. As a result, officers need to be aware that a referral to any treatment provider that requires disclosure of the offense conduct on

behalf of the defendant is discouraged.

### ***8) Assessment of Mental Health***

Officers need to continually assess the defendant's mental health status during the course of the term of supervision, especially just prior to major events such as change of plea and sentencing hearings. This population of defendants often experience anxiety associated with shame and hopelessness due to the nature of the offense charged. As a result, officers must be prepared to garner the assistance of family members and make a referral for a mental health assessment and/or other community resources.

### ***9) Specialized Treatment for Pretrial Defendants***

In fiscal year 2009, OPPS released project codes 7013 and 7023 in their Treatment Services National Statement of Work to assist in addressing the special needs associated with this population of defendants. Project code 7013 covers services provided to one defendant and 7023 covers services for two or more defendants. These services employ cognitive behavioral treatment, crisis intervention, and life skills to promote healthy coping skills. Vendors providing project codes 7013 and 7023 are also instructed in keeping with the national statement of work to protect the defendant's right against self-incrimination. As a result, referrals to treatment vendors who provide these services are encouraged if the defendant begins to show signs of anxiety or suicidal ideation.

### ***10) Location Monitoring, Curfew, Home Detention, Home Incarceration, GPS***

Defendants charged with an offense included in the Adam Walsh Act are required to be on some type of location monitoring during their term of pretrial release. This technology can be a valuable supervision tool to assist in the defendant's accountability for daily activities and provide an additional layer of protection to the community.

### ***11) Collaboration with Law Enforcement***

Contact with local law enforcement can aid in verifying the defendant's compliance with law ordinances and state laws. However, while working with other law enforcement agencies, officers need to review the confidentiality regulations on pretrial defendants.

### ***12) Collateral Contacts***

Defendants charged with a sex offense can be unreliable in reporting problem behaviors; therefore, developing multiple collateral contacts is essential. In addition, collateral contacts from different sources help ensure a community-based supervision.

### ***13) Look for social networking sites by asking for e-mail addresses***

Social networking sites attract millions of users, many of whom integrate these sites into their daily practices. We would recommend determining if your defendant possesses a social site, as much information can be gleaned from this source. At times, it can be difficult to find your defendants on these sites; thus we would recommend asking for defendant/offenders' e-mail addresses, as this can save a great deal of time in locating their social sites. A checklist of activities for officers supervising sex offense defendants appears at the end of this article in [Appendix A](#).

## Appendix A.

### *Pretrial Services Initial Checklist*

	1) Identify Risks Presented by the Defendant for Possible Release
	2) Post-Release Intake Interview
	3) State and Local Sex Offender Registration Requirements
	4) Personal Home Assessment
	5) Danger to Another Person, Identify Third-Party Risks
	6) Verify Employment—Third-Party Risk
	7) Defendant/Community Observation
	8) Refer for Treatment
	9) Assessment of Mental Health
	10) Specialized Treatment for Pretrial Defendants
	11) Location Monitoring
	12) Collaborate with Law Enforcement
	13) Collateral Contacts
	14) Look for Social Networking Sites

## **Post-Conviction Supervision**

### *1) Prerelease planning*

Prerelease planning is an important part of preparing for the arrival of a new sex offender case, as it sets the stage and prepares offenders with the knowledge and skills necessary to rejoin the community. Key to success is working with case managers to devise a release plan that is safe for the community, prepares the defendant/offender for life after prison, and ensures compliance with conditions ordered by the court. This collaboration with case managers helps in determining a sex offender's release plans as they relate to location and third-party risks. The myriad needs of this re-entry population offer important targets of change. Careful attention to the criminogenic needs of offenders is important to effective programming.

## ***2) Meet with offender face to face within 72 hours of his release and go over conditions***

Not only is meeting with the offender within 72 hours a Standard Condition of supervision, it is important in assessing the offender's criminogenic needs and developing a supervision strategy. This initial meeting sets the stage for supervision and provides a clear understanding of the responsibilities set forth in the Judgment and Commitment.

## ***3) Offender Notice and Acknowledgment of Duty to Register as a Sex Offender***

The Office of Probation and Pretrial Services collaborated with the Administrative Office's General Counsel to develop the Offender Notice and Acknowledgment of Duty to Register as a Sex Offender form, which was first sent out in a memorandum in October 2006 and was later revised in September 2009. The Sex Offender Registration—Revised Form reflects the duty of the probation officer to advise the offender of the obligation to register and explains the Sex Offender Registration and Notification Act (SORNA) requirements.

The importance of activating this form is twofold; first, it is important for the sex offender to understand the obligation to register and the laws surrounding registration; second, this signed document becomes an important piece of evidence for the Marshals Service in their investigation of potential noncompliant offenders and is important to the U.S. Attorney's Office for prosecution purposes should a violation of the registry act be alleged.

## ***4) Initial Home Visit—Blueprint***

It is important for the officer to verify the home and determine its occupants and the proximity of the home to schools, daycares, or families with children. It is necessary for the officer to verify that the offender is in compliance with city ordinance and state laws.

Drawing a sketch/blueprint of the residence and property can prove very helpful in the preparation of an approved search.

Also, the officer should conduct a plain-view observation and pay special attention to unauthorized electronic media, children's toys and clothes, gaming systems, pornography, and inappropriate clothing.

## ***5) Identify third-party risks***

Determining whether a "reasonably foreseeable" risk or a third-party risk exists depends upon a selective, case by-case evaluation. Among other factors, the officer should base the evaluation upon the offender's offense, prior criminal background, and conduct. The officer should pay special attention to employment or other circumstances that present the offender with an opportunity or temptation to engage in criminal or antisocial behavior related to the offender's criminal background and risk. Sex offenders may require an officer to make additional assessments regarding the potential danger to the community. Canvassing an entire neighborhood in notifying community members of a sex offender's presence is not recommended; rather, the officer should do diligent investigative work in determining specific risks.

### **6) *Verify employment—third-party risk***

This population of offenders may present a different set of risks to potential employers than other offenders. Potential risk factors include but are not limited to computer use, Internet access, access to minors, residential service or repair, working with minors, and the work site's proximity to such facilities as schools, daycare centers, or playgrounds.

### **7) *Verify sex offender registration***

Officers *must* follow up with their local sex offender registration management office to ensure compliance with local, state, and federal registration laws.

### **8) *Refer for Evaluation***

Determining therapeutic needs and risks through the use of a sex offender specific evaluation is considered a best practice. Understandably, some districts may not have this resource available, but every effort to gain an evaluation is paramount in determining the level of care your offender will require. The evaluation will also determine the current amenability for treatment and provide specific recommendations for treatment and treatment intensity.

### **9) *Refer for Treatment***

Conducting intensive supervision within a treatment-oriented or rehabilitation-focused framework—with a key goal to ensure that offenders develop the necessary skills and competencies to become prosocial and successful individuals—reduces recidivism rates considerably. Preliminary evidence indicates that this same holds true for sex offenders. Lower recidivism rates have been found among sex offenders when supervision is paired with specialized treatment, in contrast to using supervision alone. (See also: Center for Sex Offender Management, *Managing the Challenges of Sex Offender Re-entry*, U.S. Department of Justice, Office of Justice Programs, February 2007.)

### **10) *Schedule Polygraph—Historical***

Polygraphs are a critical tool in the treatment of these offenders. A historical polygraph (as opposed to a maintenance polygraph, which will need to be done thereafter) provides a foundation for subsequent polygraphs and provides detailed information that can be used in the treatment of the offender. This information helps assess risks and targets treatment interventions.

### **11) *Offender/Community Observation***

Observing the area in which the offender resides gives the officer a better understanding of potential third-party risks. Information could reveal that the offender lives near a vulnerable party or children. Also, such observation could reveal that the offender lives near a restricted area such as a daycare or a school.

Monitoring the offender's patterns of behavior can also help assess if there is an increased risk to the community and whether the offender is being truthful with reported activities.

### **12) *Collateral Contacts***

Sex offenders are often unreliable in reporting problem behaviors; therefore, developing multiple collateral contacts is essential. In addition, collateral contacts from different sources help ensure community-based supervision.

### **13) *Collaboration with law enforcement***

Creating and maintaining communication with local law enforcement can prove beneficial in community-based supervision of sex offenders. Outside of the VCCA notice, detailed



information given to law enforcement about specific cases can be a good way of creating a collaborative effort in protecting the community.

#### ***14) Look for social networking sites by asking for e-mail addresses***

Social networking sites attract millions of users, many of whom integrate these sites into their daily practices. Determining if an offender possesses a social site can prove helpful, as much information can be gleaned from this source. At times it can be difficult to find offenders on these sites; thus, we recommend asking for the offender’s e-mail addresses, as this can save a great deal of time in locating a social site. A checklist of post-conviction activities for officers supervising sex offenders appears at the end of this article in [Appendix B](#).

<b>Appendix B.</b>	
<b><i>Post-Conviction Initial Checklist</i></b>	
	1) Prerelease Planning
	2) Meet with Offender within 72 hours of release
	3) Acknowledgment of Duty to Register as a Sex Offender
	4) Initial Home Visit
	5) Identify Third-Party Risks
	6) Verify Employment—Third-Party Risk
	7) Verify Compliance with Sex Offender Registration Requirements
	8) Refer for Evaluation
	9) Refer for Treatment
	10) Schedule a Polygraph
	11) Offender/Community Observation
	12) Collateral Contacts
	13) Collaborate with Law Enforcement
	14) Look for Social Networking Sites

### **Assess and reassess**

To paraphrase Heraclitus, an ancient Greek philosopher, “No person ever steps into the same river twice, for it’s not the same river and they are not the same person.” This philosophy can be applied to the supervision of defendants charged with a sex offense and sex offenders. Risks the defendant and/or offender present are always changing and officers performing supervision of these populations need to be prepared to develop a supervision strategy that is dynamic and reflects the risks posed.