

VIRGINIA:

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

COMMONWEALTH OF VIRGINIA,)	Case No. CR03-576(01)/1328(-01)
)	
vs.)	
)	
GALEN BAUGHMAN,)	
)	
)	
)	

MEMORANDUM OF AMICUS CURIAE

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF VIRGINIA

Statement of Amicus Curiae

The American Civil Liberties Union Foundation of Virginia (“ACLU-VA”) is a statewide, nonprofit, nonpartisan organization with approximately 28,000 members. The ACLU of Virginia appears frequently before the state and federal courts of this Commonwealth, both as counsel and as amicus curiae. Since its founding, the ACLU of Virginia has been a forceful advocate for civil liberties and civil rights, including the constitutional rights of people accused of criminal offenses and people serving sentences of incarceration and/or community supervision. Because this case addresses an important question related to the Fifth Amendment privilege against self-incrimination, its proper resolution is a matter of concern for the ACLU of Virginia and its members and supporters.

Question Presented

Whether Defendant probationer may be compelled, upon penalty of revocation of probation, to answer potentially incriminating questions in a “Sexual History Disclosure”—administered by the Virginia Department of Corrections along with a polygraph exam—notwithstanding his invocation of the Fifth Amendment privilege against self-incrimination.

Introduction

The Department of Corrections (DOC) requires individuals who are on community supervision as a result of a sex offense conviction to complete a Sexual History Disclosure form (hereinafter “Disclosure Questionnaire”)—a questionnaire that poses detailed questions about the individual’s sexual history, which are subsequently confirmed under polygraph once the individual’s probation officer and treatment provider are “satisfied that the *Sexual History Disclosure* is complete.” Ex. A, Va. Dep’t of Corrections Operating Procedure 735.3, *Supervision of Sex Offenders in Community Corrections* (hereinafter, “O.P. 735.3”) at 8, available at <https://vadoc.virginia.gov/files/operating-procedures/700/vadoc-op-735-3.pdf>. Completing the Disclosure Questionnaire requires answering questions that would disclose information about the circumstances surrounding conduct that violates multiple criminal statutes in the Virginia Code as well as “a comprehensive report of all their victims, as well as all deviant sexual activity,” including significant identifying information with respect to the victims. *Id.*; see generally Ex. B, Sexual History Disclosure (seeking, *inter alia*, information about rape and other non-consensual sexual contact, prostitution, and child pornography). Nothing in the Virginia Code prevents an incriminating statement obtained in the course of this treatment from being used in a future criminal prosecution.

Because of the gravity of the civil liberties consequences of a decision permitting the state to compel persons under community supervision to answer questions the answers to which could be used against them in later criminal proceedings, *amicus curiae* submits this memorandum. Specifically, *amicus* urges this Court to make clear that the Fifth Amendment privilege applies to the Questionnaire Disclosure form, and that persons on supervision for sex offense convictions may not be required to answer incriminating questions over their objection absent a guarantee of immunity. We further respectfully urge this Court to consider recognizing that the Disclosure Questionnaire and polygraph treatment scheme established by the Commonwealth and the DOC attaches an impermissible penalty to the exercise of the privilege against self-incrimination such that incriminating responses elicited from probationers who fail to assert the privilege may not be used in future criminal proceedings.

Argument

I. The Fifth Amendment’s self-incrimination privilege may be asserted during the Sexual History Disclosure, and the state may not compel answers absent a guarantee of immunity.

The Fifth Amendment to the United States Constitution “privileges [individuals] not to answer official questions put to [them] in any . . . proceeding, civil or criminal, formal or informal, where the answers *might* incriminate [them] in future criminal proceedings.” *Minnesota v. Murphy*, 465 U.S. 420, 426 (1984) (emphasis added). An individual who asserts the privilege “may not be required to answer a question if there is some rational basis for believing that it will incriminate [them], at least without *at that time* being assured that neither it nor its fruits may be used against [them]” in a subsequent criminal proceeding. *Murphy*, 465 U.S. at 429 (quoting *Maness v. Meyers*, 419 U.S. 449, 473 (1976) (emphasis in original)). Further, the United States Supreme Court has been clear that the Fifth Amendment privilege applies not only to answers that

could directly implicate a witness in criminal activity, but “where a witness’ answers could reasonably furnish a link in the chain of evidence against him.” *Ohio v. Reiner*, 532 U.S. 17, 19 (2001) (citing *Hoffman v. United States*, 341 U.S. 479, 486 (1951)) (internal quotation marks omitted); *see also United States v. Von Behren*, 822 F.2d 1139, 1145 (10th Cir. 2016) (explaining that the privilege extends to admissions that may only “tend” to incriminate and should be upheld unless it is perfectly clear from the circumstances that the answers could not possibly have a tendency to incriminate (quoting *Hoffman*, 341 U.S. at 488)).

As ably explained by counsel for Mr. Baughman in his memorandum, completing the Disclosure Questionnaire requires answering unmistakably-incriminating questions, given that affirmative answers to several of the questions would themselves constitute admissions to violations of multiple Virginia felony offenses for which there are no statutes of limitations. Thus, unless Mr. Baughman is afforded complete immunity from prosecution based on any incriminating statements—which Virginia courts do not have authority to do with respect to sexual offenses¹—he may not be prevented from asserting the privilege against self-incrimination and declining to answer any possibly-incriminating questions on the Disclosure Questionnaire. *See, e.g., Murphy*, 465 U.S. at 435 n.7 (state may insist on answers to incriminating questions only if “it recognizes that the required answers may not be used in a criminal proceeding [and thus the individual’s] right to immunity as a result of compelled testimony would not be at stake.”); *Gosling v. Commonwealth*, 14 Va. App. 158, 163 (Va. Ct. App. 1992) (“Testimony may be compelled only where immunity is complete and there is no possibility of prosecution.”).

¹ Although Va. Code Ann. § 18.2-262 authorizes transactional immunity coextensive with the privilege against self-incrimination for testimony related to drug offenses, there is no statutory analog for testimony related to sex offenses.

II. The Department of Corrections’ administration of the Disclosure Questionnaire creates a classic penalty situation such that any answers should be deemed inadmissible in future criminal prosecutions.

Because the Commonwealth is in court seeking apparently to compel Mr. Baughman to answer the Disclosure Questionnaire’s incriminating questions notwithstanding that he timely invoked the Fifth Amendment privilege, this Court should make clear to the Commonwealth and its probation officers that they may not compel him to do so. But this Court should consider going farther and recognizing that as presently constituted the treatment scheme established by the Commonwealth and the DOC to administer the Disclosure Questionnaire attaches an impermissible penalty to the exercise of the privilege such that any incriminating responses elicited from someone who fails to assert the privilege—whether from Mr. Baughman or anyone else subjected to the DOC’s scheme as presently constituted—may not be used in future criminal proceedings.

Ordinarily, a person who desires the protection of the Fifth Amendment privilege must claim it. *See United States v. Monia*, 317 U.S. 424, 410–11 (1943). If, instead, the person chooses to make an incriminating statement, it is considered “voluntary since [the person] was free to claim the privilege and would suffer no penalty as the result of [their] decision to do so.” *Murphy*, 465 U.S. at 429. But the key to “this general rule, that the privilege must be claimed when self-incrimination is threatened, is that no penalty accompany the assertion of the privilege.” *United States v. Perez-Franco*, 873 F.2d 455, 462 (1st Cir. 1989); *McKathan v. United States*, 969 F.3d 1213, 1239 (11th Cir. 2020). On the other hand, as the Supreme Court has made clear, if the state expressly or implicitly suggests that invocation of the privilege would lead to revocation of probation, that creates a classic penalty situation in which the individual can be said to have been denied a free and voluntary choice to admit, deny, or refuse to answer the question, such that even

those who fail to claim the privilege are protected by Fifth Amendment. *See Murphy*, 465 U.S. at 435; *United States v. Saechao*, 418 F.3d 1073, 1077, 779 (9th Cir. 2005).

To determine whether probationers are subject to a classic penalty situation rendering any incriminating statements inadmissible in a later criminal prosecution, courts ask whether the conditions of probation merely require the probationer “to appear and give testimony about matters relevant to his probationary status or whether they [go] farther and require[] him to choose between making incriminating statements and jeopardizing his conditional liberty by remaining silent.” *Murphy*, 465 U.S. at 436; *Saechao*, 418 F.3d at 1077–78. Where a state takes that “extra, impermissible step,” the Fifth Amendment privilege becomes self-executing such that a failure to assert the privilege will not defeat an attempt to suppress admissions in an ensuing criminal prosecution. *See Saechao*, 418 F.3d at 1077 (citing *Murphy*, 465 U.S. at 435).

Thus, in *United States v. Saechao*, the Ninth Circuit concluded that Oregon’s probation system took this impermissible step when a probationer was asked whether he had firearms—which was illegal under the felon-in-possession statute—because the conditions of probation required the probationer to “truthfully answer all reasonable inquiries,” and specified that failure to comply with any of the conditions was grounds for revocation of probation. 418 F.3d at 1075. In finding that this constituted an impermissible penalty, the Court distinguished the facts from *Murphy*—where the probationer was required merely, and generally, to be “truthful in all matters”—because whereas the latter “was free to remain silent as long as he was truthful when he spoke,” Oregon’s system did not permit “the luxury of remaining silent without violating the conditions of his probation.” *Id.* at 1078. The court in *Saechao* noted that the probation condition made “no exception for the invocation of the Fifth Amendment and thus, by implication, foreclose[d] a probationer’s ability to exercise that right by remaining silent.” *Id.* at 1079. Notably,

the government attempted to argue that the probationer could have satisfied the condition of answering the inquiry by simply invoking the privilege. The Court rejected this argument on two bases: first, even assuming an assertion of the Fifth-Amendment privilege could be considered an “answer” under the probation condition, such a non-substantive response clearly would not satisfy the requirement to “truthfully” answer the question; second, the court examined whether, *in practice*, probationers were in fact free to invoke the privilege as the government now claimed, and concluded that such a contention strained credulity given that the United States had previously sought revocation of probation when a different probationer invoked the Fifth Amendment, notwithstanding that a federal probation condition had a similar condition requiring probationers to respond completely and truthfully. *Id.* at 1080–81 (citing *United States v. Robinson*, 893 F.2d 1224 (11th Cir. 1990)) (finding it “troubling that the United States, having successfully sought revocation of probation in the past for the very conduct that it suggests Saechao should have engaged in here, now assures us unabashedly that [asserting the privilege] would not justify the revocation of Saechao’s probation”).

In *McKathan v. United States*, the Eleventh Circuit recently concluded that federal supervision conditions created a classic penalty situation under *Murphy* even though they required defendant merely to “answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer,” and informed him that “upon a violation of supervised release . . . the court may . . . revoke supervision,” because there also existed a *reasonable basis for the probationer to have thought* that the invocation of his Fifth Amendment privilege would have resulted in revocation of his supervised release. 969 F.3d 1213, 1226–27 (11th Cir. 2020). In finding that the probationer reasonably could have thought he would be penalized for exercising his Fifth Amendment privilege in response to a probation officer’s inquiry as to whether he had

been viewing child pornography, the court noted the government’s past practice could reasonably give rise to such a belief, and cited a decades-old case in which the government successfully sought to revoke someone’s probation for asserting their Fifth Amendment privilege. *McKathan*, 969 F.3d at 1227–31 (citing *United States v. Robinson*, 893 F.2d 1224 (11th Cir. 1990)); *see also United States v. Bahr*, 730 F.3d 963, 966–67 (9th Cir. 2013) (concluding that a “full disclosure” polygraph test regarding defendant’s sexual history at sentencing was an impermissible penalty because defendant “faced a concrete threat” of revocation that was “more than merely hypothetical”).

Here, the details of the Commonwealth’s administration of the Disclosure Questionnaire and associated polygraph testing to persons undergoing treatment as part sex offender supervision suggest that Virginia is routinely taking the “extra, impermissible step” of suggesting that probationers must choose between making incriminating statements and jeopardizing their liberty by remaining silent. *Murphy*, 465 U.S. at 436; *Saechao*, 418 F.3d at 1077–78.

Under the scheme established by the Commonwealth, individuals on supervision for sex offense convictions are “expected to disclose a comprehensive report of all of their victims, as well as all deviant sexual activity up to the start of supervision using the” Disclosure Questionnaire. *See* Ex. A, O.P. 735.3 at 8. The questionnaire asks the probationer to admit to past sexual misconduct that would clearly violate multiple felony offenses and requires them to provide significant identifying information with respect to the victims, including their age, sex, description, their relation to the probationer, and the date(s), locations, and detailed description of each and every improper contact. *See, generally* Ex. B, Sexual History Disclosure. The treatment cannot move forward until the probation officer and treatment provider are “satisfied that the [Disclosure Questionnaire] is *complete*.” Ex. A, O.P. 735.3 at 8 (emphasis added). Similarly, the probationer agrees in their contract with the treatment provider to be “completely honest and to assume full

responsibility for [their] behavior,” to come prepared to treatment sessions with “completed assignments,” and to “undergo polygraph testing, including a full sexual history,” Ex. C, Treatment Contract, at ¶¶ 1, 6, 11, which takes place only after they complete the questionnaire and is referred to as the “Sexual History Disclosure polygraph examination.” Ex. A, O.P. 735.3 at 8. Finally, the contract provides that “any violation of this contract may be grounds for termination of [their] participation in the program at the discretion of [their] therapist.” *Id.* There is no indication anywhere in O.P. 735.3, the Disclosure Questionnaire, or the treatment provider contract, that the scheme affords an exception for assertions of the Fifth Amendment privilege, or otherwise gives probationers “the luxury of remaining silent without violating the conditions of [their] probation.” *Saechao*, 418 F.3d at 1078.

A reasonable person on conditional supervision for a sex offense would thus assume that they are required to provide truthful and complete responses to all questions in the questionnaire, and that failure to do so violates the program, which in turn violates a critical condition of their probation. And to the extent there is any doubt, DOC’s practice of seeking to revoke the probation of those who invoke the privilege makes this clearer still. Thus, just last year, this Court found a probationer in violation of his probation conditions and revoked his suspended sentence for declining to answer questions on the same Disclosure Questionnaire at issue in Mr. Baughman’s case. *See Robertson v. Commonwealth*, No. 0318-19-4, slip op. at 1 (Va. Ct. App. Oct. 20, 2020), available at <https://valawyersweekly.com/library-files/files/2020/11/020-7-191.pdf>. Unlike Mr. Baughman, the probationer in *Robertson* invoked his Fifth Amendment privilege to decline to answer *any* of the questionnaire’s questions, and this Court based its decision to revoke the suspended sentence on his failure to respond to the subset of questions that could not reasonably be considered incriminating. *Id.* at 5. Yet, a probationer might reasonably assume from that case

that asserting one's Fifth Amendment privilege to questions in the Disclosure Questionnaire can result in the Commonwealth seeking revocation of probation.

Likewise, the government's actions in the present case create a reasonable belief that a penalty attaches to the invocation of the privilege. Mr. Baughman's counsel's letter to the DOC's probation division indicating that Mr. Baughman would be instructed to invoke privilege to certain, patently-incriminating questions should have been expected and foreseeable; instead, it apparently was sufficient to grind the Commonwealth's treatment procedures to a halt and trigger a request for a hearing to show cause.² These actions suggest that in practice, the penalty is "more than merely hypothetical," *Bahr*, 730 F.3d at 967, and that DOC in its supervision of sex offenders continues to "attempt[] to attach an impermissible penalty to the exercise of the privilege against self-incrimination." *United States v. Saechao*, 418 F.3d 1073, 1079 (9th Cir. 2005) (*quoting Murphy*, 465 U.S. at 437).

Conclusion

Amicus respectfully requests this Court make clear that the Fifth Amendment privilege applies to the Questionnaire Disclosure form, and that Mr. Baughman may not be compelled to answer incriminating questions. We further respectfully urge this Court to consider whether the manner in which the Disclosure Questionnaire and polygraph exam are administered by the DOC and treatment providers contracted by the state impermissibly creates a classic penalty situation by implicitly attaching a penalty to the exercise of the privilege against self-incrimination. The Commonwealth might lift such a penalty condition by making clear to probationers undergoing

² The Commonwealth apparently called for this hearing in response to a letter from Mr. Baughman's counsel that directed him to answer all questions truthfully but to "assert the Fifth Amendment privilege should there be questions that call for incriminating information concerning offenses for which he has not been charged."

treatment that they may properly invoke their Fifth Amendment privilege in response to the Disclosure Questionnaire without facing any threat of revocation of probation, or else authorize a grant of complete immunity from prosecution for any incriminating statements. Unless the Commonwealth takes one of these steps, however, any incriminating responses elicited from probationers who fail to assert the privilege should not be permissible for use in future criminal proceedings.

Respectfully Submitted,

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Exhibit A



Operating Procedure

Effective Date April 1, 2019	Number 735.3
Amended 7/1/19, 10/1/19, 10/1/20	Operating Level Department
Supersedes Operating Procedure 735.3 (9/1/15)	
Authority COV §37.2-900 et seq., §53.1-10, §53.1-25	
ACA/PREA Standards None	
Office of Primary Responsibility Chief - Sex Offender Programs	

Subject

SUPERVISION OF SEX OFFENDERS IN COMMUNITY CORRECTIONS

Incarcerated Offender Access
Yes ☐ No ☒

Public Access Yes ☒ No ☐
Attachments Yes ☒ #2 No ☐

I. PURPOSE

This operating procedure establishes protocols on offense-specific case management approach for sex offenders being supervised by specially trained Probation and Parole staff in the Department of Corrections.

II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

III. DEFINITIONS

ACUTE-2007 - The ACUTE-2007 rates behavior change in the short run; representing current risk and the short-term timing of re-offense.

Assessment - Utilizing specific techniques of evaluation and measurement to identify and collect information related to an offender's thoughts and behaviors which contribute to sexual offending

Certified Sex Offender Treatment Provider (CSOTP) - A staff member who is currently registered in good standing with the Virginia Board of Psychology as a Certified Sex Offender Treatment Provider

COMPAS (Correctional Offender Management Profiling for Alternative Sanctions) - The DOC approved risk/needs assessment which consists of different versions for community corrections and institutions; COMPAS is a support system for supervision and case-management decisions, a database used in combination with VACORIS, a tool that assesses two critical risks - violence and recidivism and a tool for determining the criminogenic needs that are used to develop case plans and set programming.

Evidence Based Practices (EBP) - Correctional decision making derived from research findings about practices proven to change offender behavior thereby reducing the risk for recidivism

Group Therapy - Therapeutic sessions involving two or more offenders and one or more staff facilitators; groups are based on diagnostic category, therapeutic technique, or salient topic e.g., Symptom Management, Relationship Issues.

Officer - Any Chief Probation and Parole Officer, Deputy Chief Probation and Parole Officer, Senior Probation and Parole Officer, Probation and Parole Officer, or Probation Officer Assistant (Surveillance Officer)

P&P Officer - Any Chief Probation and Parole Officer, Deputy Chief Probation and Parole Officer, Senior Probation and Parole Officer, or Probation and Parole Officer authorized by a Circuit Court Judge

STABLE-2007 - The STABLE-2007 measures sex offender risk factors that can change over time, which will help formulate a case management plan or identify treatment/supervision targets for a sex offender. Additionally, it will allow the Officer to know whether a sexual offender is getting more dangerous or less dangerous over time.

STATIC-99R - An evaluation instrument that utilizes only static (unchangeable) factors that have been seen in the literature to correlate with sexual reconviction in adult males. The estimates of sexual and violent recidivism produced by the STATIC-99R can be thought of as a baseline of risk for violent and sexual reconviction. From this baseline of long-term risk assessment, treatment and supervision strategies can be put in place to reduce the risk of sexual recidivism.

IV. PROCEDURE

A. Offenders to be supervised as Sex Offenders

1. This operating procedure provides for intensive supervision of the most serious, high-risk sex offenders defined as, but not limited to:
 - a. An offender who is required to register as a sex offender (See Operating Procedure 735.1, *Sex Offender and Crimes against Minors Registration.*); or
 - b. An offender who has a sex offense in their criminal history; or
 - c. An offender convicted of an offense of a sexual nature
2. Old Sex Offense Cases
 - a. Offenders with a sex offense in their past (offense for which they are not currently under supervision) may not necessarily need to be supervised by the sex offender supervision team.
 - b. The following criteria should be considered:
 - i. Number of sexual offenses in the criminal history
 - ii. Length of time since sexual offense
 - iii. Type of offenses
 - iv. Institutional adjustment
 - v. Prior assessments/treatment
 - vi. Adjustment to community supervision
3. Gang Considerations
 - a. When an offender is a verified gang member and has committed a sexual offense, a case conference between the sex offender supervision specialist and the gang specialist shall occur to determine the appropriate case assignment.
 - b. All of the offense information and criminal history shall be reviewed during a case conference. If warranted, an assessment should be completed by a Certified Sex Offender Treatment Provider (CSOTP).
 - c. Final case assignment will be determined by the Chief P&P Officer or designee.
4. Mentally Ill and Intellectually Disabled Sex Offenders
 - a. Probationers or parolees who have a diagnosed mental illness, require treatment with psychotropic medications, or have been referred by the supervising P&P Officer should receive, at a minimum, a sex offender assessment to determine their sex offender education and treatment needs.
 - i. For offenders who have completed the *Sex Offender Awareness Program* (SOAP), assessments performed during offender participation may be utilized.
 - ii. This assessment should address amenability and responsiveness to treatment programs.
 - iii. If the SOAP facilitator is a non-clinical person, the decision whether mental health issues preclude them from participating in a group therapy setting should be made in consultation with the Regional Mental Health Clinician.
 - b. Probationers or parolees who have a diagnosis of intellectually disabled or who have been referred by the supervising P&P Officer should be assessed prior to placement in a sex offender group. If concerns arise regarding an offender's ability to benefit from group education/therapy after they are placed in a group, the offender should be referred to the Regional Mental Health Clinician, or other available clinician, to determine whether they are able to benefit from the mode of treatment being provided or to recommend other treatment interventions.

- c. For probationers or parolees who are unsuitable for group sex offender treatment, the person completing the assessment should recommend other forms of treatment or intervention that would reduce their risk of sexual re-offense. Examples might include improved medication compliance, improved attendance at mental health appointments, participation in individual sex offender therapy, participation in pre-employment activities through Virginia Department of Aging and Rehabilitation Services (VADRS), etc.

B. Sex Offender Supervision Specialists

- 1. Job Specialization
 - a. The goal of specialization is to ensure that P&P Officers working with sex offenders have specialized training and guidance in order to establish an offense-specific case management approach.
 - b. Specialization will be implemented in all P&P Districts.
 - c. It is anticipated that specialization will promote development of expertise as well as increase communication.
 - d. Specialization will improve consistency at all stages of sex offender management from investigation through assessment, supervision, and treatment
- 2. The sex offender specialist P&P Officers and Surveillance Officers supervising sex offenders must successfully complete the required specialized training regarding sex offenders. The training will include the following types of information:
 - a. An Introduction to Working with the Sex Offender
 - b. Supervision Issues with the Sex Offender in the Community
 - c. The Importance of Assessment
 - d. An Overview of Sex Offender Treatment for the Probation and Parole Officer
 - e. Polygraph Protocol and Sex Offender Law
 - f. Electronic Monitoring Training
 - g. Family Issues and the Offender
 - h. Working With Survivors of Sexual Abuse
 - i. Simulations for Sex Offender Supervision Specialists
 - j. Supervision of Conditional Release Cases
 - k. How to Write a Sex Offender PSI
 - l. STABLE-2007 and ACUTE-2007 Training

C. Supervision Requirements

- 1. Initial Supervision Requirements
 - a. The supervision of sex offenders in the community entails unique considerations and guiding rationales. Listed below are elements of supervision for sex offenders to be utilized in all P&P Districts:
 - i. The supervising P&P Officer will ensure that for all applicable sex offenses, the STATIC-99R (or more current instrument); STABLE and ACUTE Risk Assessment Instruments have been done and are documented in VACORIS.
 - ii. All offenders actively being supervised for a sex offense, with the exception of *Failure to Register* shall initially be supervised at level High. Supervision levels may be adjusted based on an offender's progress on supervision, in treatment, adjustment in the community, and assessment tool results.
 - iii. P&P Districts may establish supervisory teams. These teams will meet, at a minimum, quarterly to staff new and existing cases. The purpose of these meetings will be to determine treatment needs. Treatment needs include, but are not limited to, assessment, evaluations, polygraph examinations, and registration requirements.

- iv. Assessment or referral to any indicated treatment shall be done within 45 days of case assignment.

2. Case Plans

- a. The Case Plan is a dynamic document used to guide the offender's progress in achieving their goals during supervision. It is a mutually agreed contract between the offender and supervising staff that outlines the requirements for offenders while on supervision, identifies offender goals, incentives, sanctions, tasks, and sets time frames for completion.
- b. Case Plans shall be developed and updated per Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*. Any case supervised as a sex offender will be administered the COMPAS EBP Community Corrections version during the first 45 days of supervision.
- c. The Case Plan is to be developed and submitted within 60 days of the start of supervision. Offenders shall be given a copy of their Case Plan. The Case Plan should be evaluated and revised on a regular basis to reflect the offender's progress, performance, and delinquency toward their goals. A note should be entered into VACORIS indicating the offender's status toward their Case Plan.

3. Standards of Supervision

- a. Sex Offender Supervision with minimum contacts is as follows:
 - i. The Chief P&P Officer shall ensure that all sex offenders required to be on GPS Monitoring by law, Court order, or operating procedure are enrolled in GPS Monitoring and their GPS equipment is installed immediately on the same day of offender's sentencing, release from incarceration, or when the court order is received, whichever happens first.
 - ii. Initiate and document contact (phone, personal) within two working days of case assignment
 - iii. Initial personal contact within five working days
 - iv. Initial home visit within first 30 days
 - v. Follow-up home visit one time per month
 - vi. A minimum of one personal contact per month
 - vii. Urinalysis per Operating Procedure 841.5, *Offender Alcohol and Other Drug Testing and Treatment Services*
 - viii. Community contacts in accordance with Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*
 - ix. Verify employment, mental health, and/or substance abuse counseling monthly
- b. If appropriate, compliant sex offenders who have been on supervision, completed treatment or successfully completed at least one-half of their supervision period, and a reduced level of supervision is supported by the risk assessment instruments, shall be supervised on Voice Monitoring Self-Report with minimum contacts as follows once documented risk reassessment is completed and approved by a supervisor
 - i. One home visit every 90 days
 - ii. One personal contact every 90 days
 - iii. Self-report will happen once a month
- c. Offenders being supervised on Conditional Release for the Department of Behavioral Health will be supervised in accordance with their conditional release plans.

4. Housing Requirements

- a. COV §18.2-370.3 limits where an individual convicted of certain sexual offenses may live, but this law is very narrow in focus and rarely applies.
- b. When investigating a home plan, the plan and the offender's history should be considered when determining suitability
- c. In the interest of public safety, it is recommended that the P&P District provide the offender alternative housing until their risk level can be determined. Housing alternatives may include local shelters, Community Residential Programs (CRP) or motels. When a motel is the P&P District's

only alternative housing source, P&P Officers shall complete the [Sex Offender Motel Contract](#) 735_F14.

- d. Any home plan shall be investigated by a P&P Officer who is trained and knowledgeable in sex offender supervision practices.
 - i. The investigating P&P Officer shall physically visit and cross the threshold of the proposed home plan.
 - ii. The [Sex Offender Home Plan Checklist](#) 735_F16 shall be incorporated into the home plan investigation and when completed, uploaded into the VACORIS notes.
 - e. The leaseholder of the residence must provide verification or documentation that the sex offender is allowed to live there by the owner of the residence or rental office only. (NOTE: Virginia is a passive notification state. Therefore, verification shall not be obtained from any source that may notify others of the offender's supervision status. (See Operating Procedure 050.1, *Offender Records Management*, for confidentiality requirements.)
 - f. Information needed for home plan investigation purposes may include, but not be limited to:
 - i. PSI
 - ii. Offense reports
 - iii. Sex Offender Assessments
 - iv. Polygraph examination results
 - v. Treatment records
 - vi. Institutional records
 - vii. Supervision notes
 - viii. If a home plan is deemed safe and minors reside in the home, the Officers shall complete the [Sex Offender Family Safety Contract](#) 735_F15.
5. Employment
- a. P&P Officers will review and approve employment.
 - b. Employment for sexual offenders should not include jobs that would place them in high risk situations according to their offense pattern.
 - c. The P&P Officer shall verify the employment and ensure that the employment is not in violation of any Virginia Code Section.
 - d. The P&P Officer should communicate with the employer to minimize the potential of working in high risk situations.
6. Chaperone
- a. A responsible adult may be designated as a chaperone to accompany the offender in designated social contacts such as Faith Based Activities, Family Reunification Visits, etc.
 - b. The chaperone and their duties should be listed on a [Sex Offender Faith Based Safety Contract](#) 735_F13, [Sex Offender Family Safety Contract](#) 735_F15, or similar document.
 - c. Chaperone criteria and responsibilities:
 - i. Chaperone must be aware of offender's offense cycle.
 - ii. Offender has developed, with the therapist, supervising P&P Officer, and chaperone a *Safety Contract*.
 - iii. Chaperone will, when asked; share all details of all visits.
 - iv. The chaperone must report any violation of the *Safety Contract* to the supervising P&P Officer and the therapist immediately
7. Community Activities
- a. Involvement in community activities is a stabilizing factor and efforts should be made to help offenders reintegrate safely into community activities.
 - b. Restrictions from community activities should be done on an individual basis, and not blanket restrictions.

8. Faith Based Activities

- a. Offender safety requires that, at a minimum, offenders be expected to complete a safety plan (documented on a [Sex Offender Faith Based Safety Contract](#) 735_F13) with faith-based officials, family (if family is involved), a designated Chaperone, and the supervising Officer.
- b. Once the plan has been executed and approved, the offender will be allowed to attend faith-based activities according to the [Sex Offender Faith Based Safety Contract](#) 735_F13.

9. Library, Parks, and Recreation Areas - An offender's pattern should dictate a restriction to visit parks and recreation areas. Those offenders who are afforded the opportunity should have a safety plan.

10. Computer Access

- a. The goal with computer management is to set responsible conditions and routinely monitor compliance with these conditions.
- b. If computer and/or internet usage is approved, the Officer should implement the use of content filtering software. (see [Sex Offender Special Instructions](#) 735_F18)
- c. Total prohibition should be reserved for those offenders whose offense dictates such a restriction.

11. Travel Requirements

- a. Travel outside of the offender's travel area, but still within the state, requires the approval of the supervising Officer and will be appropriately documented. Any individuals accompanying the offender should be aware that the offender is a convicted sex offender and may be designated as a chaperone.
 - i. The supervising Officer must notify the impacted P&P Office's District email account if travel out of the area is approved for overnight.
 - ii. Out of state travel may be permitted and if allowed, the following shall occur:
 - iii. Travel must be in accordance with Operating Procedure 920.4, *Interstate Transfer of Supervision*, and approved by Chief P&P Officer or designee on a travel permit ([Travel Permit - Out of State](#) 920_F3)
 - iv. In compliance with *Supervision Conditions* (see Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*) and any special instructions. (See [Sex Offender Special Instructions](#) 735_F18.)
 - v. If in a treatment group, travel plans have been processed by the group.
 - vi. A *Safety Contract* is developed; the offender should be instructed to share the plan's details with any accompanying individuals and signed by the applicable local law enforcement entity of that jurisdiction.
 - vii. The offender is required to submit an executed notification letter upon return if travel is out of state. (See [Sex Offender Travel Notification](#) 735_F17.)
- b. Sexually Violent Predators on Conditional Release Supervision are not permitted to travel out of state unless out of state travel is documented in the Conditional Release Order.
- c. Sexually Violent Predators on Conditional Release Supervision are not permitted to transfer out of state.

D. Transfer of Supervision between P&P Districts

1. Interstate transfers must follow current Interstate Compact Rules. (see Operating Procedure 920.4 *Interstate Transfer of Supervision*)
2. Transfer between P&P Districts (intrastate) of any offender being supervised as a sex offender case must follow Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer* and Operating Procedure 435.5, *Electronic Monitoring Program*.
3. Any home plan shall be investigated by an Officer who is trained and knowledgeable in sex offender supervision practices.
 - a. The investigating Officer shall physically visit and cross the threshold of the proposed home plan.

- b. The [Sex Offender Home Plan Checklist](#) 735_F16 shall be incorporated into the home plan investigation and when completed, uploaded into the VACORIS notes. (See the *Housing Requirements* section of this operating procedure.)
4. The leaseholder of the residence must provide verification or documentation that the sex offender is allowed to live there by the owner of the residence or rental office only. (NOTE: Virginia is a passive notification state. Therefore, verification shall not be obtained from any other source that may notify others of the offender's supervision status. (See Operating Procedure 050.1 *Offender Records Management* for confidentiality regulations)
5. All denials of transfer requests must be approved by the Chief P & P Officer or designee as outlined in Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*. Denials must be documented in VACORIS Log Notes as a conference and reviewed by the Chief P & P Officer or designee. The formal transfer investigation is to be completed within 7 working days of case assignment.

E. Risk Assessment, Evaluation, Treatment, and Psycho-education

1. Treatment is an essential element of supervision with a goal of assisting offenders in the development of internal behavioral controls. Group treatment is the preferred treatment modality. In cases where the offender is not amenable for group treatment, individual treatment can be utilized once approval is obtained from the Chief - Sex Offender Programs (CSOP).
2. Any offender on supervision for a qualifying sex offense will have the following risk assessment tools completed: STATIC -99R (or most updated version of the STATIC -99R), Stable 2007, and Acute 2007. If a case comes on supervision without a STATIC -99R risk score, the referral for the STATIC -99R shall be done at the initial interview. The Acute-2007 will be administered at each personal contact (PC). The Stable-2007 will be scored at each six month case review.
3. At a minimum, offenders who present as high risk, either by STATIC -99R score or the nature of the offense, should be referred for a sex offender evaluation within 45 days of case assignment provided there is ample time for an offender to complete treatment. Other offenders who present with a significant risk of re-offense should be evaluated at the discretion of the P&P Officer using the [Sex Offender Assessment Referral](#) 735_F21.
4. When an evaluation is done and treatment is recommended, a referral to a treatment provider on the DOC Contract shall be made within two working days of receiving the recommendation using [Sex Offender Treatment Referral](#) 735_F20. If space or funding is not available, the offender will be placed on a wait list.
5. If an offender successfully completed *Sex Offender Awareness Program*, Version 3 (SOAP-V3 July 2018) while incarcerated, he does not need to take SOAP-V3 in the community. Those offenders beginning supervision, who have not had SOAP-V3, should be considered for referral.
6. Once the offender has completed the SOAP-V3, the sex offender team and the treatment provider should conference the case to determine if additional treatment is recommended. The offender's risk assessment scores, treatment responsivity, and Court obligations should be considered.

F. Polygraph Testing

1. See Attachment 1, *Polygraph Protocol* for detailed descriptions and purpose of polygraphs. Based on their ability to pay, each offender will be charged a co-payment fee for polygraph services.
2. Instant Offense (IO)/Crime of Conviction Polygraph Examination
 - a. The IO polygraph examination should be limited to those offenders whose self-reported description of the instant offense significantly differs from the official report
 - b. This examination should be conducted after an assessment, but prior to the start of treatment.
3. The offender is expected to disclose a comprehensive report of all of their victims, as well as all deviant sexual activity up to the start of supervision using the [Sexual History Disclosure](#) 735_F23.

- a. Preparation for this examination begins after completion of the assessment or when treatment begins.
 - b. The P&P Officer will provide the offender with a copy of the [Sexual History Disclosure](#) 735_F23 and enough copies of the [Sexual History Disclosure - Victim Form](#) 735_F23A for the offender to complete a separate *Victim Form* for each victim.
 - c. The P&P Officer will review the directions for of the *Sexual History Disclosure* with the offender, and set a time for completion.
 - d. The *Sexual History Disclosure* should be completed and the offender prepared to take the sexual history examination within 90 days of the start of treatment.
 - e. The offender will review the contents of the *Sexual History Disclosure* with the P&P Officer.
 - f. The P&P Officer will make a copy of the completed *Sexual History Disclosure* for the treatment provider.
 - g. The offender will review his *Sexual History Disclosure* with their group members.
 - h. When the P&P Officer, treatment provider and group members are satisfied that the *Sexual History Disclosure* is complete, the P&P Officer will schedule the *Sexual History Disclosure* polygraph examination.
 - i. Prior to the examination, the P&P Officer will provide copies of the *Sexual History Disclosure*, PSI, sexual offender evaluation, and other relevant documents to the examiner one week before the exam.
 - j. The P&P Officer will send the offender a [Sex Offender Polygraph Appointment Letter](#) 735_F22, with the date, time, location and cost of the polygraph examination.
 - k. The offender will be expected to forward payment to the examiner no later than one week prior to the examination. If the examiner has not received payment, or notification of DOC's intent to pay for the examination, the examination will be cancelled.
 - l. It will be the examiner's responsibility to notify the supervising P&P Officer if payment has not been received.
 - m. If the results of the *Sexual History Disclosure* are deemed deceptive or inconclusive, the offender will return to group and once again review the contents of the *Sexual History Disclosure*. A second examination should be scheduled and completed within 60 days. A second deceptive examination becomes a treatment issue.
4. Maintenance and Monitoring Examination
- a. This examination enables the supervising P&P Officer to assess compliance with supervision and provides the therapist with information on compliance with treatment directives. This enables the supervising P&P Officer to be proactive in identifying precursors to possible relapse behavior.
 - b. Scheduling and/or frequency of the Maintenance/Monitoring examinations should be determined by the treatment team.
 - c. When a determination to test is made, the P&P Officer will send the offender a [Sex Offender Polygraph Appointment Letter](#) 735_F22 with the date, time, location, and cost of the polygraph examination.
 - d. The offender will be expected to forward payment to the examiner no later than one week prior to the examination. If the examiner has not received payment, or notification of DOC's intent to pay for the examination, the examination will be cancelled.
 - e. It will be the examiner's responsibility to notify the supervising P&P Officer if payment has not been received.
 - f. Prior to the examination, the P&P Officer will forward to the examiner a referral using [Sex Offender Polygraph Referral](#) 735_F19. The referral form will outline the issues that need to be addressed in the examination.
 - g. Deceptive polygraph results become a treatment issue and should be addressed in group by the

therapist.

- h. Deceptive polygraph results should not be used in revocation hearings.

G. Family Reunification

1. Reunification Factors

- a. When family reunification is considered, it should be slow and cautious. The following factors should be considered:
- b. Offender is actively involved in specialized treatment and has taken full responsibility.
- c. Offender has developed a solid risk management plan.
- d. Family is actively involved in treatment.
- e. Releases are signed so all treatment providers are able to communicate with each other.
- f. Ensure appropriate assessments/polygraphs are completed before contact is allowed. Polygraphs should not show deception or inconclusive results.

2. Family Readiness

- a. Ensure appropriate adjustment to supervision
- b. The victim is living in the home, is in treatment, feels supported by all family members and is ready for reunification.
- c. No one in the household blames the victim.

3. Rules for offender visits (i.e. home and overnight); see [Sex Offender Family Safety Contract](#) 735_F15.

4. Chaperone (designated by [Sex Offender Family Safety Contract](#) 735_F15) criteria and responsibilities

- a. Chaperone must be aware of offender's offense cycle.
- b. Offender has developed, with the therapist, supervising P&P Officer, and chaperone a *Family Safety Contract*.
- c. Chaperone will when asked; share all details of all visits. The chaperone must report any violation of the *Sex Offender Family Safety Contract* to the supervising P&P Officer and the therapist immediately

5. Role of supervising P&P Officer and treatment provider

- a. The supervising P&P Officer will be part of a team in the reunification of a family.
- b. The supervising P&P Officer will approve all team decisions that involve contact between the offender and the family.

H. Commitment and Conditional Release of Sexually Violent Predators

- 1. The Virginia Department of Corrections is responsible to identify those offenders who are currently serving time for one or more of the predicate offenses for commitment and conditional release of sexually violent predators. (See Attachment 2, *Predicate Offenses for Commitment and Conditional Release of Sexually Violent Predators*.)
- 2. The Sex Offender Screening and Assessment Unit shall review the offenders using an evidence-based assessment protocol approved by the Director and the Commissioner. They will refer those who appear to meet the definition of a sexually violent predator to the Commitment Review Committee (CRC) for further evaluation.
- 3. The CRC will request a full evaluation in accordance with [COV](#) §37.2-904 on referred offenders to determine if the offender meets the definition of a sexually violent predator.
- 4. The CRC will review evaluations and make non-binding recommendations to the Office of the Attorney General. These recommendations are to Civilly Commit, Conditionally Release, or release the offender.
- 5. The Office of the Attorney General then has 90 days to file motions in Court, or up until the offender's release date, whichever is later.

6. Sexually Violent Predator (SVP) is a Court designation based on a finding of “clear and convincing evidence” that the offender: (COV §37.2-900)
 - a. Is convicted of and serving incarceration for a predicate crime or is charged with a predicate crime but unrestorably incompetent to stand trial.
 - b. Has a personality disorder or mental abnormality which makes it difficult to control his behavior and likely to engage in sexually violent acts
7. Commitment
 - a. When an offender has been committed to the Virginia Center for Behavioral Rehabilitation (VCBR), the sentencing P&P District will determine if that offender has a probation/parole or post-release obligation and upload relevant documents in VACORIS, including the Court order. When the offender’s obligation is released to the sentencing P&P District in VACORIS, and if the offender has a supervision obligation, the P&P District will administratively transfer the case to “Sex Offender Programs - Community.” If there is no supervision obligation, the P&P District will close the case.
 - b. Once the case is transferred to the Community Sex Offender Program, the CSOP will place the case in LOW level supervision and assign the case to the VCBR P&P Officer.
 - c. The VCBR P&P Officer has 10 days to meet with the offender once they have been transferred to the VCBR. The VCBR P&P Officer will review all paperwork and have the offender execute all necessary documents. These are LOW Supervision Level cases and do not require COMPAS.
 - d. After the initial interview, the VCBR P&P Officer will meet with the offender every 6 months or more frequently if needed. These contacts will be documented in VACORIS *Case Notes*.
 - e. The VCBR P&P Officer will be responsible for initiating the issuance of a PB-15 when indicated, and follow-up with the Major Violation Report and Sentencing Guidelines. The VCBR P&P Officer will also notify the sentencing P&P District when cases achieve their expiration dates and close interest in the case.
8. Conditional Release
 - a. When a *Conditional Release Plan* (CRP) has been ordered for an offender housed at the VCBR or has been ordered by the Court and the offender has submitted a *Home Plan*, the CSOP will establish a *Sexually Violent Predator Investigation* in VACORIS.
 - i. The investigation information will include a contact, address, and telephone number.
 - ii. Additionally the CSOP will forward to the assigned P&P Officer the SVP evaluation and other relevant documentation.
 - iii. The [Sex Offender Home Plan Checklist](#) 735_F16 will be attached as an external document in VACORIS notes.
 - b. This investigation is to be completed within 10 days of assignment
 - c. The investigating P&P Officer will conduct a home visit and address the questions on the *Sex Offender Home Plan Checklist*. The investigating P&P Officer will upload the [Sex Offender Home Plan Checklist](#) 735_F16 into VACORIS *Case Notes* and e-mail a copy to the CSOP.
 - d. The Department of Behavioral Health and Developmental Services will develop a *Conditional Release Plan (CRP)* to be forwarded to the CSOP. The CSOP will forward the CRP to the investigating P&P Officer for review.
 - e. If the offender is granted Conditional Release, the investigating P&P Officer will enroll the offender on GPS, review the CRP and make the appropriate referrals.
 - f. Conditional Release cases are supervised according to the CRP. Any deviations from the CRP have to be approved by the Court, or in some instances, with the approval of the Department of Behavioral Health and Developmental Services and the Office of the Attorney General.
 - g. As outlined in COV §37.2-912 there is a status report due every 6 months to the Department of Behavioral Health and the CSOP no later than the 15th of the month. The Department of Behavioral Health will be responsible for ensuring that all parties receive a copy of the report. (See [Sexually](#)

[Violent Predator Progress and Adjustment Report](#) 735_F12.)

- h. All major and minor violations must be reported to the Department of Behavioral Health and Developmental Services and the Office of the Attorney General.
 - i. Sexually Violent Predators on Conditional Release Supervision are not permitted to travel out of state unless out of state travel is documented in the Conditional Release Order
9. Conditional Release Violation Procedure
- a. When an offender on Conditional Release, with a supervision obligation(s) violates the terms and conditions of release, the supervising P&P Officer should issue a PB-15 initially and the Emergency Custody Order (ECO) and Petition will follow. The ECO must be signed by either a Circuit Court Judge or Magistrate. The ECO and Petition will be served on the offender by local law enforcement.
 - b. If no supervision obligation exists, the supervising P&P Officer will execute an Emergency Custody Order and the accompanying Petition. The ECO must be signed by either a Circuit Court Judge or Magistrate. The ECO and Petition will be served on the offender by local law enforcement.
 - c. Once the ECO and Petition have been completed, copies are e-mailed to the CSOP.
 - i. The CSOP will ensure that the other agencies receive copies and are aware of the offender's status.
 - ii. The supervising P&P Officer will complete a Major Violation Report (MVR). (See Operating Procedure 920.6, *Violation of Supervision Conditions*.)
 - iii. Once the MVR has been completed, the CSOP will ensure that the other agencies receive a copy
 - d. The supervising P&P Officer will keep the CSOP and the other agencies updated on any criminal proceedings.
10. Sex Offender and Crimes against Minors Registration
- a. Registration is required for offenders convicted on or after July 1, 1994, of any sex offense listed on the Virginia State Police Registry. (see Operating Procedure 735.1, *Sex Offender and Crimes against Minors Registration*)
 - b. Upon conviction or release from any detention facility, jail, or prison, the supervising P&P Officer is to refer the offender to local law enforcement or the Virginia State Police to execute the *Virginia State Police Registration Form* (SP236) with current identifying information, fingerprints, palm prints, and photograph. The completed SP236 is forwarded to the Sex Offenses and Crimes Against Minors Registry (SOR) at Virginia State Police Headquarters. The offender has three days to comply with this law.
 - c. When the supervising P&P Officer becomes aware of any change in status (on supervision or off supervision), address, employment, school, vehicle, or internet, the P&P Officer must forward that information forthwith to the SOR by executing the [Change of Address by Registered Sex Offender \(SP-236C\)](#) 735_F24. (See Attachment 4, *Change of Address by Registered Sex Offender (SP-236C) - Instructions*.) The SP-236C will not change information on the SOR.
 - d. Offenders have three days to execute an updated SP236 when there has been a change in address, employment, school, or vehicle. Offenders have 30 minutes to execute a change in internet address information. Changes require the execution of an updated SP236. (See Attachment 3 *Sex Offender and Crimes Against Minors Registry Guidelines*.)
 - e. Offenders moving out of the Commonwealth of Virginia must notify the SOR of their move 10 days prior to their leaving.
 - f. The Department of Corrections is required to verify or cause to be physically verified registration information within 30 days of the initial registration or change of address, employment, school, and vehicle. Offender information is verified semi-annually thereafter. The date of the verification will be entered into the Sex Offender Verification System (SOV) once the verification has been completed.

- g. Persons convicted of a Tier III offense are required to re-register every 90 days and other sex offenders (Tier I or Tier II) will re-register annually.
 - i. In addition, when a sex offender is convicted of failing to register, they will be required to re-register more frequently.
 - ii. Tier III offenders will register monthly and other sex offenders (Tier I and Tier II) will register once between January and June and once between July and December.
 - iii. The DOC will send in re-registration information for Tier I and Tier II offenders utilizing the SP-236C.
 - iv. The duration of registration for sex offenders who have been convicted of failing to register is extended as they will no longer be permitted to be removed from the registry in 10 years from the date of registration. Instead, the requirement will be 15 years from the date of their last conviction for failing to register.
- h. All those convicted of failing to register on or after July 1, 2006 are subject to electronic monitoring. (See Operating Procedure 435.5, *Electronic Monitoring*.)
- i. On or about the 1st of each month, a *Sex Offender Verification (SOV) Past Due Assignment* report is generated by the State Police.
 - i. Supervising P&P Officers should review any open assignments and take action necessary to resolve any past due assignments.
 - ii. Questions about SOV should be directed to the Chief - Sex Offender Programs (CSOP) or their designee.
 - iii. The SOR Help Desk does not resolve SOV matters.

V. REFERENCES

Operating Procedure 050.1, *Offender Records Management*

Operating Procedure 435.5, *Electronic Monitoring Program*

Operating Procedure 735.1, *Sex Offender and Crimes against Minors Registration*

Operating Procedure 841.5, *Offender Alcohol and Other Drug Testing and Treatment Services*

Operating Procedure 920.1, *Community Case Opening, Supervision, and Transfer*

Operating Procedure 920.4, *Interstate Transfer of Supervision*

Operating Procedure 920.6, *Violation of Supervision Conditions*

VI. FORM CITATIONS

[Sexually Violent Predator Progress and Adjustment Report](#) 735_F12

[Sex Offender Faith Based Safety Contract](#) 735_F13

[Sex Offender Motel Contract](#) 735_F14

[Sex Offender Family Safety Contract](#) 735_F15

[Sex Offender Home Plan Checklist](#) 735_F16

[Sex Offender Travel Notification](#) 735_F17

[Sex Offender Special Instructions](#) 735_F18

[Sex Offender Polygraph Referral](#) 735_F19

[Sex Offender Treatment Referral](#) 735_F20

[Sex Offender Assessment Referral](#) 735_F21

[Sex Offender Polygraph Appointment Letter](#) 735_F22

[Sexual History Disclosure](#) 735_F23

[Sexual History Disclosure - Victim Form](#) 735_F23A

[Change of Address by Registered Sex Offender \(SP-236C\)](#) 735_F24

[Travel Permit - Out of State](#) 920_F3

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years after the effective date.

The office of primary responsibility reviewed this operating procedure in May 2020 and determined that this operating procedure will be rewritten.

Signature Copy on File

1/25/19

A. David Robinson, Chief of Corrections Operations

Date

Exhibit B



Sexual History Disclosure

This form is to be used with the *Sexual History Disclosure - Victim Form 735_F23A* to complete the *Sexual History Disclosure* required to prepare for a Sexual History Disclosure Polygraph Examination.

Your Full Name: _____

Therapist's Name: _____

P&P Officer's Name: _____

Date Started Treatment: _____

Crime of Conviction: _____

PART ONE - Victim Disclosure: (Attach a *Sexual History Disclosure - Victim Form 735_F23A* for each victim)
Prepare a separate *Sexual History Disclosure - Victim Form 735_F23A* for each victim.

Victim is defined as:

- Before you were 18 years of age – Every person with whom you had sexual contact who was three years or younger than you.
- After you were 18 years of age – Every person under 18 with whom you had any sexual contact
- Any person with whom you had non-consensual sexual contact, such as they were unconscious or passed out, unable to consent to mental incapacity, or appeared to be asleep.
- Any person when you used physical force, violence, coercion, threat, or weapon to overcome their resistance and/or objection to sexual contact.
- Any person to whom you are related by whole or half blood with whom you engaged in sexual activity.

Description of Victim #1: _____

Description of Victim #2: _____

Description of Victim #3: _____

Description of Victim #4: _____

Description of Victim #5: _____

Description of Victim #6: _____

Description of Victim #7: _____

Description of Victim #8: _____

Description of Victim #9: _____

Description of Victim #10: _____

Description of Victim #11: _____

Description of Victim #12: _____

Description of Victim #13: _____

Description of Victim #14: _____



Sexual History Disclosure Part 1 Continued

Instructions for Sexual History Disclosure - Victim Form 735_F23A

Prepare a separate *Sexual History Disclosure - Victim Form 735_F23A* for each victim, labeled with the appropriate victim number from the list above.

Complete all information on the front of the *Victim Form*.

- **Victim's identity:** Do not use the victim's name, use some other means to identify the victim, such as "the girl in the yellow dress," or "the girl at Joe's bachelor party."
- Select the victim's sex.
- Enter your age and the victim's age when victimization began.
- Check "Yes" or "No" for each activity; and enter the most possible number of times this activity occurred.
- Describe other contact with victim not listed that you know is important to disclose.
- Enter the month and year of the first and last sexual contact with this victim.
- Sign and date.

Complete each section of the *Victim Narrative* following the directions below. Add additional pages if needed for any section.

1. Victim's identity

Do not use the victim's name, use some other means to identify the victim, such as "the girl in the yellow dress," or "the girl at Joe's bachelor party."

2. How did you become acquainted with the victim

In some cases a few words will suffice. How did you meet the victim, how were you introduced, or how did you first become aware of the victim? What efforts and tactics did you use to create an opportunity to meet and/or become acquainted with the victim? Why did you think he or she would be vulnerable to abuse?

3. Your age and victim's age when victimization began

This is taken from the victim form. Note the victim's age and your age at the time the inappropriate behavior began.

4. What happened, all times?

This is the "body," or the lengthy account of the offense. Describe in detail what happened the first time you did anything sexually inappropriately with the victim. Describe your behaviors, what you did and what you tried to do. Be clear and frankly say what you did. Begin at the beginning, for example, recounting how you groomed the victim, using flattery, alcohol, drugs, bribes or gifts to "set up" the victim, or to mislead the victim's parents or guardians. Or, you may have used threats or force in your offense.

Next, explain the "middle part," for example, how you got the victim alone with you and describe thoroughly what you did sexually with the victim. Take personal responsibility for these actions -- do not put responsibility on the victim.

Last, describe the subsequent times you abused this victim. These descriptions may be briefer than the first -- if the subsequent offenses were similar to the first. If your behavior changed in some important way then more explanation is necessary. For example, the first molestations may have involved grooming and flattery, but later you resorted to forcible rape. If your tactics changed significantly, explain in detail what you did in these additional cases.



Sexual History Disclosure Part 1 Continued

Instructions for *Sexual History Disclosure - Victim Form 735_F23A*

5. Number of times occurred

This information should be consistent with what is on the victim form. You might explain how you arrived at the number on the victim form rather than just recording a number. For example, "At most I abused Susie twice a week for six months, or 2 times 26 equals no more than 52 times," or "I raped the victim twice on the night of the offense."

6. Where the abuse(s) took place

You do not have to account for each and every location for every incident if there were many occasions of abuse. For example, a statement such as the following should suffice: "Usually I molested her in her bedroom, sometimes in my bedroom, and twice in motel rooms." Or, "I raped her in an abandoned building on an old mattress."

7. What you did to get the victim to cooperate

Focus on this aspect of your offense here although you mentioned it in number 4, above. Describe what you said to the victim in order to get the victim to cooperate. Think about how your superiority may have influenced the victim. (For example, was she your granddaughter, a stepchild, or 10 years younger. Or, if you used bribery or tricks or force, describe these in detail in this section.)

8. How you kept the victim from telling

You might have used deceit to keep the victim from telling. For example, the victim (a child) may have believed you were playing a game. You may have convinced the victim to "keep a secret." Other times offenders use threats, such as "If you tell anyone I will go to jail," or "Your mommy will be unhappy with you if I go to jail," or "SCF will place you in a foster home if you report this," or "I will never be able to see you again if you tell." Of course, you may have used direct threats and intimidation.

9. How the offense was discovered

Clearly note if this is the offense of conviction. If it the abuse was reported, explain who reported, how you were caught and what consequences followed. Often, abuses are not reported. In that case, just write something like "She never reported the abuse and I was never caught."

Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

3. Pornography without Masturbation (Magazines, videos, strip clubs ...etc.)

☐ Does Not Apply to Me

What pornography, your age? What circumstances, how often? What fantasies? Others involved? How? Their ages?

[illegible]

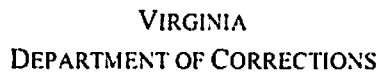
☐ Continued on back of this page.

4. Stealing of or Masturbating with underwear, lingerie or other clothing

☐ Does Not Apply to Me

Whose clothing? What clothing? What circumstances, how often? What fantasies? Others involved? How? Their ages?

[illegible]☐ Continued on back of this page.





Sexual History Disclosure - Continued

Your Full Name: _____

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

9. Necking, Petting and Consensual Sexual Activities with Age Appropriate Peers (not victims)

☐ Does Not Apply to Me

Start with first, try to keep in order

Contact # 1	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact # 2	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact # 3	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact # 4	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact # 5	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			



Sexual History Disclosure - Continued

Your Full Name: _____

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

10. Homosexual Behavior (sexual activity with the same sex – not victims)

☐ Does Not Apply to Me

Start with first, try to keep in order

Contact #1	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact #2	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact #3	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact #4	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			
Contact #5	Contact's Age	Contact's sex	Your age at the time
How did you become acquainted? What activities? How often. Thoughts and fantasies at time? _____ _____ _____ _____			

Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

11. Obscene Phone Calls (Include 1-900 and "sex lines" and "Chat Rooms" on the Internet.)

☐ Does Not Apply to Me

Did you know persons you called? Who were they? Why did you choose them? Did you masturbate? Thoughts and fantasies at time?

[illegible]

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12. Frottage (Intentionally rubbing against or touching the sexual areas of nonconsensual others. They may not have been aware.)

☐ Does Not Apply to Me

Who? What circumstances? School hallways, elevators, in lines, buses? Who did you do, how? Start at first experiences, your ages. Thoughts and fantasies at time

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Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

13. Abusing or Torturing Animals

☐ Does Not Apply to Me

Sexually motivated? What was motive? Mad at animal or its owner? Other? What animals? What did you do? Start with first, keep in order, list your age. Describe your thoughts at the time

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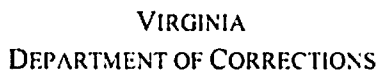
14. Setting Fires

☐ Does Not Apply to Me

Sexually motivated? What motive? Anger? Revenge? Excitement? Other? Start with first, keep in order.
List your age. Describe your thoughts and fantasies at the time

[illegible]

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Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

17. Sodomy (Anal penetration or attempted penetration – consensual)

☐ Does Not Apply to Me

Who? Their ages and relations to you. What did you do? What circumstances? Your thoughts and fantasies at the time

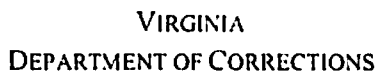
[illegible]☐ Continued on back of this page.

18. Oral Copulation (mouth to penis or to vagina or to anus – consensual)

☐ Does Not Apply to Me

Who? Their ages and relations to you. What did you do? What circumstances? Your thoughts and fantasies at the time.

[illegible]☐ Continued on back of this page.



PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

19. Transsexualism (Thoughts or interest in being the opposite sex)

☐ Does Not Apply to Me

What were your thoughts and/or fantasies? Your age and circumstances Start with first What were your thoughts and/or fantasies?

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20. Transvestitism ("cross dressing", wearing clothing or grooming like the opposite sex.)

☐ Does Not Apply to Me

What did you do? Start with first, what age. Do this with anyone else? Who? Their ages. What were your thoughts and/or fantasies?

[illegible]☐ Continued on back of this page.

Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

21. **Fetishism (Sexual arousal to inanimate objects, such as feet, tampons, nylons, or putting objects in your anus for sexual arousal)**

☐ Does Not Apply to Me

What objects? What circumstances? How often? Masturbate with these objects? How often? Do this with others? Who? What circumstances, their ages. What were your thoughts and/or fantasies?

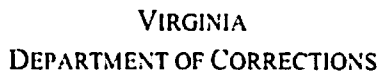
[illegible]☐ Continued on back of this page.

22. Sadism (Deriving sexual pleasure from another's pain or humiliation)

☐ Does Not Apply to Me

Who? What circumstances? What relationship? Ages? What was your motive: power, revenge, control? Did you believe "they wanted it?" Start with first. What were your thoughts and/or fantasies?

[illegible]☐ Continued on back of this page.



Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

25. Coprophilia (Use of feces or filth for sexual excitement)

☐ Does Not Apply to Me

Who else involved? What happened? Your age, theirs, your relationship. Feces or what "filth"? What were your thoughts and/or fantasies?

[illegible]

☐ Continued on back of this page.

26. Arousal to Odors (Any odor associated with sexual arousal)

☐ Does Not Apply to Me

What odors? What memories and persons associated with them? What fantasies? Ever masturbated to odors? What experiences? Your ages.

[illegible]☐ Continued on back of this page.

Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

27. Necrophilia (Sexual contact with dead animals or humans)

☐ Does Not Apply to Me

What persons or animals and what circumstances? Start with first time. How often? What were your thoughts and/or fantasies?

[illegible]

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28. Taking photos or video taping minors for sexual purposes

☐ Does Not Apply to Me

Who were the minors? Their ages, gender and relationship to you? What thoughts and fantasies at the time? How did you take the pictures? How did you use them? (Masturbation?)

[illegible]☐ Continued on back of this page.

Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

29. Taking photos or video taping adults for sexual purposes

☐ Does Not Apply to Me

Who were they? Their ages, gender and relationship to you? What thoughts and fantasies at the time? How did you take the pictures? How did you use them? (Masturbation?)

[illegible]☐ Continued on back of this page.

30. Your Sexual Victimizations (Use the same definitions as for Part One even though you may not think you're a victim.)

☐ Does Not Apply to Me

What happened? Who did it? How old were you? How old were they? Start with first, keep in order. Your thoughts and emotions at the time. How has this changed your life?

[illegible]

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Sexual History Disclosure - Continued

Your Full Name:

PART TWO - Sexual Behaviors

If you have never performed the behavior check "Does Not Apply to Me" on the section for that behavior.

35. Criminal History

☐ Does Not Apply to Me

List your arrest record for all crimes (except sexual offenses) and the outcomes in court. List all other types of crimes which you committed but were never caught - thefts, burglaries, drug sales.

[illegible]☐ Continued on back of this page.

36. Others

☐ Does Not Apply to Me

If there are other sexual behaviors you have engaged in that are not listed here add pages and descriptions of them in the same manner.

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Exhibit C

Counseling and Forensic Services, Inc.
Sex Offender
Individual Treatment Contract

I, _____, agree that I am a sexual offender in need of treatment. I agree to take part in the Sexual Offender Program and to allow Counseling and Forensic Services, Inc. to conduct the treatment. I agree to the following conditions:

1. I agree to be completely honest and to assume full responsibility for my behavior.
2. I understand that Relapse Prevention is about accepting that I have a chronic condition and that I can achieve control of my offense behavior by learning relapse signs, patterns of my thoughts, feelings and actions, deviant cycles, and new sequences for my life.
3. I agree to sign any release of information necessary to obtain information about my offense.
4. I understand that Relapse Prevention is about having no secrets. I agree that I will be open about my offense fantasies, feelings and actions to my support group and therapist, including my family, probation officer, employer and anyone else who may be helpful in supporting me.
5. I agree to participate in couples, family and/or any other therapeutic intervention that my therapist deems appropriate during the course of my treatment.
6. I agree to undergo polygraph testing, including a full sexual history and maintenance exams throughout the course of treatment. I understand that information regarding my polygraph, including the results and information needed to conduct the test will be shared between my treatment provider and the polygrapher. I understand that I am financially responsible for these tests.
7. I agree to get rid of any pornographic materials in my possession and to not access sexually explicit television programs, written material including some forms of anime, phone sex hotlines, Internet sites or use any form of electronic means to access pornography.
8. I agree to not maintain or access any type of social media or personal web-page such as My Space, Facebook, etc.
9. I agree to contact the therapist if I cannot make my appointment. The only excused absence is for a true emergency which the therapist will check by contacting a third party. You are responsible for bringing documentation to explain your absence. A total of two unexcused absences are allowed. If you have three unexcused absences in one year from the beginning of your treatment, you will be discharged unsuccessfully from treatment. Remember!!! Absences are considered a relapse sign.
 - a.) The full fee for an unexcused absence must be paid for within a two week period.
10. I agree pay my weekly fee prior to the session. Payment must be in the form of cash or money order; no checks. Do not come to your session without your fee, you will be marked absent.
11. I understand that failure to come prepared to treatment sessions, (completed assignments, etc) exhibiting disruptive behavior or refusing to participate adequately may result in removal from the session which will be considered an unexcused absence.

Counseling and Forensic Services, Inc.

Sex Offender Individual Treatment Contract

12. I agree to be prompt for all meetings. Arriving late to meetings will be discussed and may result in an unexcused absence. Arriving more than 10 minutes late for a meeting will automatically result in an unexcused absence. Contact the therapist's voice mail if he or she is late or to check whether the session is being held in inclement weather. Wait 20 minutes before leaving the treatment location.
13. I agree to come to weekly therapy sessions until the treating therapist and/or probation officer states otherwise.
14. I agree that CFS, Inc. will not accept third party payments for sex offender treatment.
15. I agree to the following special conditions:

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I UNDERSTAND THAT MY PROBATION/PAROLE OFFICER AND/OR DSS REPRESENTATIVE WILL BE NOTIFIED IMMEDIATELY OF ANY VIOLATION OF THIS CONTRACT. I ALSO UNDERSTAND THAT LOCAL OR STATE POLICE DEPARTMENTS MAY BE CONTACTED IF NECESSARY TO MAINTAIN VICTIM OR COMMUNITY SAFETY. I ALSO UNDERSTAND AND AGREE THAT ANY VIOLATION OF THIS CONTRACT MAY BE GROUNDS FOR TERMINATION OF YOUR PARTICIPATION IN THE PROGRAM AT THE DISCRETION OF THE THERAPIST. I AGREE THAT THE THERAPIST MAY TERMINATE MY TREATMENT OR RECOMMEND FURTHER ONGOING TREATMENT FOR ANY OTHER PROBLEM BEHAVIOR NOT OUTLINED ABOVE.

Signed _____ Date _____
Client

Signed _____ Date _____
Therapist