

**Vermont Agency of Human Services
Department of Corrections Proposed Rule
*Procedure and Criteria for Obtaining an Exemption from
the Sex Offender Internet Registry
September 28, 2009***

Posted for Comment 9/28/09-11/12/09

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1. AUTHORITY

2009, No. 58, §11(3)(C), eff. July 1, 2009. 13 V.S.A. §5401, Subchapter 3 of Chapter 167 *et seq.*, “Sex Offender Registration; Law Enforcement Notification”.

2. PURPOSE

The purpose of this administrative rule is to establish the criteria for the Commissioner of the Department of Corrections to apply when reviewing decisions of the Sex Offender Review Committee, under §11(3)(C) of Act 58 of the 2009 legislative session, granting an exemption from the Sex Offender Internet Registry to eligible offenders who have successfully reintegrated into the community.

3. APPLICABILITY/ACCESSIBILITY

This rule is applicable to all individuals and groups affected by the operations of the Vermont Department of Corrections, the Sex Offender Registry, and the Vermont Criminal Information Center. Anyone may have a copy of this rule.

4. DEFINITIONS

Commissioner: The Commissioner of the Department of Corrections.

Department: The Department of Corrections.

Eligible Offender: A person, convicted of a sexual crime prior to July 1, 2009 in the State of Vermont that requires compliance with the terms of subchapter 3 of chapter 167 of Title 13, and who:

a. is no longer under Department supervision;

OR

b. is still under Department supervision and has

i. a conviction of lewd and lascivious conduct with a child in violation of 13 V.S.A. §2602,

OR

ii. two (2) convictions for voyeurism in violation of 13 V.S.A. §2605(b) or (c).

Sex offenders on the Vermont Sex Offender Internet Registry as of July 1, 2009 and those who have been designated as sexually violent predators under 13 V.S.A. §5405 are excluded from this definition regardless of whether they meet any or all of the elements above.

Index Offense: The offense(s) that require(s) compliance with the terms of subchapter 3 of chapter 167 of Title 13.

Petition: The application form and supplemental materials that must be filed by an eligible offender with the Sex Offender Review Committee in order to be considered for an exemption from the Sex Offender Internet Registry. An incomplete petition will not be considered.

Sex Offender Review Committee: The Committee established in Section 5 of the Department of Corrections APA Rule #05-013, *Determination of High Risk and Failure to Comply with Treatment for Purposes of Sex Offender Internet Registry*.

Sex Offender Internet Registry: The database of information, maintained by the Department of Public Safety pursuant to 13 V.S.A. §5411(a), that is publicly accessible through the Internet.

5. POLICY

a. The Commissioner will review all determinations of the Sex Offender Review Committee on offender petitions for exemption from the Sex Offender Internet Registry.

b. The Commissioner will consider the decision of the Sex Offender Review Committee using the following criteria to assess whether the eligible offender has successfully reintegrated into the community.

i. Whether the offender has any charges, plea agreements, or convictions for a period of five (5) years prior to the effective date of the final version of this rule, of any of the following:

- a) a felony offense
- b) an offense with a sexual element
- c) a furlough/probation/parole violation;

ii. Whether the offender has complied with, and successfully completed all treatment recommended by the Department;

iii. Whether the offender has any sex offense convictions prior to the index offense;

iv. Whether the offender's current or prior probation and parole officer(s) provided a positive recommendation;

v. Whether the offender's family and other social supports are positive and prosocial;

vi. Whether the offender's employment and residence status are stable.

6. PROCESS

a. The eligible offender is responsible for submitting a complete petition, including the following items:

- i. Documentation of treatment completion;

- ii. Documentation of residence and employment for the previous five (5) years.
- b. An eligible offender who has filed a petition prior to the effective date of this administrative rule shall be permitted an additional sixty (60) days to amend his/her petition.
- c. The Sex Offender Review Committee shall make written findings on each petition for an exemption after review of a completed petition. The Sex Offender Review Committee shall deliver to the Commissioner its written findings within one (1) week after its findings are made.
- d. Where the preponderance of the evidence supports the Sex Offender Review Committee's conclusion over whether the eligible offender has successfully reintegrated into the community, the Commissioner will approve the Sex Offender Review Committee's decision. The Commissioner will review each written decision from the Sex Offender Review Committee within thirty (30) days of receiving the decision.
- e. The Commissioner shall return to the Sex Offender Review Committee any decision in which the Committee has not provided a sufficient basis for review. The Committee shall provide the Commissioner additional written explanation of the evidence upon which it relied within fifteen (15) days. The Commissioner will then render a decision.
- f. The Commissioner shall deliver to the Sex Offender Review Committee, the Department of Public Safety, and the eligible offender his/her determination, as well as the Sex Offender Review Committee's written findings.
- g. *Appeal:* Where an eligible offender's petition for exemption from the Registry is denied, an appeal to Vermont Superior Court is available through Vermont Rule of Civil Procedure 75.