

## Certification Review Panel Guidelines

The Adam Walsh Child Protection and Safety Act (Walsh Act) created Title 18 U.S.C. § 4248 for the civil commitment of sexually dangerous persons due for release from the Bureau of Prisons (Bureau). To initiate court commitment proceedings, the Bureau must certify the inmate as a "sexually dangerous person" as specified in the statute. The Bureau reviews all releasing sex-offenders to determine whether the inmate meets the statutory definition of a sexually dangerous person. To ensure that cases are reviewed in a consistent and thorough manner, the Director has established a Certification Review Panel (CRP) comprised of staff from the Correctional Programs Division (CPD), the Office of General Counsel (OGC), and other correctional managers. The present document summarizes the review procedures employed by the CRP in rendering determinations on releasing sex offenders.

### I. Elements Reviewed in the Certification Process:

Civil commitment of a sexually dangerous person pursuant to Title 18 U.S.C. § 4248 requires an offender meet three elements to be certified by the Bureau. These elements are as follows:

1. Behavioral Element: "Engaged or attempted to engage in sexually violent conduct or child molestation."

The Bureau can consider all conduct, not just conduct for which a conviction occurred. This can include behavior which resulted in a charge which was later dropped or pled to a lesser offense, where evidence indicates the behavior itself occurred. Conduct considered may also include sexual misconduct in a correctional facility or psychiatric hospital which may not have resulted in charges filed in Court. An inmate's self-admission of having engaged in or attempted to engage in sexually violent conduct or child molestation may also be considered.

2. Diagnostic Element: "A serious mental illness, abnormality, or disorder."

The Bureau may consider existing diagnoses, or conduct an additional evaluation of an inmate to determine whether a diagnosable condition is present. A diagnosable condition may be "any serious mental illness, abnormality, or disorder" that could result in the inmate having serious difficulty refraining from sexually violent conduct or child molestation. Possible diagnoses include but are not limited to 1) pedophilia; 2) sexual sadism; 3) paraphilia, not otherwise specified (non-consent,

hebephilia, etc.); 4) sexual disorder; 5) antisocial personality disorder; or 6) personality disorder, not otherwise specified.

3. Risk Element: As a result of which (diagnosis) the inmate "will have serious difficulty refraining from sexually violent conduct or child molestation."

The CRP addresses this element by conducting a review of risk factors related to sexually violent conduct or child molestation. The CRP may consider any available records to assist in determining risk. This can include documented patterns of prior behavior, statements made during treatment, or other indicators which may suggest risk. The Bureau also uses actuarial methods to determine risk of sexual recidivism. Tools currently being used are the STATIC-99 and the Rapid Risk Assessment for Sexual Offender Recidivism (RRASOR), although these selections may change as the science of risk assessment progresses.

## II. How the CRP Reviews Each Element:

### 1. Determination on Behavioral Element:

The CRP will review the inmate's documentation for evidence of a history of engaging or attempting to engage in sexually violent conduct or child molestation. As noted above, the CRP can consider all conduct, not just conduct for which a conviction occurred. An inmate's self-admission of having engaged in or attempted to engage in sexually violent conduct or child molestation may also be considered but is not necessarily determinative (see "Evidentiary Considerations" below).

### 2. Determination on the Diagnostic Element:

The inmate's psychology record will be reviewed to determine whether a qualifying diagnosis has been rendered by a Bureau psychologist (or contractor). The CRP will only consider an existing diagnosis for the purposes of reviewing this element if the psychology record contains a report that adequately supports the diagnosis (indicating, for example, that relevant areas were addressed in a clinical interview; collateral documentation was reviewed, if necessary). Documented diagnoses by non-Bureau mental health professionals may be used if, in the judgement of the CRP, the diagnosis was based on a comprehensive assessment conducted by qualified clinical staff.

In cases where an appropriate diagnosis is lacking, the case may be referred for a Precertification Review to receive a diagnostic evaluation by a staff member with specialized training in the

clinical assessment of sexual offenders. In cases where a transfer to a Sex Offender Management Program (SOMP) is precluded (i.e., insufficient time remaining on sentence), it may be necessary to request an assessment performed by an institution psychologist or contractor at the inmate's current facility.

### 3. Determination on the Risk Element:

In rendering determinations on the Risk Element, the Certification Review Panel employs the clinically adjusted actuarial method of risk classification. This method relies on empirically-derived, actuarial risk classification protocols (specifically, the STATIC-99 and the RRASOR) as the base, or foundation, for the risk assessment, supplemented by clinical adjustment in the following circumstances: 1) where research has demonstrated that consideration of additional factors adds incrementally to the predictive accuracy of the actuarial method; 2) where the characteristics of the case are beyond the scope of applicability for the actuarial instruments used (e.g., female offenders; juvenile offenders); and 3) where there are other characteristics of the case which bear relevance to public safety. The CRP uses the actuarial scores to determine the base risk level, as defined in the table below. However, at the discretion of the CRP, the clinical adjustment may be employed to increase ("upward adjustment") or decrease ("downward adjustment") the base risk level, as summarized in the following table:

STATIC-99/RRASOR Score	Risk Element Satisfied ?
6 + (STATIC-99) <u>or</u> 4 + (RRASOR)	Yes, unless downward adjustment applies
0 - 5 (STATIC-99) <u>and</u> 0 - 3 (RRASOR)	No, unless upward adjustment applies.
Not Scored (e.g., due to lack of adjudicated Category A sex offense)	No, unless upward adjustment applies

A. Factors that may be used as upward adjustments for cases not meeting the cutoff scores listed above ("overrides"):

The following upward adjustments may be used by the CRP. The upward adjustments listed below are risk factors established by research as predictors of sexual recidivism

or merit inclusion because, by their nature, they bear relevance to public safety.

- Any evidence of significant victim injury, torture, or death;
- Any evidence of forcible confinement of victim(s);
- Any evidence of sadistic behavior/paraphernalia such as rape kits, torture devices, or literature indicative of a propensity to engage in sadistic behavior;
- Any evidence of statements by the inmate, or any other indicators, of future intent or plans to commit sexual offenses or immerse himself in a criminal-pedophilic network for the explicit purpose of sexual abuse or exploitation of children;
- Behavioral evidence of paraphilic hypersexuality, compulsion, or gross sexual dysregulation;
- Evidence of psychopathy (ordinarily, must be confirmed by a Psychopathy Checklist- Revised (PCL-R) score of 27 or higher);
- Evidence of deviant sexual arousal (as measured by penile plethysmograph or other standardized method of measuring deviant sexual arousal);
- Treatment failure or drop out from a sex offender treatment program;
- History of supervised release violations/failure for sexual offense or sexual misconduct.

The CRP may also consider other factors if determined to be clinically significant and risk relevant in relation to the offender's overall risk profile.

Possible upward adjustments may be identified by the Primary Reviewer or by the panel during the initial review of the case. The possible presence of an upward adjustment does not automatically result in a decision to certify. Ordinarily, the clinical significance and risk relevance of upward adjustments will be assessed by SOMP staff, or another designated clinician, as detailed in a Precertification Review Report. The panel will then utilize this information to render a final determination on whether a specific upward adjustment will be applied.

B. Factors that may be used to adjust downward for cases meeting or exceeding the cutoff scores listed above ("mitigating factors").

- SOTP completion, or successful completion of other treatment program where records are available for

review (not based on inmate self report). Evidence must indicate that inmate convincingly demonstrates knowledge and mastery of treatment skills;

- Advanced age (i.e., 60 years of age or older), especially when the period of supervision to follow incarceration covers a substantial portion of the person's remaining life;
- Chronic and severe medical condition impairing functioning specifically related to risk of sexual offending. (Impotence or erectile dysfunction would ordinarily not apply);
- Cases where there is an absence of a pattern of sexual offending. Specifically, STATIC-99 6+ cases lacking a pattern of sex offending (e.g., history consists of a small number of known or adjudicated sex offenses);
- Cases where the preponderance of an inmate's sex offense history is in remote past (e.g., a STATIC-99 6+ case with all sex offenses having occurred more than 15 years ago). This downward adjustment is especially compelling when the offender was residing in the community for much of the time since the last sex offense (e.g., the offender was living in the community for a substantial period of time since the last sex offense and returned to custody for a reason that is non-violent and non-sexual).

The CRP may also consider other factors if determined to be clinically significant and risk relevant in relation to the offender's overall risk profile.

Possible downward adjustments may be identified by the Primary Reviewer or by the panel during the initial review of the case. The possible presence of a downward adjustment does not automatically result in a decision not to certify. Ordinarily, the clinical significance and risk relevance of downward adjustments will be assessed by SOMP staff or another designated clinician, as detailed in a Precertification Review Report. The CRP will then utilize this information to render a final determination on whether a specific downward adjustment will be applied.

#### 4. Evidentiary Considerations

The following is a list of factors considered by the CRP while assessing the behavioral, diagnostic, and risk elements in § 4248 evaluations of inmates.

- Government's Evidentiary Standard. For each of the elements, the CRP must consider the "clear and convincing" evidentiary standard the government must ultimately meet when presenting the case to a district court. The CRP must assess the likelihood of ultimately satisfying this standard. The U.S. Attorney's Office may be consulted to help assess the strength (or weakness) of the government's case on evidentiary grounds.

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- Self-admissions. If an inmate's self-admission is the only evidence of having engaged in or attempted to engage in sexually violent conduct or child molestation, the CRP will consider the context of the statement. Admissions made and documented for an official proceeding or investigation where the inmate had an opportunity to contest factual assertions (e.g., Presentence Investigation Report (PSR), Statement of Reasons (SOR), court transcript) may be more probative than a self-admission made in a clinical setting (e.g., during SOTP or SOMP programming activities or individual counseling).
- Availability of Evidence. The CRP must consider whether there will be substantial difficulty in identifying victims and/or witnesses to the inmate's qualifying behavior, securing their testimony, or obtaining other documenting evidence. The CRP must also consider the amount of time that has lapsed between the qualifying conduct and the present. In the absence of preserved testimony or documentation, the lack of a statement from a victim or witness may inhibit the presentation of the behavioral element.
- Legal Landscape. The CRP must consider case law, statutes, court orders, and other legally binding precedents which affect the Bureau's operation under 18 U.S.C. § 4248.

In cases where the factors listed above are determined to preclude a finding of YES on any of the three elements, the CRP will document the rationale on the Case Summary form on the Sex Offender Data System (SODS).

### III. Precertification Review Procedures:

Precertification Review Reports will ordinarily be requested by the CRP in the following circumstances:

1. The case meets or exceeds the base risk level criterion as determined by the actuarial instrument(s).

- The report will confirm the accuracy of the initial STATIC-99 and RRASOR scoring, possibly supplementing the scoring of these instruments with interviews or self-report data.
- The report will address the clinical significance and risk relevance any possible downward adjustments in relation to the offender's overall risk profile.
- The examiner will complete a diagnostic assessment to address Element 2 (Diagnostic Element), if necessary.

2. The case does not meet the base risk level criterion as determined by the actuarial instruments, but the panel is considering the possible application of an upward adjustment, as listed above.

- The report will confirm the accuracy of the initial STATIC-99 and RRASOR scoring, possibly supplementing the scoring of these instruments with interviews or self-report data.
- The report will address the clinical significance and risk relevance of any possible upward adjustments in relation to the offender's overall risk profile;
- The examiner will complete a diagnostic assessment to address Element 2 (Diagnosis Element), if necessary.

3. The case lacks a diagnosis but meets other criteria for certification:

- The report will confirm the accuracy of the initial STATIC-99 and RRASOR scoring, possibly supplementing the scoring of these instruments with interviews or self-report data.
- The examiner will complete a diagnostic assessment to address Element 2 (Diagnosis Element), if necessary.
- The report will address the clinical significance and risk relevance of any possible downward adjustments, as listed above.

#### IV. Levels of Review:

1. **Case Summary:** Cases referred to the CRP for certification review will be assigned to Primary Reviewers for completion of a Case Summary. The Case Summary will be written and stored on the Sex Offender Data System (SODS). The Case Summary is a concise review of all relevant information on the case, to include:

- Criminal history;
- Institution Adjustment data (e.g., incident reports);
- Diagnosis or other clinical data;
- Review of administrative data (e.g., supervised release conditions);
- STATIC-99 and RRASOR scores (either scored by the Primary Reviewer or derived from Bureau records).

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Ordinarily, Primary Reviewers will rely upon Bureau records (e.g., the Presentence Report and the Judgement and Commitment Order) to complete the review. In some cases, these sources of data may lack sufficient explication of the inmate's history. In these cases, the CRP may attempt to obtain additional documentation from outside agencies (e.g., courts; sheriff's office; treatment providers; United States Probation, etc).

**2. Initial Review:** Initial reviews are ordinarily conducted by at least two CRP members. The initial review of each case is conducted to efficiently remove from further consideration any cases clearly not meeting one of these elements. If two CRP members concur that the case does not meet one or more elements, then a decision to not certify the inmate will be rendered. The two panel members document their finding in the "CRP Case Review" section of the CRP "Case Summary" form on the SODS system.

Cases that do not meet the standard for a single element do not require review of the two remaining elements. For example, cases lacking a history of engaging or attempting to engage in sexually violent conduct or child molestation (i.e., Behavioral Element) do not require review for the Risk or Diagnostic Elements. If an Element is not reviewed, it may be coded by the CRP as "not rated" in the final documentation on SODS.

The initial review may also result in a decision to defer a final determination on certification pending completion of a diagnostic evaluation or risk assessment (see Precertification Review Procedures, above).

**3. Full CRP Review:** Full CRP reviews are only required on cases receiving strong consideration for certification. Full CRP review requires a formal meeting attended by no less than three panel members. Each case will be reviewed by attending CRP members prior to the meeting. The case will be discussed and a final determination on each of the elements will be rendered by the consensus of the CRP.

A full CRP review is required when:

- The case has a STATIC-99 score of 5 or higher;
  - The case was previously identified as requiring a Precertification Review;
  - The case involves possible significant upward adjustments or any other features warranting a more extensive discussion at a full panel meeting.
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