

REDUCTION IN CUSTODY/SPECIAL REVIEW BOARD

Minnesota Sex Offender Program

Issue Date: 11/3/15 Effective Date: 12/1/15 Policy Number: 215-5060

POLICY: The Special Review Board (SRB) hears all petitions for reductions in custody filed by or on behalf of individuals committed as a sexually dangerous person (SDP) and/or as sexual psychopathic personalities (SPP), which includes those committed as psychopathic personalities (PP) and appeals of a revocation of a transfer to Community Preparation Services (CPS) or a provisional discharge.

Petitions pertaining to persons committed as a SPP/SDP/PP under Minn.Stat. §253B.185 or Chapter 253D, or committed both as mentally ill and dangerous to the public under Minn. Stat. §253B.18 and as a SPP/SDP/PP are heard in accordance with Minn. Stat. §253D.27.

Minnesota Sex Offender Program (MSOP) clients may be administratively transferred between MSOP and the Minnesota Security Hospital (MSH), the Minnesota Department of Corrections (DOC), or the Federal Bureau of Prisons (BOP) without a hearing before the SRB and without affecting the client's commitment status as SDP, SPP, and/or PP.

AUTHORITY: Minn, Stat. §246B.02 Establishment of Minnesota Sex Offender Program.
Minn. Stat. §253D, Minnesota Commitment and Treatment Act: Sexually Dangerous Persons and Sexual Psychopathic Personalities.
Call v. Gomez, 535 N.W.2d 312. (Minn.1995)

APPLICABILITY: Minnesota Sex Offender Program (MSOP), program-wide

PURPOSE: To outline the process for a client committed to the MSOP to petition for a reduction in custody and describe the operation of the Special Review Board.

DEFINITIONS:

Community Preparation Services (CPS) – see MSOP Policy 602.010, “Community Preparation Services.”

Designated agency – an agency selected by a county board to provide case management or social services, providing case management services through a contract with the Department of Human Services.

Discharge – see MSOP Division Policy 230-5100, “MSOP Departure.”

Interested person – an adult, including but not limited to, a public official, a local welfare agency acting under §626.5561, the legal guardian, the spouse, a parent, legal counsel, an adult child, next of kin, or other person designated by a petitioning client, or by a health plan company providing coverage for a petitioning client, entitled to receive notice of the hearing, attend the SRB hearing (as permitted by the SRB Chair), and submit materials for review by the SRB.

Head of the treatment facility – pursuant to Minn. Stat. §253B.02, subd. 8, the person charged with overall responsibility for the professional program of care and treatment of the facility or the person's designee. For MSOP, the head of the treatment facility is the Executive Director or his/her designee.

Judicial Appeal Panel – the panel of district court judges established by Minn. Stat. [§253B.19](#) and appointed by the Chief Justice of the Supreme Court of Minnesota (sometimes referred to as the Supreme Court Appeal Panel or SCAP) to hear and decide petitions for reductions in custody.

MSOP Clinical Leadership – clinical directors/designee.

Petitioner – the client named on the petition form.

Post-hearing submission – supporting documentation received into an open record following the completion of a Special Review Board hearing.

Provisional discharge (PD) – placement in a community-based setting under terms and conditions ordered by the judicial appeal panel, during which the civil commitment remains in effect.

Reduction in Custody – a transfer to a less secure setting (e.g., Community Preparation Services (CPS)), a provisional discharge, or a discharge from commitment.

Report Amendment – a form used when a report has been previously submitted and finalized and the author found erroneous information, substantial change or clarification needed, requiring the information be amended.

Report Update – a form used when a report has been previously submitted and finalized, requiring an additional report to provide more current information.

Special Review Board (SRB) – the board established by the Commissioner pursuant to Minn. Stat. [§253B.18](#) subd. 4(c) made up of three persons experienced in the field of mental illness: a psychiatrist or doctoral level psychologist with forensic experience, an attorney, and a mental health professional. None of the members may be affiliated with the Department of Human Services.

SRB Coordinator – the designated MSOP staff who coordinates and schedules SRB hearings.

Staff-approved plan – see [MSOP Division Policy 215-5010](#), “Treatment Progression.”

PROCEDURES:

- A. A client rights coordinator provides clients with the [Special Review Board Summary \(215-5060p\)](#), attached) upon admission to the MSOP (see [MSOP Policy 202.100](#), “Admission to the MSOP”).
- B. A client, the client’s attorney, or the head of the treatment facility/designee may file a petition for reduction in custody.
 1. A committed person may not petition the SRB any sooner than six months following either:
 - a) the entry of judgment in the district court of the order for commitment issued under Minn. Stat. [§253D.07](#), or upon the exhaustion of all related appeal rights in state court relating to that order, whichever is later; or
 - b) any order of the Judicial Appeal Panel, or upon the exhaustion of all appeal rights in state court, whichever is later.
 2. The head of the treatment facility/designee may petition at any time.

3. A client may obtain the Special Review Board Petition (215-5060e-5011), attached) from a client rights coordinator, the client computer network or from the SRB Coordinator.
 4. Clients must submit the completed petition to the SRB Coordinator. Petitions filed by others on behalf of a client are referred to the SRB Coordinator via mail for distribution and scheduling.
 5. Clients having questions while completing the petition or about the SRB process are encouraged to contact their attorney either by mail or telephone (see MSOP Division Policy 420-5210, "Client Telephone Use"). A client rights coordinator may assist the client with identified physical, learning, language, mental health or cognitive needs (see MSOP Division Policy 215-5250, "Clients with Disabilities" and/or MSOP Division Policy 215-5017, "Clients with Limited English Proficiency") to complete and submit the petition.
 6. The petition must be signed, dated, and clearly indicate the requested relief (i.e. transfer to a less restrictive setting, provisional discharge, amendment of an existing provisional discharge, full discharge, and/or appeal of a revocation of a transfer to CPS or a provisional discharge).
- C. The SRB has no statutory authority to hear and consider petitions requesting a client's commitment status be changed from SPP to SDP or another commitment status. The SRB does not consider petitions for assignment to a different phase of treatment or programming within MSOP (e.g., treatment assignments, requests for privileges, or pass-eligible status).
- D. Client's Right to Counsel
1. A client has the right to an attorney at SRB hearings. The attorney must be licensed to practice law in the State of Minnesota.
 2. If the client does not identify an attorney on his/her petition and the SRB Coordinator cannot identify the client's attorney in the client's treatment record, the SRB Coordinator will contact the committing court and request an attorney be appointed on the client's behalf.
- E. Client's Right to Designate Interested Persons
1. A client has the right to designate interested persons to receive notice of the client's SRB hearing and to attend or submit materials, as permitted by the SRB Chair.
 2. A client must designate interested persons at least 21 days prior to the hearing by submitting a written request to the SRB Coordinator. The written request must include the name, address and telephone number of each designated interested person.
 3. Upon receipt of the client's written request, the SRB Coordinator will notify the interested person(s) of the hearing. If an interested person chooses to attend the hearing, s/he must do so at the Department of Human Services (DHS) offices at 444 Lafayette Road in St. Paul.
 4. The SRB Chair makes the final decision on whether or not to allow the attendance of a designated interested person.
- F. Upon receipt of an accepted petition, the SRB Coordinator will:
1. schedule the SRB hearing at least 60 days from the date of receipt (for exceptions: see sections G and H, below); and
 2. notify appropriate MSOP staff.

- G. Designated MSOP staff complete the following reports for consideration as the SRB makes a recommendation regarding a client's petition for a transfer to a less restrictive setting, provisional discharge or discharge from civil commitment.
1. The SRB Treatment Report (215-5060d-2010a), attached) summarizes the client's psychological history, diagnosis, progress in treatment, and continued treatment needs.
 - a) Designated clinical staff:
 - (1) offer the client the opportunity to participate in an interview for the SRB Treatment Report;
 - (2) review the client's records; and
 - (3) receives input from the treatment team regarding the client's progress.
 - b) Staff must complete the SRB Treatment Report with or without the client's participation. Client's consent will be noted on the Consent for Special Review Board Treatment Report Interview (215-5060a-2015, attached).
 - c) The report author submits a draft to the facility clinical director/designee for review.
 2. Sexual Violence Risk Assessment
 - a) The Sexual Violence Risk Assessment Report (215-5060c-1015a, attached) addresses the client's risk for sexual re-offense and comments on statutory criteria as it relates to the level of relief requested in the petition.
 - b) Staff must complete the risk assessment with or without the client's participation. Client's consent is noted on the Consent for Sexual Violence Risk Assessment Interview (215-5060b-2015), attached).
 3. The authors of the SRB Treatment Report and Risk Assessment will:
 - a) utilize the appropriate form template:
 - (1) If updated information is required following a previously-submitted report, the author will utilize the SRB Treatment Report Update (215-5060m-2015c), attached) or the Sexual Violence Risk Assessment Report Update (215-5060k-2015c), attached).
 - (2) If information found within the report is erroneous, there has been a substantial change, or clarification is needed, the author will utilize the SRB Treatment Report Amendment (215-5060n-2010d), attached) or the Sexual Violence Risk Assessment Report Amendment (215-5060l-2015d), attached).
 - b) submit the documents to Health Information Management Services (HIMS) for the client's record at least 30 days prior to the SRB hearing date. HIMS forwards the reports to the SRB Coordinator for submission to the SRB.
- H. The SRB Coordinator ensures the required information is provided to the SRB:
1. MSOP Documents
The SRB Coordinator gathers the following documents (if applicable), prior to the SRB hearing date:
 - a) the client's initial and final commitment orders, and any commitment appeals;

- b) any current criminal complaints for any pending charges;
- c) all prior SRB and Judicial Appeal Panel determinations, findings, orders, etc.;
- d) relevant treatment information, which may include, but is not limited to, the following:
 - (1) most recent Annual Treatment Progress Review;
 - (2) current Individualized Treatment Plan;
 - (3) most recent Quarterly Treatment Progress Reviews;
 - (4) an existing staff-approved provisional discharge plan (if available);
 - (5) Relevant documentation from the MSOP Reintegration Specialist for clients on Provisional Discharge;
 - (6) physiological reports (e.g., polygraph reports, Abel Assessments, penile plethysmograph (PPG) reports); and
 - (7) current mental health evaluations and psychiatric progress notes;
- e) SRB Treatment Report;
- f) Sexual Violence Risk Assessment; and
- g) if the hearing does not occur within six months of completion of the SRB Treatment Report and the Sexual Violence Risk Assessment, the SRB Coordinator/designee notifies the report authors that an updated report may be required.

2. Client Documents

- a) Clients without treatment team support for their petitions for provisional discharge are expected to author a provisional discharge plan independently or with the assistance of their legal representatives. Clients are encouraged to address the information listed on the Provisional Discharge Plan Guidelines (215-5060g, attached) and provide the plan to the SRB Coordinator.
- b) The client may submit additional items to be reviewed by the SRB.
- c) The client must submit copies of these documents to the SRB Coordinator at least 21 days prior to the hearing date. Documents will not be returned to the client.

3. Victim Documents

Statements provided by the victim under Section J.3 below (IDENTIFYING INFORMATION IS NOT TO BE DISCLOSED TO THE CLIENT).

I. Appeal of a Revocation

- 1. Transfer to CPS - (Refer to MSOP Policy 602.500, "Revocation of Transfer and Return to Community Preparation Services – Voluntary Temporary Return to a Unit Inside the Secure Perimeter.")

2. Provisional Discharge - (Refer to MSOP Division Policy 230-5660, "Voluntary Temporary Return to MSOP/Revocation of Provisional Discharge.")

J. Notice of Hearing

1. The SRB Coordinator provides written notice to the client regarding the date and time of the hearing 60 days prior to the scheduled hearing date. If the hearing date is scheduled sooner, notice will be given at least 14 days prior to the scheduled hearing date.
2. The SRB Coordinator must provide written notice at least fourteen days prior to the hearing to the following:
 - a) the committing court;
 - b) the county attorney of the committing county;
 - c) any interested person;
 - d) the client or the client's legally authorized representative/guardian; and
 - e) the client's attorney.
3. Notice to Victims
 - a) The SRB Coordinator provides written notice of the client's petition for reduction in custody utilizing the Notice of SRB Hearing (215-5060h), attached) to a victim who submits a request under MSOP Policy 203.260, "Victim Notification."
 - b) Victims who have requested notice through MSOP Policy 203.260, "Victim Notification" may provide a written statement to the SRB. However, victims or their designated proxies are not entitled to attend the hearing.

K. Request for Rescheduling

A petitioner (or the attorney on the client's behalf) may request to reschedule the petitioner's hearing once without cause.

1. A petitioner or his/her attorney who wants a second or subsequent continuance must submit a request to the SRB Chair.
2. On the rescheduled date, the petition will go before the SRB to be heard as scheduled unless the petition is withdrawn.

L. Withdrawal of Petition

A petitioner (or the attorney on the client's behalf) may withdraw a petition at any time by providing a written statement of withdrawal to the SRB Coordinator. The SRB Coordinator will notify all persons who originally received notice of the hearing date.

M. Hearing Process

1. Attendance

- a) SRB hearings are not open to the public. Only those persons entitled to notice of the hearing or those persons administratively required to attend the hearing may be present. MSOP requires the following staff to attend:

- (1) SRB Treatment Report author/designee;
- (2) Sexual Violence Risk Assessment Report author/designee;
- (3) facility clinical director/designee;
- (4) Forensic Evaluation Department Director/designee;
- (5) Director of Reintegration/designee; and
- (6) Support Services staff.

- b) If an individual not receiving notice requests to attend the hearing, the chairperson will consider the person's interest in the proceedings. The chairperson will consult with the client, the client's attorney, and the SRB Coordinator. The chairperson will make a final decision regarding the individual's attendance.
- c) All hearing participants are expected to attend their hearings at the designated site and to be on time.

2. Supporting Documentation

- a) The SRB may consider written documents and oral statements.
- b) Any individual or agency receiving notice of the hearing may submit written documents to the SRB Coordinator for distribution to the SRB prior to the hearing as long as the documents are received at least seven days prior to the hearing. The individual or agency must also provide copies of these documents directly to the client, the client's counsel, the county attorney of the county of commitment and the designated agency.

3. Post-Hearing Submissions

- a) The SRB may allow the record to remain open for post-hearing submissions following an SRB hearing. At the discretion of the SRB Chair, an individual or agency receiving notice of the hearing may provide post-hearing submissions to the SRB Coordinator for distribution to the SRB.
- b) The SRB Coordinator will distribute post-hearing submissions to individuals or agencies receiving notice of the hearing. Any individual or agency receiving post-hearing submissions will have seven days following the issuance of the post-hearing submissions to respond in writing to the SRB Coordinator.
- c) All responses to the post-hearing submissions will be made available to the SRB for review. The record will be closed once the SRB receives the responses to the post-hearing submissions.

N. Findings of Fact and Recommendation

1. Following the hearing, the SRB determines whether the information presented at the hearing supports the petition.
2. A majority of the members must agree on any SRB recommendation.
3. Within 30 days of the hearing, the SRB issues written Findings of Fact and Recommendation. This document includes:
 - a) an objective summary of information presented at the SRB hearing;

- b) the SRB's recommendation to the Judicial Appeal Panel on whether to grant or deny the petition for reduction in custody; and
- c) the basis for the recommendation.

4. The SRB provides its recommendations to the SRB Coordinator who will forward the recommendations of the SRB to the Judicial Appeal Panel and to every person entitled to statutory notice. The SRB Coordinator provides written notice of the client's petition for reduction in custody utilizing the Notice of Special Review Board Recommendation (215-5060j, attached) to a victim who submits a request under MSOP Policy 203.260, "Victim Notification."
5. The SRB Coordinator must provide the Judicial Appeal Panel with victim information in order to comply with the provisions of this section. The Judicial Appeal Panel must ensure the data on victims remains private as provided for in Minn. Stat. §611A.06, subd.4.

O. Aftercare Planning Services

1. If the SRB recommends the Judicial Appeal Panel grant the petitioning client's petition for provisional discharge or discharge, the SRB Coordinator will immediately notify the MSOP Reintegration Director or his/her designee of the recommendation.
2. Upon receipt of this notification and if the MSOP Reintegration Director or designee has not already done so, the MSOP Reintegration Director or designee will prepare and provide the petitioning client with the following aftercare planning services.
 - a) If the SRB recommends a client receive a discharge, the MSOP Reintegration Director or designee will provide the client with a written aftercare plan.
 - (1) The written aftercare plan will include information relating to the client's post-discharge medical and sex offender/mental health treatment and services, financial sustainability, housing, social supports, vocational assistance, and other assistance required by the client. As MSOP's responsibility for supervision of the client terminates upon his/her discharge, to the extent possible, this written aftercare plan will include contact information for community-based organizations able to provide the client with ongoing post-discharge assistance.
 - (2) The MSOP Reintegration Director or designee will provide the client with this written aftercare plan no later than the effective date of the Judicial Appeal Panel's order granting the client full discharge.
 - b) If the SRB recommends a client receive a provisional discharge, the client's court-approved provisional discharge plan will serve as their aftercare plan.

P. Order

No reduction in custody or reversal of a revocation of provisional discharge recommended by the SRB is effective until 15 days after the Judicial Appeal Panel files an order affirming, modifying, or denying the recommendation.

Q. Petition for Rehearing and Reconsideration

1. The client, county attorney of the county from which the person was committed or the county of financial responsibility; or the commissioner may petition the Judicial Appeal Panel for a rehearing and reconsideration of a recommendation (see Example Petition for

Rehearing and Reconsideration (215-5060f, attached)) of the SRB under Minn.Stat. §253D.28.

2. The petition must be filed with the Judicial Appeal Panel within 30 days after the recommendation is mailed by the commissioner as required in Minn.Stat. §253D.27, subd. 4.
3. If no party petitions the Judicial Appeal Panel for a rehearing or reconsideration within 30 days, the Judicial Appeal Panel will either issue an order adopting the SRB's recommendations or set the matter on for a hearing.

REVIEW: Annually

REFERENCES: MSOP Policy 203.260, "Victim Notification"
State Operated Services Policy 10020, "Special Review Board Procedures"
MSOP Policy 602.010, "Community Preparation Services."
MSOP Policy 202.100, "Admission to the MSOP"
MSOP Division Policy 230-5100, "MSOP Departure"
MSOP Division Policy 215-5010, "Treatment Progression"
MSOP Division Policy 420-5210, "Client Telephone Use"
MSOP Division Policy 215-5250, "Clients with Disabilities"
MSOP Division Policy 215-5017, "Clients with Limited English Proficiency"
MSOP Policy 602.500, "Revocation of Transfer and Return to Community Preparation Services – Voluntary Temporary Return to a Unit Inside the Secure Perimeter"
MSOP Division Policy 230-5650, "Voluntary Temporary Return to MSOP/Revocation of Provisional Discharge"
Minn. Stat. §253D.35

ATTACHMENTS: Consent for SRB Treatment Report Interview (215-5060a-2010b)
Consent for Sexual Violence Risk Assessment Interview (215-5060b-2015)
Sexual Violence Risk Assessment Report (215-5060c-2015a)
SRB Treatment Report (215-5060d-2010a)
SRB Petition (215-5060e-5011)
Example Petition for Rehearing and Reconsideration (215-5060f)
Provisional Discharge Plan Guidelines (215-5060g)
Notice of Special Review Board Hearing (215-5060h)
Special Review Board Victim Notification (215-5060i)
Notice of Special Review Board Recommendation (215-5060j)
Sexual Violence Risk Assessment Report Update (215-5060k-2015c)
Sexual Violence Risk Assessment Report Amendment (215-5060l-2015d)
SRB Treatment Report Update (215-5060m-2015c)
SRB Treatment Report Amendment (215-5060n-2010d)
Reduction in Custody Powerpoint (215-5060o)
Special Review Board Summary (215-5060p)
Client Request Form (420-5099a)

SUPERSESSON: MSOP Policy 203.060, "Special Review Board," 7/1/14.
All facility policies, memos, or other communications whether verbal, written or transmitted by electronic means regarding this topic.

/s/

Nancy A. Johnston, Executive Director
Minnesota Sex Offender Program