

Minnesota Sex Offender Program

Policy:	203.060	Title: Special Review Board
Issue Date:	6/3/14	
Effective Date:	7/1/14	

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)

PURPOSE: To provide uniform procedures and consistent standards for the operation of the Special Review Board.

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

POLICY: All petitions filed by, or on behalf of a person committed as a sexual psychopathic personality (SPP) (which includes those committed as a psychopathic personality (PP)), or a sexually dangerous person (SDP) for a reduction in custody, or to appeal the revocation of a transfer to Community Preparation Services (CPS) or of a provisional discharge are heard by the Special Review Board (SRB).

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](#).

The Special Review Board has no statutory authority to hear and consider petitions requesting a client's commitment status be changed from SPP or SDP to another commitment status. The SRB does not consider petitions for transfer to a different phase of treatment or programming within MSOP (e.g., transfers between treatment phases, requests for grounds privileges, or direct petitions seeking pass-eligible status).

Clients may be administratively transferred between the Minnesota Sex Offender Program (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.

DEFINITIONS:

60-day notice letter – a letter provided by the SRB Coordinator to the client (with a copy sent to the client's attorney) reminding the client of his/her statutorily-required obligation to submit materials and providing at least 60 days' notice of the SRB hearing.

Conforming petition – a petition meeting the statutory guidelines for content.

Community Preparation Services (CPS) – specialized residential services or programs operated or administered by MSOP outside of the secure perimeter. (See MSOP Policy 203.005, "Treatment Overview.")

Commissioner – the Commissioner of Human Services or his/her designee.

Designated agency – an agency selected by the county board to provide case management or social

services, providing case management services through a contract with the Department of Human Services.

Discharge – termination of a civil commitment.

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 hearing (as permitted by the SRB Chair), and submit materials for review by the Special Review Board.

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 Clinical Director or his/her designee.

Judicial Appeal Panel – the panel of three district court judges authorized 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).

MSOP client – a person admitted to MSOP on a hold order or committed as SDP, SPP, and/or PP pursuant to Minn. Stat. §§[253B.185](#) or [253D](#), or dually committed as SDP/SPP/PP and mentally ill and dangerous under Minn. Stat. §[253B.18](#).

Nonconforming petition – a petition determined to be either missing statutorily-required information or outside the timeframe for petitioning required by statute.

Petitioner – the client named on the petition form.

Post-hearing submission – evidence 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.

Psychopathic personality (PP) – per Minn. Stat. §[253B.185](#), subd. 1(a), a sexual psychopathic personality includes a person committed as a psychopathic personality under Minn. Stat. §526.10 (which was repealed by [Minnesota Session Laws, 1994, 1st Special Session, Ch 1, Art. 1 §§ 5-6](#)).

Qualified examiner – a licensed, doctoral level-psychologist or other designated licensed or license-eligible staff under supervision of a qualified examiner.

Reduction in Custody – a transfer to CPS, a provisional discharge, or a discharge from commitment.

Sexual Psychopathic Personality (SPP) – the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any of these conditions, which render the person irresponsible for personal conduct with respect to sexual matters, if the person has evidenced, by a habitual course of misconduct in sexual matters, an utter lack of power to control the person's sexual impulses and, as a result, is dangerous to other persons.

Sexual Violence Risk Assessment – a report prepared by a qualified examiner incorporating data from

treatment providers, actuarial risk assessment tools, record review, and examination of the client.

Sexually Dangerous Person (SDP) – a person who has (1) engaged in a course of harmful sexual conduct as defined in Minn. Stat. §[253D.02](#), subd. 8; (2) has manifested a sexual, personality, or other mental disorder or dysfunction; and (3) as a result, is likely to engage in acts of harmful sexual conduct as defined in Minn. Stat. §[253D.02](#), subd. 8.

Special Review Board (SRB) – the board established by the Commissioner meeting in panels consisting of three persons experienced in the field of mental illness: a psychiatrist, an attorney, and a mental health professional. None of the members may be affiliated with the Department of Human Services.

Special Review Board Treatment Report – a report prepared by identified treatment staff outlining the client’s psychosocial history, diagnosis, progress in treatment, and persisting treatment needs.

SRB Coordinator – the designated individual coordinating and scheduling SRB hearings.

Staff-approved plan – an MSOP-supported plan for provisional discharge, maintenance, or relapse prevention that is developed collaboratively by the client and MSOP staff and bears the signatures and titles of all parties involved.

PROCEDURES:

- A. A client, the client’s legal representative, or the head of the treatment facility may file a petition for reduction in custody with the Commissioner of Human Services. Petitions are referred to the SRB Coordinator (by direct mail or through an MSOP Client Request form (303.101A, attached) for distribution and scheduling.
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. §§[253B.18](#), subd. 3 or [253D.07](#), subd. 5, 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. The SRB proceedings are not contested cases as defined in [Minn.Stat. Ch 14](#).
 2. The head of the treatment facility, or designee, may petition at any time.
- B. The petition must clearly state the relief sought (e.g., transfer to CPS, provisional discharge, amendment of an existing provisional discharge, full discharge, or the appeal of a revocation of a transfer to CPS or a revocation of a provisional discharge) and must clearly present a signature of the client or the client’s legal representative.
- C. Client's Right to Counsel
1. A client has the right to an attorney at SRB hearings.
 2. If the client does not have an attorney, upon client written request, the SRB Coordinator will contact the committing court and request an attorney be appointed on the client's behalf.
 3. If the client does not have an attorney and does not request assistance in having one

appointed by the committing court, the client's petition will be considered nonconforming until legal representation is obtained.

4. Only a licensed attorney may represent a client at an SRB hearing.

D. 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 St. Paul location.
4. The SRB Chair makes the final decision on whether or not to allow the attendance of a designated interested person.

E. Upon receipt of a conforming petition, the SRB Coordinator will:

1. schedule the SRB hearing at least 60 days from the date of receipt of the conforming petition (for exceptions: see sections G and H, below); and
2. notify appropriate MSOP staff, requesting completion of the required documentation listed below.

F. The following information will be provided to the SRB Coordinator:

1. MSOP Documents

MSOP will provide, at a minimum, copies of the following documents to the SRB Coordinator at least 30 days 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, when appropriate;
- 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) current Annual Treatment Progress Review;
 - (2) current Individualized Treatment Plan;
 - (3) current Quarterly Treatment Progress Reviews;
 - (4) a staff-approved provisional discharge plan (if available);
 - (a) When a petition for provisional discharge is supported by the treatment team, staff are authorized to assist the client in the development of a provisional discharge plan, maintenance plan or relapse prevention plan as needed and to demonstrate program support by including staff signatures on the plan itself.

- (b) Clients without treatment team support for their petitions for provisional discharge are expected to author their plans independently or with the assistance of their legal representatives. Clients are encouraged to include the information provided on the Provisional Discharge Plan Guidelines (203.060G, attached).
- (5) Quarterly Reports 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, an addendum to both reports containing updated information.

2. Client Documents

- a) The client may submit additional items to be reviewed by the SRB (such as a client-authored provisional discharge plan, discharge plan, or other materials).
- b) Copies of these documents must be submitted to the SRB Coordinator at least 21 days prior to the hearing date. Original documents will not be returned to the client.

3. Victim Documents

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

G Appeal of a Revocation of 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.”)

1. Program-Initiated Revocation of Transfer to CPS

After receipt of the Report of Revocation, the client may petition the SRB within seven days (exclusive of Saturdays, Sundays, and Minnesota state legal holidays) for a review of the revocation.

- a) The SRB Coordinator will schedule the matter within 30 days of receiving the petition.
- b) The SRB will review the circumstances leading to the revocation and make a recommendation to the Judicial Appeal Panel whether the revocation should be upheld.
- c) The SRB’s recommendation to the Judicial Appeal Panel may also include a recommendation whether the client should be granted a new transfer to CPS.

2. Automatic Revocation of Transfer to CPS
 - a) Within 15 days of receiving the notice of the revocation, the client may petition the SRB for a review of the revocation.
 - b) The SRB Coordinator will schedule the review within 30 days of the receipt of the client's petition.
 - c) The SRB will review the circumstances of the revocation and will make a recommendation to the Judicial Appeal Panel whether revocation should be upheld.
 - d) The SRB's recommendation to the Judicial Appeal Panel may also include a recommendation whether the client should be granted a new transfer to CPS.

H. Appeal of Revocation of Provisional Discharge (Refer to MSOP Policy 603.300, "Voluntary Temporary Return to MSOP/Revocation of Provisional Discharge.")

1. Program-Initiated Revocation of Provisional Discharge
 - a) After receipt of the Report of Revocation, the client may petition the SRB within seven days (exclusive of Saturdays, Sundays, and Minnesota state legal holidays) for a review of the revocation.
 - b) The SRB Coordinator will schedule the matter within 30 days of receiving the petition.
 - c) The SRB will review the circumstances leading to the revocation and will recommend to the Judicial Appeal Panel whether the revocation will be upheld.
 - d) The SRB may also make a recommendation to the Judicial Appeal Panel whether the client should be returned to provisional discharge status.
2. Automatic Revocation of Provisional Discharge Status
 - a) Within 15 days of receiving the notice of the revocation, the client may petition the SRB for a review of the revocation.
 - b) The SRB will review the circumstances of the revocation and will recommend to the Judicial Appeal Panel whether revocation will be upheld.
 - c) The SRB may also make a recommendation to the Judicial Appeal Panel whether the client should be returned to provisional discharge status.

I. Notice of Hearing

1. The SRB Coordinator will provide 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. The notice letter will also provide a reminder to the client and the client's attorney regarding the submission of statutorily-required materials (provisional discharge plan/discharge plan or other materials for SRB review) as applicable.
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) the designated agency;
- d) any interested person;
- e) the Ombudsman for Mental Health and Developmental Disabilities;
- f) the client or the client's legally authorized representative/guardian; and
- g) the client's attorney.

3. Notice to Victims

- a) Victims who submit a request under MSOP Policy 203.260, "Victim Notification," are entitled to notice of the client's petition for reduction in custody. The SRB Coordinator will provide written notice to the victim(s).
- 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.

J. Request for Rescheduling

A petitioner (or the attorney on the client's behalf) may request to reschedule the petitioner's hearing.

- 1. Only one request to reschedule a hearing is permitted for each petition.
- 2. On the rescheduled date, the petition will go before the SRB to be heard as scheduled unless the petition is withdrawn.

K. 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.

L. 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.
- 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) The head of the treatment facility must make available the authors of the SRB Treatment Report and the Sexual Violence Risk Assessment. In the absence of one or both of those authors, the head of the treatment facility will identify an appropriate designee(s).

- d) Clients are expected to attend their hearings at the designated site and to be on time.

2. Evidence

- a) The SRB may consider documents, medical records, and oral statements. The SRB may question all persons in attendance.
- b) All persons attending the hearing must be given an opportunity to present information and to direct questions to other persons attending the hearing at the discretion of the SRB Chair.
- c) 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.
- d) When the client resides at an MSOP facility, the facility staff are responsible for facilitating the client's presence at the hearing unless the client chooses not to attend.

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 as long as they are received within seven days following the hearing.
- 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.

M. Statutory Criteria for Reductions in Custody

1. Transfer out of the secure perimeter

The SRB must consider the following factors (found in Minn. Stat. §[253B.185](#), subd. 11) in determining whether a transfer to CPS is appropriate:

- a) the client's clinical progress and present treatment needs;
- b) the need for security to accomplish continuing treatment;
- c) the need for continuing institutionalization;
- d) which facility can best meet the client's needs; and
- e) whether the transfer can be accomplished with a reasonable degree of safety to the

public.

2. Provisional Discharge

A provisional discharge may be granted only if the client demonstrates the ability to make an acceptable adjustment to open society. The SRB must consider the following statutory factors in determining whether a provisional discharge is appropriate:

- a) whether the client's course of hospitalization/treatment and present mental status indicate there is no longer a need for treatment and supervision in the client's current treatment setting; and
- b) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and enable the client to adjust to the community.

3. Discharge from Civil Commitment

The SRB must consider the following statutory provisions in determining whether to recommend a client be discharged from commitment:

- a) whether the client is capable of making an acceptable adjustment to open society;
- b) whether the client is no longer dangerous to the public; and
- c) whether the client no longer needs inpatient treatment and supervision.

If all the conditions are met, discharge may be recommended.

N. Findings of Fact and Recommendation

1. Immediately after the hearing, the SRB may meet to determine whether the information presented at the hearing supports the petition. The SRB's findings must include an objective summary of the information presented at the hearing and must be specific enough to support the SRB's recommendation.
2. Any recommendation of the SRB requires a majority of the members to agree on the recommendation.
3. Within 30 days of the hearing, the SRB will issue written findings of fact recommending denial or approval of the petition to the Judicial Appeal Panel established under Minn. Stat. [§253B.19](#).
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.
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) This written aftercare plan will include information relating to the client's post-discharge medical and behavioral health services, financial sustainability, housing, social supports, vocational assistance, and other assistance required by the client. As MSOP's 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 it has been reviewed by the Judicial Appeal Panel and until 15 days after an order from the Judicial Appeal Panel affirming, modifying, or denying the recommendation.

Q. Petition for Rehearing and Reconsideration

1. A person committed as SPP or SDP under Minn.Stat. [§253B.185](#) or Chapter [253D](#), or committed as both mentally ill and dangerous to the public under Minn.Stat. [§253B.18](#) and SPP and/or SDP under Minn.Stat. [§253B.185](#) or Chapter [253D](#); the 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 decision of the Special Review Board under Minn.Stat. [§253D.28](#).
2. The petition must be filed with the Judicial Appeal Panel within 30 days after the decision is mailed by the commissioner as required in Minn.Stat. [§253B.185](#), subd.9, paragraph (f).
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 recommendations of the Special Review Board 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 203.005, "Treatment Overview"
 MSOP Policy 602.500, "Revocation of Transfer and Return to Community Preparation Services – Voluntary Temporary Return to a Unit Inside the Secure Perimeter"

MSOP Policy 603.300, “Voluntary Temporary Return to MSOP/Revocation of Provisional Discharge”
Minn. Stat. §[253D.35](#)

SUPERSESSSION: MSOP Policy 203.060, “Special Review Board,” 8/6/13.
All facility policies, memos, or other communications whether verbal, written or transmitted by electronic means regarding this topic.

ATTACHMENTS: Consent for SRB Interview (203.060A-2011)
Consent for Risk Assessment Interview (203.060B-2016)
Sexual Violence Risk Assessment Report (203.060C-2015)
SRB Report (203.060D-2010)
SRB Petition (203.060E-5001)
Client Request Form (303.101A)
Example Petition for Rehearing and Reconsideration (203.060F)
Provisional Discharge Plan Guidelines (203.060G)
Notice of Special Review Board Hearing (203.060H)
Special Review Board Victim Notification (203.060I)
Notice of Special Review Board Recommendation (203.060J)

/s/

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Minnesota Sex Offender Program