

REDUCTION IN CUSTODY/SPECIAL REVIEW BOARD

Minnesota Sex Offender Program

Issue Date: 3/5/19 Effective Date: 3/5/19 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) (including those committed as psychopathic personalities (PP)), and appeals of a revocation of a transfer to Community Preparation Services (CPS) or a provisional discharge. After hearing each petition or appeal, the SRB makes a recommendation to the Judicial Appeal Panel regarding whether it should deny or grant the petition or appeal.

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

The SRB does not have statutory authority to: recommend or order the transfer of a Minnesota Sex Offender Program (MSOP) client from an MSOP facility to the Minnesota Security Hospital (MSH), the Forensic Nursing Home, the Minnesota Department of Corrections (DOC), or the Federal Bureau of Prisons (BOP); change a client's commitment type (e.g., change from SPP to SDP); progress a client through MSOP's treatment phases; or direct MSOP to provide new or different treatment opportunities to a client..

The SRB does not hear requests for changes to the conditions of a provisional discharge that has already been granted by the Judicial Appeal Panel. Such requests for amendment must be made directly to the Judicial Appeal Panel.

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: MSOP, program-wide

PURPOSE: To describe how a client committed as SDP/SPP/PP petitions for a reduction in custody or appeals the revocation of a transfer or provisional discharge.

DEFINITIONS:

Community Preparation Services (CPS) – see MSOP Division Policy 225-5020, “CPS Client Liberties.”

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

General Counsel's Office (GCO) Legal Services Coordinator – the Department of Human Services (DHS) GCO staff member(s) who coordinate SRB hearings.

Interested person – an adult, including but not limited to, a public official, a local welfare agency acting under Minn. Stat. §626.5561, and a client's legal guardian, spouse, parent, legal counsel, adult child, next of kin, or other person designated by a client (or by a health plan company providing coverage for a petitioning client) that is entitled to receive notice of the SRB hearing, attend the SRB hearing (as permitted by the SRB Chair), and provide information for consideration 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 MSOP Executive Director or his/her designee.

Judicial Appeal Panel (also known as “Supreme Court Appeal Panel (SCAP”)) – the panel of district court judges established by Minn. Stat. §253B.19 subd. 1 to hear and decide petitions for reductions in custody and appeals of transfer and provisional discharge revocations.

Post-hearing submission – documents received into an open record following the completion of an SRB hearing.

Provisional discharge – a client’s court-ordered placement in a community-based setting under terms and conditions set by the Judicial Appeal Panel, during which the client’s civil commitment remains in effect.

Reduction in Custody – a transfer out of a secure facility (e.g., a transfer from MSOP Moose Lake or MSOP St. Peter to CPS), a provisional discharge, or a discharge from commitment.

Report Amendment – a form used when a finalized report requires change(s) due to its inclusion of erroneous information or need for clarification.

Report Update – a form used when a finalized report is updated to include updated or new information or opinions.

Special Review Board (SRB) – the board established by the Commissioner pursuant to Minn. Stat. §253B.18 subd. 4(c). A panel of three SRB members hears each petition for a reduction in custody or appeal of the revocation of a transfer or provisional discharge. Each three-person panel must include a psychiatrist or doctoral level psychologist with forensic experience and an attorney. None of the members may be affiliated with DHS.

PROCEDURES:

- A. A client rights coordinator (CRC) provides clients with the Special Review Board Summary (215-5060p) upon admission to the MSOP (see MSOP Division Policy 210-5100, “Admission to the MSOP”).
- B. A client (or an attorney working on the client’s behalf), or the head of the treatment facility may file a petition for reduction in custody.
 1. A client may not petition the SRB for a reduction in custody 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, whichever is later; or
 - b) any order of the Judicial Appeal Panel, or upon the exhaustion of all related appeal rights, whichever is later.
 2. The head of the treatment facility may petition the SRB for a reduction in custody on behalf of a client at any time.

3. A client may obtain the Special Review Board Petition (215-5060e-5011) from the client computer network or request a copy from a CRC or the GCO Legal Services Coordinator.
4. The client, the client's attorney, or the head of the treatment facility must sign and date the Special Review Board Petition (215-5060e-5011) and clearly indicate the requested relief (e.g., a reduction in custody, revocation appeal, etc.).
 - a) Clients must submit completed Special Review Board Petition (215-5060e-5011) to the GCO Legal Services Coordinator via attached Client Request (420-5099a) or by sending the completed Special Review Board Petition (215-5060e-5011) via US mail to the address listed on the petition.
 - b) Client's attorneys must submit completed Special Review Board Petition (215-5060e-5011) to the GCO Legal Services Coordinator via electronic mail or US mail to the address listed on the petition.
5. Clients with SRB-related questions are encouraged to contact their attorney either by mail or telephone (see MSOP Division Policy 420-5210, "Client Telephone Use"). A CRC may help a client complete and submit an SRB petition if that client has 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, "Communication Tools and Accessibility Services").

C. Client's Right to Counsel

1. Clients must be represented by an attorney at SRB hearings. A client has the right to a court-appointed attorney. 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 GCO Legal Services Coordinator cannot identify the client's attorney based on the client's record, the GCO Legal Services Coordinator contacts the committing court and requests an attorney be appointed on the client's behalf.

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 this hearing and/or submit written materials to the SRB as permitted by the SRB Chair.
2. A client must designate interested persons at least 21 days before the SRB hearing by submitting a written request to the GCO Legal Services 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 GCO Legal Services Coordinator notifies the interested person(s) of the SRB hearing. If an interested person wishes to attend the SRB hearing, s/he must appear at the hearing from the DHS building located at 444 Lafayette Road North in St. Paul, Minnesota.
4. The SRB Chair makes the final decision whether a designated interested person is allowed to attend and/or participate in the hearing.

E. Designated MSOP staff complete the following reports for consideration by the SRB and Judicial Appeal Panel:

1. The SRB Treatment Report (215-5060d-2010a) summarizes the client's psychological history, diagnosis, progress in treatment, and continued treatment needs.
 - a) Designated clinical staff:
 - (1) review the client's records; and
 - (2) receive input from the treatment team regarding the client's progress.
 - b) On behalf of the designated clinical staff, the designated CRC or designated clinical staff offers the client the opportunity to participate in an interview for the SRB Treatment Report (215-5060d-2010a) by offering the Consent for Special Review Board Treatment Report Interview (215-5060a-2015).
 - c) Designated clinical staff must complete the SRB Treatment Report (215-5060d-2010a) with or without the client's participation, and ensure client's consent is documented on the Consent for Special Review Board Treatment Report Interview (215-5060a-2015).
 - d) The report author submits a draft to the MSOP Treatment Evaluation Supervisor/designee for review and finalization.
2. The Sexual Violence Risk Assessment Report (215-5060c-1015a) addresses the client's risk for sexual re-offense and comments on statutory criteria as it relates to the relief requested in the petition.
 - a) On behalf of the assigned risk evaluator, the designated CRC or the assigned risk evaluator offers the client the opportunity to participate in an interview for the Sexual Violence Risk Assessment Report (215-5060c-1015a) by offering the Consent for Sexual Violence Risk Assessment Interview (215-5060b-2015).
 - b) The assigned risk evaluator must complete the risk assessment with or without the client's participation and ensure client's consent is documented on the Consent for Sexual Violence Risk Assessment Interview (215-5060b-2015).
3. The authors of the SRB Treatment Report (215-5060d-2010a) and Sexual Violence Risk Assessment Report (215-5060c-1015a):
 - a) use the appropriate form template:
 - (1) If updated information is required following a previously-submitted report, the author uses the SRB Treatment Report Update (215-5060m-2015c) or the Sexual Violence Risk Assessment Report Update (215-5060k-2015c).
 - (2) If information found within the report is erroneous, there has been a substantial change, or clarification is needed, the author uses the SRB Treatment Report Amendment (215-5060n-2010d) or the Sexual Violence Risk Assessment Report Amendment (215-5060l-2015d).
 - b) submit the reports 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 GCO Legal Services Coordinator for distribution to the SRB and designated parties.
4. If the hearing does not occur within six months of completion of the SRB Treatment Report (215-5060d-2010a) and Sexual Violence Risk Assessment Report (215-5060c-1015a), the GCO

Legal Services Coordinator consults with the report authors (and others as needed) to determine if updated reports are required, and notifies the report authors.

- F. The GCO Legal Services Coordinator ensures the following information is provided to the SRB and documented in the Release of Information (ROI) Log (135-5170c-6040) in the client's treatment record:
1. MSOP Documents
The GCO Legal Services Coordinator gathers, compiles, and distributes the following documents (if applicable) prior to the SRB hearing date:
 - a) initial and final commitment orders, and any related appeal opinions or orders;
 - b) criminal complaints for any pending charges;
 - c) most recent prior SRB Findings of Fact and Recommendations and Judicial Appeal Panel's final order and any previous Judicial Appeal Panel final order granting a reduction in custody (and corresponding SRB Findings of Fact and Recommendations);
 - d) relevant treatment information, which may include, but is not limited to, the following:
 - (1) most recent Annual Treatment Progress Report;
 - (2) current Individualized Treatment Plan;
 - (3) most recent Quarterly Treatment Progress Report;
 - (4) provisional discharge plan for clients on provisional discharge;
 - (5) relevant documentation from an MSOP reintegration agent for clients on provisional discharge;
 - (6) physiological reports (e.g., polygraph reports, assessments of sexual interest, penile plethysmograph (PPG) reports);
 - (7) most recent mental health evaluations and psychiatric progress notes;
 - (8) SRB Treatment Report; and
 - (9) Sexual Violence Risk Assessment.
 - e) For clients requesting a reduction in custody who have not already been granted a provisional discharge, or for clients who are requesting a new provisional discharge following a revocation, the GCO Legal Services Coordinator includes Standard Provisional Discharge Plan Conditions (215-5060g) as the default provisional discharge plan for the SRB's consideration.
 2. Client Documents
 - a) Provisional discharge plan: as outlined in section F.1.e) above, the GCO Legal Services Coordinator includes Standard Provisional Discharge Plan Conditions (215-5060g) as the default provisional discharge plan for the SRB's consideration.
 - (1) The Standard Provisional Discharge Plan Conditions (215-5060g) must not be altered.

(2) Clients may, independently or with the assistance of their attorney, submit alternative or additional proposed provisional discharge plan conditions to the GCO Legal Services Coordinator at least 21 calendar days prior to the hearing date.

b) The client may submit additional documents to be reviewed by the SRB.

(1) The client must submit copies of these documents to the GCO Legal Services Coordinator at least 21 days prior to the hearing date.

(2) The GCO Legal Services Coordinator does not return documents to the client.

3. Victim Documents

Victims may provide a written statement to the SRB and the parties by submitting a statement to the GCO Legal Services Coordinator. VICTIM IDENTIFYING INFORMATION IS NOT DISCLOSED.

G. Appeal of a Revocation

1. Appeal of a revocation of a transfer to CPS - refer to MSOP Division Policy 225-5500, "Revocation of Transfer and Return from Community Preparation Services (Voluntary Return or Program-Initiated Revocation)."

2. Appeal of a revocation of a provisional discharge - refer to MSOP Division Policy 225-5651, "Revocation of Provisional Discharge."

H. Notice of Hearing

1. If possible, at least 60 days prior to the SRB hearing, the GCO Legal Services Coordinator provides written notice of the SRB hearing's date and time to the client, the client's attorney, the county of commitment, and the county of financial responsibility.

2. At least 14 days prior to the SRB hearing, the GCO Legal Services Coordinator provides written notice of the date and time of the SRB hearing to the following:

a) the committing court;

b) the county attorney of the county of commitment;

c) the county attorney of the county of financial responsibility;

d) any interested person(s);

e) the client;

f) the client's guardian, if applicable; and

g) the client's attorney.

3. Notice to Victims

a) At least 14 days prior to the SRB hearing, the GCO Legal Services Coordinator provides written notice of the client's petition for reduction in custody using the Notice of SRB Hearing (215-5060h) to any victim who requested notification through MSOP Division Policy 215-5260, "Victim Notification."

- b) Victims who have requested notice through MSOP Division Policy 215-5260, “Victim Notification” may provide a written statement to the SRB and the parties. However, victims or their designated proxies may not attend the SRB hearing.

I. Request for Rescheduling

The presumption is that all hearings will proceed as scheduled. Hearings are only rescheduled in the most extraordinary circumstances. An attorney may request their client’s SRB hearing be rescheduled by promptly submitting a written continuance request to the GCO Legal Services Coordinator explaining the basis for the request. The GCO Legal Services Coordinator in consultation with the assigned GCO attorney decides whether the rescheduling request is granted. If the GCO Legal Services Coordinator denies the rescheduling request, the SRB hears the petition as scheduled unless the petition is withdrawn.

J. Withdrawal of Petition

A client or his/her attorney may withdraw some or all of his/her requested relief at any time by providing a written statement of withdrawal to the GCO Legal Services Coordinator. The GCO Legal Services Coordinator notifies all persons who originally received notice of the hearing date.

K. Hearing Process

1. Attendance

- a) SRB hearings are not open to the public. Only those persons statutorily entitled to notice of the hearing or those persons administratively required to attend the hearing may be present. Persons administratively required to attend the hearing may include:
 - (1) SRB Treatment Report author/designee;
 - (2) Sexual Violence Risk Assessment Report author/designee;
 - (3) MSOP Treatment Evaluation Supervisor/designee;
 - (4) Forensic Evaluation Department Director/designee;
 - (5) CPS Director/designee;
 - (6) MSOP Reintegration Director/designee; and
 - (7) Support Services staff.
- b) All hearing participants must attend the hearings at the designated site or by approved Vidyo conference.

- 2. Submitting Additional Documents to the SRB - any individual or agency receiving notice of the hearing may submit written documents to the GCO Legal Services Coordinator for distribution to the SRB prior to the SRB hearing. These documents must be received by the GCO Legal Services Coordinator at least seven days prior to the hearing. The submitting 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 county attorney of the county of financial responsibility.

3. Post-Hearing Submissions

- a) The SRB may allow the record to remain open for post-hearing written submissions by a hearing participant. Any such submissions must be received by the GCO Legal Services Coordinator by the deadline set by the SRB during the SRB hearing. The GCO Legal Services Coordinator distributes post-hearing submissions to the SRB, the client, the client’s counsel, the county attorney of the county of commitment, and the county attorney of the county of financial responsibility.

- b) Unless the SRB Chair specifies a different deadline, any participant receiving post-hearing submissions has seven days following the issuance of the post-hearing submissions to respond in writing. Written responses must be submitted to the GCO Legal Services Coordinator for distribution to the SRB, the client, the client's counsel, the county attorney of the county of commitment, and the county attorney of the county of financial responsibility.

L. Findings of Fact and Recommendation

1. Within 30 days of the hearing, the SRB provides its written Findings of Fact and Recommendation to the GCO Legal Services Coordinator. This document includes:
 - a) an objective summary of information presented to the SRB (including all written submissions and statements made during the hearing);
 - b) the SRB's recommendation to the Judicial Appeal Panel on whether to grant or deny the petition for reduction in custody or revocation appeal; and
 - c) the basis for the SRB's recommendation.
2. The GCO Legal Services Coordinator forwards the SRB's written Findings of Fact and Recommendation on behalf of the DHS Commissioner by providing a copy to the Judicial Appeal Panel, the client, the client's counsel, the county attorney of the county of commitment, and the county attorney of the county of financial responsibility.
3. Using the Notice of Special Review Board Recommendation (215-5060j), the GCO Legal Services Coordinator provides written notice of the SRB's recommendations to victims who submitted a request under MSOP Division Policy 215-5260, "Victim Notification."
4. The GCO Legal Services Coordinator provides the Judicial Appeal Panel with victim information. The Judicial Appeal Panel must ensure the data on victims remains private as provided for in Minn. Stat. § 611A.06, subd.4.
5. The GCO Legal Services Coordinator provides a copy of the SRB's Findings of Fact and Recommendation to the MSOP Executive Director, the MSOP Executive Clinical Director, the MSOP CPS Director, the MSOP Reintegration Director, and other designated MSOP staff.

M. Petition for Rehearing and Reconsideration

1. Pursuant to Minn. Stat. § 253D.28, the client, county attorney of the county of commitment or the county of financial responsibility, or the DHS Commissioner may petition the Judicial Appeal Panel for a rehearing and reconsideration of a recommendation (see Example Petition for Rehearing and Reconsideration (215-5060f)).
2. The petition must be filed with the Judicial Appeal Panel within 30 days after the recommendation is forwarded by the GCO Legal Services Coordinator as required in Minn. Stat. § 253D.27, subd. 4.
3. If no party timely petitions the Judicial Appeal Panel for a rehearing or reconsideration of an SRB recommendation, the Judicial Appeal Panel either issues an order adopting the SRB's recommendation or sets the matter on for a hearing.

N. Order

The SRB does not have the authority to grant or deny a petition for a reduction in custody or revocation appeal; this authority lies in the sole discretion of the Judicial Appeal Panel. A Judicial Appeal Panel's order granting a reduction in custody or revocation appeal is effective 15 days after the entry of judgment.

REVIEW: Annually

REFERENCES: MSOP Division Policy 215-5260, "Victim Notification"
Forensic Services Division Policy 130-3000, "Special Review Board"
MSOP Division Policy 210-5100, "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, "Communication Tools and Accessibility Services"
MSOP Division Policy 225-5500, "Revocation of Transfer and Return from Community Preparation Services (Voluntary Return or Program-Initiated Revocation)"
MSOP Division Policy 225-5651, "Revocation of Provisional Discharge"
Minn. Stat. §253D

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)
Standard Provisional Discharge Plan Conditions (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 (420-5099a)
Release of Information (ROI) Log (135-5170c-6040)

SUPERSESSON: MSOP Division Policy 215-5060, "Reduction in Custody/Special Review Board," 12/1/15.
MSOP Division Policy 215-5060, "Reduction in Custody/Special Review Board," issued 2/5/19 and effective 3/5/19.
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