

# **Risk Assessment And Community Notification Guidelines**

## **I. Introduction**

These guidelines have been developed by Attorney General Wayne Stenehjem pursuant to North Dakota Century Code (N.D.C.C.) § 12.1-32-15. Assistance was received from the Department of Corrections and Rehabilitation (DOCR) and the Juvenile Courts.

The purpose of the guidelines is to set forth procedures for assigning low, moderate, or high-risk designations to all sexual offenders who are required by law to register. It is important to keep in mind that being considered a high risk does not necessarily mean that someone will reoffend, just as being considered a low risk does not necessarily mean they won't reoffend. Risk assessment is not a precise science.

There is little evidence that clinical judgment alone is useful in predicting future criminal or deviant behavior. However, when knowledge about the motives and dynamics of sexual offending is combined with objective risk scales that utilize empirical methods for item selection and scoring, the ability to predict future sexual recidivism is greatly improved.

These guidelines discuss which offenders will receive a risk designation, what information will be gathered, the tools used in the assessment process, and the assignment of risk levels based upon that information and actuarial scoring.

## **II. Covered Offenders**

All sex offenders who are required to register pursuant to N.D.C.C. § 12.1-32-15 will be designated as low, moderate, or high risk to commit another sexual offense. The responsibility for gathering information and conducting an initial risk assessment tool is divided as follows:

### **A. Juvenile offenders**

DOCR's Division of Juvenile Services (DJS) will be responsible for conducting risk assessments of all juveniles who are adjudicated in juvenile court, required to register, and under DJS supervision. The Juvenile Courts will have responsibility for those juveniles who are adjudicated and required to register, but are not placed under DJS supervision.

Juveniles who were transferred to adult court for disposition of their sexual offenses will be assessed by the DOCR or Attorney General as discussed below.

## **B. Incarcerated or supervised adult offenders**

The DOCR will conduct risk assessments of all inmates, probationers, or parolees who are required to register and are still under DOCR custody or supervision.

## **C. All other adult offenders**

The Attorney General will conduct risk assessments on all other offenders who are required to register, including those who are no longer supervised by the DOCR, transfers from other states, and offenders convicted in federal court. Until the Sex Offender Risk Assessment Committee (SORAC) assigns a risk level, the Attorney General will adopt any risk level assigned by another state, tribe, or foreign country, with a notation on the offender's records what state, tribe, or country assigned the risk level.

# **III. The Risk Assessment Process**

## **A. The Risk Assessment Tool**

The Minnesota Sex Offender Screening Tool Revised (MnSOST-R) has been validated for adult male sex offenders. Although it has not been validated for females and intrafamilial or probationary sex offenders, it will be scored for those offenders unless a more appropriate tool is available. The screening tool and its actuarial score are not intended to be the sole basis for a given risk level, but are intended to be considered in conjunction with offender-specific information and dynamic factors that may change with greater frequency.

The DOCR Field Services Division currently scores the Static99-R prior to sentencing of most adult sexual offenders. The North Dakota State Penitentiary treatment staff scores a Static99-R approximately six to eight months prior to release of an inmate. If there is a Static99-R scored within the last two years for an offender, the assessing agency may adopt that score rather than duplicate the process.

The Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR) is an actuarial checklist to aid in the systematic review of risk factors that have been identified in the professional literature as associated with juvenile sexual and criminal offending. Since the MnSOST-R uses variables that are not applicable to juvenile offending, the juvenile courts and DJS will use the ERASOR in conjunction with other clinical and case-specific factors.

## **B. Validation of actuarial tools for North Dakota Offenders**

Efforts are ongoing, in North Dakota and elsewhere, to statistically validate tools like the MNSOST-R and ERASOR/JSOAP for specified populations. The MnSOST-R, STATIC-99, and RRASOR were validated for North Dakota prison and probation populations in a 2003 validity study conducted by Dr. Douglas L. Epperson, Ph.D.

## **C. Information gathering, scoring, and submission of materials to the central Risk Level Committee**

Each designated agency is responsible for gathering sufficient information about the offenders they will be assessing. Agencies should consider sections IV and V(B) when deciding what information will be useful to the Risk Level Committee.

Once the appropriate risk assessment tool has been scored, the tool, information gathered, and any special concerns should be forwarded to the Risk Level Committee.

For juveniles placed at a facility such as YCC, Home on the Range, or Dakota Boys Ranch, the DJS will submit the risk score and materials to the Risk Committee at least four months prior to the juvenile's release.

The DOCR will submit the risk score and materials to the Risk Level Committee at least six months prior to release.

## **IV. Records/Sharing of Information**

N.D.C.C. § 12-47-36 allows all DOCR records to be shared with the Attorney General and criminal justice agencies. The only exception is for drug and alcohol treatment records, and the DOCR will require waivers to be signed by offenders for release of those records.

N.D.C.C. § 27-20-51 allows juvenile court records to be provided to criminal justice agencies if the juvenile is registered.

N.D.C.C. § 27-20-52 allows law enforcement records pertaining to juveniles to be shared with other law enforcement agencies when necessary for the discharge of official duties.

N.D.C.C. ch. 27-21 allows DJS records to be distributed to the Attorney General and law enforcement agencies.

North Dakota Rules of Criminal Procedure 32(c)(4) allows presentence investigation reports to be disclosed to the Attorney General.

The following records, or the equivalent juvenile records, will be gathered and exchanged for the purposes of risk assessment, level assignment, and community notification:

- A. Drug & Alcohol records
  - 1. With waiver, full disclosure.
  - 2. Without waiver, only affirmative answers that allow scoring of item 14 of the MnSOST-R.
- B. PSI or sentencing report
- C. Criminal Records
- D. Police Reports
- E. Psychological Evaluations
- F. Prison or Juvenile Facility Discipline Reports
- G. Other records

When the Bureau of Criminal Investigation (BCI) disseminates criminal history record information pursuant to N.D.C.C. ch. 12-60, the BCI shall also indicate whether the individual is a registered sex offender or offender against children, and the offender's assigned risk level, if any.

## **V. Sex Offender Risk Assessment Committee (SORAC)**

### **A. Committee meetings**

The Attorney General will appoint a nine-member committee. The committee will include representatives of the Attorney General, the DOCR (NDSP), DOCR Field Services, a victim advocate, a mental health professional, two law enforcement officers, a position shared by the juvenile courts and DOCR's Division of Juvenile Services, and a citizen representative. Appointed representatives may fill other seats at monthly meetings until a maximum of nine members is present to vote.

SORAC will convene once per month, or less frequently as needed, to review offender records and risk assessment scores, assign risk levels to offenders, and hear appeals and requests for reconsideration as discussed below.

At least five members of the committee must be in attendance to constitute a quorum. Majority vote of attending members will decide all business. The Attorney General's representative will not vote except as needed to fill a quorum or to break ties.

An invitation to the meeting may be sent to the sheriff's office or police department where the offender resides or intends to reside upon release. That police agency may present information to the committee that may impact the initial risk level decision, the request for rev1ew, or reconsideration of a previously assigned level.

**B. Criteria**

The authors of the MnSOST-R recommend the following risk level cut scores:

Risk level	MnSOST-R	Recidivism rate
Low	3 and below	16%
Moderate	4 to 7	45%
High	8 and above	88%

Static99-R cut scores

Risk level	Static99-R	Recidivism rate
Low	1	?
Low/Moderate	2,3	?
Moderate/High	4,5	?
High	6 and above	?

These cut scores will provide the starting point for assignment of the offenders to one of the three levels. Other published risk factors will be distributed to the members of the Risk Level Committee for their use. The committee will also consider the following factors in the risk level decision:

- 1) The seriousness of the offense should the offender reoffend:
  - a) the degree of likely force or harm;
  - b) the degree of likely physical contact; and
  - c) the age of likely victim.
  
- 2) The offender's prior offense history:
  - a) the relationship of prior victims to the offender;
  - b) the number of prior offenses or victims;
  - c) the duration and frequency of the offender's prior offense history;
  - d) the length of time since the offender's last prior offense while at risk to commit offenses; and
  - e) the offender's prior history of antisocial acts.

- 3) The offender's characteristics:
  - a) the offender's response to prior treatment efforts; and
  - b) the offender's history of substance abuse.
- 4) The availability of community supports to the offender:
  - a) availability and likelihood that the offender will be involved in therapeutic treatment;
  - b) the availability of residential supports to the offender, such as a stable and supervised living arrangement in an appropriate location;
  - c) the offender's familial and social relationships, including the nature and length of these relationships and the level of support that the offender may receive from these persons; and
  - d) the offender's lack of education or employment stability.
- 5) Whether the offender has indicated (or credible evidence in the record indicates) that the offender will reoffend if released into the community;
- 6) Whether the offender demonstrates a physical condition that minimizes the risk of reoffense, including, but not limited to, advanced age or a debilitating illness or physical condition.

## **VI. Notice to Offender and appeal process**

The Risk Level Committee will provide written notice to each offender of the level assigned to that offender. The notice will include a general statement outlining the basis for the decision, as well as information about the community notification that is required by statute for that level. The notice must provide information as to how the offender requests immediate review or later reconsideration of the decision.

Unless the offender is incarcerated at the time of the decision, notice will be provided to the offender's last registration address.

The offender will have 14 days to file a request for review of the determination. Failure of the offender to maintain a correct address for receipt of the notice will not be cause for extension of that deadline.

Offenders may choose to submit information in writing that supports their appeal of the risk level decision, to appear by telephone conference, or to appear before the committee in person or through an attorney (at their own expense). Incarcerated offenders, or those confined in a facility, may not have the option of personal appearance.

## **VII. Offender requested review hearing**

At the next scheduled Risk Level Committee hearing, information provided by the offender will be considered. If an offender has requested a personal appearance, a maximum of 10 minutes will be allowed for presentation of arguments by the offender or his counsel.

If a majority of the committee believes that a reduction in level is warranted, the risk level will be changed to reflect that decision. The offender will be notified whether there will be a reduction in risk level, and if not, the earliest date that the level may be reconsidered.

## **VIII. Distribution of level and materials**

The Risk Level Committee will not release the SORAC-assigned risk level to the registering law enforcement agency until after the 14-day review period has expired, or the review has been heard and a decision reached by the Risk Level Committee.

The Risk Level Committee will then distribute the risk level and the information upon which it was based to the law enforcement agency where the offender will be residing and any agency that is supervising or will be supervising the offender.

If an offender requests that a review hearing be rescheduled, the Committee chair has discretion whether to grant the continuance. If the offender will be living in the community prior to the next available review hearing, the risk level will be immediately distributed to the registering agency, and then corrected if there is a change in risk level.

## **IX. Reconsideration**

### **A. At the request of the offender**

The Risk Level Committee will reconsider the assigned level upon request by the offender. Reconsideration requests will not be considered any sooner than two (2) years after the original level assignment, and thereafter no more frequently than every two (2) years.

An offender wishing to have his risk level reconsidered must file a written request with the Risk Level Committee, specifying what circumstances have changed warranting a modification in risk level.

### **B. By request of an agency or by the committee's own motion**

The Risk Level Committee will reconsider the assigned level upon request of any law enforcement agency or any agency referred to in these guidelines. Upon the occurrence of a known event, the committee may reconsider an assigned risk level on its own motion.

## **X. Community Notification**

Responsibility for conducting community notification rests with the local law enforcement agency where the offender resides. Other than some mandatory requirements set forth in N.D.C.C. § 12.1-32-15(13), decisions about who will be notified and how that notice will be given are left up to the local law enforcement agency.

The list that follows contains suggestions about who the law enforcement agencies will notify, and possible methods for conducting the notification.

### **LOW RISK**

- Notify victims and witnesses to the offense
- Distribution to other law enforcement agencies
- Information to the public upon request

### **MODERATE RISK** (in addition to above notifications)

- Notify agencies and groups that the offender is likely to target
- Schools
- Park and Recreation districts
- Senior centers Churches Daycares
- Civic organizations
- Shopping malls
- Offender's employer where appropriate
- Neighbors, neighborhood watch groups

BY:

- Flyers
- Personal contact
- Phone contact
- Allowing citizens to review lists or info on demand

### **HIGH RISK** (in addition to above notifications)

- Internet
- Flyers (more widespread) Posters
- CD-rom purchased from commercial vendor
- Community Meeting
- News release
- Newspaper public service announcements
- Television public service announcements