

Risk Assessment **And** **Community Notification Guidelines**

I. Introduction

These guidelines have been developed by Attorney General Wayne Stenehjem pursuant to North Dakota Century Code Section 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. section 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 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.

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 MnSOST-R prior to sentencing of most adult sexual offenders. The North Dakota State Penitentiary treatment staff scores both a MnSOST-R and the older version of the MnSOST approximately six to eight months prior to release of an inmate. If there is a MnSOST-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 Division of Juvenile Services will use the ERASOR in conjunction with other clinical and case-specific factors.

B. Validation of the MnSOST-R and ERASOR 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 was 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 conducted, 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 Division of Juvenile Services will submit the risk score and materials to the Risk Committee at least four months prior to the juvenile's release.

The Department of Corrections and Rehabilitation 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. Section 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. Section 27-20-51 allows juvenile court records to be provided to criminal justice agencies if the juvenile is registered.

N.D.C.C. Section 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. 27-21 allows Division of Juvenile Service records to be distributed to the Attorney General and law enforcement agencies.

Rule 32(c)(4) of the N.D. Rules of Criminal Procedure 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

V. Level assignment committee

A. Committee meetings

The Attorney General will appoint a nine-member Risk Level 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.

The Risk Level Committee 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. If an even number of committee members are in attendance, the Attorney General representative will not vote except to break ties.

An invitation to the meeting will 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 review, 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%

Since the last four questions of the MnSOST-R relate to incarcerated offenders only, the cut score may need to be adjusted for offenders who were never incarcerated following their conviction.

Risk level	MnSOST-R	Recidivism rate
Low	0 and below	?
Moderate	1 to 4	?
High	5 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;
 - 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;
 - e) the offender's prior history of antisocial acts.

- 3) The offender's characteristics:
 - a) the offender's response to prior treatment efforts;
 - 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;
 - 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 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.

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 for 10-year registrants and five (5) years for lifetime registrants.

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