

# **Risk Assessment And Community Notification Guidelines**

## **I. Introduction**

These guidelines have been developed by North Dakota's Attorney General 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 North Dakota 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 document 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. 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. § 27-20.2-21(1)(h) allows juvenile court records to be provided to criminal justice agencies if the juvenile is registered.

N.D.C.C. § 27-20.2-23(1)(d) 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. § 27-21-12 allows DJS records to be distributed to the Attorney General and law enforcement agencies.

North Dakota Rules of Criminal Procedure 32(C)(4)(c) 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. § 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.

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

##### **A. Committee meetings**

The Attorney General will appoint a committee of members that will include representatives of the Attorney General, the DOCR (North Dakota State Penitentiary), DOCR Field Services, a victim advocate, a mental health professional, 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 quorum is met.

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 review, or reconsideration of a previously assigned level.

##### **B. Criteria**

Any available 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 reoffending, including, but not limited to, advanced age or a debilitating illness or physical condition.

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

The SORAC 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.

## **VI. Offender requested review hearing**

At the next scheduled SORAC 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 their 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.

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

The SORAC 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 SORAC.

The SORAC 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.

## **VIII. Reconsideration**

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

The SORAC 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 their risk level reconsidered must file a written request with the SORAC, 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 SORAC 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.

## **IX. 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 information on demand
- Social Media platforms

**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

Social Media platforms