



State of Minnesota



Sex Offender Civil Commitment Fact Sheet

Office of the Ombudsman for Mental Health and Developmental Disabilities

Chapter 253B of the Minnesota Statute Section 253B.02, Subs. 18b and 18c Section 253B.185

This fact sheet describes the process of civil commitment under the Minnesota Commitment and Treatment Act for persons who are civilly committed for sex offenses. Individuals convicted of sex offenses are not all civilly committed for sex offender treatment. Individuals that are found to be either a “sexual psychopathic personality” or a “sexually dangerous person” by a court are committed to the Minnesota Sex Offender Program (“MSOP”). The Commissioner of the Minnesota Department of Human Services operates the MSOP.

This fact sheet explains who is subject to civil commitment as a sex offender, the various stages of the commitment process and provides a description of the Department of Human Service’s sex offender treatment program for those individuals that are committed as sex offenders.

A “Sexual Psychopathic Personality” and a “Sexually Dangerous Person”

The State of Minnesota uses civil commitment to institutionalize certain sex offenders in highly secure treatment facilities. Two subdivisions of the Minnesota Commitment Act are used to commit sex offenders for treatment--the Sexual Psychopathic Personality provision, 253B.02, sub. 18b and the Sexually Dangerous Person provision, 253B.02, sub. 18c. A person may be committed under both subdivisions.

While the two classifications are different in important ways, they both serve the same purpose. The Commitment Act is a civil law used to institutionalize a person for sex offender treatment in order to reduce the risk of future dangerous sexual behavior. The Act is not used to punish a person for sexual crimes that have been committed in the past. Sex offenders are committed for treatment for an indeterminate amount of time, which means that they may be held for however long it takes to successfully treat them and satisfy public safety concerns.

A civil court may commit a person for sex offender treatment if a judge determines that the individual is a “sexual psychopathic personality,” a “sexually dangerous person,” or both. A sexual psychopathic personality is a person who, as a result of a mental or emotional condition:

- (1) engaged in a “habitual course of misconduct in sexual matters;”
- (2) has an “utter lack of power to control the person’s sexual impulses;” and
- (3) as a result of this inability to control his/her behavior is “dangerous to other persons.”

A person may also be committed for sex offender treatment even though the individual's behavior does not rise to the level to be considered a sexual psychopathic personality. A person can also be committed as a sexually dangerous person. Unlike the sexual psychopathic personality provision, a judge does not have to show that the person has an inability to control the person's sexual impulses. A sexually dangerous person is defined as a person who:

- (1) has "engaged in a course of harmful sexual conduct" that creates a "substantial likelihood of serious physical or emotional harm to another;"
- (2) the person has a sexual, personality or mental disorder; and
- (3) the person is likely to engage in harmful sexual conduct in the future.

The Commitment Process

1. Prior To The Commitment Hearing.

Information about the person, such as the person's mental and criminal history, is gathered by the county attorney who may prepare a petition for commitment. The county attorney may request, but is not required to have, a pre-petition screening report prepared by county social services to determine if the requirements for commitment have been met.

Usually, the petition for commitment is filed shortly before the person is scheduled to be released from prison, after having served the required prison term. However, a petition may be filed before a person is sentenced to prison as, for example, when a person agrees to be committed for treatment as a condition of a plea bargain. Finally, a petition may also be filed after the person has been released on a conditional or supervised release, even though the person has not committed any new sexual offenses.

2. The Commitment Hearing.

The Commitment hearing is conducted similar to non-sex offender commitment hearings. [For a description of a hearing, see Item 4, Your Commitment Hearing, in The Civil Commitment Process Fact Sheet. This fact sheet explains your rights at the hearing. See also the document, Civil Commitment Notice for Mentally Ill and Dangerous.]

Upon filing the petition, the civil court will conduct a hearing and listen to evidence supporting the commitment. Any evidence relating to a person's history of sexual misconduct or acts of violence may be heard, subject to the rules of evidence. The individual has a right to counsel and may present a defense, including the cross-examination of witnesses, as well as presenting evidence and witnesses on behalf of the person being committed.

The judge may consider evidence of past allegations of sexual misconduct, even if a person was never arrested or charged with the crime. While the State has the burden of proof to show that the commitment is necessary, it is important to note that the burden of proof is lower than that used to convict a person for a crime. Therefore, a judge may consider evidence of sexual misconduct even in instances where a person was found not-guilty.

Currently, a person who is the subject of a commitment proceeding does not have a right to a jury trial. As a result, all commitment cases are determined by a judge.

A person who is being petitioned for commitment as a sexual psychopathic personality or sexually dangerous person and who has been placed under a judicial hold order pending final commitment may be

confined at a Department of Corrections or a county correctional or detention facility. The individual may be confined in such a facility, rather than a secure treatment facility, until there is a determination of the commitment petition.

If the court finds by clear and convincing evidence that the individual is a sexual psychopathic personality or a sexually dangerous person, it must commit the person to a secure treatment facility operated by the MSOP. If the person shows a less restrictive setting is available, can meet the treatment needs of the person, and fulfill the requirements of public safety, the court may commit the person to a less restrictive setting. The commitment may be appealed to the Court of Appeals and the Minnesota Supreme Court. During this time, a person is confined within the facility to which they currently are committed pending the appeal.

3. **The Review Hearing.**

Once a person is initially committed as a sexual psychopathic personality or sexually dangerous person, MSOP is responsible for submitting a treatment report to the court 60-90 days after the person's initial commitment. This time period may be changed upon agreement of the involved parties. The court must conduct a second hearing to make a final determination whether the person should be committed for an indeterminate amount of time.

The Minnesota Sex Offender Program

MSOP is one program with two locations – Moose Lake and St. Peter. Each location specializes in different components of the sex offender treatment process. The Moose Lake facility houses individuals involved in the civil commitment process, non-participants and those participating in the initial and primary stages of treatment. Individuals who have demonstrated meaningful change and have progressed through treatment are moved to St. Peter to begin the reintegration process. In addition to the components of reintegration, St. Peter also provides alternative treatment for clients from whom conventional programming is not appropriate due to cognitive limitations.

MSOP provides sex offender-specific treatment to meet the needs of all referrals. The treatment program draws on several contemporary treatment models, and treatment is guided by an individualized treatment plan that defines measurable goals throughout treatment in MSOP. There are three phases to the treatment process. MSOP clients who choose to engage in treatment participate in a sexual offender assessment that sets the foundation for their individualized treatment plans. Clients are placed in programming based on their clinical needs and risk factors.

Procedures for Release from Commitment

A special review board hears and considers all petitions for transfer, provisional discharge, revocation of provisional discharge, or full discharge from commitment. A petition for a hearing before the Special Review Board may be filed by the individual committed, the individual's attorney, or the facility medical director. Following the hearing, the Special Review Board makes a recommendation to the Supreme Court Appeal Panel. Decisions by the Supreme Court Appeal Panel may be appealed to the Court of Appeals and the Minnesota Supreme Court.

**Office of the Ombudsman for Mental Health and Developmental Disabilities
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