# RISK LEVEL REVIEWS

# WHY REGISTER




| Jacob Wetterling Act 1994 | Established state-wide registry |
|---|---|
| Megan's law 1996 | Mandated release of sex offender info to public |
| Adam Walsh child protection and safety act SORNA | Established 3 tiers of sex offenders – comprehensive registry and notification |

# RISK LEVEL APPEALS

**Minn. Stat. § 244.052, Subd. 6-administrative review of risk level assignment**

(a)Offender has right to seek admin review of ECRC determination of level II or III

(b) offender must be given reasonable opportunity to prepare for the hearing. If confined, at prison. If not ALJ determines location

Offender has burden or proof, to show, by a preponderance of the evidence, that the ECRC risk assessment determination was erroneous

(c) ALJ determines if the ECRC determination was erroneous and shall either uphold or modify the determination.

Appeal of ALJ decision is completed by writ of certiorari (Minn.Stat. 14.63-.68 within 30 days after party receives ALJ decision

# TIMELINE AFTER NOTICE OF APPEAL

Notice and Order for hearing is sent from CAH

Dispositive motion due date is provided

Scheduling conference

# SUMMARY DISPOSITION MOTION

Appropriate when:

no scoring error noted in appeal

no special concerns raised in appeal

even if appeal argues scoring error or special concerns – no material error

# SUMMARY DISPOSITION MOTION

Service on appellant:

sent to inmate's case manager for personal service

if not in prison, mail served

Response due in 10 days

# HEARING – EVIDENCE FROM ECRC

Notice of appeal

ECRC report

Risk assessment recommendation (by DOC psychologist) and scoring tool (MnSOST/MnSTARR)

ECRC packet

- criminal complaints
- PSIs

Coding rules

Recording of the ECRC meeting

# HEARING – BOP AND DETERMINATION

Burden of proof on offender: preponderance of evidence the ECRC risk assessment determination was erroneous

ALJ determination based on substantial evidence:

1. Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion;
2. More than a scintilla of evidence
3. More than some evidence
4. More than any evidence or
5. The evidence considered in its entirety

# ECRC DETERMINATION

Determination is based on both the score on the risk tool and risk factors

The ECRC may draw upon its experience and expertise to exercise some discretion in assigning a risk level on a case-by-case basis. *E.M.N.* 2006 WL 2053034 (Minn. App. July 25, 2006)

Under Minn.Stat. 14.60 agencies have authority to consider and give probative effect to evidence commonly accepted by reasonable prudent persons in the conduct of their affairs. Such evidence includes hearsay.

ECRC can used facts in complaint/PSI - even if offender testifies the facts are inaccurate-or if they deny offenses

-ECRC does not conduct fact-finding,

-ECRC and ALJ can give weight and assess credibility

F.C.M. A09-1162, 2010 WL 1286874 (Minn. App. Apr. 6, 2010); *In re Risk Level Determination of R.L.*, A09-1885, 2010 WL 2813451 (Minn.App. July 20, 2010)

# ECRC DETERMINATION - TOOL USED

*In re Risk Level Determination of R.L.*, A09-1885, 2010 WL 2813451 (Minn.App. July 20, 2010)

Issue: whether to use the LSI -R (general recidivism) or the MnSOST-R (sexual recidivism)

RL argued the MnSOST should not have been used because he denied committing his sex offense, and was ultimately not convicted of the sex crime

Holding: Which tool ECRC uses to assess risk is entirely within the discretion of the risk assessor. There is no legal requirement for the ECRC to use one tool over another

# ECRC DETERMINATION – SPECIAL CONCERNS

Special concerns used by ECRC can be reviewed by ALJ

*In re risk level determination of L.R.O.* 2016 WL 281158 (Minn. App. 2016)

ECRC has discretion to weigh special concerns

if offender provides preponderance of evidence that determination was erroneous, a hearing with witnesses should be held

case by case analysis: not every case automatically warrants a hearing; summary disposition is appropriate procedure

# SPECIAL CONCERNS

*Matter of risk level determination of R.B.P.* 640 N.W.2d 351 (Minn. App. 2002)

-Risk level assigned was two levels higher than presumption given by score on tool

-had uncharged sexually violent offenses, struggled with sobriety, use of weapons, prior to his release he said, "it doesn't matter what you do with slutty women."

*ECRC did not exceed its statutory authority when assigning risk level two levels higher.

*Ct.App.: presumptive score can be rebutted by circumstances not taken into account by the tool/actuarial

*In re Risk Level Determination of S.P.M.*, A14-1344 2015 WL 1281407 (Mar 23, 2015)

-risk level assigned was two levels higher than presumption given by score on tool

ALJ disagreed with ECRC special concerns

Victim pool: ECRC looked at uncharged behavior; ALJ did not

2 CD treatment failures: ECRC looked at the history; ALJ looked at current use of medication to help MH and offender's commitment to sobriety

Ct.App: ALJ decision was not unreasonable or arbitrary

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