

# O.J. Doyle

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Governmental Affairs Consultant

## **DRIVE CAM LEGISLATIVE PROPOSAL**

House File 1218 (Powell)

Senate File 1147 [Sams]

### **BACKGROUND**

Vehicle and liability insurance premiums for ambulance services have increased dramatically over the past 3 years. A 2004 study was undertaken by the Minnesota Department of Commerce, pursuant to legislation passed in 2003.

The study provided a number of examples of the sharp increases in ambulance insurance premiums after contacting a cross-section of providers throughout the state.

The ambulance industry is pursuing a number of different strategies to lower overall ambulance operating costs, particularly in the insurance area.

Ambulance services in other states have seen very significant reductions in vehicle accidents and lower insurance premiums when they install a device called a "Drive Cam" or "Road Safety Vehicle Monitoring Systems". It is firmly attached to the rear view mirror and is roughly the size of deck of playing cards.

In addition to increased patient and attendant safety, rigs utilizing these devices have seen an increase in patient satisfaction, longer tire life and longer period of time between brake jobs.

A request was made to the Department of Public Safety two years ago regarding any statutory constraints on installing these devices. We were told that it was prohibited under M.S. 169.71, subd 1. The law prohibits any objects suspended from rear view mirrors. Upon reading this law, however, we believe it does not apply. The small device is not "suspended" but rather firmly attached. DPS disagreed, so we pursued requesting a waiver from the Commissioner of Public Safety under the same statute. The Assistant Attorney General consulted by DPS said that the Commissioner did not have the authority to grant a waiver in this case. Consequently, we asked this legislation be introduced. [see attached cite]

**From:** "Stephen Simon" <simon001@umn.edu>  
**To:** <sen.wes.skoglund@senate.mn>  
**Date:** Thu, May 19, 2005 11:33 AM

Wes,

I am writing about several provisions in the House Omnibus crime bill. One is related to modifying B-Card restrictions for individuals who have gone 10 years without a violation. The other is related to the lack of a work permit for such individuals if they have a subsequent violation while their license is subject to a B-Card restriction.

I think these provisions are trying to address a problem that exists in this area. However, they do not appear to adequately address the problem of protecting the public while at the same time allowing some flexibility and limited driving so that such individuals can maintain employment. I recommend that the Senate not accept these provisions at this time.

I have put this issue on the Minnesota Criminal Justice System DWI Task Force Agenda for June. I will ask the Task Force to study this issue this summer and fall and obtain input guidance and advice from chemical dependency professionals as well as DPS. The Task Force will attempt to develop some legislative recommendations in this area for the 2006 legislative session.

Steve Simon  
Director  
Minnesota Criminal Justice System DWI Task Force

## WHY ASEXUALIZATION THERAPY?

Rep. Tom Emmer



In February I proposed House File 1131, titled asexualization of certain sex offenders. The idea for the bill came to me as I listened to testimony relating to the Governor's "lock 'em up and throw away the key approach" to the ever increasing problem with sex offenders in the State of Minnesota.

I agree with the Governor's strong stance on the issue. Sexual predators and offenders must be dealt with in the most direct way possible. The issue, however, will not be dealt with fully if we simply commit to continue to build more and more jails to house this ever growing community of offenders. The "one size fits all" approach is not and never has been the final word on any topic. We must continually explore alternatives for dealing with our problems, in this case, the problem is sexual predators and offenders.

There is no dispute that we need to build safe and secure facilities for our convicted sex criminals. In my opinion, however, our efforts should not (and, in fact, cannot) stop once we decide when, where and how to build. We might be able to securely separate these criminals from the rest of our law abiding society but that does not begin to address or, God forbid, solve the problem.

To date, there does not seem to be any acceptable/effective cure for pedophilia. At least, that is, for the entire population of pedophiles. There is, however, a proven therapy for one group of pedophiles, categorized by some experts as "preferential pedophiles." "A preferential pedophile prefers sexual relations with children and has never had an adult sexual relationship."<sup>1</sup> The therapy in question is commonly known as "castration."

Castration has not been a widely accepted practice in this country since approximately the 1940's and 1950's.<sup>2</sup> As best I can tell, in the late 1980's and continuing thereafter, research of the impact of castration on sexual impulse and behavior was addressed in several studies.

A 1989 German study by Wille and Beier compared 99 surgically castrated sex offenders and 35 non-castrated sex offenders about a decade after their release from prison, and found that the recidivism rate of castrated offenders was 3%, while the rate for non-castrated offenders was 46%.<sup>3</sup> Similarly, a 1994 study revealed marked reductions in

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<sup>1</sup> A "preferential pedophile" is different from a "situational pedophile" or a "violent pedophile." See M. Baro, Medical, legal experts debate merits of castration bill, Associated Press (1997); Preferential pedophiles make up a small percentage of the pedophile population. Again, these pedophiles do not and never have had any adult sexual relationships. By contrast, a situational pedophile has had adult relationships, but will have sex with children because of drugs or alcohol, or because his needs are not otherwise being met. Violent pedophiles are motivated by anger and rage.

<sup>2</sup> Apparently, castration had been widely used in sanitariums and other similar institutions in the late 1800's and the first half of the 1900's. I understand that this was surgical and prescribed for the express purpose of preventing procreation/reproduction.

<sup>3</sup> See Mild Testosterone Reduction Effective Against Aggression? *Crime Times*, Vol. 1, No. 4, 1995, p. 4.

outward-directed anger with a mild reduction of serum testosterone levels.<sup>4</sup> These results are significant and persuasive.

In a report issued in January of this year, the Legislative Auditor made several recommendations relating to the supervision of sex offenders. Among the Auditor's recommendations was included the following:

Consider additional funding for community-based assessment, treatment, housing, and supervision of sex offenders;

Require sex offenders to disclose certain temporary changes in their living arrangements;

Require corrections agencies to inform child protection agencies before authorizing sex offenders to live with children; and

**Require the Department of Corrections to collect additional information on sex offender treatment participation and outcomes.**

*See Community Supervision of Sex Offenders*, Office of the Legislative Auditor, January 2005 (emphasis added).<sup>5</sup> The Auditor's report further noted "[t]here are . . . significant weaknesses in community-based sex offender treatment. According to state law, DOC must provide for sex offender programming or aftercare when it is required by DOC at the time of an offender's release from prison. But DOC usually does not specify in detail the types of community-based 'programming' that offenders must complete. *In addition, there are no state rules that define or regulate outpatient sex offender 'treatment.' Directors of agencies that supervise the large majority of Minnesota's sex offenders released from prison rated the availability for these offenders as 'poor' or 'fair.'* *Id.* (Emphasis added.)

As the foregoing hopefully makes clear, we need sex offender aftercare upon release from prison and we have, at least for one group of sex offenders-preferential pedophiles-a proven therapy-castration.

Under the proposal, a person charged with a sex crime would be tried and, if convicted of sex crime, could as part of a sentence be ordered to submit to chemical castration. The proposal would also afford a convicted sex offender the option to submit voluntarily to surgical castration. *See Pedophile warns he will strike again*, CNN Interactive, U.S. News, 4/2/96.

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<sup>4</sup> See P. Loosen, S. Purdon, and S. Pavlou, *Effects on behavior of modulation of gonadal function in men with gonadotropin – releasing hormone antagonists*, *American Journal of Psychiatry*, 151: 2, Feb. 1994.

<sup>5</sup> "Directors of community-based corrections agencies expressed frustration that more sex offenders do not complete or participate in treatment while in prison. These agencies assume responsibility (and potentially costs) for untreated offenders after their release. We recommend that DOC report to the 2006 Legislature on options for increasing the participation of sex offenders in prison-based treatment, including possible funding needs and options for treating sex offenders who enter prison with short periods of time remaining on their sentences." (*Id.*; additional citation omitted.)

What is chemical castration? Chemical castration involves an injection of a hormone known as DEPO-PROVERA. Incidentally, this hormone is typically used as a method of birth control for women, once every 1-3 months. The hormone is known to lower sex drive and when used in the more concentrated form, as would be used for these felons, it will reduce the urges that drive these offenders to commit their crimes. It is totally reversible [just discontinue injections] does not deprive the recipient of the ability or enjoyment of sexual encounters nor does it deprive them of the right to procreate.

Although the proposal is fiscally neutral, experience in other states indicates there will be a significant cost savings. For example, in Montana, “[o]fficials estimate that the injections will cost \$21 a day, while incarceration costs \$44 a day.” See ‘Chemical castration ‘OK’d for Montana inmates, N.Y. Times News Service, 4/27/97.

Please keep in mind, the proposal is not only medically appropriate and supported by empirical evidence generated through scientific study, the proposal is entirely humane and ethical. In fact, nine states already have similar laws including Wisconsin and Iowa. This law is intended as an attempt at rehabilitation . . . to help those folks who honestly cannot help themselves.

I hope you will give the proposal some serious consideration and support. Thanks.

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Thursday, May 8, 1997

## Medical, legal experts debate merits of castration bill

By MADELINE BARO

Associated Press Writer

DALLAS (AP) - Frightened victims-rights advocates tried desperately last year to find a way to fulfill convicted child molester Larry Don McQuay's request to be castrated.

McQuay swore he'd molested more than 200 children. He declared he was "doomed to eventually rape then murder my poor little victims to keep them from telling on me."

And he contended that castration would be the only way to ensure he wouldn't molest another child.

Texas officials refused to pay for the surgery because it is considered elective.

Today, a bill awaiting Gov. George W. Bush's signature would make voluntary surgical castration an option for child molesters, even though some medical and legal experts say it's ill-advised.

McQuay was paroled a year ago after serving six years for the 1989 assault of a 7-year-old San Antonio boy. He's been jailed since August in San Antonio after being charged with indecency with a child in other 1989 incidents.

California this year became the first state to require chemical castration for repeat child molesters, who also can choose to be surgically castrated. Montana and Georgia have passed their own chemical castration laws and other states are considering similar measures.

The bill introduced in the Texas Legislature by Sen. Teel Bivins, R-Amarillo, is unique in making surgery the primary option.

With chemical castration, sex offenders are injected with drugs to reduce the amount of the male hormone testosterone in their system. With surgical castration, the testicles are removed.

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Surgical castration isn't really more drastic than chemical, said Gordon Cappelletty, who directs the adult and adolescent sex offender treatment program at the California School of Professional Psychology at Fresno, Calif.

Both are reversible.

"Even with surgical castration, a person could get a doctor to prescribe synthetic testosterone or they can find it on the black market," he said. "If a sexual offender really wanted, there are ways around it."

To reverse chemical castration, a person could end the treatments.

When done by a qualified surgeon, castration is actually a routine procedure, Cappelletty contends, like "having your wisdom teeth pulled out."

Bivins drafted his bill after reviewing European studies showing that child molesters who are surgically castrated have a small rate of recidivism, about 2 percent to 3 percent.

Surgical castration has been used in countries like Denmark, Finland, Norway, Sweden and Germany, although Denmark has switched to chemical castration.

Cappelletty said the European studies involved a group known as preferential pedophiles, who make up a small percentage of the pedophile population.

A preferential pedophile prefers sexual relations with children and has never had an adult sexual relationship.

A situational pedophile, however, has had adult sexual relationships, but will have sex with children because of drugs or alcohol, or because his needs are not otherwise being met.

"Castration for those individuals is pointless because those people aren't engaging in sex with children for sexual reasons," Cappelletty said.

Violent pedophiles are motivated by anger and rage, so castration wouldn't help them, either.

"It certainly does work in very select cases," Cappelletty said. "It is a very powerful tool for reducing recidivism, but it's not the cure-all. It's not the panacea that the legislatures see it as."

Bivins said he's written the bill "in a very narrow fashion" to target the pedophiles who will benefit. He argues against complaints that castration is cruel.

"Our response to that is what's more barbaric - allowing this voluntary surgical treatment or knowing with (some) certainty that an offender is going to molest another child?" he said. "To me, the answer to that question is real simple."



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Bush is expected to sign the bill into law after reviewing it, said his spokeswoman, Karen Hughes.

Jay Jacobson, executive director of the American Civil Liberties Union of Texas, says although the bill makes it clear that volunteering for castration wouldn't reduce a molester's sentence, it still could be considered coercion.

"Inmates might think it'll have some kind of effect on a parole board," Jacobson said.

The ACLU also objects to the bill's singling out child molesters.

The bill applies to convicted molesters over 21 years old. The inmate must request the operation in writing, admit his guilt and undergo psychological evaluation.

"Why shouldn't the Legislature make this available to anyone who feels that this is a problem, whether they have been arrested or not, whether they have been convicted or not, if they're so concerned about public safety?" Jacobson said.

Rev. John A. Leies, director of the center for professional ethics at St. Mary's University in San Antonio, said castration could sometimes be justified under the beliefs of the Catholic Church.

"I have problems with surgical castration, but I think I could accept chemical castration as a needed defense in society," Leies said.

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# Community Supervision of Sex Offenders

January 2005

## Major Findings

- Minnesota has a complex, multi-agency structure for community supervision of sex offenders, with many variations among agencies' supervision practices and limited state-level coordination.
- Specialized sex offender agents supervise a majority of adult offenders, and this recent development is a strength of Minnesota's approach. However, caseloads of specialized agents are somewhat larger than originally intended.
- The Intensive Supervised Release program provides close surveillance of certain sex offenders recently released from prison. But most sex offenders under correctional supervision receive much more limited scrutiny, typically with infrequent home visits.
- Community-based sex offender treatment programs are inadequately funded, regulated, and evaluated. Also, local corrections officials think that more sex offenders should participate in prison-based treatment programs prior to their release.
- State budget constraints have limited the use of halfway houses for released prisoners, even though community corrections directors think that improved transitional housing after prison should be a central part of the state's efforts to protect the public from sex offenders.

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**To improve community supervision of sex offenders, Minnesota needs better policy coordination, additional funding, and closer monitoring of offenders.**

- In some parts of Minnesota, state-required sex offender assessments have not been conducted prior to sentencing. Also, courts have referred few repeat sex offenders to the state security hospital for state-required assessments.

## Key Recommendations

The Legislature should:

- Require the development of more consistent statewide policies for sex offender supervision;
- Authorize external review of supervision practices;
- Consider additional funding for community-based assessment, treatment, housing, and supervision of sex offenders;
- Require statewide rules for sex offender treatment programs and polygraph administration;
- Require sex offenders to disclose certain temporary changes in their living arrangements;
- Require corrections agencies to inform child protection agencies before authorizing sex offenders to live with children; and
- Require the Department of Corrections to collect additional information on sex offender treatment participation and outcomes.

## Report Summary

In June 2004, about 7,000 adults living in Minnesota communities were registered with the Bureau of Criminal Apprehension as "predatory offenders" due to crimes (mainly sex offenses) committed as adults.<sup>1</sup> About 4,500 adults were under the supervision of state or county corrections agents for a sex offense. This included persons on "supervised release" from prison, as well as persons sentenced to probation.

Since 1996, Minnesota state law has required "community notification" regarding sex offenders released from prison. The law requires widespread notification for "Level III" offenders—those deemed most likely to reoffend—and these offenders comprise about 2 percent of the registered adult sex offenders living in Minnesota communities. The law requires lesser notification for Level I and II offenders, who comprise another 25 percent of the registered adult offenders. However, most sex offenders in Minnesota communities have been sentenced to probation, not prison—and, thus, they are not subject to community notification requirements under existing law.

### Offender Supervision Practices Should Be Enhanced, Coordinated

Minnesota has implemented stricter prison sentences for sex offenders in recent years. Nevertheless, community supervision of non-incarcerated offenders is still an important part of the state's efforts to protect the public. Seventeen state and county agencies supervise adult, felony-level sex offenders in Minnesota, and 42 agencies supervise juvenile sex offenders. Few statewide policies address the nature of the supervision, and agencies have adopted a variety of policies and practices.

Nationally, there is a general consensus that it is a "best practice" for corrections agencies to have agents with specialized training in sex offender supervision and for these agents to have caseloads that consist

largely of sex offenders. We estimated that, as of June 2004, 65 percent of Minnesota's adult, felony-level sex offenders under correctional supervision were assigned to such "specialized" sex offender agents. Another 7 percent were assigned to Intensive Supervised Release agents, who supervise certain high-risk offenders recently released from prison, and 28 percent were assigned to regular, non-specialized corrections agents.

Offenders assigned to Intensive Supervised Release tend to have frequent contacts with their agents. In a sample of cases we reviewed, Intensive Supervised Release agents annually conducted a median of 70 home visits and 35 other face-to-face meetings per sex offender. However, state Intensive Supervised Release funding has not been sufficient to cover all offenders needing this type of close scrutiny in all parts of the state. Offenders who comply with supervision requirements typically remain on Intensive Supervised Release for a year after their release from prison, and then they are reassigned to less intensive supervision.<sup>2</sup>

Sex offenders who *are not* on Intensive Supervised Release have much less frequent meetings with their agents, particularly home visits. For example, our case reviews indicated that the median number of home visits for these offenders ranged from 0 to 3 visits annually, depending on their supervision level. Supervising agencies each set their own standards for the minimum number of agent-offender contacts, but many offenders were not seen as often as the standards required. While it makes sense for agencies to vary their supervision practices depending on the risks posed by individual offenders, we think there is a general need for more home visits of sex offenders—to help detect deception, hold offenders accountable, and monitor changes in offenders' behaviors. Likewise, in a statewide survey, most directors of community-based corrections agencies said they would like to see additional

**Except for the limited number of offenders on "intensive" supervision, home visits are a relatively infrequent part of sex offender supervision.**

<sup>1</sup> Of the more than 15,000 persons in BCA's statewide registry, our estimate excluded those who were deceased, living out of state, deported, incarcerated, or living in a state security hospital, as well as those whose registration occurred as a result of juvenile offenses and those whose period of registration has expired.

<sup>2</sup> Offenders who do not comply with supervision requirements can be kept on intensive supervision longer than one year or returned to prison.

unannounced home visits, agent surveillance activities, polygraphs, and monitoring of offenders' computer use.

There are no national standards for the optimum caseload size of agents who supervise sex offenders, but the Legislature has provided funding in recent years to reduce the caseloads of specialized agents. On average, specialized sex offender agents supervised 45 offenders in June 2004, which was somewhat above the targets of 35 to 40 suggested by the Legislature and Minnesota Department of Corrections (DOC).

The Legislature should require development of statewide sex offender supervision policies by DOC or, alternatively, a state sex offender policy board (such as the one recommended by the Governor's recent sex offender commission). A working group of state and local corrections officials should advise DOC or the board on these policies. Examples of possible statewide policies include minimum levels of agent contact with offenders under supervision, or model language regarding the restrictions and supervision requirements that could be placed on sex offenders in court sentences. In addition, we think that the supervision practices of individual agencies need periodic scrutiny, and we recommend that the Legislature require DOC (or a sex offender policy board) to establish a process for independent reviews by state and/or local staff.

#### **More Offenders Need Treatment in Prison and Community Programs**

Directors of community-based corrections agencies expressed frustration that more sex offenders do not complete or participate in treatment while in prison.<sup>3</sup> These agencies assume responsibility (and potentially costs) for untreated offenders after their release. We recommend that DOC report to the 2006 Legislature on options for increasing the participation of sex offenders in prison-based treatment,

including possible funding needs and options for treating sex offenders who enter prison with short periods of time remaining on their sentences.

There are also significant weaknesses in community-based sex offender treatment. According to state law, DOC must provide for sex offender programming or aftercare when it is required by DOC at the time of an offender's release from prison. But DOC usually does not specify in detail the types of community-based "programming" that offenders must complete. In addition, there are no state rules that define or regulate outpatient sex offender "treatment." Directors of agencies that supervise the large majority of Minnesota's sex offenders released from prison rated the availability of community-based treatment for these offenders as "poor" or "fair." Adjusted for inflation, state spending for community-based sex offender treatment in fiscal year 2004 was at its lowest point in recent years.

The Legislature and DOC should ensure that there is sufficient funding for community-based treatment, particularly for offenders released from prison. This may require additional money, different administrative methods of allocating funding, or both. DOC should also collect comprehensive data on offenders who enter community-based sex offender treatment programs, and it should periodically track post-treatment offender outcomes.

In addition, there are weaknesses in assessment practices for sex offenders who are not sentenced to prison. State law requires these convicted sex offenders to undergo specialized assessments, partly to determine their treatment needs. DOC provided partial state reimbursement of such assessments until 2003. Since the discontinuation of these reimbursements, however, some assessments have not been completed until well after offenders have been sentenced—potentially delaying treatment and hindering correctional supervision. Also, courts have not referred many repeat sex offenders for assessment to the Minnesota state security hospital, contrary to state law.

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### **Local corrections officials expressed concerns about the availability of community-based treatment for sex offenders in parts of Minnesota.**

<sup>3</sup> In 2003, 14 inmates completed sex offender treatment in prison. Another 55 participated in treatment until their prison sentence ended, including many who entered the program with less time to serve on their sentence than the length of the full prison treatment program.



# CRIME Times

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Linking Brain Dysfunction to  
Disordered/Criminal/Psychopathic Behavior

Vol. 1, No. 4, 1995,  
Page 4

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## MILD TESTOSTERONE REDUCTION EFFECTIVE AGAINST AGGRESSION?

Attempts to reduce aggression and sexual predation in male sex offenders have included surgical castration and chemical castration (the use of female hormones to suppress testosterone levels). Studies suggest that either approach can be effective; a 1989 German study by Wille and Beier, for instance, compared 99 surgically castrated sex offenders and 35 non-castrated sex offenders about a decade after their release from prison, and found that the recidivism rate of castrated offenders was 3%, while the rate for non-castrated offenders was 46%.

Castration is not an accepted practice in the United States, however, because of both ethical and medical concerns. But a new study suggests that even mild reductions in testosterone levels -- far short of the drastic reductions induced by castration -- can significantly reduce male aggression.

Peter Loosen and colleagues suppressed the gonadal function of eight normal men by administering a gonadotropin-releasing hormone antagonist, while keeping the subjects' testosterone levels in the low-normal range through the use of synthetic testosterone injections. The researchers say "this design allowed us to prospectively study behavioral changes in normal men during mild reductions (rather than during complete suppression) of serum testosterone levels."

The researchers report that all of their subjects showed marked reductions in outward- directed anger during the experiment, while half exhibited reductions in anxiety and sexual desire. This suggests, they say, that "measures of outward-directed anger are most sensitive to small reductions in circulating testosterone concentrations."

The researchers' experiment is of interest in light of studies by James Dabbs et al. (See *Crime Times*, Vol. 1, No. 3, Page 2 ) which strongly suggest a link between elevated testosterone levels and violence, delinquency, substance abuse, and prison rule violations.

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"Effects on behavior of modulation of gonadal function in men with gonadotropin- releasing hormone antagonists," Peter T. Loosen, Scot E. Purdon, and Spyros N. Pavlou, *American Journal of Psychiatry*, 151: 2, Feb. 1994. Address: Peter T. Loosen, Health Research Chief, Psychiatry Service (116A), Veterans Affairs Medical Center, 1310 24th Ave. South, Nashville, TN 37212-2637.

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# CRIME Times

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Linking Brain Dysfunction to  
Disordered/Criminal/Psychopathic Behavior

Vol. 1, No. 3, 1995,  
Page 2

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## HIGH TESTOSTERONE LINKED TO CRIMES OF SEX, VIOLENCE

Men, in general, are much more aggressive than women -- a fact that has led researchers to investigate possible links between levels of male hormones (particularly testosterone) and aggressive or criminal behavior.

James Dabbs, Jr., studied 4,462 men in 1990 and found that "the overall picture among the high-testosterone men is one of delinquency, substance abuse and a tendency toward excess." These men, he added, "have more trouble with people like teachers while they are growing up, have more sexual partners, are more likely to have gone AWOL in the service and to have used hard drugs," particularly if they had poor educations and low incomes. A separate study by Dabbs of young male prison inmates found that high testosterone levels were associated with more violent crimes, parole board decisions against release, and more prison rule violations. Even in women, Dabbs found, high testosterone levels were related to crimes of unprovoked violence, increased numbers of prior charges, and decisions against parole.

The latest study by Dabbs et al., which pooled data from two groups of prisoners, measured testosterone levels in the saliva of 692 adult male prisoners. The researchers found that inmates who committed crimes of sex and violence had higher testosterone levels than inmates who were incarcerated for property crimes or drug abuse. In addition, they say, "inmates with higher testosterone levels... violated more rules in prison, especially rules involving overt confrontation."

Dabbs et al. say that "the variety of rule violations suggests the behavior of high testosterone individuals reflects intractability, unmanageability, and lack of docility as well as aggression and violence."

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"Testosterone, crime, and misbehavior among 692 male prison inmates," James M. Dabbs, Jr., et al., *Person. individ. Diff.*, Vol. 18, No. 5, 1995. Address: James M. Dabbs, Jr., Dept. of Psychology, Georgia State University, University Plaza, Atlanta, GA 30303-3083.

**Related Article:** [2000, Vol. 6]

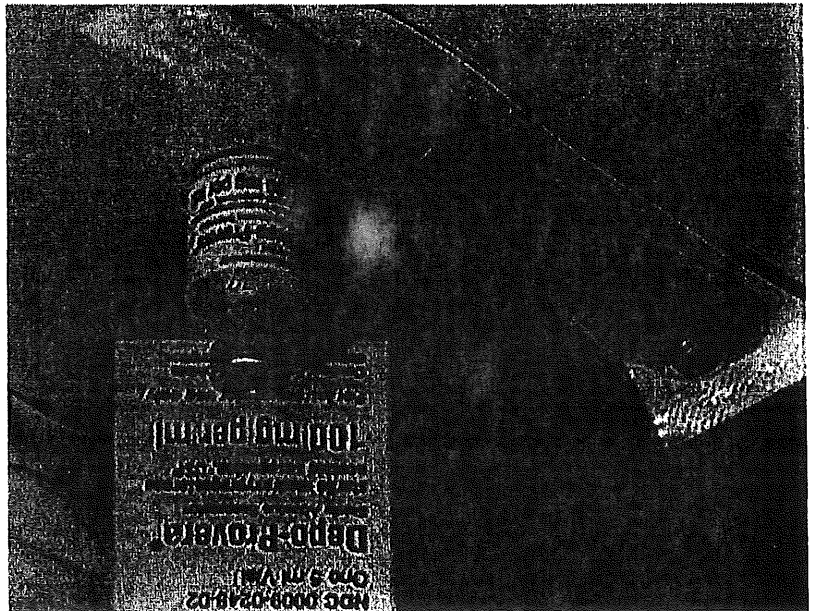
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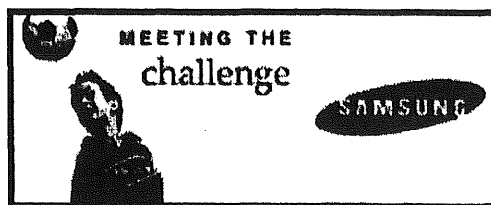
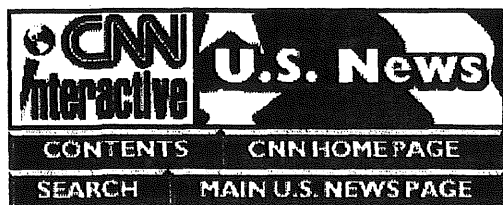
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## Pedophile warns he will strike again

### Due for release on parole

April 2, 1996

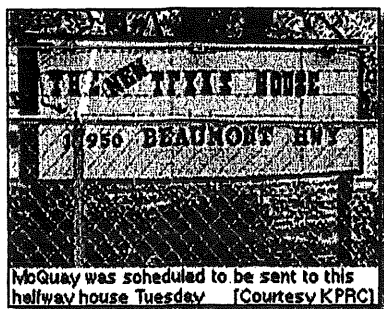
Web posted at: 9:40 p.m. EST

HOUSTON, Texas (CNN) -- Texas prison officials have held up the release of a convicted child molester who calls himself a monster and says he is "doomed" to strike again and this time, kill.

Former school bus driver Larry Don McQuay, 32, who has in the past asked to be castrated, says he molested more than 200 children.



McQuay (Courtesy KRIY)



He was to be paroled and released to a halfway house in Houston Tuesday but that was put on hold after victims' rights groups pleaded for a review.

The groups are concerned because of letters sent by McQuay while in prison to a victims' rights group, Justice For All.

In those notes -- sometimes signed "child molesting demon" -- McQuay warned he would do even more harm to children if he were released.

***"I am doomed to eventually rape then murder my poor little victims to keep them from telling on me."***

***- Larry Don McQuay***

McQuay has served six years of an eight-year sentence for molesting a 6-year-old boy in San Antonio. He is eligible for parole for time served in prison and time taken off his sentence for "good behavior" while behind bars.

McQuay was just a few hours away from being released from prison to a halfway house when Victor Rodriguez, chairman of the Texas Board of Pardons and Paroles, intervened.

Prison officials said the parole board chairman was reviewing letters McQuay had sent to the Houston-based rights group Justice for All. "It's on hold," Texas Department of Corrections spokesman David Nunnelee said.

Texas Gov. George W. Bush said he was "appalled" at McQuay's statements. "He's as flagrant with his words as his behavior," Bush said.

The governor said he has asked the parole board to do everything in the state's



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power "to keep this man behind bars." (196K AIFF sound or 196K WAV sound)

"This is an important use of taxpayers' money: To lock up the most violent predators for a long, long time," Bush said. "He (McQuay) is just lucky thus far that the laws that we changed in the books did not pertain to him." (179K AIFF sound or 179K WAV sound)

Under the revised laws, Bush said there was no such thing as automatic mandatory release, which in part enables a prisoner to earn good credits and negotiate an early release. The new legislation, however, does not apply to McQuay because he was convicted before it came into effect.

***"Sex offenders should be in jail for long periods of time ... It is a legitimate state function to lock up the most violent and predatory-type criminals."***  
***- Texas Governor George W. Bush***

#### **'Children safe for at least 24 hours'**

Dianne Clements of Houston-based Justice for All said McQuay had sent the group at least six letters over the past year or so and described them as "perverse and sick stuff." Parole officials had requested copies Tuesday, she added.

"I think it's very wise for prison officials and the parole board to look at his eligibility," Clements said. "Of course, it's only temporary. But at least children are safe for at least 24 hours."

Indeed, McQuay seems well aware that he is a danger to children. While in prison, he campaigned unsuccessfully to be castrated. State officials denied the request because it was considered elective surgery. A move by the Legislature to allow such operations failed last year.

"I have been busting my butt to do everything possible to keep me from reoffending, but everyone seems to be dead set against that," McQuay said at the time.

"I got away with molesting over 240 children before getting caught for molesting just one little boy. With all that I have cold-heartedly learned while in prison, there is no way that I will ever be caught again."

#### **McQuay calls himself a 'monster'**

Last August, McQuay described himself to the weekly Houston Press as "a child molester. A monster."

"Sometimes I wish I was born a hundred years ago when you could marry a 12-year-old girl and nobody would think twice about it. Or back in the Greek culture when they had sex with boys," he said. "But in today's society that's not acceptable and I'm not a time traveler, so I can't go back into another society or another culture."

A 1995 state law requires that local law enforcement authorities be notified if a convicted child molester is moving into the community. But McQuay would not be subject to the law because he was convicted before the measure was enacted.

If he is set free, parole officials will impose strict conditions on McQuay, including the use of an electronic monitoring device to track his movements, Texas Department of Corrections spokesman Nunnelee said.



"It terrifies me," said Betty Frank, who lives near the 210-inmate halfway house and spent Monday writing a petition protesting the number of sex offenders sent there. She said she worries when her 3- and 5-year-old children play outside.

*The Associated Press and Reuters contributed to this report.*

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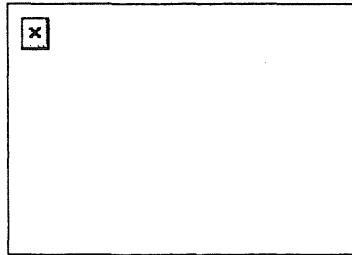
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**SouthCoast**  
TODAY



## 'Chemical castration' OK'd for Montana inmates

**N.Y. Times News Service**

HELENA, Mont. -- Hoping to save money on prisons, Montana has become the second state to approve the use of "chemical castration" to reduce the sexual drive of sexual offenders who are about to be released from prison.

A similar program went into effect this year in California, where the law mandates that sex offenders convicted of child molestation for a second time be injected with a drug, usually Depo-Provera, that reduces testosterone levels, which in turn reduces sex drive.

The Montana law, which is to take effect Oct. 1, does not mandate injections, but allows judges to impose them if an offender commits rape or incest for a second time, or if a first offense is particularly heinous.

The injections would begin a week before the offender is to be released from prison and would continue until the Montana Department of Corrections deems them no longer necessary -- which could mean for life. Once the injections stop, the sex drive returns to previous levels.

"It's like a nicotine patch," said state Rep. Deb Kottel, Democrat of Great Falls, who sponsored one of two bills on the issue that passed. "It takes the edge off and allows people to quit."

Officials estimate that the injections will cost \$21 a day, while incarceration costs \$44 a day.

Although the new law has broad support and the treatment is widely used in Europe, some people have questioned the use of such methods. "It's a simplistic, feel-good piece of legislation that doesn't get at the root of the problem," said Scott Crichton, executive director of the American Civil Liberties Union of Montana.

"They think a sex offense is all about sex. But it's about power and control and patterns of thought."

The law that emerged was a compromise to a proposal that would have mandated surgical castration for some sex offenders. The two bills passed earlier this year by wide margins but were vetoed by Gov. Marc Racicot, who said he was concerned about the cost. Legislators overrode the veto April 21 during the last week of the session.

Ms. Kottel said one of the reasons she introduced the bill was that she received a letter from a prison inmate who was serving time for a third sexual offense.

"He pleaded with me to find a way to get him out of prison," she said. Drugs are available to help sex offenders, she added, "so why would we not give them the tools to maintain some balance?"

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To Tom Emmer

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retail \$75.00

Mark Edwards

do Fairview 612 626 2828 (op 3)

- **CLINICAL APPLICATIONS**
  - **THERAPEUTIC USES**
    - **AJ. SEXUAL AGGRESSION**
      - **1. OVERVIEW:**

**FDA APPROVAL:** Adult, no; pediatric, no  
**EFFICACY:** Adult, possibly effective  
**DOCUMENTATION:** Adult, poor

- **2. SUMMARY:**

- Medroxyprogesterone has been shown to be possibly effective

- **3. ADULT:**

- a. Two anecdotal cases were reported in which sexually aggressive behavior in elderly men with dementia responded to intramuscular MEDROXYPROGESTERONE ACETATE administered every 2 weeks (Weiner et al, 1992). One patient's effective dose was 150 milligrams every 2 weeks, while the other patient required 200 milligrams every 2 weeks. Controlled studies are needed to evaluate efficacy and safety of MEDROXYPROGESTERONE ACETATE in this setting.
- b. MEDROXYPROGESTERONE 300 milligrams intramuscularly weekly for 1 year was effective in controlling HYPERSEXUALITY in 4 males with dementia in a study (Cooper, 1987). Response was evident after 2 weeks of treatment, and suppression of sexual behavior was associated with reductions in TESTOSTERONE and LH levels, decreasing by 90 and 60%, respectively, after 1 month of treatment. In 3 of 4 patients, sexually disruptive behavior did not recur at 1 year of follow-up (following withdrawal of the drug); a return to sexual acting out was observed in one subject, however this at a lesser degree than previously and was managed by firm nursing. Side effects were not observed during treatment. It is suggested that MEDROXYPROGESTERONE be considered a first-line agent in the treatment of DISRUPTIVE SEXUAL BEHAVIOR in demented men.
- c. For More Information

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## DRUG CONSULTS: THERAPY OF MALE HYPERSEXUALITY

- **RESPONSE:**
- **PROGESTINS:**
- **MEDROXYPROGESTERONE** has been used investigationaly in the treatment of male patients displaying paraphilic (sexually deviant), hypersexuality or **SEXUALLY CRIMINAL BEHAVIOR** (Kelly & Cavanaugh, 1982; Berlin & Coyle, 1981; Kiersch, 1990; Cooper, 1986). The primary mechanism of action of medroxyprogesterone appears to involve a reduction in plasma **TESTOSTERONE** Berlin & Coyle, 1981). Gagne (1981) reported that the effects medroxyprogesterone were temporally related serum testosterone; however, Berlin & Meinecke (1981) noted a reduction in sexual fantasies of patients before a decrease in testosterone. A direct CNS effect and other potential mechanisms have also been proposed (Berlin & Meinecke, 1981).
- The patient population in which medroxyprogesterone is potentially effective is not well defined. Some investigators have observed that this agent is effective only in patients in whom sexually deviant behavior is performed as an attempt to achieve sexual gratification. Others have noted that medroxyprogesterone also appears to be beneficial in patients whose sexually deviant behavior is a result of non-sexual aggressive tendencies (Blumer & Migeon, 1975).
- A number of uncontrolled trials indicate that medroxyprogesterone appears to be effective in male hypersexuality (Cooper, 1981; Gagne, 1981; Berlin & Meinecke, 1981; Blumer & Migeon, 1975; Cordoba & Chapel, 1983). However, Kiersch (1990) noted that medroxyprogesterone as well as placebo injections produced similar decreases in sexual arousal in 8 sex offender patients in a placebo-controlled study.
- Gagne (1981) reported that 40 of 48 treated patients demonstrated a positive response. The patients received medroxyprogesterone 200 milligrams intramuscularly 2 or 3 times a week for 2 weeks, 200 milligrams 1 or 2 times a week for 4 weeks, 100 milligrams weekly or 200 milligrams every other week for 12 weeks, then 100 milligrams once a week to once per month for 7 or 8 months. All patients also attended psychiatric counseling sessions for the duration of the 12-month study. Of the 40 responders, 33 were improved within 10 days, and the remaining 7 within 3 weeks. Full improvement in psychosocial functioning required 2 to 3 months. In most cases, plasma testosterone levels fell to less than one-half initial values after 4 injections. A gradual reduction in erectile and ejaculation ability was noted, and the patients generally became sexually impotent when plasma testosterone levels were less than one-fourth the initial value. Other investigations have used doses of 200 to 300 milligrams intramuscularly every 7 to 10 days (Pinta, 1978), 150 milligrams every other week to 600 milligrams weekly (Berlin & Meinecke, 1981), and 10 to 400 milligrams every 10 days (Pinta, 1978).
- Gagne (1981) reported that all 48 patients in his study experienced side effects from medroxyprogesterone. Fatigue was generally present for 2 or 3 days following each injection. Additionally, 28 patients had weight gain of up to 9.1 kg, 14 had hot and cold flashes, 10 had headaches, 7 had insomnia, and 1 patient each had nausea and phlebitis. Other side effects associated with medroxyprogesterone include depressed mood, elevated blood glucose, and changes in body hair.
- The ethics of using medroxyprogesterone in this application, particularly in those who face incarceration, has been controversial (Berlin & Coyle, 1981; Gagne, 1981; Halleck, 1981). Halleck (1981) questioned whether legally acceptable informed consent could be obtained from a patient who might be imprisoned if treatment was refused. Other investigators have published guidelines and documents used in their studies. Demsky (1984) has published the legal issues involved in the use of medroxyprogesterone in the treatment of sex offenders.
- Two studies were conducted in England using **CYPROTERONE**; one study enrolling 3 patients (Cooper et al, 1972) and the other (Brotherton et al, 1973). Brotherton et al (1973) reported a fall in testosterone to one-fifth the mean average levels within 4 days, a complete lack of sexual performance, libido, and spermatogenesis within 6 to 7 weeks. These effects were reversible within 3 weeks of discontinuing treatment. Doses administered ranged from 50 to 150 milligrams/day. Cooper et al (1972) reported that there was an unmistakable generalized tranquilizing effect rendering the patients less irritable, more tolerant and more relaxed physically and mentally. The only adverse effect noted was some loss of energy without drowsiness, weakness, or fatigue.
- **ESTROGENS**
- **ESTROGEN** treatment of gonadally intact men for the control of deviant sexual behavior was introduced in 1940, when a convicted heterosexual pedophile was successfully treated with diethylstilbestrol. Complete loss of libido was observed, accompanied by gynecomastia and degenerative testicular changes (Dunn, 1940). Estrone, ethinylestradiol and estradiol implants have also been used with considerable clinical success, but adverse effects such as nausea, vomiting, feminization, gynecomastia, and the occurrence of breast carcinoma limit or contraindicate their use (Golla & Hodge, 1949; Bancroft et al, 1974; Field & Williams, 1981; Symmers, 1968).
- **BENPERIDOL:**
- **BENPERIDOL**, which is an analog of haloperidol, has been used extensively in England for the treatment of sexual offenders. A study indicated that this drug was more effective than chlorpromazine in reducing the frequency of sexual thoughts without impairing sexual performance (Anon, 1974). Another study using 28 normal male volunteers reported that the use of benperidol 0.25 milligrams 2 to 4 times daily not only abolished sexual desire, but impaired the ability to obtain an erection either as a result of lack of fantasy or masturbation. These effects were attended with mild, but typical butyrophenone adverse effects including parkinsonism, "jumpy leg" syndrome, and mild lethargy, which lasted for the first few days of treatment (Field et al, 1973).

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Last update: April 19, 2005 at 2:20 PM

## Rapist admits molesting girl in his custody

Jim Adams, Star Tribune

April 19, 2005 FARN0419

A Hastings man with a prior rape conviction pleaded guilty Monday to sexually assaulting a 9-year-old girl after he had been granted partial custody of her.

Justin P. Farnsworth, 31, pleaded guilty in Dakota County District Court to first-degree criminal sexual conduct involving the girl. Two lesser rape charges will be dropped at his July sentencing.

The girl, the daughter of his ex-girlfriend, had been living with him and his two younger daughters for more than a year. Police said there was no indication that Farnsworth had molested the younger girls.

The mother, who was living in western Minnesota, agreed to let all three of her girls live with Farnsworth, and District Judge Joseph Carter granted his request for primary physical custody of the 9-year-old on Oct. 25. He was charged less than a month later. Farnsworth's probation for raping a 13-year-old girl in Carver County in 1994 ended last June.

At the time custody was granted, Carter didn't discuss his decision because that is forbidden by the state code of judicial ethics. However, Bar Association president David Stowman said in a prepared statement on Carter's behalf that it was based on several factors, including that Farnsworth had been described as a "success story" since his prior sexual assault and that the girl's mother had asked the judge to award him custody.

County Attorney James Backstrom said Farnsworth is a "poster boy" for why harsher laws are needed to keep sex offenders under indefinite supervision, possibly for life, and use random lie detector tests to see whether they are molesting anyone. He noted that such proposals, recommended by a governor's commission in January, are being considered by the state Legislature this session.

Such controls might have protected the 9-year-old girl in this case, Backstrom said. He noted that children under age 12 account for one out of three sexual abuse victims nationally, and studies estimate that more than half of young victims don't report the abuse.

Backstrom said he will seek more than the minimum 12-year sentence required by law for Farnsworth's offense. Farnsworth's attorney couldn't be reached to comment.

According to the criminal complaint, the 9-year-old girl told a neighbor woman that Farnsworth had been sexually abusing her. The woman told the girl's mother when she came to pick up the three girls on Nov. 10. The mother, who, Backstrom said,

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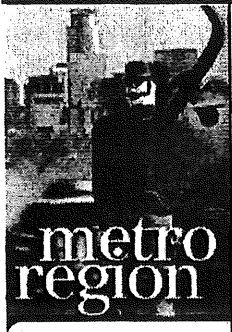
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Last update: April 20, 2005 at 7:01 AM

## Sex offender pleads guilty to abusing 8-year-old boy

**Matt McKinney**, Star Tribune  
 April 20, 2005 SEXABUSE0420

A convicted sex offender pleaded guilty Tuesday to fondling an 8-year-old developmentally disabled Apple Valley boy while driving him to school during the 1999-2000 school year.

David Allen Laugerude, 25, who is serving time in prison for three other sex crimes, drove a school bus for the Rosemount-Apple Valley-Eagan School District in the 1999-2000 school year. He had no criminal record at the time.

He told a corrections officer in June 2003 that he had touched a boy who rode his bus while helping the boy put on his seat belt.

He said he touched the boy over his clothing on five or six occasions, and led investigators to the boy's house.

The boy's mother told police that her son would not be able to confirm the abuse because of his condition, but that he began exhibiting sexual behavior around the time that Laugerude was his bus driver.

Dakota County District Judge William Thuet sentenced Laugerude on Tuesday to four years and nine months in prison. He was already serving a 12-year term for sexually abusing two girls, ages 5 and 6, in Farmington and Burnsville in 2001, and for sexually abusing a 6-year-old girl in Scott County in 1995, according to Dakota County Attorney James Backstrom.

"David Laugerude is a dangerous sex offender who preys upon young and vulnerable children," Backstrom said in a statement Tuesday. "This conviction will be useful in our review of his possible civil commitment prior to his release from prison."

Laugerude told investigators that he had abused the Apple Valley boy, plus about four other children, during the 1999-2000 school year. But Backstrom said that despite extensive investigation, the other alleged victims could not be identified or investigators could not find sufficient evidence that crimes had been committed.

*Matt McKinney is at [mckinney@startribune.com](mailto:mckinney@startribune.com)*

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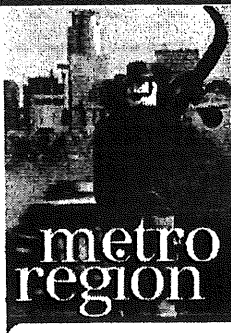
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Last update: April 26, 2005 at 10:58 PM

### Ex-volunteer charged in girl's abuse at Minneapolis school

April 27, 2005 ABUSE0427

A former Minneapolis schools volunteer has been charged with a felony after a kindergartner was molested.

Gerald Leighton Smith, 67, was charged with first-degree criminal sexual conduct for allegedly touching a 6-year-old girl in an office at Hamilton Elementary School at 4119 Dupont Av. N., according to a criminal complaint filed Tuesday in Hennepin County District Court.

After the girl tried to run into traffic on April 1, her mother took her to a hospital.

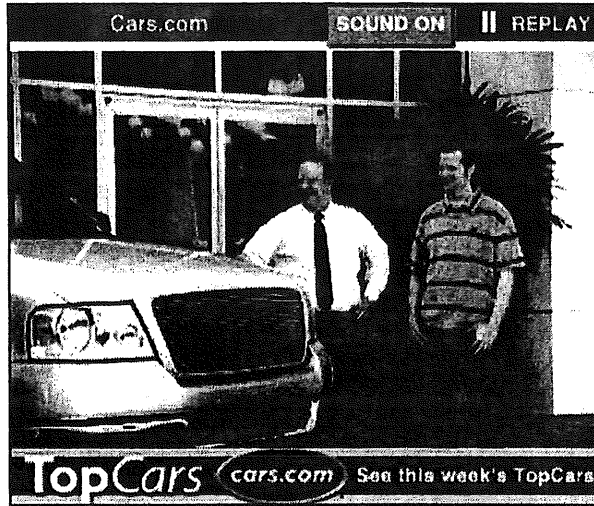
Smith, who escorted students to school buses among other duties, told police last Thursday that he inappropriately touched the girl, the complaint said.

He was arrested and made his first court appearance Monday. He is being held in the Hennepin County jail on \$50,000 bail. His next court appearance is set for May 31.

Smith had stopped volunteering at the school in January, said Josh Collins, assistant director of communications for Minneapolis schools. The district plans to fully cooperate with a police investigation and conduct its own investigation as well, Collins said.

The district also will review its volunteer program screening process, he added.

*Terry Collins*



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## Rapist admits molesting girl in his custody

**Jim Adams**

Star Tribune

Published April 19, 2005



A Hastings man with a prior rape conviction pleaded guilty Monday to sexually assaulting a 9-year-old girl after he had been granted partial custody of her.

Justin P. Farnsworth, 31, pleaded guilty in Dakota County District Court to first-degree criminal sexual conduct involving the girl. Two lesser rape charges will be dropped at his July sentencing.

The girl, the daughter of his ex-girlfriend, had been living with him and his two younger daughters for more than a year. Police said there was no indication that Farnsworth had molested the younger girls.

The mother, who was living in western Minnesota, agreed to let all three of her girls live with Farnsworth, and District Judge Joseph Carter granted his request for primary physical custody of the 9-year-old on Oct. 25. He was charged less than a month later. Farnsworth's probation for raping a 13-year-old girl in Carver County in 1994 ended last June.

At the time custody was granted, Carter didn't discuss his decision because that is forbidden by the state code of judicial ethics. However, Bar Association president David Stowman said in a prepared statement on Carter's behalf that it was based on several factors, including that Farnsworth had been described as a "success story" since his prior sexual assault and that the girl's mother had asked the judge to award him custody.

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Such controls might have protected the 9-year-old girl in this case, Backstrom said. He noted that children under age 12 account for one out of three sexual abuse victims nationally, and studies estimate that more than half of young victims don't report the abuse.

Backstrom said he will seek more than the minimum 12-year sentence required by law for Farnsworth's offense. Farnsworth's attorney couldn't be reached to comment.

According to the criminal complaint, the 9-year-old girl told a neighbor woman that Farnsworth had been sexually abusing her. The woman told the girl's mother when she came to pick up the three girls on Nov. 10. The mother, who, Backstrom said, still has the children, called police that day. Farnsworth admitted sexually assaulting the girl after watching a pornographic movie with her.

*Jim Adams is at [jadams@startribune.com](mailto:jadams@startribune.com)*

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## **PROSECUTORS SAY GIRL WAS RAPED, BURIED ALIVE; [Broward Metro Edition]**

*The Associated Press.* **South Florida Sun - Sentinel.** Fort Lauderdale, Fla.: Apr 21, 2005. pg. 6.B

People: Lunsford, Jessica, Couey, John Evander  
 Author(s): The Associated Press  
 Dateline: TAMPA  
 Section: LOCAL  
 Publication title: South Florida Sun - Sentinel. Fort Lauderdale, Fla.: Apr 21, 2005. pg. 6.B  
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### **Abstract** (Document Summary)

Officials said they believe [Jessica Lunsford] may have been alive in [John Evander Couey]'s home while police and volunteers searched for her. After she was killed, Couey fled to Georgia.

### **Full Text** (534 words)

*(Copyright 2005 by the Sun-Sentinel)*

Nine-year-old Jessica Lunsford was raped, bound and buried alive, kneeling and clutching a purple stuffed dolphin, state prosecutors said in documents released Wednesday.

The girl's body was found March 19 buried about 150 yards from her house in Homosassa, about 60 miles north of Tampa.

According to the 292 pages of documents, Jessica was found wearing shorts and a shirt -- different from the pink nightgown her family said she was wearing when they reported her missing Feb. 24, The Tampa Tribune said in its online edition late Wednesday.

The body was wrapped in two plastic trash bags knotted at her head and feet in a grave covered by a mound of leaves, the state attorney's office said in the statements.

Jessica died of asphyxiation, according to a coroner's report.

A convicted sex offender, John Evander Couey, 46, is charged in her slaying.

Officials said they believe Jessica may have been alive in Couey's home while police and volunteers searched for her. After she was killed, Couey fled to Georgia.

A message left by The Associated Press for Couey's attorney, Dan Lewan, was not immediately returned Wednesday evening.

In Tallahassee meanwhile, the state Senate moved ahead with a bill named in the girl's memory to make sure dangerous criminals who might hurt Florida's children are behind bars or tracked by high-tech satellite monitoring devices.

The Senate debated the Jessica Lunsford Act, a day after it was passed unanimously by the House. The bill would require life in prison or lifetime monitoring with a global positioning system for some offenders. The Senate didn't make a final vote, but it could as early as Thursday.

If the Senate can work out some differences with the legislation that passed the House 118-0 on Tuesday, the bill

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would go to Gov. Jeb Bush, who said he supports the idea of tracking criminals who have the clear potential to harm more children.

The bill before the Legislature would set a mandatory sentence of 25 years to life for people convicted of molesting children under 12 years old. If the person serves less than life, their prison time would be followed by monitoring by GPS for the rest of their life.

Sen. Nancy Argenziano, in whose north-central Florida district Jessica lived, said she knows the bill won't stop all crimes against children -- but hoped that those who commit such offenses would be put away for a long time.

"There will always be this type of deviant in the world," said Argenziano, R-Dunellon. "Heaven help you if you do it now in the state of Florida."

The bill (HB 1877) would also require that if current sex predators who preyed on children up to age 15 violate their probation in just about any way, they have to wear the GPS devices if they're not sent back to prison.

The monitoring system would provide law enforcement the ability to know where the offenders are at any time, and could also be used with maps showing the location of crimes so suspects could quickly be identified.

The Senate measure would include more than \$10 million to pay for it. So far, the House hasn't put the money specifically into the bill

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## Child molester undergoes voluntary castration

**DALLAS, Texas (AP) --A former YMCA camp counselor who admitted molesting more than 40 boys underwent voluntary castration this week in Texas, the only state where the prison system allows the surgery.**

David Wayne Jones, a former employee of the East Dallas YMCA, is the second inmate to have the surgery since a 1997 law legalized the procedure.

Jones is expected to complete his sentence this week before facing further prosecution for an unresolved sex abuse charge, said Judy Johnson, who heads the Texas Department of Criminal Justice's sex-offender treatment program.

Johnson told The Dallas Morning News in Wednesday's editions that she believes castration will help Jones control his urges and allow him to benefit more from therapy. He had previously been taking a testosterone-suppressing drug that mimics the effect of physical castration.

Jones pleaded guilty in 1991 to several felony charges of indecency with a child in exchange for a 15-year prison sentence. He also pleaded guilty to aggravated sexual assault of a child who was not connected to the East Dallas YMCA.

Jones still faces a charge of sexually assaulting a 5-year-old day camper in 1990 during a YMCA field trip. He was expected to be jailed until a judge decides whether to grant him bail in that case.

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**Find this article at:**

<http://edition.cnn.com/2004/LAW/03/03/inmate.castration.ap>

Check the box to include the list of links referenced in the article.

25

**From:** <Nyvold@netscape.com>  
**To:** <Andrea.Sternberg@senate.mn>  
**Date:** 5/18/2005 9:11:14 PM  
**Subject:** Attorney fees for pre-trial appeals

Ms. Sternberg:

If I am not able to appear before the Conference Committee, please convey to the Committee the following concerning the provisions of SF 1207 and HF 1252, which would eliminate attorney fees in cases where the State brings a pre-trial appeal.

By way of introduction, I am a private attorney and work in St. Paul. My interest in this legislation is that I have an agreement with the State Public Defender to handle cases in which they would otherwise provide the attorney to represent the defendant in whose case the State has brought a pre-trial appeal. I seek payment from the Counties involved in the appeal.

I testified before the Senate Judiciary Committee and the House Public Safety Policy and Finance Committee concerning the attorney fee provision, and made the following points:

The State did not always have the right to appeal pre-trial orders. The Legislature granted the State this right in 1967. See Minn. Stat. 632.11 (repealed in 1979, and superseded in 1975 by Rule of Criminal Procedure 28.04, subd. 2(6)). When the Legislature granted the State the right to appeal, it conditioned it on payment of a reasonable attorney fee to the defendant's attorney. See Minn. Stat. 632.13(8). This provision for attorney fees was carried over into the now-governing Rule of Criminal Procedure 28.04 when the Criminal Rules replaced 632.11 and 632.13 in 1975, per Minn. Stat. 480.059.

The point here is that the Legislature considered it fair and necessary in 1967 when it granted the State the right to appeal to require the counties in which the appeal originated to pay a reasonable attorney fee. The attorney-fee provision is not judicial in origin but legislative. The reasons why the Legislature enacted it are still valid today, as I discuss below.

The requirement to pay a reasonable attorney fee discourages the State from appealing every time a pre-trial ruling goes against the State. The State, in my experience (over 60 pre-trial appeals in the last thirteen-fourteen years) brings many non-meritorious appeals, as I prevail in these types of appeals @ 55-60 percent of the time). The absence of an attorney-fee provision would encourage even more non-meritorious appeals.

It is also my experience the State often appeals not because it believes it will win the case (the State's relatively high loss-rate helps corroborate this), but to demonstrate support for the victim and/or the police and to

show that it is not giving up. This is especially true in high visibility cases. Although appealing under these circumstances is understandable, and I would do the same if I were a prosecutor, it is hardly fair to saddle a defendant with the cost of an appeal that the prosecutor never really expects to win to begin with.

The pending legislation says (if it has not changed in the last few weeks) that attorney fees will still be allowed in cases in which the State Public Defender provides representation, but this falls far short of what the Legislature appears to have intended in 1967, as it takes away what the Legislature intended all defendants to have, whether represented privately or by a public defender. In addition, private attorneys almost never include in their fee the cost of a pre-trial appeal as such appeals do not happen all that often. It is an added expense the private defendant must deal with.

The State PD exception language does not help that office, either. At present, the State Public Defender contracts with private attorneys such as myself to handle these types of cases because it enables the State PD to reduce its caseload and not have to hire an attorney to handle what would be a significant number of cases if that office provided representation directly. Scott Hersey, of the Dakota County Attorney's office testified last year in the House Public Safety Policy and Finance Committee concerning the attorney-fee provision that in situations where a private attorney provides representation per an agreement with the State PD, his office would assert that the exception-language for State PD cases does not apply if the attorney does not work directly for the State PD. If this interpretation were accepted by the appellate courts the State PD would not be able to contract with private attorneys and it would likely seek increased staffing to provide representation.

Thank you for the opportunity to present this information.

Mark D. Nyvold

(651) 223-5176

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Minnesota Sentencing Guidelines Commission  
 Aggravated Departures Information  
 Cases Sentenced in 2003

Total Aggravated Departures

Type of Departure	# Cases	% Overall Cases
Aggravated Disposition	522	3.6%
Agg. Disposition and Agg. Duration	60	0.4%
Aggravated Duration-Prison	247	1.7%
Aggravated Duration-Probation	235	1.6%
<b>Total</b>	<b>1,064</b>	<b>7.3% (of 14,492)</b>

Contested Departures

	Method of Conviction and Agreement on Departure	All Aggravated Dispositions*	Aggravated Durations	Total
<b>Total # Departures</b>		582	482	1,064
Non-Contested	Guilty Plea – Departure by Plea Agreement or Request	461	212	673
	Guilty Plea – Departure Result of Criminal History Error		27	27
	Trial - Departure by Request	6		6
	<b>Total</b>	<b>467 (80%)</b>	<b>239 (50%)</b>	<b>706 (66%)</b>
Contested	Trial	9	55	64
	Guilty Plea - No Agreement for Departure	106	188	294
	<b>Total</b>	<b>115 (20%)</b>	<b>243 (50%)</b>	<b>358 (34%)</b>

\* All Aggravated Dispositions includes the 60 cases that are both aggravated dispositional and aggravated durational departures

Frequency of Aggravated Durational Departures  
Cases Sentenced in 2003

Frequency by Severity Level

Severity Level	Total # of Cases	Aggravated Durational Departures					
		Prison		No Prison		Total	
		#	%	#	%	#	%
1	983	8	5.3	20	2.4	28	2.8
2	4,567	38	6.4	70	1.8	108	2.4
3	1,972	35	9.6	17	1.1	52	2.6
4	2,092	45	12.1	40	2.3	85	4.1
5	675	17	10.8	18	3.5	35	5.2
6	1,553	52	9.3	44	4.4	96	6.2
7	813	0	0	5	0.7	5	0.6
8	844	35	6.4	12	4.0	47	5.6
9	906	54	9	9	2.9	63	7
10	32	12	38.7	0	0	12	37.5
11	45	9	20	0	0	9	20
12	10	2	20	0	0	2	20
Total	14,492	274	9.0	235	2.1	542	3.7

Frequency by Offense Type

Offense Type	Total # of Cases	Aggravated Durational Departures					
		Prison		No Prison		Total	
		#	%	#	%	#	%
Murder/Manslaughter	129	26	(24.1)	1	4.8	27	(21.0)
Assault	1,053	45	13.8	29	4	74	7.0
Crim. Sexual Conduct	607	57	(22.8)	27	7.6	84	(13.8)
Other Person Offenses	1,363	42	11.5	28	2.8	70	5.1
Drugs	3,896	42	3.8	74	2.7	116	3.0
Property	5,395	82	8.7	62	1.4	144	2.7
Other Crimes	2,049	13	3.0	14	1	27	1.3
Total	14,492	307	8.7	235	2.1	542	3.7

Extent of Aggravated Durational Departures  
Excluding Consecutive Sentences (28 cases)  
Cases Sentenced in 2003

Extent of the Aggravated Durational Departure by Severity Level

Severity Level and Most Frequent Offenses	# of Aggravated Durations	Av. Increase over Presumptive	Av. # Extra Months
1 Flee Police	28	43%	6
2 Con Sub 5, Theft, Check Forg	108	39%	6
3 MV Use, Rec Stolen Prop	52	78%	15
4 Asslt 3, Terr Threats, Burg 3	83	85%	16
5 Crim Sex 3, Burg 2	30	77%	23
6 Asslt2, Crim Sex 2, Bur 1, Con Sub 3	92	94%	31
7 Felony DWI	5	36%	19
8 Agg Robb , Con Sub 2	44	49%	34
9 Crim Sex 1. Asslt 1, Con Sub 1	51	61%	73
10 Murder 2-Unintentional	12	56%	99
11 Murder 2 – Intentional	8	23%	72
12 At. Murder 1	1	17%	26
<b>Total</b>	<b>514</b>	<b>66%</b>	<b>26</b>

Extent of the Aggravated Durational Departure by Offense Type

Offense Type	# of Aggravated Durations	Av. Increase over Presumptive	Av. # Extra Months
Murder/Manslaughter	25	40%	75
Assault	72	86%	22
Criminal Sexual Conduct	67	106%	72
Other Person Offenses	66	55%	22
Drugs	116	41%	11
Property	142	70%	16
Other Crimes	26	45%	10
<b>Total</b>	<b>514</b>	<b>66%</b>	<b>26</b>

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T H E M I N N E S O T A  
C O U N T Y A T T O R N E Y S  
A S S O C I A T I O N

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**MCAA Position on *Blakely* Provisions**  
**H.F. 1, Art. 1 (l. 277.12-287.3)/S.F. 2273, Art. 7, § 1 (l. 111.35-112.14)**

The *Blakely v. Washington* decision from the U.S. Supreme Court in June 2004 held that a unanimous jury finding is required in order to impose a sentence higher than that which the judge may impose without additional findings. Under Minnesota's guidelines system, that meant that a sentencing jury would be required to depart from the narrow presumptive sentencing ranges, adversely impacting the resources of the courts, public defenders, and prosecutors.

**1. The MCAA supports adoption of the substantive provisions in the House bill, Article 16, sections 1 and 9 through 14.**

These sections would preserve the status quo in the lengths of sentences, while solving the fiscal and resource problems created by *Blakely*. Section 1, along with section 14, would expand the presumptive guidelines ranges to 15% below and 100% above the current midpoint. These expanded ranges would allow a court to exercise its discretion within that range without the expense of empanelling a sentencing jury. The presence of the historical midpoint on the guidelines chart, as a reference point only, would guide practitioners toward maintaining sentencing practices as they currently exist, without limiting judges' discretion within the range.

Sections 9 through 13 would make changes to Minn. Stat. §§ 609.108, .109 and .1095, the patterned and predatory sex offender, repeat sex offender, and dangerous and repeat sex offender statutes, removing some of the factual findings that the legislature intended to be made by a judge, but *Blakely* requires to be made by a jury.

**2. The MCAA supports adoption of the procedural provisions in the House bill, Article 16, sections 2 through 6. The MCAA Criminal Law Committee recommends a one-year sunset and the Senate effective date.**

To date, the courts have neither decided the impact of *Blakely* on Minnesota sentencing practices nor established procedures to conform with *Blakely*. Practitioners are seeking guidance from the legislature, as different jurisdictions are adopting different procedures, and some judges are denying the right to a sentencing jury, resulting in a *de facto* abolition of upward departures, even where substantial and compelling reasons support an increased sentence.

Sections 2 through 6 would provide this necessary guidance. Further, adding a one-year sunset would: (1) ensure that procedures are in place to permit upward departures over the next year; (2) acknowledge that the legislature is providing guidance on procedure only until the courts act; and (3) permit the legislature to readdress the policy issues raised by *Blakely* after the courts have laid down the constitutional guidelines in the pending cases. Inclusion of the Senate effective date, S.F. 2273, Art. 7, § 1 (l. 112.11-112.14), on the procedural provisions would ensure that sentencing juries are not denied to cases already on remand for treatment consistent with *Blakely*.

**Fiscal Note – 2005-06 Session**

Bill #: H0171-0 Complete Date: 02/23/05

Chief Author: ANDERSON, BRUCE

Title: MV LIC PLATES; WAR ON TERRORISM VETS

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

Agency Name: Public Safety Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Expenditures</b>					
Highway Users Tax Distribution Fund		13	3	3	3
<b>Less Agency Can Absorb</b>					
-- No Impact --					
<b>Net Expenditures</b>					
Highway Users Tax Distribution Fund		13	3	3	3
<b>Revenues</b>					
Highway Users Tax Distribution Fund		6	3	3	3
<b>Net Cost &lt;Savings&gt;</b>					
Highway Users Tax Distribution Fund		7	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>		7	0	0	0

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalents</b>					
-- No Impact --					
<b>Total FTE</b>					

1

**Bill Description**

A bill for an act relating to veterans; authorizing license plates for veterans of global war on terrorism; amending statutes 2004, section 168.123, subd. 1, 2.

**Assumptions**

- Assumes the plates would be issued on generic special plates with corresponding decals.
- Assume an implementation date is July 1, 2005 and approximately three months would be needed for the designing the plate decals, establishing an inventory and distribution system. Inventory would require 3 different sets of decals (Iraqi Vet; Afghan Vet, GWOT Vet) and 3 metal dies for stamping motorcycle plates.
- Assume the marketing of the "GWOT" is similar to current Veteran plates.
- Assumes the sales and number of eligible persons of "GWOT" is similar to other Veteran series plates:

Estimated	Sales	Total in Fleet
FY06	600	600
FY07	300	900
FY08	300	1,200
FY09	300	1,500

- The total price for MINNCOR to produce plates and the cost for a decal is \$6.35 (\$5.10 and \$1.25) through FY07 and assumes cost to remain constant. However, DVS anticipates a price increase for the new contract.
- All plates issued would require total mailing and handling cost of \$2.49 (\$1.98 and \$0.51) and assumes postal rates remain constant. However, the United States Postal Service has indicated a rate increase for calendar year 2006.
- DVS also assumes a one time programming cost of \$5,000.00.

**Expenditure and/or Revenue Formula**

Start-up cost: 3 metal dies @ \$425.00 = \$1,275.00; 1,500 pairs of Decals (3 Medal designs and titles) @ \$1.25 = \$1,875.00; programming cost of \$5,000 for a total start up cost of \$8,150.

FY06: 600 @ \$6.35 + \$2.49 = \$5,304.00

FY07: 300 @ \$6.35 + \$2.49 = \$2,652.00

FY08: 300 @ \$6.35 + \$2.49 = \$2,652.00

FY09: 300 @ \$6.35 + \$2.49 = \$2,652.00

Revenue from plate fee (\$10.00): FY06 \$6,000.00; FY07 \$3,000; FY08 \$3,000; FY09 \$3,000.

**Long-Term Fiscal Considerations**

Costs are on-going.

**Local Government Costs**

N/A

**References/Sources**

Agency Contact Name: Bob Cheney 651 297-5835  
FN Coord Signature: FRANK AHRENS  
Date: 02/23/05 Phone: 296-9484

**EBO Comments**

2

I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER  
Date: 02/23/05 Phone: 215-0594

**Fiscal Note – 2005-06 Session**

**Bill #:** H0171-0 **Complete Date:** 02/23/05

**Chief Author:** ANDERSON, BRUCE

**Title:** MV LIC PLATES; WAR ON TERRORISM VETS

Fiscal Impact	Yes	No
State	X	
Local		X
Fee/Departmental Earnings	X	
Tax Revenue		X

**Agency Name:** Public Safety Dept

This table reflects fiscal impact to state government. Local government impact is reflected in the narrative only.

Dollars (in thousands)	FY05	FY06	FY07	FY08	FY09
<b>Expenditures</b>					
Highway Users Tax Distribution Fund		13	3	3	3
<b>Less Agency Can Absorb</b>					
– No Impact –					
<b>Net Expenditures</b>					
Highway Users Tax Distribution Fund		13	3	3	3
<b>Revenues</b>					
Highway Users Tax Distribution Fund		6	3	3	3
<b>Net Cost &lt;Savings&gt;</b>					
Highway Users Tax Distribution Fund		7	0	0	0
<b>Total Cost &lt;Savings&gt; to the State</b>		7	0	0	0

	FY05	FY06	FY07	FY08	FY09
<b>Full Time Equivalent</b>					
– No Impact –					
<b>Total FTE</b>					

4



I have reviewed this Fiscal Note for accuracy and content.

EBO Signature: NORMAN FOSTER

Date: 02/23/05 Phone: 215-0594

**EXPLORE Minnesota**



**BA272**

**NOV**

**IRAQ WAR VET**

**39**

**EXPLORE Minnesota**



**BA272**

**NOV**

**AFGHAN WAR VET**

**39**

**EXPLORE Minnesota**



**BA272**

**NOV**

**GWOT VET-SERVICE**

**39**

6

### Fiscal Note Request Worksheet

Bill #: SF - 734 Title: Support Our Troops License Plate  
 Comp #: HF - 682 Author: Vickerman Agency: Driver & Vehicle Services  
 Urgent: Due Date: 2/11/05 Committee: Agriculture, Veterans, and Gaming  
 Consolidated: Lead Agency: Contact Person: Bob Cheney 297-5835

**What version of the bill are you working on?**  
 (Changing the version of the bill will automatically create a new fiscal note request.)

(The following four fiscal impact questions must be answered before an agency can sign off on a fiscal note.)

<b>Fiscal Impact</b>	<b>Yes</b>	<b>No</b>
State (Does this bill have a fiscal impact to your Agency?)	X	
Local (Does this bill have a fiscal impact to a Local Gov Body?)		X
Fee/Dept Earnings (Does this bill impact a Fee or Dept Earning?)	X	
Tax Revenue (Does this bill impact Tax Revenues?)		X

Dollars (in thousands)	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Expenditures</b>					
Vehicle Services Operating Account (Special)		485	275	91	57
<b>Less Agency Can Absorb</b>					
Vehicle Services Operating Account (Special)		0	0	0	0
<b>Net Expenditures</b>					
Vehicle Services Operating Account (Special)		485	275	91	57
<b>Revenues</b>					
Vehicle Services Operating Account (Special)		261	563	186	116
Contributions to Matching Account		675	2,130	2,610	2,910
<b>Net Cost &lt;Savings&gt;</b>					
Vehicle Services Operating Account (Special)		224	(288)	(95)	(59)
Contributions to Matching Account		(675)	(2,130)	(2,610)	(2,910)
<b>Total Cost &lt;Savings&gt; to the State</b>		(451)	(2,418)	2,705	(2,969)

	<b>FY05</b>	<b>FY06</b>	<b>FY07</b>	<b>FY08</b>	<b>FY09</b>
<b>Full-Time Equivalents</b>					
<b>Total FTE</b>		0	0	0	0

7

Bill Description

Article 1.1a The commissioner shall issue "Support Our Troops" license plates ... (2) pays a fee of \$10 to cover the cost of handling and manufacturing the plates ... (5) contributes a minimum of \$30 annually ...

Assumptions

Assume the effective date is July 1, 2005 and approximately six months would be needed for designing the plate, establishing an inventory and distribution to deputy registrars. Inventory would require 65,000 sets of passenger plates, 2,000 sets of RV/one ton plates, 1,000 motorcycle plates and 1,000 disability plates.

Assume the marketing of the "Support Our Troops" is marketed similar to the Critical Habitat plates.

Assume the sales of "Support Our Troops" is similar to the sales of Critical Habitat plates:

Estimated	Sales	Total in Fleet
FY06 (6 months)	22,500	22,500
FY07	48,500	71,000
FY08	16,000	87,000
FY09	10,000	97,000

The contract price for MINNCOR to produce the plates is \$5.10 through FY07 and assumes cost to remain constant. However, DVS anticipates price increases for the new contract. Currently, MINNCOR does not have the capability to produce flat plates and thus subcontracts to an outside vendor.

DVS estimates 23% of plates issued would require mailing at a cost of \$1.98 and assumes postal rates remain constant. However, the United States Postal Service has indicated a rate increase for calendar year 2006.

MINNCOR also charges a \$0.51 handling cost.

DVS also assumes a one time programming cost of \$5,000.

Expenditure and/or Revenue Formula

Start-up cost: 69,000 plates @ \$5.10 = \$351,900. Programming cost: \$5,000.

FY06: 22,500 @ \$5.10 = \$114,800; 22,500 \* 23% (mailed) \* \$2.49 (\$1.98 + \$0.51) = \$12,900 for a total of \$127,700.

FY07: 48,500 @ \$5.10 = \$247,400; 48,500 \* 23% \* \$2.49 = \$27,800 for a total of \$275,200.

FY08: 16,000 @ \$5.10 = \$ 81,600; 16,000 \* 23% \* \$2.49 = \$ 9,200 for a total of \$ 90,800.

FY09: 10,000 @ \$5.10 = \$ 51,000; 10,000 \* 23% \* \$2.49 = \$ 5,700 for a total of \$ 56,700.

Revenue from plate fee (\$10.00): FY06 \$225,000; FY07 \$485,000; FY08 \$160,000; FY09 \$100,000.

Revenue from filing fee (\$7.00) via internet/mail: FY06 \$36,200; FY07 \$78,000; FY08 \$25,800; FY09 \$16,100.

Contributions to matching account (\$30.00): FY06 \$675,000; FY07 \$2,130,000; FY08 \$2,610,000; FY09 \$2,910,000.

Long-Term Fiscal ConsiderationsLocal Government CostsReferences/Sources

I have reviewed the content of this fiscal note and believe it is a reasonable estimate of the expenditures and revenues associated with this proposed legislation.

Fiscal Note Coordinator Signature:

Date:

8

## **Fiscal Impact of Sexual Predator Plates Amendment**

Assuming the program would mirror administrative impound:

Plates would be required for all passenger vehicles, pick-up trucks, one-ton pick-up trucks, vans, recreational vehicles and motorcycles registered in the person's name. *(Ohio's language would put the burden on the violator and make it a crime for them to operate any vehicle without the special plates)*

Plates would be produced with a special numbering system and identifying characteristics separate from the existing special registration plates

The required "Predatory Offender" inscription would not be able to be embossed on the bottom of the plate (Max 11 characters) special run sheeting required (est. an extra \$1.00 per plate set)

Currently there are an estimated 400 level 3 sex offenders in Minnesota that could possibly be affected by law. There is an average of 1.3 vehicles per person (520 vehicles possibly affected).

Fiscal costs assume that the program would mirror administrative impound.

### **Staff Costs:**

1 FTE: \$52,602 (FY06) 53,788 (FY07)

one-time staff expenses: \$6,075

.5 FTE will be required to administer program (process and mail plates; process vehicle title transfers; update records; note on vehicle records requirements for plates)

.5 FTE will be required to answer inquiries from the public, law enforcement, business partners, and other jurisdictions received via mail, phone, or e-mail

### **Startup Costs:**

\$8,000 programming

Initial Plate order (500 sets) \$4,295.00

Additional programming will be required for the plate range and separate category creation and to link to DL records est. \$8,000.00 programming.

Plate cost to state would be \$8.59 including Minncor production fees, postage, and special sheeting

Cost to vehicle owner is \$10

**TOTAL FISCAL IMPACT:   \$70, 972 (FY06)**  
**\$53,788 (FY 07)**

**Comparison - Spending/Revenue for FY06-07**

(dollars in thousands)

	<u>Governor</u>	<u>House</u>	<u>Senate</u>	<u>Agreement</u>	<u>Difference Governor</u>	<u>Difference House</u>	<u>Difference Senate</u>
GF Spending	1,666,682	1,681,199	1,680,778	1,685,029	18,347	3,830	4,251
Revenue	<u>11,400</u>	<u>25,954</u>	<u>27,028</u>	<u>38,113</u>	<u>26,713</u>	<u>12,159</u>	<u>11,085</u>
GF after Adjustments	1,655,282	1,655,245	1,653,750	1,646,916	(8,366)	(8,329)	(6,834)



*Mission: To eliminate the disparities African American and American Indian children experience with systems of child welfare.*

Paula Goodman Maccabee  
Project Director

**Need for Public Defender Representation in Child Protection Cases**

Providing public defender representation for indigent parents and children in child protection cases is critical not only to preserve constitutionally protected rights of parents, but to protect children who may have been abused and neglected and to prevent racial disparities.

The Minnesota Children’s Justice Initiative (CJI) was launched by the Minnesota Supreme Court to protect the rights of children in court proceedings. It is a non-partisan effort to ensure that abused and neglected children are raised in safe, permanent and nurturing homes. The Minnesota CJI has developed a best practices guide and a set of Core Standards & Measures for child protection cases. Analysis of these Standards was provided in recent (May 2005) regional seminars hosted by CJI.

The Core Standards & Measures established by the Minnesota Children’s Justice Initiative specifically state that providing representation to all parties is needed to protect children:

- Goal 4 --Due Process: Proceedings are conducted in a fair manner with strong judicial oversight.
- Practices to Achieve Goal:
  - ... P11 All parties are represented by competent counsel.

The Children’s Justice Initiative is tracking performance around the State to meet this and other performance standards. As of March 2005, throughout the State, we were far from meeting this CJI goal. This data shows that Minnesota cannot afford to cut back on representation in child protection cases.

<b>Minnesota Children's Justice Standard</b>	<b>Minnesota CJI Measure</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
S11.1 All children are represented by counsel.	M11.1.1 Percent of <u>all</u> children who are represented by counsel.	33.1% (1683)	29.9% (1620)	25.9% (1449)
	M11.1.2 Percent of children <u>10 and over</u> who are represented by counsel.	56.7% (1278)	53.2% (1262)	50.7% (1133)
S11.4 All parents are represented by counsel.	M11.4.1 Percent of cases where <u>all</u> parents are represented by counsel.	43.6% (2195)	42.3% (2265)	41.4% (2297)
	M11.4.2 Percent of cases in which <u>any</u> parent is represented by counsel.	68.8% (3465)	68.2% (3651)	71.7% (1977)

To protect abused and neglected children from indigent families, to meet the due process standards of the Minnesota Children’s Justice Initiative and to prevent disparities in outcomes for African American and American Indian children, it is necessary to provide public defender representation in child protection cases.

**May 12, 2005, Conference Committee**

**Information Requested of the  
Minnesota Department of Corrections**

1. *Smith/How many meth offenders in prison are there for first-time offenses? Fifty-two percent of the meth offenders in prison as of July 1, 2004, do not have a felony on record in the Criminal History File. (See attached Backgrounder entitled *Methamphetamine Offenders in Prison.*)*
2. *Rosen/What is the success rate of the Challenge Incarceration Program (CIP)? In a 1999 study, the department found that those participating in phase 3 of CIP had a two percent reconviction rate after two years. In comparison, those in the study that did not participate in phase 3 had a reconviction rate of 10 percent.*
3. *Smith/How many "nonviolent" drug offenders are as a result of a plea bargain? This information is not available through the corrections department. Minnesota Sentencing Guidelines Commission Director Barb Tombs indicated at the hearing that the commission does not have this information either.*
4. *Newville/Do we have any criteria laid out in policy or practice for making lifer determinations? Please see attached materials.*
5. *Hillstrom/What information can we provide on the amount of offenders we have released under the existing early release statute? No offenders have been released under the Intensive Community Supervision Statute since 1999.*



## METHAMPHETAMINE OFFENDERS IN PRISON

### Introduction

On January 1, 2001, there were 139 offenders in Minnesota state correctional facilities whose governing offense involved possession, possession with intent to distribute, sale, or manufacturing of methamphetamine. Since that time, this population has expanded dramatically. On July 1, 2004, the number of methamphetamine offenders in prison stood at 1,012 (see Table 1).

The 873-inmate increase since 2001 amounts to a 628 percent growth in 3.5 years. Moreover, as of July 1, 2004, methamphetamine inmates constituted almost half (49 percent) of the 2,047 drug offenders in the Minnesota prison population.

### Meth Offender Profile

The growing methamphetamine offender population is comprised mostly of males in their 20s and 30s who are very likely to have a non-metro county of commitment, espe-

cially those imprisoned for either the manufacturing or sale of methamphetamine.

More specifically, 90 percent of the 1,012 offenders are male. Their average age is 32, with nearly 40 percent falling between the ages of 25 and 34. Female offenders are slightly older than their male counterparts, with an average age of 33.

### A Rural Phenomenon

Compared to other criminal offenses, which tend to be concentrated in large urban areas, methamphetamine has been a largely rural phenomenon. Seventy-two percent of the methamphetamine offenders have a non-metro county of commitment.

The overrepresentation of non-metro counties of commitment is even greater, however, for offenders imprisoned for either the manufacturing or sale of methamphetamine. Of these commitments, 87 percent have come from Greater Minnesota.

### Prior Criminal History

A little more than half (52 percent) of the 1,012 methamphetamine inmates are first-time offenders in that they did not have a previous felony conviction (see Table 2). Of the 48 percent with a prior felony conviction, the average number of previous convictions is 2.42. Approximately two-thirds of the repeat offenders have two or fewer previous felony convictions, whereas 11 percent have five or more prior convictions.

Compared to the repeat offenders, first-time offenders are more likely to be under the age of 25 and imprisoned for either the manufacturing or sale of methamphetamine. Conversely, the recidivist offenders are more likely to be between the ages of 25 and 44 and incarcerated for either possession or possession with intent to distribute methamphetamine.

### Prior Prison Commitment

Seventy-two percent (733 inmates) of the 1,012 methamphetamine offend-

ers are experiencing their first commitment to prison. The average number of prior prison commitments is 1.67 for the remaining 28 percent (279 offenders) who have been previously incarcerated. A little more than three-fifths of this group of offenders have one prior prison commitment,

**Table 1 - Methamphetamine Offender Percentage of Drug Offender & Total Prison Population, 2001-2004**

Date	Number of meth offenders*	Number of drug offenders	Meth % of drug population	Total prison population	Meth % of total population	Drug % of total population
1/1/01	139	1,066	13.0	6,187	2.2	17.2
7/1/01	230	1,151	20.0	6,428	3.6	17.9
1/1/02	287	1,169	24.6	6,583	4.4	17.8
7/1/02	417	1,337	31.2	6,946	6.0	19.2
1/1/03	517	1,483	34.9	7,073	7.3	21.0
7/1/03	724	1,730	41.8	7,568	9.6	22.9
1/1/04	869	1,859	46.7	7,795	11.1	23.8
7/1/04	1,012	2,047	49.4	8,333	12.1	24.6

\* Does not include amphetamine

while the remainder (38 percent) have had multiple prior commitments.

Compared to first-time commits, reincarcerated offenders are more likely to be male, between the ages of 25 and 44, and slightly more likely to be imprisoned for either possession or possession with intent to distribute methamphetamine.

First-time commits are more likely to be female, under the age of 25, and slightly more likely to be imprisoned for either the manufacturing or sale of methamphetamine.

Drugs are the most common offense type (34 percent) for which the recidivist offenders were previously incarcerated, followed closely by property offenses (32 percent). Person (8 percent) and sex (2 percent) offenses account for approximately one-tenth of the 464 prior prison commitments.

In addition to a slight propensity to specialize in drug offenses, the 279 reincarcerated methamphetamine offenders were much younger at the time of their first prison commitment than the 733 first-time commitments. For example, the average age of these offenders when they were first committed to prison was 24, compared to 32 for the current first-time commits.

**Table 2 - Criminal Histories of Methamphetamine Offenders**

<i># of prior felony convictions or incarcerations</i>	<i># of offenders with prior felony convictions</i>	<i>Percent</i>	<i># of offenders with prior incarcerations</i>	<i>Percent</i>
0	528	52.2	733	72.4
1	221	21.8	174	17.2
2	105	10.4	61	6.0
3	56	5.5	22	2.2
4	50	4.9	15	1.5
5 or more	52	5.2	7	0.7
Total	1,012	100.0	1,012	100.0

**Average Sentence Length**

Average sentence length for the 1,012 methamphetamine offenders is 69 months. This is ten months greater than that of non-methamphetamine drug offenders and nearly 24 months greater than that of the general inmate population.

A little more than three-fourths of the offenders have a sentence between three and ten years (see Table 3).

Female offenders, inmates under the age of 25, and those incarcerated for possession are more likely to receive sentences of five years or less.

Conversely, male offenders, inmates between the ages of 25-34 and 45-54, and especially those imprisoned for manufacturing methamphetamine are more likely to receive sentences greater than five years.

**Additional Information**

For additional information, contact:

651/642-0252  
 infosvcs@doc.state.mn.us

**Table 3 - Sentence Lengths of Methamphetamine Offenders**

<i>Sentence Lengths</i>	<i>Number</i>	<i>Percent</i>
1-2 years	93	9.2
2-3 years	66	6.5
3-5 years	315	31.1
5-10 years	467	46.1
Over 10 years	71	7.1
Total	1,012	100.0

February 2005

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# Talking Points

## *Life-sentenced inmates who are parole eligible under state law*

### **Public safety is top priority**

Parole decisions are taken very seriously and weighed very carefully. The paramount consideration is public safety of the citizens of Minnesota. Offenders who continue to pose a risk to public safety are not released regardless of parole eligibility. There are no cases in Minnesota of paroled first-degree murder life-sentenced inmates being reconvicted of a like crime after release.

### **Long-standing law**

Parole consideration of life-sentenced inmates at their eligibility dates is a long-standing public policy created by state law. The then-paroling authority, the Minnesota Corrections Board, was abolished in 1982. Paroling authority for life-sentenced inmates was then transferred to the commissioner of corrections. (All other crimes come under sentencing guidelines.) Promulgated rules with full force and effect of law set procedures for the parole consideration process.

An advisory panel composed of corrections professionals advises the commissioner. State rules require the commissioner and the advisory panel to review cases three years prior to parole eligibility dates. The hearing and release unit of the Department of Corrections coordinates this process.

### **Notification and investigation**

When life-sentenced cases are considered, a complete investigation is done to compile all available information on the offender. The victim's family, sentencing judge, prosecutor, defense attorney, and local law enforcement are notified to ensure they are aware of the parole consideration and have the opportunity to provide any information they deem pertinent. This process includes a meeting with the corrections commissioner and advisory panel at the request of the victim's family.

Detailed documentation of the offender's institution behavior and adjustment is also compiled including extensive psychological/psychiatric evaluation, program participation, and recommendations of a prison staff team that has monitored the inmate's behavior for many years.

### **Release plan**

Inmates are released on parole only after a complete plan setting forth the conditions of release is established. Examples of elements included in a release plan are supervision and surveillance by a corrections agent, placement in a halfway house, or assignment to work release with residential placement.

### **Law change not retroactive**

In 1989 the state legislature increased the time that life-sentenced inmates must serve before parole eligibility to 30 years. A life imprisonment sentence without possibility of parole was also established.

For inmates sentenced to life for first-degree murder committed prior to August 1, 1989, the law sets 17 years as the time that must be served before parole eligibility. (Prior to 1980 the required time served was slightly less than 17 years.)

Under the U.S. Constitution, sentences cannot be applied "ex post facto." Newly increased penalties cannot be applied retroactively to inmates already convicted and serving time under a previous statute.

## *Life Sentence Law*

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- ❖ First degree murder has historically required life imprisonment with the possibility of parole in the State of Minnesota. It wasn't until 1989 that life imprisonment without the possibility of parole was introduced.
- ❖ State law sets a minimum number of years of imprisonment before parole eligibility for life-sentence inmates is considered. In accordance with law, after the minimum parole eligibility date is reached, the commissioner of corrections can consider release unless the offender continues to present a threat to public safety.
- ❖ Parole consideration of life-sentenced inmates after their minimum eligibility date has been public policy established in law for many decades. In 1982, the Minnesota Corrections Board, as the paroling authority, was abolished and the paroling authority for life-sentenced inmates was transferred to the commissioner of corrections (all other crimes come under sentencing guidelines). Promulgated rules with full force and effect of law set procedures for the parole consideration process. An advisory panel which includes the assistant commissioner of institutions, the deputy commissioner of community and juvenile services, the warden of the facility housing the offender, and the executive officer of hearings and release (required but not exclusive membership), advise the commissioner. Promulgated rules require the commissioner and advisory panel to review cases three years prior to minimum parole eligibility dates. The Hearings and Release Unit (HRU) for the MN Department of Corrections coordinates this process.
- ❖ Changes in law affecting minimum parole eligibility dates for offenders receiving a life sentence include:

**Prior to 1980** –required imprisonment time was slightly less than 17 years; however, parole eligibility was set at 17 years for all life-sentenced inmates.

**5/1/80 to 8/1/89** - the law set 17 years as imprisonment time before parole eligibility.

**8/1/89 to Present** – the state legislature increased imprisonment time before parole eligibility to 30 years except under MS 609.385 (treason) which remained at 17 years.

**1989** – life without parole was created for conviction of first degree murder following a conviction for a heinous crime.

**1992** – life imprisonment for certain repeat sex offenders was added which includes persons convicted of first degree criminal sexual conduct who have had two previous first, second, or third degree criminal sexual conduct convictions. Prior to this, sentences could have been as little as three years.

Life sentence without the possibility of parole was added for first degree murder while committing forcible criminal sexual conduct.

**1993** – life imprisonment without the possibility of parole established for killing a peace officer or correctional officer.

**Minnesota Department of Corrections**

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<b>Policy:</b>	<b>203.060</b>	<b>Title:</b>	<b>Life Sentence Review Process</b>
<b>Issue Date:</b>	<b>8/1/04</b>		
<b>Effective Date:</b>	<b>9/1/04</b>		

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**AUTHORITY:** Minn. Stat. §244.05, subd. 4.

**PURPOSE:** To review offenders serving life sentences who are eligible for release consideration and to make determinations relevant to their release or continued incarceration.

**APPLICABILITY:** Adult facilities, Hearings and Release Unit and Field Services.

**POLICY:** The Commissioner of Corrections has the sole authority for reviewing offenders serving life sentences who are eligible for release consideration and for making determinations relevant to their release or continued incarceration. The commissioner will review offenders with life sentences three years prior to their parole eligibility dates and thereafter at intervals as determined by the commissioner. In exercising this authority, the commissioner utilizes an advisory panel to assist in considering all relevant factors.

**DEFINITIONS:**

Advisory panel - a panel consisting of, but not limited to, the Deputy Commissioner for Adult Facility Services, Deputy Commissioner for Community and Juvenile Services, Assistant Commissioner for Adult Facilities, the warden/superintendent of the facility where the offender is currently incarcerated, and the Executive Officer of the Hearings and Release Unit.

Life sentence - a mandatory life sentence for first degree murder and certain other offenses not governed by the sentencing guidelines.

**PROCEDURES:****A. Life Sentence Review Waivers**

1. The offender may waive his/her right to a life review hearing (attached). If the offender waives his/her right to a life review hearing, the Commissioner and advisory panel will conduct an administrative review and will forward review results to the offender.
2. The offender may waive the right to a 60-day notification of hearing (attached).

**B. The Hearings and Release Unit will**

1. coordinate the scheduling of life sentence reviews with the Commissioner and all members of the advisory panel;
2. draft and forward a letter that notifies the victim's(s') family(ies) of the scheduled review and their right to meet personally with the Commissioner and advisory panel or submit their comments in writing;
3. draft and forward a letter notifying the criminal justice victim community of the scheduled review and their rights to submit feedback in writing to the Commissioner and advisory panel;
4. Send the community investigation request packet to appropriate field supervisor for agent assignment;
5. request that the community investigation report and all accompanying community investigation materials, including any letters from the victim's(s') family, friends, and criminal justice community be sent to the offender's assigned case manager;

6. provide the assigned case manager with the pre-initial hearing questionnaire (attached), if applicable; and
  7. provide victim family contact information to the State Crime Victim Services victim advocate.
- C. The offender's assigned case manager will
1. be responsible for informing eligible offenders of the review process and for making the necessary arrangements at the facility;
  2. be responsible for requesting and obtaining all necessary facility reports and recommendations;
  3. be responsible for conducting the pre-initial hearing interview with the offender, if applicable; and
  4. oversee the compilation and organization of the life review documentation and distribute it to the advisory panel at least one week prior to the scheduled review.
- D. The community investigator will:
1. review the community investigation report guidelines sent by HRU;
  2. forward the notification letter from HRU to the victim's(s') family(ies);
  3. forward the notification letter from HRU to the criminal justice victim's' community(ies);
  4. notify the State Victim Advocate for the life sentence review process at Department of Corrections Central Office of identified victim family members; and
  5. submit all community investigation materials, including letters from victim family members, friends, and the criminal justice victim community to the offender's assigned case manager.
- E. Immediate victim family members will be given the opportunity to meet with the commissioner and advisory panel prior to the life sentence review, if they choose to.
- F. The offender may have an advocate of his/her choice (this person can be an attorney) present during the proceedings for support and to speak on the offender's behalf. The advocate may not introduce new arguments of a legal nature during the proceedings.

**REVIEW:** Annually

**REFERENCES:** Minn. Stat. §§609.184, subd. 2; 609.185, clause (1), (3), (5) and (6); 609.346, subd. 2a.; 609.385.

**SUPERSESSION:** Policy 203.060, "Life Sentence Review Process," 5/1/02.  
All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

**ATTACHMENTS:** Community Investigation Materials  
Contents of Advisory Panel Documentation  
Pre-initial hearing questionnaire  
Waiver of Right to Appear  
Waiver of 60-day Notification

/s/

Dennis L. Benson, Deputy Commissioner  
Adult Facility Services

Harley W. Nelson, Deputy Commissioner  
Community Services

Minnesota Rules, Table of ChaptersTable of contents for Chapter 2940**2940.1800 INMATES WITH LIFE SENTENCES.**

Subpart 1. **Advisory panel.** The commissioner shall convene an advisory panel of Department of Corrections employees, which shall consist of, but not be limited to, the following:

- A. the deputy commissioner for institutions;
- B. the deputy commissioner for community services;
- C. the superintendent or warden of the institution of the inmate's residence; and
- D. the executive officer of the hearings and release unit.

The commissioner shall serve as the chair of the advisory panel.

Subp. 2. **Duties of panel.** The advisory panel shall review each inmate who is serving a life sentence three years prior to the inmate's parole or supervised release eligibility date in order to establish a projected release date or a future review date. The advisory panel shall assist the commissioner in thoroughly considering the inmate's entire case history, including the facts and circumstances of the offense for which the life sentence is being served; past criminal history, institutional adjustment, program team reports, psychological and psychiatric reports where pertinent; and the results of community investigations.

The program review team of the inmate's residence shall prepare appropriate reports and recommendations as requested by the institution superintendent or warden.

Subp. 3. **Inmate's rights.** The inmate shall be given 60 days notice prior to the date of review; shall be entitled to submit written documentation in support of his or her position; and shall have the choice to be present at the review hearing.

An attorney representing the inmate or an advocate of the inmate's choice shall be allowed at the review hearing.

A representative of the ombudsman's office may be present at the review hearing.

Subp. 4. **Duties of officials.** The commissioner may initiate inquiries and take testimony as authorized by Minnesota Statutes, section 243.05.

The executive officer of hearings and release shall assist the commissioner in interviewing interested parties and prepare a summary of community input for presentation to the advisory panel.



During the deliberative process only members of the advisory panel shall be present unless determined otherwise by the commissioner.

Subp. 5. **Projected release date.** The commissioner shall establish a projected release date for each inmate or continue the case to a future review date. The decision of the commissioner shall be communicated to the inmate in writing within 30 days of the review and shall contain the following:

A. the factors utilized in arriving at the projected release date or a future review date;

B. the future review or projected release date; and

C. actions by the inmate which could cause the projected release or review date to be changed.

The projected release date, once established shall not be modified without a review incorporating the elements of the initial review referred to in subpart 3 with the exception of changes caused by a loss of good time.

STAT AUTH: MS s 14.388; 241.26; 243.05

HIST: 8 SR 2298; 17 SR 1279; 23 SR 808; L 1999 c 86 art 1 s 82  
*Current as of 11/09/04*

Minnesota Rules, Table of Chapters

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2940.1900 OBJECTIVE OF PUBLIC SAFETY.

Conditions of parole or supervised release shall be based on the need for public safety. Surveillance with optional treatment programming shall be utilized when consistent with case planning in order to achieve maximum public safety.

STAT AUTH: MS s 241.26; 243.05

HIST: 8 SR 2298

*Current as of 11/09/04*