DEPARTMENT OF CORRECTIONS

Via Email
July 21, 2025
Legislative Reference Library
sonars@lrl.leg.mn

Re: In the Matter of the Proposed Permanent Rules Relating to Residential Treatment Programs; Revisor's ID No. R-4447; CAH Docket No. 22-9051-40735

Dear Legislative Reference Library:

The Minnesota Department of Corrections intends to adopt rules on department-certified residential treatment programs for individuals who have engaged or attempted to engage in sexually abusive or harmful behavior. On July 21, 2025, the department will publish in the *State Register* a Notice of Intent to Adopt Rules Without a Public Hearing.

As required under Minnesota Statutes, section 14.131, we are sending the library an electronic copy of the Statement of Need and Reasonableness.

If there are any questions or concerns, please contact me at ian.lewenstein@state.mn.us.

Sincerely,

Ian Lewenstein
Rulemaking Manager

Enclosure: Statement of Need and Reasonableness

DEPARTMENT OF CORRECTIONS

STATEMENT OF NEED AND REASONABLENESS

Department of Corrections

Proposed Permanent Rules Relating to Residential Treatment Programs for Individuals Who Have Engaged or Attempted to Engage in Sexually Abusive or Harmful Behavior

Revisor's ID No. R-4447
CAH Docket No. 22-9051-40735

July 21, 2025

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General Information

Availability. All required rulemaking notices and documents, including the SONAR and the proposed rule, are available on the department's rulemaking web page (https://mn.gov/doc/about/rulemaking/). The SONAR has been available for public review as of July 21, 2025.

Rule records. You can track this rulemaking proceeding and search past department rulemaking records by using the Minnesota Rule Status System, located on the revisor's office website (https://www.revisor.mn.gov/rules/status/).

Alternative format. If you would like this SONAR in another language or an alternative format, such as large print, braille, or audio, please contact Ian Lewenstein, Rulemaking Manager, ian.lewenstein@state.mn.us, 651-361-7707, or the Department of Corrections, 1450 Energy Park Drive, St. Paul MN 55108.

Abbreviations

APA: Administrative Procedure Act

ATSA: Association for the Treatment and Prevention of Sexual Abuse

CAH: Court of Administrative Hearings

MMB: Minnesota Management and Budget

OLA: Office of the Legislative Auditor

SONAR: Statement of Need and Reasonableness

Table 1. Statute- and rule-level tags

Statute	Rule
Subdivision: 1, 2, 3, etc.; Subdivision 1 and then Subd. 2, Subd. 3, etc.	Subpart: 1, 2, 3, etc.; Subpart 1 and then Subp. 2, Subp. 3, etc.
Paragraph: (a), (b), (c), etc.	Item: A., B., C., etc.
Clause: (1), (2), (3), etc.	Subitem: (1), (2), (3), etc.
Item: (i), (ii), (iii), etc.	Unit: (a), (b), (c), etc.
Unit: (A), (B), (C), etc.	Subunit: i., ii., iii., etc.

Shorthand	Shorthand
Minn. Stat. § 241.021, subd. 1b(a)(1): Minnesota Statutes, section 241.021, subdivision 1b, paragraph (a), clause (1)	*Minn. R. 2955.0100, subp. 7(A)(1):* Minnesota Rules, part 2911.0100, subpart 7, item A, subitem (1)

Unless indicated otherwise, all statutory citations are to the 2024 *Minnesota Statutes* publication, and rule citations are to the 2023 *Minnesota Rules* publication.

Introduction and Overview

1. The department's initial rules on sex-offense-specific treatment haven't been updated in over 25 years.

The department oversees two rulemaking chapters on sex-offense-specific treatment: one for juveniles and one for adults. The department adopted both chapters in 1999, and they have remained unamended since. While the department was one of the first state agencies to adopt rules for people who have engaged or attempted to engage in sexually abusive or harmful behavior, the rules are now obsolete and in need of revision to conform to best practices for sex-offense-specific treatment.

Since the department adopted its rules, several state reports and legislative audits have highlighted the need for reforms for managing and treating those who engage in sexually abusive or harmful behavior. For example, a 2005 commission in Governor Pawlenty's administration examined statewide issues on this population.[1] The commission's goal was to "search out and to identify the very best public safety practices"[2] and to develop uniform standards for assessing and treating those who engage in sexually abusive or harmful behavior.

Also in 2005, a report from the Office of the Legislative Auditor recommended over a half-dozen policy changes to improve statewide standards for those who engage in sexually abusive or harmful behavior.[3] In response to the office's audit, the legislature commissioned a working group to recommend standards in a dozen areas such as community supervision (probation and supervised release), prison release planning, and polygraphs.

The working group produced a final report in 2007 detailing the need to enhance the management of those who engage in sexually abusive or harmful behavior.[4] The working group also developed statewide standards on sex-offense-specific treatment and basic elements for community-based programs that provide sex-offense-specific treatment.

[1] Governor's Commission on Sex Offender Policy, *Final Report* (St. Paul, January 2005).
[2] *Id.*, 39.
[3] Office of the Legislative Auditor, *Evaluation Report: Community Supervision of Sex Offenders* (St. Paul, January 2005).
[4] Working Group on Sex Offender Management, *Minnesota Sex Offender Management: Final Report* (St. Paul, February 2007).

And more recently, a 2024 report on the statewide civil-commitment treatment program, the Minnesota Sex Offender Program administered by Minnesota Direct Care and Treatment (formerly within the Department of Human Services), examined the consequences of long-term civil commitment for individuals who have engaged in sexually abusive or harmful behavior.[5]

This history shows that the department's responsibility for its two rulemaking chapters is part of a larger statewide and national discussion on sex-offense-specific treatment and treatment's inextricable connection to public safety and the broader community.

2. The department seeks to combine its juvenile and adult chapters to adopt updated evidence-based practices.

Much has changed in sex-offense-specific treatment since 1999. This change is especially true for juveniles, as research from the early 2000s raised "serious concerns regarding the widespread use of unproven interventions with juveniles who sexually offend."[6] To account for new research, the department's rule amendments incorporate updated evidence-based best practices to help clients participating in sex-offense-specific treatment reduce their likelihood of reoffending. In turn, incorporating new evidence-based best practices will help protect the safety of Minnesotans when clients reintegrate into the community because the best practices will support the already low recidivism rates for adults and juveniles convicted of sex offenses.[7]

> *"The successful reintegration of offenders into the community involves participation from prison-based programs that will help offenders prepare for transition from the prison to the community."*[8]

[5] Eric S. Janus, *Sex Offense Civil Commitment: Minnesota's Failed Investment and the $100 Million Opportunity to Stop Sexual Violence*, in collaboration with the $100 Million Committee (Mitchell Hamline Sex Offense Litigation and Policy Resource Center, April 2024).
[6] Elizabeth J. Letourneau and Charles M. Borduin, "The Effective Treatment of Juveniles Who Sexually Offend: An Ethical Imperative," *Ethics & Behavior* 18, nos. 2-3 (2008): 286-306.
[7] The recidivism percentage varies and depends on several variables such as the period being measured. But studies show that recidivism ranges from around 3% to 10%. *See* Janus, *Sex Offense Civil Commitment*, 8; Grant Duwe, "To What Extent Does Civil Commitment Reduce Sexual Recidivism? Estimating the Selective Incapacitation Effects in Minnesota," *Journal of Criminal Justice* 42, no. 2 (March-April 2014): 193-202; Sarah Stillman, "The List," *The New Yorker* (March 6, 2016).
[8] Bryan L. Kline, "Enhancing Rehabilitation in Jails and Prisons: The Role of the Risk Need Responsivity Model and Treatment Programs," *Corrections Today* (spring 2025): 40.

The department also plans to streamline its regulatory requirements by combining both chapters on adult and juvenile clients into one cohesive chapter applicable to all regulated programs. The department and its advisory committee decided on this approach because both chapters were originally drafted together and contain about 95% of the same language.

Other proposed amendments seek to:

a) establish well-defined, consistent standards to promote the most effective treatment for clients;

b) update definitions and ensure that they are consistently used and understandable; and

c) remove jargon and legalese and conform to plain-language standards for more-effective regulatory compliance.

3. The department's Inspection and Enforcement Unit supervises five treatment programs that operate in different settings.

Treatment programs in state and local correctional facilities are regulated by the department's Inspection and Enforcement Unit. While the department has had fewer treatment programs seek certification to provide sex-offense-specific treatment, the need for treatment is still great, and a more-flexible and updated rule may encourage more programs to seek department certification.

- **State correctional facilities.** The department has provided residential sex-offense-specific treatment in its prisons since 1978. Currently, three prisons provide this treatment: Lino Lakes and Rush City provide treatment for adults, and Red Wing provides treatment for juveniles.

  Certifying programs in prisons poses several challenges given the unique correctional environment, especially related to security and staffing.

  Because each prison is different in terms of population served, facility design, staffing, and other factors, the department must carefully draft rules with these differences in mind.

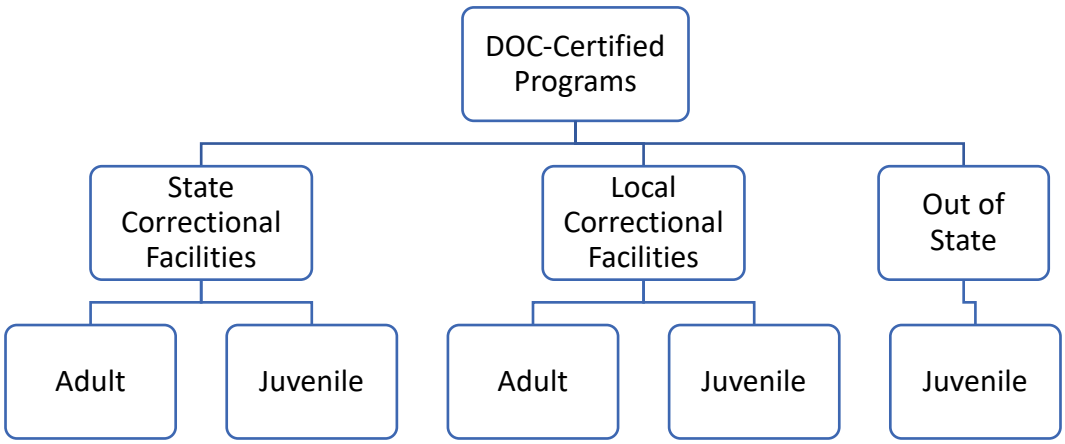
- **Local correctional facilities.** The department certifies two treatment programs in local correctional facilities, one for adults and one for juveniles. While these facilities are considered correctional facilities under statute,[9] both facilities

[9] Minn. Stat. § 241.021, subd. 1i.

operate in different environments because of their respective licensure under Minnesota Rules, chapter 2920 or 2960.

- **Out-of-state programs.** The department has previously certified out-of-state treatment programs serving juveniles, as prescribed by statute.[10]

Figure 1. DOC-certified programs



While the rules apply only to correctional facilities, the rules indirectly affect some community-based programs—that is, outpatient programs without a residential treatment component. Outpatient programs operate differently from residential programs in correctional facilities. In fact, the legislature recognized this difference when it first granted the department statutory authority to regulate outpatient programs (the legislature later revoked this authority).[11]

Although the department doesn't regulate outpatient programs with administrative rules, the department administers grants to some of these programs (about $3.7 million and 2,000 clients),[12] and a department grant condition is to require the programs to comply with the 2007 legislative working-group standards. These standards largely mirror the original 1999 rules, so if the department decides to revise its outpatient standards, the department's

[10] *Id.*, § 260B.198, subd. 11.
[11] 1993 Minn. Laws, ch. 326, art. 8, sec. 6.
[12] Minn. Stat. § 241.67, subd. 7.

proposed rule amendments may affect an outpatient program's eligibility to receive a grant.

4. The department's advisory committee has met since 2018.

The department started meeting with its advisory committee in 2018, and while the composition changed at times, the committee was comprised of representatives from four of the department's five certified treatment programs, with a representative from the fifth program attending later meetings.

Table 2. Advisory committee

Name	Position	Organization
Holly Hanson	Psychological Services Director – Red Wing	Department of Corrections
Teresa Knies	Program Director, Behavioral Health – Rush City	Department of Corrections
Shanna Langston	Behavioral Health Director	Department of Corrections
Mindy Malm	Associate Director of Behavioral Health	Department of Corrections
Tara Osborne	Release Planner – Rush City	Department of Corrections
Jessica Brueggen	Clinical Program Therapist – Rush City	Former Department of Corrections employee
Robin Goldman	Treatment Program Director	Former Department of Corrections employee
Janae Sullivan	Director and Owner	Steps for Change

The advisory committee met at least 30 times, most recently meeting eight times between 2024 and early 2025.

Summary of Proposed Rule Changes

The department's proposed rules seek to accomplish four main goals.

1. Update the rule with best practices in sex-offense-specific treatment.

As new evidence and research emerge, it's imperative to update treatment standards so that correctional facilities can follow best practices in sex-offense-specific treatment, particularly for juveniles because juvenile standards didn't exist when the rules were adopted. So to ensure that clients receive the best treatment possible, the department seeks to improve its rule by looking to:

a) other state agencies such as Direct Care and Treatment;

b) other states (most notably, Colorado and New York); and

c) international organizations.

One such international organization, the Association for the Treatment and Prevention of Sexual Abuse, has developed best-practice standards that treatment programs rely on:

> The Association for the Treatment and Prevention of Sexual Abuse is an international, multi-disciplinary organization dedicated to preventing sexual abuse. ATSA promotes sound research, effective evidence-based practice, informed public policy, and collaborative community strategies that lead to the effective assessment, treatment, and management of individuals who have sexually abused or are at risk to abuse.[13]

ATSA standards emphasize risk, need, and responsivity principles, or RNR. RNR focuses on how the "risk and needs of the incarcerated individual should determine the strategies appropriate for addressing the individual's criminogenic factors before and after release."[14] RNR—which is also a best practice for correctional supervision—is important for those who have engaged in sexually

[13] Association for the Treatment and Prevention of Sexual Abuse, https://www.atsa.com (accessed May 2, 2025); *see also* Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines for the Assessment, Treatment, and Risk Management and Risk Reduction of Men Who Have Committed Sexually Abusive Behaviors* (2025).
[14] National Institute of Corrections, "Transition from Jail to Community: TJC Toolkit," https://web.archive.org/web/20240722050013/https://info.nicic.gov/transition-jail-community/transition-jail-community/module-2-leadership-vision-and-organizational (accessed April 21, 2025); *see also* Kline, "Enhancing Rehabilitation."

abusive or harmful behavior because it is an evidence-based approach that helps reduce risks of reoffending.

In addition to examining other state and organizational standards, the department directly sought feedback on the rule from ATSA and Direct Care and Treatment. This feedback was important because the 2005 OLA audit identified deficiencies in the department's treatment programs.[15] The feedback has helped the department draft rule standards rooted in evidence-based practices.

2. Clarify vague or ambiguous language.

Uniformity in regulation is one of the most vital components of any regulatory body, but much of the original rule chapters contains overly discretionary language or vague language that doesn't provide adequate notice of what the department expects from treatment programs. This vague or ambiguous language poses enforcement challenges for the department such as by allowing for varying interpretations of rule requirements and inconsistent enforcement.

3. Ensure performance-based standards.

As stated in the introduction, the department's Inspection and Enforcement Unit is responsible for certifying a mix of treatment programs. To account for this mix, the department identifies when certain standards apply to juvenile or adult programs or to local or state correctional facilities.

4. Embed plain language.

In addition to these three main goals, the department's proposed revision is written in plain language. By writing in plain language, the department wants its requirements to be clear, concise, and accurate to its staff, its stakeholders, and the public. This commitment to plain language complies with Governor Walz's Executive Order 19-29, which requires state agencies to use plain language "to communicate with Minnesotans."[16]

[15] Legislative Auditor, *Community Supervision of Sex Offenders*, 76. In a survey of directors of community-based correctional agencies, 81% rated department treatment in its correctional facilities as "fair" or "poor."
[16] Executive Order 19-29 (April 5, 2019).

Statutory Authority

The department's initial grant of rulemaking authority was given in 1989,[17] but the department didn't adopt the rules until 1999 because of legislative changes and the difficulties of adopting a rule with few national standards to base them on.[18]

The department's statutory authority allows it to adopt rules on treatment programs for those who engage in sexually abusive or harmful behavior in state and local correctional facilities:

> The commissioner shall adopt rules under chapter 14 for the certification of adult and juvenile sex offender treatment programs in state and local correctional facilities and state-operated adult and juvenile sex offender treatment programs not operated in state or local correctional facilities.[19]

As the department wrote in its initial SONAR, the "legislature authorized the proposed rule to ensure that the residential treatment of adult sex offenders in Minnesota would meet well-defined, consistent standards to promote the most effective treatment of this highly visible and potentially dangerous population . . . ."[20]

In its first revision to the two rule chapters, the department strives to meet this original legislative directive while also continuing to ensure appropriate and individualized treatment for those who need it.

[17] 1989 Minn. Laws, ch. 290, art. 4, sec. 1.
[18] More on the original efforts to adopt the rule can be found in Minnesota Department of Corrections, *Statement of Need and Reasonableness, Minnesota Rules Chapter 2965*, rev. ed. (June 1999), 2-4.
[19] Minn. Stat. § 241.67, subd. 2(a).
[20] Department of Corrections, 1999 SONAR, 2.

Regulatory Analysis

As part of its SONAR, the department must analyze eight factors.[21]

1. **A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.**

   1.1. Classes of persons who probably will be affected by the proposed rule.

   The department's proposed rules are likely to affect:

   a. clients in treatment programs and their families or guardians;

   b. all certified treatment programs and their staff and administrators of their respective state or local correctional facility;

   c. people who provide services for a treatment program such as staff contracted to provide clinical services;

   d. outpatient programs that receive department grants for providing treatment;

   e. persons involved in the justice, mental-health, and social-service systems who have contact with clients in need of treatment such as probation or parole agents;

   f. the Minnesota Association of Community Corrections Act Counties;

   g. the Minnesota Association of County Probation Agents; and

   h. department probation and parole agents.

   1.2. Classes that will bear costs from the proposed rule.

The main class that will bear costs will be the treatment programs responsible for providing treatment to clients. But the department anticipates that its proposed revisions will reduce program costs by streamlining requirements, by making requirements easier to understand, and by providing treatment programs more flexibility in various areas such as staffing and by individualizing client treatment to ensure that clients receive an accurate treatment dosage (the number of hours a client receives over the course of their treatment).

[21] Minn. Stat. § 14.131.

1.3. Classes that will benefit from the proposed rules.

All classes should benefit from the proposed rules, as the department intends to incorporate best standards in treatment practices for those who have engaged in sexually abusive or harmful behavior. More-effective treatment practices will help reduce a client's likelihood to reoffend, thus reducing reincarceration costs.[22]

Reducing a client's risk of reoffending can also reduce the public-safety risk from sexually motivated crimes. Both public safety and the community are core ATSA tenets:

> Community safety and the rights and interests of individuals who have experienced the effects of sexually abusive behaviors and their families are paramount considerations when developing and implementing assessment, treatment, risk management, risk reduction and other strategies designed to reduce the risk posed by men who have committed sexually abusive behaviors.[23]

Public safety is also enhanced because the department's proposed changes rely on empirically informed practices, which can help "reduce and prevent sexual exploitation and abuse through educating and engaging the public . . ."[24] A clearer rule can help the public better understand sex-offense-specific treatment and how it benefits not only clients but victims and public safety as well.

2. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The department will not see increased costs and most likely will see decreased costs from a single enforceable chapter that is easy to understand and regulate. The department also expects fewer variance requests because of rule changes that correct vague or ambiguous requirements and because of the added flexibility for programs. Fewer variance requests will save the department time and money.

[22] Reincarceration costs, for example, occur because some formerly incarcerated persons may have to participate in treatment as a condition of their supervised or conditional release. Statistics from the department's Hearings and Release Unit reveal that in 2019 there were 128 dispositions where a person's supervised or conditional release was revoked because of a violation relating to community sex-offense-specific treatment.
[23] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 5.
[24] *Id.*, 2.

It's possible that there will be a slight positive effect on state revenues if clients receive treatment that aligns with best practices and reduces their risk of reoffending. With a more-flexible rule, the department can pivot as needed to respond as new research emerges in sex-offense-specific treatment.

No other state agency will experience costs when the department implements and enforces the rule.

3. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

Given the need—and legislative requirements—for sex-offense-specific treatment in state and local correctional facilities,[25] the department determined that there were no less-costly or less-intrusive methods to ensure that this treatment conforms to empirically supported best practices. The department and the advisory committee both saw a significant need to amend and update the rule.

4. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The department and the advisory committee considered whether to keep the rule chapters separate. But this consideration was rejected several times because of the almost identical wording of both chapters and the benefits of a single, unifying chapter that applies to both adults and juveniles.

The department also considered whether to require treatment programs to follow ATSA standards. While the department is proposing that programs follow ATSA standards on special assessments (department prisons already do), a broader approach was rejected because ATSA standards are meant to complement, not supersede, state standards. Additionally, the department's Inspection and Enforcement Unit lacks the clinical expertise to determine a program's compliance with the entire ATSA guidelines for both juveniles and adults.

[25] Minn. Stat. § 241.67.

5. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The department anticipates minimal compliance costs, if any, for treatment programs because the department is streamlining the rule and adding more flexibility for programs. For example, programs will no longer need to reapply for certification every two years or reapply to renew a variance. And proposed changes to staffing requirements remove arbitrary provisions on clinical supervision and the weekly number of client treatment hours. These—and other requirements—resulted in significant costs to treatment programs without any concomitant increase in client treatment gains or public safety.

As discussed on page 17, businesses and governmental units won't experience increased costs.

6. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

"Interventions are most effective when guided by evidence-based principles. Community-based risk management and risk reduction strategies should be based on a client's assessed risk, need, and responsivity factors."[26]

Not adopting the rule would see treatment programs and their clients continue to operate under 26-year-old standards, which were originally developed when few national best practices in sex-offense-specific treatment existed. Treatment that does not align or is unable to adapt to research and evidence-based practices could increase the risk of clients reoffending and have corresponding increases in costs to public safety and the community. While recidivism risks for this population are low, any level of recidivism can have far-reaching and negative consequences on victims and their families—and the broader community.

[26] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 77.

Additionally, less flexibility for programs in staffing requirements will continue to make it harder for programs to recruit and retain staff to provide clinical services and other program services.

For the department, several current rule parts contain vague or no standards to provide guidance to programs. Without amending the rules, the department is at risk of programs petitioning the department for following unadopted rules or is subject to other APA actions.

7. An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are no known differences between the proposed rule and federal regulations because there are no federal standards for sex-offense-specific treatment programs under state regulatory control. While federal standards exist for federal prisons, the state's three residential sex-offense-specific treatment programs do not follow the federal standards, nor are they subject to them.

8. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.

There are no other state regulations relating to sex-offense-specific treatment programs in correctional facilities. And as stated, there are no federal regulations that apply to department-certified treatment programs.

Performance-Based Rules

The department must describe how it considered and implemented performance-based standards that emphasize (1) superior achievement in meeting the department's regulatory objectives, and (2) maximum flexibility for the regulated party and the department in meeting these goals.[27]

The department and the advisory committee sought regulatory flexibility for all types of programs: juvenile, adult, local, state, and out of state. For example, the proposed rule specifies when a regulatory requirement applies to a juvenile program or to a state correctional facility so that programs aren't required to follow standards that may not work for them.

Another example of flexibility is the department's addition of pretreatment standards for its adult treatment programs. These programs operate within state correctional facilities, or prisons. Because prisons operate in a dramatically different environment than a local correctional facility (an adult community-based residential facility or a juvenile facility), the pretreatment standards are meant to reflect the security environment—and its restrictions—that the department's adult programs operate in.

Finally, the department (1) amends the rule's variance procedures to provide more flexibility to programs, and (2) streamlines its sanctioning authority to better align with recent statutory changes for the department's licensed correctional facilities.[28] By amending its sanctioning authority, the department can more effectively act to correct program violations and ensure that clients are receiving the treatment that they need.

[27] Minn. Stat. §§ 14.002, .131.
[28] *See id.* § 241.021, subds. 1a-1e.

Additional SONAR Requirements

1. Consulting with MMB on local government impact.

The department must consult with MMB to help evaluate the fiscal impact and benefits of the proposed rule on units of local governments.[29] To consult with MMB, the department sent MMB the SONAR and proposed rules to help it determine the impact and benefits of the proposed rule on units of local governments.

MMB determined that the rule doesn't have any identified fiscal impact on local governments.[30]

2. Cost of complying for small business or small city.

The department must determine if the cost of complying with the proposed rule in the first year after the rule is effective will exceed $25,000 for:

a) a business that has less than 50 full-time employees; or

b) a statutory or home rule charter city that has less than ten full-time employees.[31]

The cost of complying with the proposed rule will not exceed $25,000 for any business or any statutory or home rule charter city because the rules don't affect small cities and should overall reduce costs for a small business, as explained in the regulatory analysis.

Of the five currently certified treatment programs, only one—a chapter-2920-licensed adult community-based residential facility—is affected by the proposed rules as a small business. The department has discussed potential costs with the program's owner, and costs aren't expected to exceed $25,000 in the first year after the rule is effective. Most costs aren't new, will be reduced with performance-based rules, or are already required under the program's licensure.

3. Determining whether the rules require local implementation.

The department must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with the department's

[29] *Id.* § 14.131.
[30] *See* Exhibit P1.
[31] Minn. Stat. § 14.127.

proposed rule.[32] The department has determined that the proposed rule does not affect local ordinances or regulations. While local correctional facilities must comply with local ordinances or regulations, the department doesn't propose any conflicting requirements.

4. Impact on farming operations.

The proposed rule does not affect farming operations.

[32] *Id.* § 14.128.

Additional Notice Plan

The department's Additional Notice Plan gives notice to persons or classes of persons that may be affected by the proposed rules. The department will email the rules, SONAR, and Notice of Intent to Adopt Rules Without a Public Hearing to the legislature and everyone registered on the department's rulemaking and topic lists.[33] The department did not notify the commissioner of agriculture because the rules do not affect farming operations.

The department's Additional Notice Plan complies with the APA because the department will publish notice of the proposed rules and SONAR in the *State Register* and will email copies of the notice, proposed rules, and SONAR to the department's rulemaking lists and the following groups:

1) all certified treatment programs and administrators of their respective state or local correctional facility;
2) current department grantees providing community-based treatment;
3) the Minnesota chapter of the Association for the Treatment and Prevention of Sexual Abuse;
4) the Minnesota Association of Community Corrections Act Counties;
5) the Minnesota Association of County Probation Agents;
6) the department's Field Services Unit;
7) the department's Risk Assessment/Community Notification Unit;
8) Minnesota Direct Care and Treatment;
9) the Minnesota Coalition Against Sexual Assault;
10) the Minnesota Alliance on Crime;
11) the Minnesota County Attorney's Association;
12) the state's Office of the Public Defender; and
13) members of the advisory committee.

[33] *See id.* §§ 14.22, subd. 1(a), .116(b).

The proposed rules, SONAR, and other notices will be published on the department's rulemaking web page. Additionally, an announcement about the rules will be posted on the home page of the department's website.

Rule-By-Rule Analysis

1. Each proposed rule requirement must be needed and reasonable.

The most critical requirement of the SONAR is the rule-by-rule analysis, which explains the department's reasoning behind every proposed rule requirement. For each proposed rule requirement, the department must explain two key elements: why the rule is (1) needed, and (2) reasonable.

A rule is reasonable if it is based on an affirmative presentation of facts and evidence that rationally connect with the department's proposed regulatory choice. The department's proposed regulatory choice does not need to be the "best," but the proposed choice must be one that a rational person could have made and one that is not arbitrary or otherwise devoid of articulated reasons.

2. The rule-by-rule analysis is organized in numerical order of chapter 2955, divided into multiple categories.

At the beginning of each category, the department establishes a general overview of the need for the rule amendments within the category. This overview is meant to better inform the public about the requirements in each category and helps establish—on the record—the department's argument for adopting the proposed rules.

Table 3. Rule-by-rule analysis

Category	Rule Parts
Purpose; Scope; Definitions	2955.0010 to 2955.0020
Incorporations by Reference	2955.0025
Certification Procedures and Certification Conditions	2955.0030 to 2955.0040
Inspecting Certified Programs	2955.0050
Revoking, Suspending, and Nonrenewing Certification	2955.0060
Variances	2955.0070
Staffing	2955.0080

Category	Rule Parts
Training	2955.0085
Staff Qualifications	2955.0090
Client Admission, Intake, and Assessment	2955.0100
Pretreatment	2955.0105
Individual Treatment Plans	2955.0110
Client Progress in Treatment	2955.0120
Aftercare	2955.0125
Discharge Reporting	2955.0130
Program Standards and Delivering Treatment	2955.0140 to 2955.0150
Special Assessment and Treatment Procedures	2955.0160
Quality Improvement	2955.0170

Last, the department discusses a detailed rule-by-rule analysis within each rule chapter, arguing for the need and reasonableness of each rule amendment.

Purpose, Scope, and Definitions (2955.0010 to 2955.0020)

Part 2955.0010 on the rule's purpose and scope repeals and strikes duplicative statutory language. Subpart 3—language moved from chapter 2965—clarifies that the Minnesota Sex Offender Treatment Program (the state's civil-commitment program) isn't governed by this chapter.

Part 2955.0020 contains definitions. Unless otherwise noted, the terms in this part are rewritten in plain language, for internal consistency, or for minor grammatical changes.

1. Subpart 1a (adjunctive services).

This term reflects how a client may—as part of their treatment—receive nonclinical services such as education, recreation, leisure, and other activities designed to target criminogenic needs or to increase prosocial attitudes and beliefs.

2. Subpart 2 (administrative director).

This subpart clarifies that the administrative director includes their designee; this change is consistent with other department rules and precludes the need to write "or designee" after the term every time it is used.

3. Subpart 3 (applicant).

This subpart is amended to clarify that the term applies solely to a program applying to be certified under this chapter.

4. Subpart 4 (basic treatment protocol).

Duplicative language that already exists in part 2955.0140 is stricken.

5. Subpart 4a (business day).

This subpart is added to clarify the common definition of a business or working day. This term is needed because the department proposes several amendments on facility deadlines for conducting intake assessments and discharge summaries.

The context in which the term is used doesn't necessitate adding a specific timeframe (such as 8:00 a.m. to 4:30 p.m.), and every program has different hours of operation. Holidays aren't included because correctional facilities must operate at all hours.

6. Subpart 6a (certificate holder).

This term is currently used in the rule chapter but is undefined. This addition is needed for clarification because of actions that the department may take under part 2955.0060.

7. Subpart 7 (client).

This subpart is amended to conform with changes on pretreatment and to clarify that the rule chapter doesn't apply to outpatient programs, or nonresidential treatment programs.

This is an important clarification for the entire rule and because the department is adding new requirements on aftercare. Aftercare is important because it allows individuals to maintain their treatment gains by including "arrangements for continuing treatment or counseling, support groups, and socialization, cultural, religious, and recreational activities."[34] Yet residential programs in the community such as an adult community-based residential facility may include individuals receiving outpatient care, and the department has no authority to regulate outpatient treatment.

8. Subpart 7c (clinical services).

This term is currently used in the rule chapter but is undefined. While the department initially created this definition with the stricken language from the definition of *clinical supervision*, the department later determined to more broadly define clinical services. For example, the stricken language in subpart 8 is content-specific, and the department was concerned about being overly specific in listing clinical services and having the term become obsolete.

A more reasonable solution was to list the responsibilities involved for clinical supervision and to state that clinical services are overseen by treatment staff to help a client reduce their risk of engaging in sexually abusive or harmful behavior.

9. Subpart 8 (clinical supervision).

Plain-language changes are made, and stricken language is moved to subpart 7c, where the language is more generally stated.

10. Subparts 11 and 12 (correctional facility and criminal sexual behavior).

Statutory cross-references are updated.

[34] *See* Minn. R. 2955.0140, subp. 3(E)(1).

11. Subpart 13a (direct-service staff).

This subpart is needed to define a new term used in the rule; direct-service staff include security staff or support staff. Direct-service staff don't provide treatment—rather, they help support a program's clerical and security functions.

This term doesn't apply to department programs because these programs operate within state correctional facilities and don't oversee the staffing responsibilities of correctional officers.

12. Subpart 14 (discharge summary).

This amendment clarifies that treatment staff prepare a client's discharge summary.

13. Subpart 14a (DOC Portal).

This new term is defined because it is needed to reference the statutory requirement on the department's detention information system and because the term is used in new variance language under part 2955.0070.

14. Subpart 16 (individual treatment plan).

Duplicative language is stricken; the stricken language contains substantive requirements found under part 2955.0110.

15. Subpart 16a (intake assessment).

This new subpart is added to place the existing defined term (subpart 26) in alphabetical order because *sex offender* is stricken from the term. No substantive changes are made to the definition, and a vertical list is added for clarity.

16. Subparts 17, 19, 20, and 25 (various repealed subparts).

These subparts are repealed because they aren't used in the rule chapter or because they contain obsolete statutory references (subpart 17).

Subpart 25 is replaced with new terminology that refers to individuals who commit "sexually abusive or harmful behavior," which is defined in subpart 28.

17. Subpart 18 (license).

This term is simplified and rewritten to refer to both Minnesota-licensed programs—operating in either juvenile facilities or adult community-based residential facilities—and juvenile facilities licensed outside the state.

18. Subparts 21 and 22 (special assessments).

Slight term changes in the definitions are made to conform with current usage in the field, and vague language is stricken.

19. Subpart 22a (pretreatment).

This subpart is needed to define pretreatment, a long-standing practice used by the department's adult programs. As described more on page 54, pretreatment serves clients not yet formally admitted into a treatment program.

Pretreatment was developed to acclimate incoming clients to the planned therapeutic environment, acknowledging that:

a) the experience of an incarcerated person in general population is different than the experience in a therapeutic treatment community; and

b) a person reasonably needs time to learn the expected norms, rules, and expectations of the community as they relate to accountability and other treatment concepts.

20. Subpart 22b (program staff).

The department refers to *program staff* in rule, so this subpart is needed to clarify that this includes all of a program's staff members.

21. Subpart 23 (residential treatment program).

This definition removes obsolete language on treatment phases and strikes duplicative language that appears elsewhere in the chapter. The definition also clarifies that a client receives treatment while in the planned therapeutic environment in a residential program, which includes residential components such as food and housing.

22. Subparts 26 and 27 (intake assessment and sex-offender treatment).

These two definitions are repealed and moved to new subparts, where they are placed alphabetically to reflect terminology changes.

23. Subpart 28 (sexually abusive or harmful behavior).

The term is changed to add "harmful," which more accurately reflects how professionals refer to this behavior for juveniles. Referring to juveniles as "sex offenders" is problematic for several reasons:

> Although terms such as 'juvenile sex offender' and 'adolescent sex offender' are commonly used, these kinds of descriptors, which characterize a young person based on his/her behavior, imply that the

> behavior is long lasting, intractable, or permanent. These notions are contraindicated by current research, which finds that *problematic sexual behaviors in the vast majority of youth are transitory*. In addition, the term 'sex offender' fails to make a distinction among the continuum of behaviors broadly described in legal and popular contexts, which can range from voyeurism to violent sexual assault.[35]

The addition of "harmful" also better captures the category of people who have "attempted to engage" in this behavior.

Item B limits the potential scope of an "unequal relationship." An unequal relationship could include a financial relationship, for example, while "imbalance of power" limits the scope of the relationship to sex-offense-related dynamics.

Item D is added because of changes to laws around access, use, production, and distribution of child-sexual-exploitation imagery.

24. Subpart 29 (special assessment and treatment procedures).

This subpart is amended and simplified by referring to special assessments as described by ATSA. This is a needed and reasonable change to streamline the language and update the rule with current best practices for special assessments such as phallometry, viewing time, and polygraphs.

25. Subpart 30 (supervising agent).

This definition adds "case manager" to the list of supervising agents because clients on provisional discharge from the Minnesota Sex Offender Program who are residing in chapter-2920-licensed facilities have a case manager rather than a parole or probation agent.

26. Subpart 31 (planned therapeutic environment).

This subpart simplifies the definition by removing unenforceable nonrule language. The subpart is also amended to reflect how the term is used in the rule as a physical site where treatment is provided.

27. Subpart 31a (treatment).

The definition is renumbered from subpart 27 and amended. As with other terms, substantive requirements or advisory comments are removed. The

[35] Association for the Treatment of Sexual Abusers, *Practice Guidelines for Assessment, Treatment, and Intervention with Adolescents Who Have Engaged in Sexually Abusive Behavior* (Beaverton, 2017), 3 (emphasis added).

simplified definition is clearer without changing the term's meaning, and other rule parts further prescribe the substantive requirements of a planned therapeutic environment.

28. Subpart 31b (treatment staff).

This term is currently used in the rule chapter but is undefined. The department believes it needed and reasonable to define a used term, and parts 2955.0080 and 2955.0090 further establish the substantive requirements for treatment staff (generally, a clinical supervisor and a counselor).

29. Subpart 32 (treatment team).

This term is redundant and confusing; it's unclear what differentiates treatment team from treatment staff, so the department repeals the term and believes that other staff-related terms more accurately describe all of a program's staff.

30. Subpart 33 (variance).

This subpart clarifies what a variance is and removes unnecessary language.

Incorporations by Reference (2955.0025)

Under the Administrative Procedure Act, state agencies may incorporate by reference into their rules the text from publications and documents that are determined by the revisor of statutes to be conveniently available to the public.[36] An agency may choose to incorporate a document by reference for several reasons:

1. **Accuracy.** A manual, guideline, or similar publication may already sufficiently detail what the agency would otherwise write into a rule.
2. **Efficiency.** If an agency anticipates that an incorporation by reference is appropriate, it's more efficient to incorporate a document so that when the document changes, the agency need not have to amend the rule and go through the rulemaking process solely to update unincorporated standards.
3. **Reasonableness.** An agency may find it more reasonable to justify publications from trade groups or national associations than to justify each requirement in rule that is based on these publications.

An agency must follow several requirements when incorporating documents by reference:

> The statement of incorporation by reference must include the words 'incorporated by reference'; must identify by title, author, publisher, and date of publication the standard or material to be incorporated; must state whether the material is subject to frequent change; and must contain a statement of availability.[37]

Except for ATSA's juvenile practice guidelines, the department's proposed incorporations are already incorporated in the chapter. Here, the department proposes to consolidate the existing incorporations into a single rule part for efficiency.

The following incorporations are proposed:

- **ATSA adult and juvenile guidelines.** ATSA's adult guidelines were originally incorporated in part 2955.0160, subpart 2;[38] ATSA didn't develop juvenile

[36] *See* Minn. Stat. § 14.07, subd. 4.
[37] *Id.*
[38] They were also incorporated in chapter 2965.

guidelines until 2017, so this incorporation is needed because of the department's proposed changes to special assessments for juveniles.

- **American Polygraph Association.** The Standards of Practice were originally incorporated in part 2955.0160, subpart 2;[39] the *Model Policy for Post-Conviction Sex Offender Testing* wasn't published until 2021, and it replaces an existing standard in part 2955.0090, subpart 6. The model policy relies on evidence-based best practices for polygraphs.

[39] They were also incorporated in chapter 2965.

Certification Procedures and Conditions (2955.0030 to 2955.0040)

The existing rule lacks guidance for facilities—and the department—on what a program must include in an initial application to be certified as a treatment program. While current rule requires the department to conduct a certification study,[40] it's unclear how this differs from existing standards for approving an application. Additionally, the certification conditions are vague or don't adequately correspond to current department practice.

Accordingly, the department seeks to prescribe that only an initial application is required and proposes to further clarify what is required in the application.

1. 2955.0030 (certification procedures).

1.1. Subpart 1 (applying for certificate).

This subpart makes plain-language changes and technical changes consistent with the definition amendments under part 2955.0020. Language on approving an application is moved to part 2955.0040, subpart 2.

1.2. Subpart 1a (application contents).

The department has certified four of the five treatment programs for decades, and the department recently certified an adult community-based residential facility. With this latest certification, the department found that the rule provides vague standards on the application process.

To provide adequate notice to applicants, the department proposes more-specific application requirements that reflect what the department required for its most recent certification. Items A to I are reasonable application requirements that are needed so the department can identify the program and assess whether it can provide treatment according to the rule:

- Items A, B, and E allow the department to verify who is operating the program and also ensure that the department has contact information to communicate with the program, including for issuing any needed corrective action.

[40] Minn. R. 2955.0040, subp. 2.

- The rest of the items are needed so the department can evaluate an applicant's ability to provide treatment, manage its program, and comply with the chapter.

  Three of these items, such as a program's plans for operations and physical-plant documentation, are moved from part 2955.0040, subpart 2, but amended to provide more guidance or to reflect when the program's underlying license would already provide the information. For example, an adult community-based residential facility under chapter 2920 would already need to maintain physical-plant documentation for its licensure, but the department would need to know that a local zoning authority has approved the program's operation within the local government unit.

1.3. Subpart 2 (renewal application).

Subpart 2 is repealed because treatment programs don't reapply for certification; consistent with statute, long-standing department practice for all of its licensed facilities is to inspect the facility every two years or as needed to investigate a complaint.[41] This routine inspection process means that the department doesn't need to require facilities to reapply for a license every two years. The department sees no need to deviate from this practice for its certified programs.

In addition to the department's inspection authority, the department can also monitor changes in a program's initial certification under part 2955.0060, subpart 2.

1.4. Subpart 3 (programs before 1999).

Subpart 3 is repealed because it's an obsolete subpart that was needed when the rules were first adopted in 1999.

2. 2955.0040 (certification conditions).

2.1. Subpart 1 (issuing certificate).

This part is repealed because the department's criteria for granting an application are listed in subpart 2.

[41] *See also* Minn. Stat. § 241.021, subd. 1(a): "The commissioner shall review the correctional facilities described in this subdivision at least once every two years . . . . The commissioner may grant licensure up to two years."

2.2. Subpart 2 (reviewing application).

This subpart strikes requirements that are moved to part 2955.0030 and reviewed in a program's application.

Proposed changes clarify that the department must approve an initial application within 60 calendar days. This change is needed because the current language in part 2955.0030, subpart 1, suggests but doesn't explicitly require the department to approve an initial application within 60 days. As such, this change will clearly require the department to timely review an application and provides fair notice of this review timeline in rule.

The 60-day timeline is consistent with current rule language and department amendments to its variance procedures. Because some treatment programs don't operate in state correctional facilities, the department can't begin to review an application until the treatment program has submitted all completed application information, particularly local zoning approvals.[42]

After reviewing an application, the department will determine whether the program will be able to provide treatment according to the rule chapter.

2.3. Subpart 3 (issuing certificate).

Changes to subpart 3 reflect the department's current licensing and certification procedures. The department may later restrict a program's certification according to part 2955.0060.

Item A, subitems (1) to (4), lists the different facilities that the department may certify, as prescribed by statute (*see* pages 5 to 6).

2.4. Subpart 3a (denied application).

This subpart is added to reflect amendments under part 2955.0060, to provide fair notice, and to allow for a denied applicant to resubmit its application to the department or to appeal the denial to the Court of Administrative Hearings, as prescribed under subpart 9.

2.5. Subparts 4 and 5 (posting nontransferable certificate).

Plain-language changes are made, and superfluous language is removed.

[42] *See also* Minn. R., subp. 1: "Completed applications must be considered for certification . . ."

Inspecting Certified Programs (2955.0050)

As with other rule amendments, this part is amended to reflect the department's current inspection process for its licensed correctional facilities. Terms such as "monitored" are replaced by "inspected." Internal department standards and unnecessary information already governed by statute are removed because the department inspects treatment programs in the same manner that it inspects licensed local correctional facilities.

Subpart 3, item E, strikes existing language on the department providing forms to a program—the department doesn't do this. The department would, if needed to determine a program's rule compliance, request additional information on a program's policies and procedures during an inspection or while investigating a complaint.[43]

Subparts 2 and 3 otherwise make technical and conforming changes.

[43] *See* Minn. Stat. § 241.021, subd. 1(a): "The commissioner shall have access to the buildings, grounds, books, records, staff, and to persons confined or incarcerated in these facilities."

Revoking, Suspending, and Nonrenewing Certification (2955.0060)

This part is substantively revised to remove confusing and overly broad sanctioning standards and to better align them with statutorily prescribed department actions. These changes will allow for uniform department actions for all of its licensed facilities and certified programs.

1. Subpart 1 (inspections and nonconformance).

This subpart is amended to establish the department's current inspection standards previously listed in part 2955.0050.

For example, the department may place a program on an annual inspection status because of repeated rule violations but only after determining that more-frequent inspections are needed because the department has cited the program for a violation in an inspection report or because of a substantiated complaint. This change is consistent with statutory requirements for the department's licensed facilities and proposed amendments under part 2955.0040, subpart 3, on the term of a treatment program's certificate.

Because a treatment program's certificate operates under a licensed correctional facility, these are needed and reasonable changes to align the rule with statutory requirements and department standards.

2. Subpart 2 (changes to initial certification).

This subpart is amended to simplify how a treatment program must seek the department's approval to make changes to the program's initial certification. Currently, the rule limits a program's ability to make certification changes to four program areas. The rule also requires a program to seek approval under a 20-day timeline.

The department finds that these requirements are unreasonable burdens for a program and that the department can review any changes—not just for four areas—to a program's initial certification.

Item B is added because the rule has no existing standards governing how the department will approve a program's proposed changes to its certification. Accordingly, programs don't have fair notice for how the department will review changes; the department seeks to rectify this unreasonable omission.

When reviewing a treatment program's proposed changes, the department will determine whether the changes will make a program out of compliance with the rule chapter or jeopardize a client's treatment. For example, a proposed change to staffing or clinical services could jeopardize a client's treatment quality. This concept is similar to existing language on how the commissioner must evaluate a variance request.[44]

Item C provides a certificate holder reasonable notice if the department denies a proposed change. These proposed standards mirror notice requirements for a denied application under part 2955.0040, subpart 3a, except for an appeals process. If the department denied a change and the treatment program made it anyway, the department would likely require a correction action plan or revoke or suspend the certificate—both a revocation and suspension are appealable.

The 60-day review timeline is consistent with other proposed amendments.

3. Subpart 3 (notice of intent to revoke or suspend certificate).

Plain-language and technical changes are made to this subpart; conforming changes are also made for consistency with other proposed changes in this part. These changes are needed to provide fair notice to a certificate holder when the department takes action against the program.

4. Subpart 4 (notice of revocation or suspension).

Plain-language and conforming changes are made to this subpart.

5. Subpart 5 (revoking or suspending certificate).

This subpart is substantively revised to replace the existing sanctioning framework under subparts 6, 7, and 8. The new language is needed because the existing sanctioning framework is confusing and includes overly broad requirements—such as ethical violations or civil actions— that the department would, for local correctional facilities, take action against under the program's underlying licensure rather than under its certificate.

Although the existing sanctioning framework hasn't been used by the department in the last seven years,[45] the department still needs a framework to hold certified programs accountable and to protect the health and safety of program staff, clients, and the public.

[44] *See* Minn. R. 2955.0070, subp. 2(A).
[45] The department's retention schedule for this data is seven years.

The department first considered whether to import the department's statutory sanctioning authority used for its licensed facilities.[46] This approach was rejected as too convoluted and unnecessary because the department would almost always take a sanctioning action against a program's underlying license rather than the program's certificate.

Because a program's certificate is tied to its licensure, the department proposes to establish that the department will revoke or suspend a program's certificate (for chapter 2920 and 2960 programs) if the *license* of the facility it operates in has been revoked or suspended. This is a reasonable requirement because a program must operate within a licensed correctional facility.

The department will also revoke a program's certificate if the program has repeatedly not adhered to its policies and procedures and hasn't taken action to correct its noncompliance.[47] This revocation could happen after a program fails to comply with a corrective-action plan, and this requirement applies to all certified programs.

And finally, the department proposes to suspend a program when there is an imminent risk of harm to clients, program staff, or the public. This rule requirement currently exists and applies to all certified programs.

For its correctional facilities, the department is required by statute to provide treatment to people who have engaged in sexually abusive or harmful behavior, and the department has not revoked or suspended a prison program since the rules were adopted. The department has, however, issued corrective-action plans, which are needed so the department can ensure a program's compliance with the rule.

6. Subpart 6a (corrective-action plans).

This subpart establishes the department's long-standing inspection process for its licensed facilities and certified programs. After the department inspects a program, the department issues a publicly available inspection report. Depending on the inspection, the inspection report may include a corrective-action plan. A corrective-action plan is used as the first option to correct a rule violation, unless other considerations are present as prescribed under subpart 5.

[46] *See* Minn. Stat. § 241.021, subds. 1a-1e.
[47] *See* the definition of *serious violations of policies and procedures*. Minn. R. 2955.0020, subp. 24.

Because a corrective-action plan closely mirrors a correction order under statute,[48] the requirements for a corrective-action plan follow the statutory requirements for a correction order.

Corrective-action plans aren't appealable because the department isn't taking action against a program's certificate such as by revoking or suspending it. When a program corrects a rule violation, the correction is publicly available on the department's website.

A treatment program's failure to comply with a corrective-action plan may, depending on the violation, be grounds for the department to revoke or suspend the program's certificate—this revocation or suspension is appealable.

7. Subparts 6, 7, and 8 (existing sanctioning framework).

These subparts are repealed and replaced with a new sanctioning framework under subparts 5 and 6a.

8. Subpart 9 (appeals).

Item A makes technical and conforming changes that allow a program to appeal a department action to the Court of Administrative Hearings.

In item B, the department proposes barring a program from applying for a new certificate if the Court of Administrative Hearings affirms a department revocation order. This is a reasonable change for two reasons. First, a treatment program's certificate may be revoked:

a) because of repeated noncompliance with rule requirements; or

b) because the program's operation poses an imminent risk to the program's clients or staff or the public.

A program should be unable to apply for a certificate after its previous one was revoked—under the department's proposed application amendments, the department would likely deny the certificate because the program has demonstrated noncompliance through the department's original revocation order and the decision from the Court of Administrative Hearings. A two-year application bar is thus reasonable and aligns with the department's standard two-year inspection and certification requirements.

[48] *See* Minn. Stat. § 241.021, subd. 1a.

Second, if the program's underlying licensure is revoked, a program cannot hold a certificate. A certificate is an optional service that a licensed correctional facility may provide, and neither the rule nor statute allows for a treatment program to hold a certificate without operating within a licensed correctional facility.

The department also proposes to bar an applicant from resubmitting a new application. This is also reasonable because the department must inform an applicant of any needed changes to correct an application and allows the applicant to resubmit it. If the denied application is challenged through a contested case and the department denial is affirmed, the department doesn't want an applicant to then resubmit its application again, starting the application process anew. This needed change will ensure that applicants operate in good faith, especially considering the treatment that they provide to clients and the role that evidence-based treatment plays in protecting public safety.

Variances (2955.0070)

This part is updated with technical and conforming changes. New language is added to establish standards for how the department will review and approve variances. The current lack of criteria deprives programs of fair notice.

1. Subpart 1 (variance request).

This subpart is amended to reflect current department practice. For example, variances aren't limited to a year and variance requests are submitted through the DOC Portal, the department's online detention information system.[49] The subpart also makes plain-language and technical changes.

2. Subpart 2 (evaluating variance request).

This subpart makes plain-language changes and technical changes consistent with other proposed amendments under part 2955.0060. The permissive "may" is removed and replaced with "must," removing the department's overly discretionary review standard.

3. Subpart 3 (commissioner notice).

The department's time to review a variance request is increased from 30 calendar days to 60 calendar days. This 30-day increase is needed because a department inspector may need to conduct a site visit to review the request, or a variance request may require a more-intensive review depending on what the program is requesting. Additionally, the department may receive multiple requests and could be unable to review all the requests within 30 days. This 30-day increase is also reasonable because it aligns with the APA's statutory review period for variances.

Technical changes are also made, including requiring the department to notify a program of a department determination through the DOC Portal.

All changes in this subpart provide flexibility for programs to seek alternatives to a rule requirement.[50]

[49] *See id.*, subd. 1(a).
[50] *See id.* § 14.056, subd. 5.

4. Subpart 4 (renewing variance).

Programs may renew their variance requests, and the department reviews renewal requests through the DOC Portal. It is needed and reasonable for the department to continue to assess a program's compliance with its granted variance, especially if the program is following an alternative measure not in rule.

5. Subpart 5 (revoking or not renewing variance).

This subpart is needed so the department can assess a program's compliance with its variance and any department-imposed conditions. The department proposes 60 days' notice to provide it enough time to review whether to revoke or not renew a variance, consistent with the proposed 60-day review period under subpart 3.

The department doesn't allow its licensed facilities to appeal a commissioner determination, but nothing prevents a program from filing a new variance request.

Staffing (2955.0080)

A treatment program has four main staff categories:

- An administrative director responsible for managing the program (and who may also be the clinical supervisor).
- A clinical supervisor who oversees all clinical operations—including clinical and adjunctive services—and supervises licensed or unlicensed treatment staff.
- Treatment staff—who may be licensed or unlicensed mental-health professionals under the state's Mental Health Uniform Service Standards Act[51] and who provide treatment such as therapy, counseling, and education.
- Direct-service staff, who are generally security staff or staff who help monitor or manage a program's nonclinical aspects.

This part addresses the staff qualifications for these four staff categories.

1. Subpart 1 (potential conflict with licensure rules).

A technical wording change is made. "Accreditation" is stricken because the department evaluates a program according to its respective licensure under chapter 2920 or 2960, and certified programs aren't accredited by a third party.

2. Subpart 1a (general staffing requirement).

This subpart is needed to streamline language. For example, in each subpart, the phrase "who meets the requirements under part 2955.0090," is used. This new subpart allows the department to strike this language and consolidate the phrase.

3. Subpart 2 (administrative director).

This subpart makes technical and conforming changes.

4. Subpart 3 (administrative director's designee).

This subpart removes the vague phrase "where appropriate" and clarifies that an administrative director must designate a designee—during all hours of a

[51] *Id.* §§ 245I.01-.23.

program's operation—to be available when the director is unavailable (this amendment is also consistent with chapters 2920 and 2960).[52]

5. Subpart 4 (clinical supervisor).

This subpart makes several substantive changes to a clinical supervisor's duties. A program's clinical supervisor manages all clinical aspects of the program—essentially, ensuring clients receive appropriate treatment. A clinical supervisor also supervises the program's treatment staff.

Given these duties, the current rule under item B is both unreasonable and inaccurate because the rule requires a clinical supervisor to provide two hours per month of clinical services *for each client*. It's inaccurate because a clinical supervisor supervises clinical services, not clients. And it's unreasonable because of the cumulative time involved for this level of supervision.

To correct this outdated requirement, the advisory committee and department determined that a ratio of clinical supervisor to counselors was a more accurate requirement that fulfills the rule's original intent—for a clinical supervisor to adequately supervise treatment staff.

To arrive at the 1:8 ratio, the department surveyed the treatment programs for their current ratios. All programs would meet this 1:8 ratio, even when fully staffed (both of the department's adult programs aren't fully staffed). If a program couldn't meet this ratio, the program would need to apply for a variance.

Item D requires that a clinical supervisor provide at least two hours of monthly clinical supervision to a counselor. As discussed for item B, this two-hour requirement should be for clinical supervision of treatment staff such as a counselor. Because the experience and qualifications of counselors vary, a clinical supervisor may not need to provide this level of monthly supervision for every counselor. As such, any deviation should be documented, and all decisions to provide less clinical supervision should be individual to each counselor.

The rest of the subpart adds items for structure and makes plain-language and conforming changes.

[52] Minn. R. 2920.3700, subp. 6, 2960.0150, subp. 3(A), (B).

6. Subpart 5 (treatment staff).

This subpart removes redundant language and clarifies that, at a minimum, a treatment program must have a clinical supervisor and a counselor. These are the main staff positions needed for clients to receive treatment.

The department also clarifies that counselors need not be licensed (*see* page 48 for the department's discussion repealing the therapist position).

7. Subpart 6 (multiple staff roles).

Most of the certified programs serve a small number of clients, so the rule allows for a staff member to occupy more than one position. Conforming changes are made to this subpart along with clarifying poorly worded and confusing language. The original intent behind the requirement isn't changed.

8. Subpart 7 (staff ratios).

Items are added for structure, and conforming changes are made. A substantive change is to strike the staff-to-client ratio for treatment phases. Treatment programs no longer use treatment phases, so the different ratios for "primary" and "reentry" phases are obsolete. A standard 1:10 ratio reflects current rule requirements and long-standing practice.

Item C is added to allow for a larger ratio for clients in aftercare or preparing to reenter the community. For example, a client who has completed treatment may still attend group meetings or receive additional support before they are released from the facility and return to the community.

The department finds it unreasonable to penalize a program for this practice that helps clients maintain their treatment gains. Aftercare is important for continuity of care and "is necessary to support effective risk management and risk reduction of clients in the community."[53]

9. Subpart 8 (staffing plan).

This subpart adds items for structure and clarifies that a staffing plan must be developed by both the administrative director and the clinical supervisor.

Item B is needed to ensure that programs review their staffing plans at least annually. This is a standard practice among the department's licensed facilities,

[53] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 98.

and programs should be reviewing their staffing plans to ensure that they are providing appropriate treatment to their clients.

10. Subpart 9 (staff orientation and training).

This subpart is updated with technical, plain-language, and substantive changes.

The substantive changes involve requiring a program to develop a training plan within 90 calendar days of a staff member's employment—the rule doesn't currently require a timeline, which the department finds unreasonable given the niche field of sex-offense-specific treatment and the consequent need for training; this 90-day requirement also reflects Direct Care and Treatment standards.[54]

Technical changes are made to the training requirements under items B and C. These items apply to counselors who may be unlicensed or other unlicensed treatment staff that provide treatment. Licensed staff such as a clinical supervisor or counselor must already complete training to maintain their licensure.

11. Subparts 10 and 11 (special-assessment examiners).

Conforming and technical changes are made to these two subparts.

[54] *See* Minn. R. 9515.3070, subp. 2(A).

Training (2955.0085)

Training ensures that program staff are qualified to provide or oversee clinical and adjunctive services. The rule, however, contains no standards on what constitutes training. To rectify this omission, the department proposes minimum standards on what constitutes training that program staff must receive after they are hired and the training that they must receive annually thereafter.

Items A to C state that training should be related to a staff member's duties, a reasonable and logical requirement. Item D prescribes specific training requirements for treatment staff that reflects their day-to-day job duties in areas such as research and teaching that may enhance their ability to provide treatment for clients.

Staff Qualifications (2955.0090)

While ensuring appropriate staffing coverage is important, so is ensuring that staff are qualified to provide treatment according to their certification or licensure.

1. Subpart 1 (general qualifications).

This subpart makes technical changes and switches the order of the vertical list.

2. Subpart 2 (administrative director).

Mostly plain-language and conforming changes are made, but item B is stricken. Because most clinical supervisors serve as the administrative director, the department finds it superfluous to require an administrative director to have 2,000 hours of experience administering a correctional or human-services program. Additionally, Direct Care and Treatment doesn't require this level of training for its sex-offense programming.[55]

The department and advisory committee believe that while item B was initially needed, the dual roles of program staff allow the department to strike the requirement.

A new item C provides an administrative director time, if needed, to complete training after being hired. This is a new change that the department is proposing for all program staff to provide programs flexibility in hiring difficult-to-fill treatment-staff positions.

3. Subpart 3 (clinical supervisor).

As with other changes in this part, most of the changes are technical and conforming.

While item A, subitem (1), strikes several lines of text, this change simplifies the existing requirement by cross-referencing to the Mental Health Uniform Service Standards Act.[56]

Other amendments under item A, subitem (3), change the training topics for clinical supervisors to align with their current duties. For example, training on managing a planned therapeutic environment is added—this is a core function of

[55] *See id.* 9515.3060, subp. 1.
[56] Minn. Stat. §§ 245I.01-.23.

a clinical supervisor. Relapse prevention is changed to risk, need, and responsivity principles, which have shown the largest reduction in sexual and general recidivism.[57] Additionally, recognizing risk and protective factors is an important component of a client's assessment and treatment, where community reintegration is a key risk-reduction strategy.

Training hours on human sexuality and the criminal justice system are reduced to align with department-provided training. And *chemical dependency* is changed to *substance use* to reflect the clinical definition in the Diagnostic and Statistical Manual of Mental Disorders.

Item B provides a program flexibility when hiring a clinical supervisor by giving the clinical supervisor time to complete the training after being hired.

4. Subpart 4 (therapist).

In addition to the clinical-supervisor position, the rule has two other main positions that are considered treatment staff: a therapist and a counselor. But over the years, treatment programs have relied on the counselor qualifications when hiring treatment staff. Some of this was a natural gravitation, and some was because the therapist qualifications were difficult to fill and programs needed to hire treatment staff to provide client treatment.

Some counselors may be licensed mental-health professionals, while others may be unlicensed. Regardless, counselors are trained to provide sex-offense-specific treatment and are supervised by a clinical supervisor. The department and the advisory committee both agreed that removing the therapist position was needed and reasonable and that it wouldn't jeopardize treatment quality or the health and safety of clients.

5. Subpart 5 (counselor).

Similar changes are made to this subpart as with subparts 2 and 3. No other substantive changes are made.

6. Subparts 6 and 7 (special-assessment examiners).

Subpart 6 makes conforming changes and adds an incorporation by reference; this incorporation, the *Model Policy for Post-Conviction Sex Offender Testing*, requires 40 hours of "specialized Post-Conviction Sex Offender training that

[57] Kline, "Enhancing Rehabilitation," 41.

adheres to the standards established by the APA."[58] The model policy provides more-specific guidance than the current language and is needed and reasonable because "the reliability of the polygraph is still a subject of ongoing concern."[59] As such, ATSA recommends that examiners "adhere to the most current existing practice standards or guidelines specific to the use of polygraph in the treatment of men who have committed sexually abusive behaviors."[60]

Subpart 7 also makes conforming changes and updates statutory cross-references. Unlike for polygraphs, there is no model policy for sexual interest and response assessments and the various instruments that may be used for the assessments. Because each instrument has education, licensure, or training requirements unique to the instrument, the department proposes to strike the 40- and 8-hour training requirements for examiners. Instead, the department proposes a standard that requires examiners—for each instrument that they intend to use—to receive training relevant to the instrument that will be used for the assessment.

Training is still important for this assessment because examiners should be "appropriately trained in the use of such instruments, use accepted methods, and adhere to applicable professional and discipline-specific standards or guidelines."[61]

Initial language from 1999 exempting examiners from the subpart is stricken because the exemption is now obsolete.

7. Subpart 7a (direct-service staff).

Because the department has added this staff position in rule, the department must also add qualifications. Direct-service staff are responsible for nonclinical functions of a program such as security, clerical, and maintenance. Because direct-service staff work in a correctional facility, basic training is required, especially relating to the environment (sex-offense-specific treatment) in which they work.

[58] American Polygraph Association, *Model Policy for Post-Conviction Sex Offender Testing*, 23 (2021), https://polygraph.org/docs/PCSOT_Model_Policy_2021.Board_Approved.pdf, (accessed June 27, 2025).
[59] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 73.
[60] *Id.*, 74.
[61] *Id.*, 38.

Because of how security staff are scheduled in juvenile correctional facilities, item A is needed to qualify that the training in this subpart is only needed for staff who are working in a treatment program's unit half time or more in a calendar year. This limit to half time is consistent with existing rule language on training for treatment staff under part 2955.0080, subpart 9.

To establish minimum hours of training, the department and advisory committee looked to other department rules such as its jail rule and to Direct Care and Treatment.[62] In these two rulemaking chapters, the department found that 16 hours was a standard number of training hours for direct-service staff or equivalent positions in a licensed correctional or noncorrectional facility.

Unlike with the other staff positions, direct-service staff must receive this training before direct contact with clients. This is because direct-service staff, unlike treatment staff, may be high-school graduates with little to no experience in sex-offense-specific treatment.

Direct-service staff should also receive 16 hours of annual training—like with the initial training, this training may be combined with the program's licensure requirements for annual training as long as the listed topics are covered. For example, an adult community-based residential facility may have a single training program for both its 2920 licensure and 2955 certificate.

The first two topics are needed and reasonable because they directly relate to the unique environment of treatment programs and how a treatment program operates. The third topic (crisis management) is needed and reasonable because of the correctional environment, and the department believes that all programs currently offer crisis-management training under their licensure.

8. Subpart 8 (documentation).

Plain-language changes are made, including by removing vague and subjective words such as "relevant" and "successful."

9. Subpart 9 (staff exemptions).

As in subpart 7, this subpart removes 1999 language exempting staff members from qualification requirements. This subpart was needed when the rules were first adopted, but this language is now obsolete.

[62] *See* Minn. R. 2911.1200, 9515.3070, subp. 3(A).

Client Admission, Intake, and Assessment (2955.0100)

"Assessments promote informed decision making related to treatment, case management, risk management, risk reduction, and legal decision making."[63]

Before admitting a person into a treatment program, treatment staff must assess whether the person has a need for sex-offense-specific treatment. After a person is admitted, treatment staff must conduct an intake assessment to determine the person's treatment needs and goals.

1. Subpart 1 (admission procedure).

This subpart makes plain-language and technical changes, including by structuring the subpart into items and using a vertical list. In item A, the vague "other available resources" is replaced with more-specific requirements on the documents that treatment staff should review when determining whether to admit a person into the program.

The choppy drafting in item B is clarified to state that because a treatment program operates within a correctional facility, the treatment program's admission procedure must be coordinated with the various aspects of a correctional program—for example, staffing, security, and safety.

Item C clarifies that an intake assessment must be conducted within 30 business days after a client's admission, but this requirement doesn't apply to clients in pretreatment (*see* part 2955.0105). This change to business days is needed because these assessments can take much time and work, and, depending on the program, the program could have multiple new client assessments to conduct. Accordingly, the advisory committee identified that additional time was needed so program staff have enough time to conduct an assessment or don't need to scramble to submit a variance request for more time.

[63] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 13.

2. Subpart 2 (intake assessments).

This part is structured into items, with conforming changes made. Item A clarifies that treatment staff conducting intake assessments must be trained and experienced according to their licensure, if any, or be supervised by a clinical supervisor (a clinical supervisor must be a licensed mental-health professional).

Item B allows a program to contract with an outside entity to provide assessments—this flexibility is needed because of the shortage of psychologists and subsequent difficulty a program may have in hiring a full-time psychologist. If a program doesn't employ a qualified staff member who can conduct these assessments, the program must still meet the 30-day assessment timeline—contracting with a qualified individual allows for compliance.

3. Subpart 3 (assessment according to basic treatment protocol).

Minor changes are made to this subpart, including striking unnecessary words such as "particular" or "as specified."

4. Subpart 4 (reassessments).

This part is organized into a vertical list, with conforming changes made. Reassessments are important because they provide treatment staff with current information on a client and can help staff make informed decisions on the client's treatment.

5. Subparts 5 to 10 (intake-assessment data and assessment report).

> *"Comprehensive assessments of sexually abusive behaviors are empirically informed and have a specific focus on assessing a client's sexual development and history, paraphilic interests, inappropriate and criminal sexual behaviors, and risk of sexual recidivism."*[64]

These subparts detail the requirements for an intake assessment, including factors that treatment staff must consider, sources to use for the assessment, and special assessments to provide supplementary information.

Most of the changes are technical and conforming. Vague phrases such as "as appropriate" are replaced with "as applicable to the client," and vertical lists are added for readability.

[64] *Id.*, 23.

Subparts 6 and 7 clarify legal terms relating to juveniles and replace them with more accurate terms relating to juvenile data (*juvenile justice data*) and juvenile terms in the criminal-justice system (*delinquency petition*).

Subpart 7, item E, adds that treatment staff must consider a client's nature of peer relations and the client's leisure interests to address dynamic risk factors such as prosocial friends and activities.

Subpart 7, Item H, subitem (6), on learning disabilities is stricken because it's not a strengths-based factor and because it's already covered under subitems (1) to (5).

Subpart 7, item J, is rewritten for clarity.

Subpart 9 strikes language requiring a clinical supervisor to meet with the treatment team to discuss the intake assessment report. *Treatment team* is a defined term that is being repealed, and this meeting may not be necessary for every client. Because a licensed professional must approve the assessment report, the licensed professional doesn't need to know whether treatment staff met to discuss the report. Accordingly, this is an unnecessary provision that can be stricken (the first sentence of subpart 10 is stricken as a conforming change).

Subpart 9 also makes conforming changes made in subpart 6 that differentiate between adults and juveniles in the criminal-justice system.

Subpart 10, item D, replaces a vague "inappropriate" with a clearer standard that more accurately reflects how treatment staff determine whether to admit a person into the treatment program. This item also strikes language on a client's treatment goals because this information is in a client's treatment plan.

6. Subpart 11 (client review and input).

This new subpart is needed to provide clients the opportunity to review their assessment report. Clients should be afforded this opportunity because the assessment report will guide their treatment and, for most clients, subsequent ability to successfully reenter the community. The client, however, is only verifying that the source information is correct, and the client or a treatment staff member cannot override any of the report's conclusions or recommendations.

Pretreatment (2955.0105)

"Those convicted of sex offenses have one of the lowest same-crime recidivism rates across all offender categories."[65]

This part contains the minimum standards of practice for the pretreatment phase of programming, which is used only by the department's adult programs. The department's adult programs use pretreatment for several reasons:

- **Acclimate new clients.** Pretreatment can acclimate incoming clients to the planned therapeutic environment, showing clients that the experience of an incarcerated person in general population differs from one in a therapeutic treatment community and that an individual needs time to learn the expected norms, rules, and expectations of the community as they relate to accountability and other treatment concepts.
- **Change in contemplation.** Pretreatment can help clients move from pre-contemplation to contemplation and preparation stages of change.
- **Program stability and prison constraints.** Pretreatment can provide stability to the living unit and ensure that all individuals living in the community have an identified need for sex-offense-specific treatment.

  Pretreatment is also needed because of constraints unique to state correctional facilities. For example, department facilities frequently face issues with managing bedspace, putting pressure on treatment programs to ensure that their beds are filled.[66] If programs are unable to fill treatment beds with clients who have been assessed and found to need sex-offense-specific treatment, the facility's capacity manager may direct the beds to be filled by any individual, regardless of whether the individual has a need for sex-offense-specific treatment. This is problematic because filling beds with individuals without a need for treatment may cause instability in the treatment unit and disrupt treatment for clients.

  To prevent this disruption, pretreatment provides a program the flexibility to keep a stable therapeutic community when facing department staffing issues

[65] Janus, *Sex Offense Civil Commitment*, 8.
[66] *See, e.g.,* Legislative Auditor, *Evaluation Report: Community Supervision of Sex Offenders*, 77.

among correctional officers. If there are not enough staff to provide full-time active treatment to all residents housed in a treatment unit, a program will need to allocate some beds to pretreatment status.

The need for pretreatment standards in rule was best summarized in the 2005 OLA audit on community supervision of those who engage in sexually abusive or harmful behavior:

> We think that the Legislature and DOC *should consider ways to ensure that more sex offenders participate in treatment while in prison*. We recognize that there are various challenges to increasing participation levels, including funding constraints, the short incarceration periods of some inmates, and the refusal of some inmates to follow DOC's treatment directives. However, prison-based treatment is important because releasing untreated sex offenders from prison can jeopardize public safety and shift cost burdens to the agencies that assume responsibility for their supervision in the community. Even if inmates will need to continue treatment following their release to the community, we think it makes sense to engage them in treatment while still in prison.[67]

1. Subpart 1 (definition).

This definition is needed to differentiate between clients admitted into a treatment program and clients in pretreatment.

2. Subpart 2 (policy and procedure).

This subpart allows an adult treatment program to use pretreatment; both department adult programs already use pretreatment, but the rule contains no standards on pretreatment, including on the program's policy and procedure. This proposed language is needed and reasonable to ensure accountability and to allow department inspectors to inspect for compliance.

3. Subpart 3 (pretreatment services).

This subpart requires a treatment program's policy and procedure to further describe what constitutes pretreatment and how treatment staff will assess for and provide pretreatment services. This is also needed to hold programs accountable and to ensure public transparency on what pretreatment services are being provided.

[67] *Id.* (emphasis added).

4. Subpart 4 (pretreatment standards).

Like with subparts 2 and 3, this subpart is needed to ensure that pretreatment is being appropriately and transparently provided. This subpart emphasizes how clients assessed as having a need for full-time treatment should transition from pretreatment as soon as a facility's bedspace or staffing resources allow. Subpart 6 further prescribes when this transition must occur.

The department also finds it necessary to require treatment staff to review a client's progress in pretreatment—this is similar to how a client's progress in full-time treatment is reviewed weekly and quarterly. Because pretreatment is less extensive as full-time treatment, 14 calendar days was determined reasonable (as compared to weekly reviews for clients in full-time treatment).

5. Subpart 5 (client expectations; removing client from pretreatment).

To ensure clients can acclimate to treatment, the proposed minimum expectations for clients are needed and reasonable. By following these expectations, clients can more effectively and smoothly transition to full-time treatment.

The department also proposes when a client must be removed from pretreatment. These conditions are needed and reasonable to protect all clients and facility staff, in addition to ensuring that both clients in pretreatment and full-time treatment can receive their treatment without being disrupted. These conditions are also consistent with the department's policy on sex-offense-specific treatment.[68]

6. Subpart 6 (transitioning to full-time treatment).

As the department has discussed, pretreatment is needed to acclimate new clients to treatment, for a program's stability, and because of prison constraints. This subpart further prescribes when clients must transition to full-time treatment.

7. Subpart 7 (documentation).

The proposed documentation requirements are needed to ensure a client's quality of care in pretreatment and that their transition is documented—this is

[68] DOC Policy 204.050.

important because of rule deadlines prescribing when treatment staff must complete intake assessments and treatment plans.

Individual Treatment Plans (2955.0110)

Treatment staff will use a client's assessment results to develop the client's individual treatment plan.

> *"The type of therapeutic modalities (e.g., individual, group, couple, family therapy) and intensity of service delivery (e.g., type and number of modalities, frequency of therapeutic contact, duration of participation in the treatment) should be matched to each client's individual risk, needs, and responsivity factors."*[69]

1. Subpart 1 (initial treatment plan).

This subpart is structured into items and vertical lists, with conforming changes made. Current rule requires a treatment plan to be developed within 30 days of the client's admission into the program, and the department clarifies—under this part—that this should be within 30 *business* days. This change aligns with the one made for intake assessments and gives programs more time to complete individualized treatment plans for clients.

Vague phrases such as "appropriate" are clarified, and item B is separated into two sentences.

Item D ensures that licensed treatment staff are developing a client's treatment plan or, if unlicensed, are supervised by a licensed staff member. This amendment more clearly explains what the department means by "qualified."

2. Subpart 2 (explaining treatment plan).

This subpart adds items for structure and requires a treatment plan to be explained to a client in a language or manner that they can understand. This requirement is consistent with statutory requirements on accessibility for both nonnative-English speakers and people with disabilities.[70]

Changes in item B clarify that a client's treatment plan must document the clinical and adjunctive services that the client is receiving.

[69] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 50.
[70] *See, e.g.,* Minn. Stat. § 241.021, subd. 4e.

3. Subpart 3 (plan contents).

This subpart clarifies vague and outdated language such as “other problem areas.”

Item C clarifies that a treatment plan shouldn’t be limited to considering only psychological and psychiatric disorders and should also consider a client’s broader mental-health concerns and how they may affect a client’s ability to understand and participate in treatment.

Item F on the estimated length of treatment is stricken as a treatment-plan requirement because treatment staff may find it difficult to accurately estimate this for clients and because of the individualized nature of treatment for each client, which may change while they receive treatment. In the department’s programs, staffing shortages or lockdowns are unpredictable and may also affect the length of treatment.

Client Progress in Treatment (2955.0120)

Clinical standards prescribe that a treatment program should regularly review and assess a client's progress in treatment. By reviewing a client's progress in treatment, treatment staff can modify a client's treatment plan, approve the client's movement in the program, and otherwise ensure that the client is receiving appropriate treatment.

1. Subpart 1 (weekly progress notes).

This subpart is rewritten for clarity and to better state that weekly progress notes should reflect the observations of treatment staff. The subpart also clarifies that a counselor should write the progress notes.

2. Subpart 1a (quarterly review).

This subpart restructures subpart 1 into two subparts, with subpart 1a detailing the quarterly review. This subpart is also structured into items and subitems for readability. The lone substantive change is to allow treatment staff ten more days to document a quarterly review.

Depending on the program and how the program structures quarterly reviews, quarterly reviews are time-consuming: a counselor must write reports, the reports must be reviewed by the clinical supervisor, and the counselor must then make any needed changes. Accordingly, this ten-day increase is needed because:

a) of the amount of writing and editing that is involved in quarterly reviews;

b) in many cases, counselors are providing full-time treatment in addition to writing reports; and

c) counselors must comply with the regular weekly documentation standards in addition to any needed edits to their quarterly reviews.

3. Subpart 2 (review session).

The substantive requirements of this subpart are moved to subparts 3 and 4. The new language allows for a review session to occur at any time; this flexibility is needed and reasonable to allow clients and treatment staff the opportunity to review a client's progress in treatment between the quarterly review sessions.

4. Subpart 3 (quarterly review session with family or legal guardian).

This subpart contains language moved from subpart 2 and applies to juvenile treatment programs only. While an adult program may involve family members in

a quarterly review, this practice isn't required because adult clients can consent to their own treatment.

Item B, subitem (3), adds a new requirement that the client's supervising agent or family be given a written summary of the client's quarterly review. This is needed to allow these individuals to be apprised of a client's progress in treatment.

Because "sexually abusive behavior within a family can create complex family dynamics,"[71] item C allows treatment staff to prohibit a client's supervising agent or family from a review session for a health or safety reason or if their involvement would otherwise hinder a client's progress in treatment. For example, there may be documented evidence of abuse or neglect, and a client is likely to be verbally or emotionally abused if a family member or guardian is invited into the review process. Or the client may be triggered by their supervising agent such that the resulting psychological distress from having the agent participate would be contraindicated.

Treatment staff should make decisions under this subpart on a case-by-case basis because while family shouldn't be involved in some cases, in other instances family involvement may be appropriate. Accordingly, treatment staff will need to rely on empirically informed practices to determine what is best for the client's treatment.

5. Subpart 4 (documentation).

This subpart includes a documentation requirement moved from subpart 2, and item B is needed to reflect new changes under subpart 3.

[71] Association for the Treatment and Prevention of Sexual Abuse, *Best Practice Guidelines*, 91-92.

Aftercare (2955.0125)

"Treatment effectiveness is bolstered when there is the capacity to offer a coordinated continuum of care and ideally continuity of care."[72]

The department proposes adding this part to clarify practices around aftercare. Aftercare can help ensure a client's continuity of care upon completing treatment but before returning to the community. For example, the department's adult programs allow clients to continue to participate in group meetings with other clients and to provide mentoring. This mentoring helps both the client and other clients in treatment.

1. Subpart 1 (policy and procedure).

This subpart allows a program to provide aftercare to clients—all certified programs currently provide aftercare, but the rule lacks any standards or requirements. Accordingly, the department finds it needed and reasonable to require treatment programs to develop a written policy and procedure on aftercare (if provided). This policy-and-procedure requirement is consistent with current rule requirements.

2. Subpart 2 (aftercare services).

This subpart requires a program to detail the aftercare that it will provide—this will allow department inspectors to inspect for compliance and will form the foundation of the program's policy and procedure.

If a client chooses to receive aftercare, the department proposes that the client should receive aftercare at least twice a calendar month. This requirement reflects how treatment programs structure weekly and group meetings; calendar month is used to provide flexibility for the department's prison programs. For example, a client in a prison may be on a restrictive security status and thus may not receive aftercare. In these instances, the department finds it unreasonable to penalize a treatment program for security protocols outside of the program's control.

[72] *Id.*, 68.

3. Subpart 3 (documentation).

This subpart establishes a needed documentation requirement for any aftercare that a client receives—this language is consistent with the existing rule and proposed amendments.

Discharge Reporting (2955.0130)

This subpart contains requirements on a client's discharge summary for their treatment. While aftercare is important for continuity of care, equally important is a well-developed discharge summary. A discharge summary is needed so that a client can continue their treatment gains once they return to the community.

A discharge summary is provided to a client's supervising agent, and depending on the program or the client, the discharge summary may be sent to the client's outpatient treatment program.

1. Subpart 1 (notification).

Plain-language and technical changes are made in this subpart. The vague "when applicable" is stricken because this requirement applies to only juvenile clients and adults in community-based residential facilities. The requirement doesn't apply to adults in state correctional facilities because a client could complete their treatment a couple of years before they are released and the client's supervising agent—who isn't assigned until a client is closer to release—would have no need to know a client's discharge plan years before the client's release.

In both this subpart and subpart 2, the department clarifies that a treatment program should complete a discharge summary even if a client leaves the program or can no longer participate in treatment. For example, a client in an adult community-based residential facility could reoffend or violate the client's conditions of release. In these cases, the department believes it is needed and reasonable for the treatment program to still notify the client's supervising agent and to prepare a discharge summary, which could help inform the client's future treatment.

2. Subpart 2 (discharge summary).

The department is amending the timeline to complete a discharge summary from 14 days to 20 business days to provide programs more time to write a summary—depending on the client, discharge summaries can be lengthy. This change is consistent with other proposed requirements that grant programs flexibility and preclude the need for variance requests.

The department is also striking language that requires a discharge summary to be written upon request of an "interested party" because treatment programs only write a discharge summary when a client is discharged from the program.

3. Subpart 3 (discharge content).

This subpart makes technical and conforming changes. Obsolete references to a "reoffense prevention plan" are replaced with current program practices on how clients develop plans for maintaining their treatment gains after their release from the facility.

Program and Treatment Standards (2955.0140 to 2955.0150)

1. 2955.0140 (program standards).

This part establishes a treatment program's policies and procedures, including its basic treatment protocol and how the program will manage its planned therapeutic environment. Except as otherwise noted, minor technical, conforming, and plain-language changes are made in this part.

New language under subpart 3 is added; this substantive language is moved from the definition of *basic treatment protocol*. Some of this language has been amended to better detail the focus of treatment. For example, the substantive changes:

a) provide clearer understanding of how sex-offense-specific treatment is separate from and different than other types of behavioral-health treatment; and

b) clarifies elements of sex-offense-treatment that are effective to reducing a client's risk to engage in future sexually abusive or harmful behaviors based on additional information that has emerged in the field since the rule was first adopted.

Under subpart 4, item B, the department makes conforming changes to part 2955.0130, subpart 3, by removing references to a "reoffense prevention plan."

2. 2955.0150 (treatment standards).

The department proposes several substantive revisions to this part.

2.1. Subpart 1 (amount of treatment).

> *"Men who have committed sexually abusive behaviors are a heterogeneous population and will present with a myriad of issues and treatment needs despite the common denominator of having sexual behavior problems."*[73]

Current rule requires that each client receive at least 12 hours of weekly treatment, but the department couldn't find any comparative standard from

[73] *Id.*, 45.

Direct Care and Treatment, other states, or ATSA. After much discussion, the department and the advisory committee found that this requirement was obsolete and potentially harmful to clients.

Additionally, the literature on sex-offense-specific treatment doesn't uniformly lean toward a certain number of treatment hours. This is because each client is different, with different treatment needs:

> . . . generally, those at high risk and having high needs should be allocated to higher intensity programs, whereas those with moderate risk and needs should receive moderate intensity treatment, and those with low risk and needs should enter a low-intensity program.[74]

Requiring a set number of treatment hours for all clients can result in over- or underdosage, which can harm a client's progress in treatment and subsequent ability to continue their treatment in the community.

The 12-hour requirement can also be difficult for correctional facilities, especially department facilities because of security and staffing concerns associated with prisons, all of which are outside of a program's control.

Overall, the department and advisory committee find that clients should receive individualized treatment, not an arbitrary number of treatment hours that the department can no longer justify or that is no longer empirically supported.[75]

2.2. Subpart 3 (clinical case management).

This subpart makes technical and clarifying changes.

2.3. Subpart 4 (service quality).

This subpart on service quality is repealed because it's superfluous and confusing. The department and advisory committee don't know what "quality standards" are or what constitutes "current norms for quality of a service in Minnesota." Rule already requires clients to receive treatment according to their treatment plan, and this can't happen without providing services in line with

[74] Andrew Day et al., "The Intensity and Timing of Sex Offender Treatment," *Sexual Abuse* 31, no. 4 (2019): 400-01.

[75] *See id.* at 404: . . . "it is evident from this review that drawing firm conclusions about best practice in this area continues to be premature, primarily because of the limited knowledge that currently exists about treatment effectiveness and those factors that are associated with treatment outcome."

national best practices in sex-offense-specific treatment. Because the rule already establishes these best practices, this subpart is unnecessary.

2.4. Subpart 5 (therapy and psychoeducation groups).

This subpart is structured into items. Because the department is combining adult and juvenile requirements, the department must establish the separate psychoeducation ratios for juvenile and adult programs. The 1:20 ratio for adults is the current standard in the adult certification rule,[76] and the department and advisory committee determined that no change was needed to this ratio.

2.5. Subpart 6 (service monitoring).

This subpart is repealed because it contains superfluous standards on treatment services and delegates the department's enforcement authority to treatment programs. For example, the subpart requires a treatment program to monitor any treatment services provided by a contracted provider. But a treatment program must already monitor compliance with the rule chapter, and this requirement applies regardless of who is providing clinical services.

Additionally, the subpart allows a treatment program to take corrective action if the program finds a contracted provider out of compliance with the rule. This delegation of authority is unreasonable, and the department inspects for compliance during its annual or biennial reviews or after receiving a complaint. Repealing this subpart is both needed and reasonable.

2.6. Subpart 7 (treatment length).

This subpart is structured into items and a vertical list for readability. Statute already establishes that the minimum length of treatment is four months, so there is no need to repeat this in rule. The department also strikes language on treatment in a nonresidential setting. The department finds this requirement confusing and unenforceable because the department's statutory authority for certifying treatment programs is for correctional facilities, and correctional facilities must have a residential component.[77]

The department is unaware of any currently certified programs that allow their clients to receive treatment in a nonresidential setting. This treatment would be provided by outpatient programs, which aren't subject to this rule chapter.

[76] *See* Minn. R. 2965.0150, subp. 5.
[77] *See* Minn. Stat. § 241.021, subd. 1i.

2.7. Subpart 8 (treatment and residential services in separate locations).

This subpart moves language from part 2955.0020, subpart 23—this is a substantive requirement on providing treatment and residential services in separate locations that doesn't belong in a definition. For the department's correctional facilities in Rush City and Lino Lakes, clients live in one building but receive most of their treatment in another building.

Special Assessment and Treatment Procedures (2955.0160)

This part governs special assessment and treatment procedures that a treatment program may use. Together with other proposed other amendments such as requiring treatment programs to adhere to ATSA guidelines (*see* part 2955.0020, subpart 29), these changes strive to ensure uniformity among all treatment programs and adherence to best practices for special assessments.

Unless otherwise noted, changes in this part are technical and conforming changes.

1. Subpart 1 (policy).

The department adds language in item C to require a treatment program to list in its policy and procedure any technology that the program may need to conduct a special assessment. This proposed language is needed because the department is repealing subpart 5 that requires a treatment program to contract with a consultant for any needed special-assessment technology. Because a treatment program must comply with subparts 2 and 3 and ATSA guidelines, subpart 5 is superfluous.

2. Subpart 1a (juvenile programs).

When the rules were first adopted, there was little to no guidance on when or how treatment programs should use special assessments for juveniles. But now the evidence is clear that certain special assessments should not be used for juveniles, as explained by ATSA:

> Polygraph and plethysmography are physiological measurements designed for use with adults. Their use was extended to adolescents (and younger children) without establishing the measures' scientific validity and without full consideration of their potential for harm. In particular, no research has subjected either measurement to controlled evaluation with relevant comparison groups such as adolescents who have not offended sexually. There are, therefore, no norms against which to compare measurement results, which severely limits their interpretability. *More generally, neither measurement has been shown to improve treatment outcomes, reduce recidivism, or enhance community safety*. Neither measurement is regularly used outside of the United States. Indeed, some countries have banned the use of one or both measurements with minors.

> Ethical concerns raised for both measurements include the potential for coercion and for engendering fear, shame, and other negative responses in adolescent clients. Further ethical concerns relate to the prospect of basing impactful decisions (including those relevant to such things as legal restrictions and/or family reunification) on the results of measurements that are largely unsupported empirically. Separately, plethysmography involves the ethically concerning practice of exposing adolescents to developmentally inappropriate sexual material. *Without a clearly identified benefit and with a potential for harm, ATSA recommends against using polygraph or plethysmography with adolescents under age 18*. ATSA recommends the use of valid assessment procedures . . .[78]

Given ATSA's guidance, the department believes it needed and reasonable to prohibit special assessments (polygraphs and plethysmography) for juveniles. If ATSA's guidance changes, the rule would then change accordingly. Items B and C reflect standards for special assessments under subparts 2 and 3 that should apply to juveniles if ATSA's guidance changes.

3. Subparts 2 and 3 (special-assessment standards).

Language that incorporates documents by reference is stricken because the department moved this language to its general rule part on incorporations under part 2955.0025. The subpart also strikes duplicative language on using assessments "in a controlled setting" because this requirement is already stated in the definitions for the two assessments.

4. Subpart 4 (interpreting special-assessment data).

This subpart is structured into items and simplifies the language in item A.

[78] Association for the Treatment of Sexual Abusers, *Practice Guidelines for Assessment, Treatment, and Intervention with Adolescents*, 34 (emphasis added).

Quality Improvement (2955.0170)

Treatment programs should continuously seek to improve the quality of the treatment they provide. In contrast to the rest of the rule revision, the department and advisory committee determined that there were no substantive provisions to make to this part—aside from plain-language and conforming changes.

Term Changes, Renumbering, and Repealer

This section describes uncoded changes to the rule draft, with the term changes and renumbering both constituting technical changes. The need and reasonableness for the repealed rule parts and subparts have been explained in the parts that they are repealed in.

1. Term changes.

This instruction states the authority for the revisor's office to editorially change the terms in table 4.

Table 4. Term changes

Existing term	New term	Reason
Case management	Clinical case management	Technical change to reflect treatment staff's responsibility to coordinate treatment services both within and outside the program
Chemical	Substance	Technical change to align with the Diagnostic and Statistical Manual of Mental Disorders
Chemical dependency	Substance use disorder	Technical change to align with the Diagnostic and Statistical Manual of Mental Disorders
Sexual arousal or response	Sexual interest and response	Technical change, as amended in the rule
Sexually abusive or criminal sexual behavior (and variations)	Sexually abusive or harmful behavior or criminal sexual behavior	Conforming change with proposed rule amendments

2. Renumbering.

- **2955.0020:** subparts are renumbered in alphabetical order.
- **2955.0060:** a subpart is renumbered for a more logical progression of requirements.

3. Repealer.

The following parts and subparts are repealed:

- **2955.0010:**
  - Subp. 1: duplicative statutory language
- **2955.0020:**
  - Subp. 17: obsolete provision
  - Subp. 19: unnecessary provision
  - Subp. 20: unnecessary provision
  - Subp. 25: replaced with new standards
  - Subp. 26: replaced with new standard
  - Subp. 27: replaced with new standards
  - Subp. 32: unnecessary provision
- **2955.0030:**
  - Subp. 2: obsolete provision
  - Subp. 3: obsolete provision
- **2955.0040:**
  - Subp. 1: duplicative provision
- **2955.0060:**
  - Subp. 6: replaced with new standards
  - Subp. 7: replaced with new standards
  - Subp. 8: replaced with new standards
- **2955.0090:**
  - Subp. 4: unnecessary provision
  - Subp. 9: obsolete provision
- **2955.0150:**
  - Subp. 4: unnecessary provision
  - Subp. 6: unnecessary provision

- **2955.0160:**
    - Subp. 5: unnecessary provision and replaced with new standards
- All rule parts under chapter 2965: This is needed because the department is combining both the adult and juvenile rule chapters into a single chapter.

Conclusion

In the SONAR, the department has established the need for and the reasonableness of each of the proposed amendments to Minnesota Rules, chapters 2955 and 2965. The department has provided the necessary notice and complied with all applicable APA rulemaking requirements.

Based on the evidence and information in the SONAR, the proposed amendments are both needed and reasonable.

Paul Schnell, Commissioner
Department of Corrections

July 21, 2025