

INFORMATION BRIEF

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Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws

This information brief describes Minnesota laws that apply to sex offenders and predatory offenders. The information brief consists of two parts. The first part summarizes the criminal laws that prohibit unlawful sexual conduct, the criminal penalties that apply to these offenses, and the mandatory sentences that courts must impose on certain offenders. The second part describes the civil and regulatory laws that supplement the criminal provisions. These regulatory laws include the predatory offender registration law, the community notification law, and the law authorizing civil commitment of persons determined to be sexually dangerous.

Contents

Criminal Provisions	2
Civil and Regulatory Provisions	8
Predatory Offender Registration Law	8
Community Notification Law	17
Sexually Dangerous Persons Civil Commitment Law	25
Appendix	29
Elements of First- and Third-Degree Criminal Sexual Conduct Crimes ...	29
Elements of Second-, Fourth-, and Fifth-Degree Criminal Sexual Conduct Crimes	31

Criminal Provisions

The Elements of Criminal Sexual Conduct

Minnesota law classifies criminal sexual conduct into five categories: first- through fifth-degree criminal sexual conduct. Each degree of the crime covers a variety of behavior, with first-degree carrying the most severe penalties and fifth-degree the least severe. Generally speaking, the first-degree and third-degree crimes apply to sexual conduct involving sexual **penetration** of the victim; the second-, fourth-, and fifth-degree crimes apply to sexual conduct involving sexual **contact** with the victim without sexual penetration.

The elements of the criminal sexual conduct crimes also vary with respect to a number of other issues. For example, criminal sexual conduct in the first and second degree typically apply to conduct involving personal injury to the victim; the use or threatened use of force, violence, or a dangerous weapon; or victims who are extremely young. Criminal sexual conduct in the third, fourth, and fifth degree typically address less aggravated conduct and apply to other situations in which the victim either did not consent to the sexual conduct, was relatively young, or was incapable of voluntarily consenting to the sexual conduct due to a particular vulnerability or due to the special relationship between the offender and the victim. [Minn. Stat. §§ 609.342 to 609.3451](#).

The appendix contains detailed charts describing the specific elements of each degree of the criminal sexual conduct crimes.

Penalties for Criminal Sexual Conduct

Criminal sexual conduct in the first, second, third, and fourth degree are felony-level offenses. Criminal sexual conduct in the fifth degree is a gross misdemeanor offense; however, certain repeat violations of this crime are classified as felonies. [Minn. Stat. §§ 609.342 to 609.3451](#).

The chart on the following page displays the maximum statutory penalty for each degree of the crime and the presumptive sentence for each degree of the crime under the sentencing guidelines sex offender grid.

Name of crime	Type of activity	Maximum penalty provided by statute	Presumptive Sentencing Guidelines sentence (no criminal history)
1st degree criminal sexual conduct	Sexual penetration; certain sexual contact with victim under 13 years old	30 years; \$40,000 fine	144 months in prison; Statutory law presumes an executed sentence of 144 months for all violations
2nd degree criminal sexual conduct	Sexual contact	25 years; \$35,000 fine	90 months in prison; 36 months stayed sentence for “statutory rape.”* Statutory law presumes an executed sentence of 90 months for crimes where the perpetrator uses or threatens to use force or violence, causes injury, uses a dangerous weapon, or creates significant fear on the part of the victim of imminent great bodily harm
3rd degree criminal sexual conduct	Sexual penetration	15 years; \$30,000 fine	48 months in prison; 36 months stayed sentence for “statutory rape”*
4th degree criminal sexual conduct	Sexual contact	10 years; \$20,000 fine	24 months stayed sentence; 18 months stayed sentence for “statutory rape”*
5th degree criminal sexual conduct	Sexual contact; certain lewd conduct	One year; \$3,000 fine (gross misdemeanor). Certain repeat violations punishable by 5 years; \$10,000 fine	15 months stayed sentence; Sentencing guidelines do not apply to gross misdemeanor violations
*As used in this chart, “statutory rape” means a criminal sexual conduct crime that has the following elements: (1) sexual conduct; (2) a victim of a certain age; and, for certain crimes, either (3) a familial relationship between the actor and the victim; or (4) use of a position of authority by the actor. The term “statutory rape” is not a term used in statute.			

Mandatory Minimum Criminal Penalties

There are a number of mandatory minimum criminal penalties that apply to certain criminal sexual conduct offenses. These mandatory sentencing provisions are described below.

First-Degree Criminal Sexual Conduct Offenders. The court must presume that an executed sentence of 144 months applies to any offender convicted of first-degree criminal sexual conduct. This penalty does not apply if a longer mandatory minimum sentence is otherwise required or the sentencing guidelines presume a longer executed sentence. If the court sentences an offender in a manner other than as provided by this law, the sentence is a departure under the sentencing guidelines, requiring the court to make certain findings. [Minn. Stat. § 609.342](#), subd. 2.

Certain Second-Degree Criminal Sexual Conduct Offenders. The court must presume that an executed sentence of 90 months applies to any offender convicted of second-degree criminal sexual conduct when the actor:

- uses or threatens use of force or violence,
- causes injury to the complainant,
- uses a dangerous weapon,
- creates significant fear on the part of the complainant of imminent great bodily harm,
- commits the crime with an accomplice, or
- has a significant relationship to complainant under the age of 16.

The presumptive executed sentence does not apply to other second-degree criminal sexual conduct offenses.

This penalty does not apply if a longer mandatory minimum sentence is otherwise required by law or the sentencing guidelines presume a longer executed sentence. If the court sentences an offender in a manner other than as provided by this law, the sentence is a departure under the sentencing guidelines, requiring the court to make certain findings. [Minn. Stat. § 609.343](#), subd. 2.

Sentences for Repeat or Violent Predatory Offenders¹

Life Without Release. The court must impose a **life-without-release** sentence on a person convicted of certain clauses² of first- or second-degree criminal sexual conduct involving force or violence, and either:

- the fact finder (i.e., the judge or jury) determined beyond a reasonable doubt that two or more heinous³ elements exist, or the offender has a previous sex offense for first-, second-, or third-degree criminal sexual conduct and the fact finder determines that a heinous element exists for the present offense. [Minn. Stat. § 609.3455](#), subd. 2.

¹ Portions of this provision were previously found in [Minnesota Statutes 2004, section 609.109](#), which applied to offenses that occurred prior to 2005.

² The clauses include: (1) where circumstances exist that cause the victim to have a reasonable fear of great bodily harm; (2) where the offender is armed with a dangerous weapon; (3) where the offender causes personal injury to the victim under specified conditions; (4) where the offender is aided or abetted by one or more accomplices under specified conditions; or (5) where the offender has a family-type relationship to a victim under 16 and specified conditions exist.

³ A “heinous element” includes: (1) the offender tortured the victim; (2) the offender intentionally inflicted great bodily harm upon the victim; (3) the offender intentionally mutilated the victim; (4) the offender exposed the victim to extreme inhuman conditions; (5) the offender was armed with a dangerous weapon and used or threatened to use it to cause the victim to submit; (6) the offense involved sexual penetration or sexual contact with more than one victim; (7) the offense involved more than one perpetrator engaging in sexual penetration or sexual contact with the victim; or (8) the offender removed the victim from one place to another without his or her consent and did not release the victim in a safe place.

Indeterminate Life Sentence. The court must impose an **indeterminate life sentence** for offenders who are convicted of certain clauses of first- or second-degree criminal sexual conduct (the same clauses referred to above) and the fact finder determines that a heinous element exists. [Minn. Stat. § 609.3455](#), subd. 3.

The court must also impose an **indeterminate life sentence** on offenders who are convicted of first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct if one of the three following conditions exist:

- The offender has two previous sex offense convictions
- The offender has one previous offense conviction and:
 - the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure;
 - the person received an upward durational departure for the previous sex offense conviction or was sentenced under the patterned and predatory sex offender sentencing law for the previous sex offense conviction; or
 - the person was sentenced as a dangerous sex offender or as a patterned and predatory sex offender for the previous sex offense conviction
- The offender has two prior sex offense convictions and the fact finder determines that the prior convictions and present offense involved at least three separate victims; and
 - the fact finder determines that the present offense involved an aggravating factor that would provide grounds for an upward durational departure;
 - the offender received an upward durational departure for one of the prior sex offense convictions or was sentenced under the patterned and predatory offender sentencing law for one of the prior sex offense convictions; or
 - the person was sentenced as a dangerous sex offender or as a patterned and predatory sex offender for the previous sex offense conviction

However, if the present offense is for fourth-degree criminal sexual conduct, then the offender is not typically subject to the indeterminate life sentence. An indeterminate sentence can be imposed if the offender's previous or prior sex offense convictions that are being used to enhance the sentence were for first- through third-degree criminal sexual conduct, criminal sexual predatory conduct, or crimes under any similar United States or state criminal statute. [Minn. Stat. § 609.3455](#), subd. 4.

Certain Engrained Offenders.⁴ The court must sentence an offender to at least **twice the presumptive prison sentence**, and not more than the statutory maximum, if:

- the offender is convicted of committing or attempting to commit first- through fourth-degree criminal sexual conduct or criminal sexual predatory conduct;
- the fact finder determines that the offender is a danger to public safety; and

⁴ Portions of this provision were previously found in [Minnesota Statutes 2004, section 609.108](#). If an offender was convicted as a patterned predatory offender under [Minnesota Statutes 2004, section 609.108](#), for crimes committed before August 1, 2005, then that statute still applies. [Minn. Stat. § 609.3455](#), subd. 9.

- the fact finder determines that the offender’s criminal sexual behavior is so engrained that the risk of reoffending is great without intensive treatment or supervision extending beyond the presumptive term of imprisonment and supervised release.

[Minn. Stat. § 609.3455](#), subd. 3a.

Criminal Sexual Predatory Conduct. A person is guilty of criminal sexual predatory conduct if the crime was motivated by the offender’s sexual impulses or was part of a predatory pattern of behavior that had criminal sexual conduct as its goal. The sentence must be 25 percent longer than for the underlying predatory crime; or 50 percent longer if the offender has a previous sex offense conviction. [Minn. Stat. § 609.3453](#).

Mandatory Minimum Fines for Repeat and Violent Offenders

In addition to the mandatory sentencing provisions, mandatory minimum fines apply to all persons convicted of criminal sexual conduct. These minimum fines are equal to 30 percent of the maximum fine authorized by law for the crime of conviction. The court may not waive the minimum fine, but may reduce it to not less than \$50 or allow payment of the fine in installments due to the offender’s indigency. In cases of indigency, the court also may order an offender to perform community work service in lieu of paying the fine. The court must forward 70 percent of the minimum fine to local programs that serve victims of sexual assault and the remainder to the state general fund. If there are no local programs in the court’s jurisdiction, the entire minimum fine must be forwarded to the state general fund. [Minn. Stat. § 609.101](#).

Other Mandatory Sentencing Provisions

Convicted predatory offenders also are subject to several other mandatory sentencing laws that are designed to minimize their recidivism risk.

Minimum Conditional Release Term. If a court sentences a felony-level sex offender to prison, the court must also sentence the offender to serve a minimum period of “conditional release” after release from prison. All offenders are placed on conditional release for ten years. Offenders who were sentenced to an indeterminate life sentence (discussed above) and certain repeat offenders are placed on conditional release for the remainder of his or her life. The repeat offenders subject to lifetime conditional release are those that are released from prison for first-through fourth-degree criminal sexual conduct or criminal sexual predatory conduct, and the offender had a previous⁵ or prior⁶ sex offense conviction. But if the offender is released from

⁵ A conviction is considered a “previous” sex offense conviction if the offender was convicted and sentenced for a sex offense before the commission of the present offense. [Minn. Stat. § 609.3455](#), subd. 1, para. (f).

⁶ A conviction is considered a “prior” sex offense conviction if the offender was convicted of committing a sex offense before the offender has been convicted of the present offense, regardless of whether the offender was convicted for the first offense before the commission of the present offense, and the convictions involved separate behavioral incidents. [Minn. Stat. § 609.3455](#), subd. 1, para. (g). A “prior” sex offense conviction does not require the sequencing of events that a “previous” sex offense conviction does. Thus, a person who has committed two sex offenses but has not been convicted of either would be considered to have a prior sex offense once the offender has

prison for fourth-degree criminal sexual conduct, the offender will only be placed on lifetime conditional release if the offender's previous or prior sex offense conviction being used as the basis for the lifetime conditional release terms, is for first- through third-degree criminal sexual conduct or criminal sexual predatory conduct. [Minn. Stat. § 609.3455](#), subds. 6 and 7.

Mandatory Predatory Offender Assessment and Treatment. The court must order a predatory offender treatment assessment for any person convicted of criminal sexual conduct (any degree), surreptitious intrusion, obscene phone calls, or indecent exposure. The court may waive the assessment if the offender is eligible for a presumptive prison sentence or has already been assessed.

If the assessment indicates the offender is in need of and amenable to treatment, the court must order the offender to undergo treatment if the court places the offender on probation. [Minn. Stat. § 609.3457](#).

DNA Analysis. The court must order persons convicted of or adjudicated for a sex offense to provide a biological sample for DNA analysis, if the offender has not already done so. This requirement also applies to persons convicted of other violent crimes listed in the law. If an individual was not ordered to provide this specimen at the time of sentencing, the offender must provide the specimen before release. An offender who is incarcerated for any offense and who has a conviction for a prior offense enumerated in the law must provide a specimen before release, even if the offense for which the person is currently serving time is not an offense enumerated in the law. [Minn. Stat. § 609.117](#).

been convicted for the first offense even though the present offense occurred before the actual conviction for the prior offense.

Civil and Regulatory Provisions

Predatory Offender Registration Law

The predatory offender registration law requires registration of individuals who have committed certain crimes under Minnesota law, federal law, or the law of other states. The law also requires registration of certain individuals who have been civilly committed.

Offenders Who Commit Offenses in Minnesota. An adult who is charged with and convicted of, or a juvenile who is petitioned for and adjudicated delinquent for, one of the following offenses or another offense arising out of the same set of circumstances, must register under the law:

- murder while committing or attempting to commit criminal sexual conduct in the first or second degree with force or violence
- kidnapping
- criminal sexual conduct in the first, second, third, and fourth degree and felony criminal sexual conduct in the fifth degree
- criminal sexual predatory conduct
- felony indecent exposure
- false imprisonment of a minor
- soliciting a minor to engage in prostitution
- soliciting a minor to engage in sexual conduct
- using a minor in a sexual performance
- possessing pictorial representations of minors

An adult also must register under the law if sentenced as an engrained sex offender under [Minnesota Statutes, section 609.3455](#), subdivision 3a. [Minn. Stat. § 243.166](#), subd. 1b.

Offenders Who Commit Offenses under United States Law. An adult or juvenile must register if convicted of or adjudicated delinquent for violating a law of the United States similar to any of the above laws. An adult or juvenile also must register if convicted of or adjudicated delinquent for an offense pursuant to court martial for violating a law of the United States, including the Uniform Code of Military Justice, similar to any of the above laws. [Minn. Stat. § 243.166](#), subd. 1b.

Offenders Who Commit Offenses in Other States. A person who was convicted in another state for an offense that would be a violation of one of the above laws if committed in this state must register if the person enters the state to reside, work, or attend school, or enters this state and remains for 14 days or longer.⁷ The person must register in Minnesota if ten years have not

⁷ A “school” is any public or private educational institution, including any secondary school, trade or professional institution, or institution of higher education, that the person is enrolled in on a full-time or part-time basis. “Work” means employment that is full-time or part-time for a period of time exceeding 14 days or for an aggregate period of time exceeding 30 days during any calendar year, whether financially compensated, volunteered, or for the purpose of government or educational benefit.

elapsed since the person was released from confinement or, if the person was not confined, since the person was convicted of the offense-triggering registration. This ten-year limit is not applicable to those subject to a longer registration period under the laws of the other state in which the person has been convicted, or those subject to lifetime registration; these offenders must register for that longer time period or for life regardless of when they were released from confinement or convicted. This requirement also applies to juvenile offenders whose cases are handled in the juvenile justice system. If the offender leaves Minnesota or is no longer working or attending school in Minnesota, the offender is no longer subject to Minnesota's registration law. [Minn. Stat. § 243.166](#), subd. 1b.

Individuals Civilly Committed Regardless of Whether Convicted for an Offense. A person must register under the law if the person was committed as a sexually dangerous person, sexual psychopath, or psychopathic personality under [Minnesota Statutes 1992, section 526.10](#), or a similar law of another state or the United States, regardless of whether the person was convicted for an offense.

A person also must register under the law if:

- the person was charged with or petitioned for a specific offense listed in the predatory offender registration law or the similar law of another state or the United States;
- the person was found not guilty by reason of mental illness or mental deficiency after a trial for the offense, or found guilty but mentally ill after a trial for that offense; and
- the person was committed pursuant to a court commitment order.

[Minn. Stat. § 243.166](#), subd. 1b.

Individuals Who Commit Other Offenses. The predatory offender registration law also applies to certain individuals who commit a crime against the person that may not be included within the scope of the predatory offender registration law. This registration requirement applies if the person is convicted of a crime against the person and:

- the person was previously convicted of or adjudicated delinquent for an offense for which registration is currently required, or a comparable offense in another state, but was not required to register for the offense because the registration requirements did not apply to the person at the time the offense was committed or at the time the person was released from imprisonment; **or**
- the person was previously required to register under the predatory offender registration law and has completed the registration requirements.

[Minn. Stat. § 243.167](#).

A crime against the person is defined to mean certain crimes involving firearms by persons ineligible to possess firearms; first-, second-, and third-degree murder; manslaughter in the first and second degree; first-, second-, third-, fourth-, and fifth-degree (gross misdemeanor and felony) assault; gross misdemeanor and felony domestic assault; domestic abuse by strangulation; use of drugs to facilitate crime; aggravated robbery in the first degree; kidnapping,

false imprisonment; felony fifth-degree criminal sexual conduct; tampering with a witness in the first degree; burglary in the first degree; gross misdemeanor indecent exposure; and any felony-level violation of a crime committed for the benefit of a gang, malicious punishment of a child, or involving stalking or harassment. The definition includes violations of these Minnesota laws and violations of similar laws of other states or the United States. [Minn. Stat. § 243.167](#), subd. 1.

Notifying an Offender of the Obligation to Register

The court must inform a person who is required to register of the duty to register and require the person to read and sign a form stating that the duty of the person to register under this section has been explained. The court also must inform the person that, if the person fails to comply with the registration requirements, information about the offender may be made available to the public through electronic, computerized, or other accessible means. The court lacks authority to modify the person's duty to register. The court must forward the signed predatory offender registration form, the complaint, and sentencing documents to the Bureau of Criminal Apprehension (BCA).

If the court does not notify the person of the registration requirement, the assigned corrections agent shall notify the person of the registration requirements. If the person is required to register following release from civil commitment, the treatment facility shall notify the person of the registration requirements, obtain the required registration information, and forward the information to the BCA. [Minn. Stat. § 243.166](#), subd. 2.

The person's corrections agent, or if the person does not have an assigned corrections agent, the law enforcement authority with jurisdiction in the area of the person's primary address must notify the person of the obligation to register in another state if the person works or attends school there. [Minn. Stat. § 243.166](#), subd. 3.

Information Required at Initial Registration

The initial registration must include a written statement signed by the person giving information required by the BCA, a fingerprint card, and a photograph of the person taken at the time of the person's release from incarceration, or if the person was not incarcerated, at the time the person initially registered. The registration information also must include a written consent form signed by the person allowing a treatment facility or residential housing unit or shelter to release information to law enforcement about the person's admission to, or residence in, such facility. [Minn. Stat. § 243.166](#), subd. 4.

An individual also must provide the following information to the corrections agent or law enforcement authority:

- the person's primary address
- all the person's secondary addresses in Minnesota, including all addresses used for residential or recreational purposes
- the addresses of all Minnesota property owned, leased, or rented by the person

- the addresses of all locations where the person is employed
- the addresses of all schools where the person is enrolled
- the year, model, make, license plate number, and color of all motor vehicles⁸ owned or regularly driven by the person

An individual must notify law enforcement at least five days before living at a new primary address. An individual must report the other information noted above within five days of the time it becomes applicable. The individual must immediately inform law enforcement when any reported information is no longer applicable. There are different registration procedures for persons who lack a primary address (discussed below). [Minn. Stat. § 243.166](#), subds. 3 and 4a.

The registration information for a person who is required to register due to court commitment as a sexually dangerous person or sexual psychopathic personality must also include the person's offense history and documentation of treatment received during the person's confinement. This document is limited to a statement of how far the person progressed in treatment during confinement. [Minn. Stat. § 243.166](#), subd. 4.

Continuing Obligations of the Registration Law

A person must continue to update his or her assigned corrections agent or the law enforcement authority with which he or she currently is registered of changes in primary address and other information required to be provided. This notice must be provided at least five days before the person starts living at the new address.

If the person will be living in a new state and that state has a registration requirement, he or she must also give written notice of the new address to the designated registration agency in the new state.

A person who is required to register because of working or attending school in Minnesota must register with the law enforcement authority that has jurisdiction in the area where the person works or attends school. This registration must occur within five days of beginning employment or school. The person must provide the address of the school or the location where he or she is employed.

A person who is required to register in Minnesota who works or attends school outside of Minnesota must register in the state where he or she works or attends school. [Minn. Stat. § 243.166](#), subd. 3.

The corrections agent or law enforcement authority must require a level III offender to appear at least every six months to be photographed, except during any period where the person to be photographed is incarcerated or receiving treatment in a secure treatment facility. The agent or authority may also require any other person who is required to register to appear for a

⁸ Motor vehicle means "every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires." [Minn. Stat. § 169.011](#), subd. 42. Motor vehicles do not include electric personal assistive mobility devices or vehicles moved solely by human power.

photograph. The agent or agency must forward the photograph to the BCA. [Minn. Stat. § 243.166](#), subd. 4.

Verification of Information

In most cases, the BCA must mail a verification form to the individual's last reported primary address once each year, within 30 days of the anniversary date of the person's initial registration. However, the BCA must send out the form four times per year for those offenders who are required to register due to court commitment as a sexually dangerous person or sexual psychopathic personality and twice per year for level III offenders who are no longer under correctional supervision for a registration offense or failure to register offense. If the individual does not have a primary address, the BCA must send the verification form to the law enforcement authority where the offender most recently reported, and the authority must give the form to him or her at the next weekly meeting and ensure that it is completed, signed, and returned to the BCA.

The verification form must inform the offender that, if the form is not returned as required, information about the offender may be made available to the public. If the person has not signed a consent form for release of information by a treatment facility, such a form must be sent to the offender with the verification form. The person must mail the signed verification form back to the BCA within ten days after receipt of the form, stating on the form his or her current and last address. If applicable, the offender also must sign and return the consent form. If a level III offender fails to return the verification form within ten days, the BCA and local law enforcement authority will immediately investigate the person's location. The BCA must also immediately give notice of the person's violation to the law enforcement authority having jurisdiction over the person's last registered address(es).

Additionally, level II and III offenders who are no longer under correctional supervision for a registration offense, or a failure to register offense, and who reside, work, or attend school in Minnesota, must have an annual in-person contact with a law enforcement authority. The person must report to the authority during the month of their birth date to verify the accuracy of the registration information and to be photographed. [Minn. Stat. § 243.166](#), subd. 4.

Registration for Those Without a Primary Address

If a person leaves a primary address and does not have a new primary address, the person must register with the law enforcement authority that has jurisdiction in the area where the person is staying within 24 hours of the time the person no longer has a primary address. If a person's primary address is a correctional facility, then he or she must register with the law enforcement authority that has jurisdiction where the person will be staying at least three days before he or she is released from the correctional facility.

Each time a person who lacks a primary address moves to a new jurisdiction without acquiring a new primary address, the person must register with the law enforcement authority in the area where the person is staying within 24 hours after entering the jurisdiction.

A person without a primary address must provide law enforcement with the same information as other offenders, but instead of a primary address, the person must describe the location of where he or she is staying with as much specificity as possible.

If a person continues to lack a primary address, the person shall report in-person weekly to the law enforcement authority with jurisdiction in the area where the person is staying. The law enforcement authority may authorize an alternative reporting procedure if it determines that weekly reporting is impractical due to a person's unique circumstances.

If a person continues to lack a primary address and continues to report to the same law enforcement authority, the person must provide the authority with all of the required registration information at least annually, unless the person is required to register due to court commitment as a sexually dangerous person or sexual psychopathic personality, then he or she must report at least once every three months.

If a person fails to report a primary address, then he or she will be considered a person who lacks a primary address, and the person must comply with these requirements. [Minn. Stat. § 243.166](#), subd. 3a.

Registered Offenders in a Health Care Facility

Prior to admission to a health care facility,⁹ a person required to register must inform the health care facility employee processing the admission that he or she is a registered predatory offender. The person also must notify his or her corrections agent, or if the person does not have one, the law enforcement authority with whom the person is currently required to register, that inpatient admission will occur.

When a law enforcement authority or corrections agent receives such notice or otherwise knows that a person required to register is planning to be, or has been, admitted to a health care facility, they must notify the administrator of the facility and deliver a fact sheet to the administrator. The fact sheet must contain the name and physical description of the offender, the offender's conviction history (including dates of conviction), the risk-level classification assigned to the offender, and the profile of likely victims.

If a health care facility, other than a hospital, receives a fact sheet that includes a risk classification for the offender, and the facility admits the offender, then the facility must distribute the fact sheet to all residents at the facility. If the facility determines that distribution to a resident is not appropriate given the resident's medical, emotional, or mental status, the

⁹ A "health care facility" is a facility licensed by the commissioner of health as a hospital, boarding care home, supervised living facility, or nursing home; or a facility licensed by the commissioner of human services as a residential facility to provide adult foster care, adult mental health treatment, chemical dependency treatment to adults, or residential services to persons with developmental disabilities; or a facility registered as a housing with services establishment. [Minn. Stat. § 243.166](#), subd. 4b.

facility must distribute the fact sheet to the patient's next of kin or emergency contact. [Minn. Stat. § 243.166](#), subd. 4b.

Registration Information Sharing Among Law Enforcement and Correctional Agencies

A corrections agent or law enforcement authority receiving the initial registration documents must forward the registration information to the BCA. The BCA must then determine whether the person has registered with the law enforcement authority in the area of the person's primary address, or if the person lacks a primary address, where the person is staying. If the person has not registered, the BCA must send a copy of the registration to the law enforcement agency. [Minn. Stat. § 243.166](#), subd. 4, para. (c).

A corrections agent or law enforcement authority receiving written notification of a new living address must forward this information to the BCA within two business days after receipt of the information. The BCA must, if it has not already been done, give the new address to the law enforcement authority with primary jurisdiction in the community where the person will reside. If the person is leaving the state, the BCA must notify the registration authority in the new state of the new address. [Minn. Stat. § 243.166](#), subd. 3.

In addition, the BCA must maintain a computerized data system of individuals who are required to register. This data system must indicate the time period an offender is required to register and list the offender's addresses. The information must be maintained in a manner that ensures it is readily available to law enforcement. [Minn. Stat. § 299C.093](#).

The Registration Period

A person must register with the person's corrections agent as soon as the agent is assigned to him or her, which occurs upon release from incarceration, or if the person is not incarcerated, at the time he or she is placed on some form of release. If the offender does not have an assigned corrections agent or is unable to locate the assigned corrections agent, the offender must register with the law enforcement authority that has jurisdiction in the area of the offender's primary address. [Minn. Stat. § 243.166](#), subd. 3.

Except for those persons subject to lifetime registration (discussed below), a person who is required to register is subject to the law for ten years from the time he or she initially registered in connection with the offense, or until the probation, supervised release, or conditional release period expires, **whichever occurs later**. For individuals who have been civilly committed, the ten-year registration period does not include the period of commitment. The commissioner may add five years to the end of an offender's registration period if he or she:

- fails to register a change in primary address;
- fails to register with the local law enforcement authority when the person has no primary address;

- fails to notify authority of any other change in registered information; or
- fails to return the verification form sent by the BCA within ten days.

In addition, a new ten-year registration period applies to a person subsequently incarcerated following a conviction for a new offense or following a revocation of supervised release, conditional release, or probation for any offense. These individuals must continue to register until ten years have elapsed since they were last released from incarceration, or until their probation, supervised release, or conditional release expires, whichever occurs later. [Minn. Stat. § 243.166](#), subd. 6.

Individuals Subject to Lifetime Registration

Lifetime registration is required for three categories of individuals.

- **Recidivists.** This category includes a person convicted of or adjudicated delinquent for any offense for which registration is required who has a prior conviction or adjudication for an offense where registration was or would have been required under the law. For the purpose of determining whether the person is a recidivist, the law includes an offense of another state or a federal offense similar to the offenses for which registration is required under Minnesota law.
- **Individuals Who Commit Aggravated Offenses.** This category includes a person who commits a sexual act, including, but not limited to penetration, with a victim of any age through the use of force or the threat of serious violence and a person who commits a sexual act, including but not limited to penetration, with a victim under the age of 13, regardless of whether the offense is committed under Minnesota law, federal law, or the law of some other state. This registration requirement applies only to adults, juveniles who have been certified as adult, extended jurisdiction juveniles, and juveniles who cause the death of a victim while committing certain criminal sexual conduct offenses.
- **Sexual Predators.** This category includes a person who is required to register following commitment as a sexual psychopathic personality or sexually dangerous person under Minnesota law or a similar law of another state or the United States.

[Minn. Stat. § 243.166](#), subd. 6, para. (d).

Failure to Comply with the Registration Law

In certain circumstances, the BCA may make information public about an offender who is out of compliance with the registration law. The offender must be out of compliance for 30 days or longer for failure to provide his or her primary or secondary addresses. If the offender is 16 years of age or older and out of compliance, information about him or her may be made available to the public through electronic, computerized, or other accessible means. The amount and type of information disclosed is limited to the information necessary for the public to assist law enforcement in locating the offender. The BCA is immune from criminal or civil liability based

upon the accuracy or completeness of any information made public, if the BCA acts in good faith.

An offender who comes into compliance with the registration law after the BCA discloses information about him or her may send a written request to the BCA to request that the information be treated as private data. The BCA must review the request and respond. An offender also may challenge the accuracy or completeness of the data. [Minn. Stat. § 243.166](#), subd. 7a.

A person who knowingly violates any of the provisions of the registration law or who intentionally provides false information to a corrections agent, law enforcement authority, or the BCA is guilty of a five-year felony. The court must commit the person to the Commissioner of Corrections for not less than one year and one day for a first offense and not less than two years for a subsequent offense. A prosecutor may move to have the person sentenced without regard to the mandatory minimum. The court may sentence the person without regard to the mandatory minimum on the prosecutor's motion or the court's own motion, but such a sentence is a departure from the sentencing guidelines. [Minn. Stat. § 243.166](#), subd. 5.

Registration Requirements for Predatory Offenders from Other States

An offender who is on probation or parole in another state and who enters the state under a reciprocal agreement under the interstate compact for the supervision of parolees and probationers may enter the state only on the condition that the offender agrees to register under the law while living in Minnesota.

Additionally, the BCA must notify the Commissioner of Corrections:

- (1) when the bureau receives notice from local law enforcement authority that an offender from another state has registered with the authority;
- (2) when a registration authority, corrections agent, or law enforcement agency in another state notifies the bureau that an offender from another state is moving to Minnesota; and
- (3) when the bureau learns that a person from another state is in Minnesota and allegedly in violation of the law for failure to register.

When the BCA learns that an offender from another state intends to move to Minnesota, or has already moved to Minnesota, the bureau must notify the law enforcement authority with jurisdiction in the area of the person's primary address and provide the authority with all available information concerning the person. [Minn. Stat. § 243.166](#), subd. 9.

Data Classification

In general, information obtained through the registration requirements of this section is private data, which means the data are not public, but are accessible to the subject of the data. Exceptions exist for disclosure of data on certain individuals who are out of compliance with the

registration law, for community notification purposes, and for the purpose of the BCA's maintenance of a database of registered predatory offenders. [Minn. Stat. §§ 13.02](#), subd. 12; [243.166](#), subd. 7. The information may be used only for law enforcement purposes, and information on adults and juveniles may be maintained together. [Minn. Stat. § 243.166](#), subd. 4.

Community Notification Law

All predatory offenders are subject to the community notification law. A predatory offender is a person who is required to register under the predatory offender registration law, except for those individuals who are required to register based solely on delinquency adjudications. [Minn. Stat. § 244.052](#), subd. 1, cl. (5).

The End-of-Confinement Review Committee

An end-of-confinement review committee is responsible for determining an offender's risk level, which in turn determines the level of community notification that will occur. The end-of-confinement review committee is a standing committee at each state correctional facility and at each state treatment facility where predatory offenders are confined. The committee is appointed by the Commissioner of Corrections or Human Services, as appropriate, and consists of the following:

- the chief executive officer or head of the correctional or treatment facility where the offender is currently confined, or the person's designee
- a law enforcement officer
- a treatment professional who is trained in the assessment of predatory offenders
- a caseworker experienced in supervising predatory offenders
- a victim services professional

These committee members serve two-year terms. The chief executive officer or head of the facility or designee acts as chair of the committee. [Minn. Stat. § 244.052](#), subd. 3.

In most cases, the Commissioner of Corrections must convene the end-of-confinement review committee at least 90 days before a predatory offender is released from confinement. However, there are three exceptions:

- (1) If the offender is received for confinement with fewer than 90 days remaining in his or her sentence, the offender's risk is assessed at the first regularly scheduled end-of-confinement review committee that meets after the committee receives the documentation necessary to conduct the risk assessment. The Commissioner of Corrections must make reasonable efforts to ensure that the offender's risk is assessed and a risk level is assigned or reassigned at least 30 days before the offender's release date.
- (2) If the offender is subject to a mandatory life sentence, then the end-of-confinement review committee must meet at least nine months before the offender's minimum term of

imprisonment has been served. If the offender is received for confinement in a facility with less than nine months remaining in his or her sentence, then the committee must follow the procedure described in (1) above, to the extent practicable.

- (3) If the offender is granted supervised release, the offender's previously determined risk level must be reviewed at the next regularly scheduled end-of-confinement review. The Commissioner of Corrections must make reasonable efforts to ensure that the offender's risk level is received and a risk level is either confirmed or reassigned at least 60 days before the offender's release date.

[Minn. Stat. § 244.052](#), subd. 3, para. (d).

The offender receives notice and has a right to appear and present information at the meeting. In addition, the law enforcement agency responsible for the charge resulting in the offender's confinement is notified of the time and place of the meeting. The law enforcement agency may provide written material relevant to the offender's risk level to the chair of the committee. [Minn. Stat. § 244.052](#), subd. 3, para. (d), item (i).

Determining an Offender's Risk Level

The committee assesses the risk posed by an offender who is about to be released from confinement on a case-by-case basis. The committee has access to various data, including medical data, court services data, corrections data, and criminal history data. It considers various risk factors to determine the offender's risk of reoffending. These risk factors include:

- **the seriousness of the offense should the offender reoffend**, including the degree of likely force or harm, the degree of likely physical contact, and the age of the likely victim;
- **the offender's prior offense history**, including the relationship of prior victims to the offender, the number of prior offenses or victims, the duration of the offender's prior offense history, the length of time since his or her last prior offense while he or she was at risk to commit offenses, and the offender's prior history of other antisocial acts;
- **the offender's characteristics**, including response to prior treatment efforts and history of substance abuse;
- **the availability of community support to the offender**, including the availability and likelihood that he or she will be involved in therapeutic treatment, the availability of residential supports, familial and social relationships and the support offered from these relationships, and lack of education or emotional stability;
- **whether the offender has indicated or credible evidence in the record indicates that the offender will reoffend if released into the community**; and
- **whether the offender demonstrates a physical condition that minimizes the risk of reoffense**, including, but not limited to, advanced age or a debilitating illness or physical condition.

[Minn. Stat. § 244.052](#), subd. 3.

A risk assessment scale is used to assign weights to these risk factors and to determine the risk level to which offenders with various risk assessment scores will be assigned. This scale was developed by the Commissioner of Corrections, with input by county attorneys, treatment professionals, law enforcement officials, and probation officers. [Minn. Stat. § 244.052](#), subd. 2.

There are three risk levels, as follows:

- **Level I** offenders have a risk assessment score that indicates a low risk of reoffense.
- **Level II** offenders have a risk assessment score that indicates a moderate risk of reoffense.
- **Level III** offenders have a risk assessment score that indicates a high risk of reoffense.

[Minn. Stat. § 244.052](#), subd. 3.

Community Notification for the Various Risk Levels

The type of community notification that occurs depends on the risk level to which an offender has been assigned. The depth and breadth of the disclosure depends upon the level of danger posed by the offender, his or her pattern of offending behavior, and the need of community members for information to enhance individual and community safety. In making the notification, a law enforcement agency must not disclose the identity or any identifying characteristics of the victims of or witnesses to the offender's offenses.

Notification for the three levels is as follows:

Level I Offenders. The law enforcement agency may maintain information about the offender within the agency and disclose it to other law enforcement agencies. The law enforcement agency also may disclose the information to any victims or witnesses to the offense committed by the offender. The agency must disclose information to victims of the offense who have requested disclosure. The agency also must disclose information to adult members of the offender's immediate household. [Minn. Stat. § 244.052](#), subsd. 1 and 4.

Level II Offenders. The law enforcement agency may disclose the same information it may disclose on Level I offenders, and it also may disclose information to agencies and groups the offender is likely to encounter. These agencies and groups include the staff members of public and private educational institutions, day care establishments, and establishments and organizations that primarily serve individuals likely to be victimized by the offender. The purpose of this notification is to secure these institutions and to protect individuals in the care of these institutions while they are on or near the institution's premises. The agency also may disclose information to individuals the agency believes are likely to be victimized by the offender based on the offender's pattern of offending or victim preference. [Minn. Stat. § 244.052](#), subd. 4.

Level III Offenders. The law enforcement agency must disclose the information to the persons and entities who may receive notice about Level I and II offenders. When the entity is one that

primarily educates or serves children, and the offender is participating in programs offered by the facility that require or allow the person to interact with children, then the entity must notify the parents with children at the facility. In addition, the agency must disclose information to other members of the community whom the offender is likely to encounter, unless the agency determines that public safety would be compromised by the disclosure or that a more limited disclosure is necessary to protect the identity of the victim. When a Level III offender moves into a community, law enforcement typically holds a community meeting to provide information about the offender. The offender may not attend the meeting. [Minn. Stat. § 244.052](#), subd. 4.

A law enforcement agency disclosing information to the public about Level III offenders must forward the information disclosed to the Commissioner of Corrections. The Commissioner of Corrections must create and maintain a website to post the information received from the law enforcement agency. This information must be updated in a timely manner to account for address changes. The information must be available during the time the offender is subject to notification as a Level III offender. [Minn. Stat. § 244.052](#), subds. 4 and 4b.

Caveat: A law enforcement agency may not make the disclosures permitted or required for Level II and Level III predatory offenders if the offender is placed or resides in a residential facility. In these cases, notification is delayed until shortly before the offender is released from the residential facility. [Minn. Stat. § 244.052](#), subd. 4.

The Manner of Notification

City councils may adopt policies addressing when information disclosed under the law must be disclosed in languages in addition to English. The policies may designate whether the information shall be disclosed orally, in writing, or both. Policies may provide for different approaches based upon the prevalence of non-English languages in different neighborhoods. [Minn. Stat. § 244.052](#), subd. 4.

A law enforcement agency that discloses information must make a good faith effort to make the notification within 14 days of receiving a confirmed address from the Department of Corrections indicating that the offender will reside at the address listed. [Minn. Stat. § 244.052](#), subd. 4.

The Length of Time a Predatory Offender Is Subject to the Law

The community notification law applies during the entire time an offender is required to register under the predatory offender registration law, including an offender who lacks a primary address. [Minn. Stat. § 244.052](#), subd. 4. (See page 14, “When does the registration period expire?”)

Communicating the Risk Level Determination to the Offender and Law Enforcement

The committee must prepare a risk assessment report which specifies the offender’s risk level and the reasons for the committee’s decision. The committee must give this report to the

offender and to the law enforcement agency where the offender will reside at least 60 days before the offender is released from confinement, except for an offender subject to a mandatory life sentence who has not been granted supervised release. If the offender is subject to a mandatory life sentence and has not yet served the entire minimum term of imprisonment, the report must be given to the offender at least six months before the offender is first eligible for release. If, however, the risk assessment is delayed because the offender was received for confinement with fewer than 90 days remaining on his or her sentence, the report must be given to the offender and law enforcement as soon as it is available. [Minn. Stat. § 244.052](#), subd. 3.

At least 60 days before a predatory offender is released from confinement, the Department of Corrections or the Department of Human Services must give the law enforcement agency that investigated the offender's crime, or where relevant, the law enforcement agency with primary jurisdiction where the offender was committed, all relevant information the departments have on the offender. This information includes information on risk factors in the offender's history.

In addition, within five days after receiving the offender's approved release plan, the appropriate department must give the law enforcement agency with primary jurisdiction where the offender plans to live all relevant information the department has concerning him or her, including information on risk factors in the offender's history. The offender's risk level assignment must also be communicated with this information. If the risk level assignment was delayed because the offender was accepted for confinement with fewer than 90 days remaining on his or her sentence, the appropriate department must communicate this information to the law enforcement agency within five days of the risk level assignment or reassignment. [Minn. Stat. § 244.052](#), subd. 5.

Notification of an Offender's Impending Release

The Commissioner of Corrections must send written notice of the impending release of a predatory offender to the sheriff of the county and the police chief of the city in which the inmate will reside or in which placement will be made in a work release program. This notification must occur at least 60 days before release of the offender. [Minn. Stat. § 244.053](#), subd. 1. The following individuals also must be notified of an offender's impending release:

- the sheriff of the county where the offender was convicted
- the victim of the crime or a deceased victim's next of kin if the victim or next of kin request this notice in writing
- any witnesses who testified against the inmate in any court proceeding, if the witness requests the notice in writing
- any person specified in writing by the prosecuting attorney

The notice sent to the victim or victim's next of kin must inform the person of the right to request and receive additional information about the offender, as authorized by the community notification law. If the victim or witness is under the age of 16, the notice required by this section shall be sent to the parents or legal guardian of the child. [Minn. Stat. § 244.053](#), subsd. 1 and 2.

Reconsideration of the Risk Level Determination

If additional information becomes available, either the law enforcement agency in the area where the offender will reside or the offender's corrections agent may request a reassessment of the risk level. Upon such a request, the commissioner may reconvene the end-of-confinement review committee. In requesting such a reassessment, the law enforcement agency that was responsible for the charge resulting in confinement or the agent shall list the facts and circumstances arising after the committee's determination or the facts and circumstances known to law enforcement or the agent but not considered by the committee. The law enforcement agency must request the reassessment within 30 days of receipt of the report identifying the offender's risk level. A corrections agent, in consultation with the chief law enforcement officer in the area where the offender plans to reside, may request a review of the offender's risk level at any time if substantial evidence (as described by law) exists that the offender's risk level should be reviewed by an end-of-confinement review committee. Upon review of the request, the committee may reassign an offender to a different risk level and, if he or she is assigned to a higher risk level, the offender has the right to seek administrative review of the decision. [Minn. Stat. § 244.052](#), subd. 3.

Recourse for an Offender If He or She Objects to the Risk Level Assessment

At the time the committee provides the offender its risk assessment report, including the risk level to which he or she has been assigned, the committee must inform the offender of the availability of administrative review of its decision. [Minn. Stat. § 244.052](#), subd. 3. The right to administrative review exists for those offenders assigned to risk Level II or III.

An offender must seek review within 14 days of receiving notice of the committee's risk level decision by notifying the chair of the committee. Upon receiving this request, the chair must notify the offender; the victims of the offense who have requested disclosure; the law enforcement agency that investigated the crime or, where relevant, the law enforcement agency having primary jurisdiction where the offender was committed; the law enforcement agency with jurisdiction where the offender expects to reside (if the release plan has been approved by the Department of Corrections); and any other individuals the chair selects.

A request for a review hearing does not interfere with or delay the notification process under the law, unless the administrative law judge orders otherwise for good cause shown.

An offender who requests a hearing must be given a reasonable time to prepare for the hearing. The hearing is conducted by an administrative law judge. The offender bears the burden of proving by a preponderance of the evidence that the risk assessment determination was erroneous. The attorney general or a designee must defend the committee's determination. The offender has the right to be present and be represented by counsel at the hearing, to present evidence, and to call and cross-examine witnesses. The judge may seal any portion of the record of the hearing to the extent necessary to protect the identity of a victim of or witness to the offense.

After the hearing, the administrative law judge must issue a written decision upholding or modifying the review committee's decision. This decision must include the judge's reasons for the decision. The decision may be appealed to the courts through procedures set forth in the Administrative Procedures Act (chapter 14). [Minn. Stat. § 244.052](#), subd. 6.

Requesting a Reassessment of Risk Levels

An offender may ask the committee to reassess his or her risk level after three years have passed since the committee's initial assessment. The offender may renew the request once every two years following subsequent denials. In seeking reassessment, the offender must list the facts and circumstances that demonstrate that he or she no longer poses the same degree of risk to the community. For an offender's request for a risk level reduction to be granted, the offender must demonstrate full compliance with supervised release conditions, completion of required post-release programming, and full compliance with all predatory offender registration requirements. An offender who is incarcerated may not request reassessment of his or her risk level. In addition, an offender's request for a risk level reduction will not be granted if the offender has been convicted of any felony, gross misdemeanor, or misdemeanor offenses subsequent to the initial assignment of risk level. Offenders returned to prison as release violators may not request reassessment of risk level unless substantial evidence determines that the offender's risk to the public has increased. [Minn. Stat. § 244.052](#), subd. 3.

Restrictions on Where Level III Offenders Can Live

The end-of-confinement review committee must determine whether residency restrictions should be included in the conditions of a Level III offender's release based upon the offender's pattern of offending behavior. [Minn. Stat. § 244.052](#), subd. 3. In addition, the agency responsible for the offender's supervision must take into consideration the proximity of the offender's residence to that of other Level III offenders and to schools when an offender is released from confinement or a residential facility and when the offender changes residence. To the extent feasible, the agency must mitigate the concentration of Level III offenders living in proximity to one another and living near schools. [Minn. Stat. § 244.052](#), subd. 4a.

An owner or property manager of a hotel, motel, lodging establishment, or apartment building may not knowingly rent rooms to both Level III offenders and domestic abuse victims at the same time. This prohibition applies only if the owner or property manager has an agreement with an agency that arranges or provides shelter for domestic abuse victims. If the owner or property manager discovers or is informed that a tenant is a Level III offender, the owner or property manager may evict the offender. [Minn. Stat. § 244.052](#), subd. 4a.

Notification for Offenders Released From a Correctional Facility

The commissioner must establish an end-of-confinement review committee to assign a risk level to offenders who are released from a federal correctional facility in Minnesota or from another

state's facility when the offender intends to reside in Minnesota. The committee must make reasonable efforts to apply the same timelines to these cases that apply to Minnesota cases. [Minn. Stat. § 244.052](#), subd. 3a.

Notification for Offenders Who Enter Minnesota From Another State

The community notification law applies to offenders who are accepted from another state under a reciprocal agreement for supervision under the interstate compact. These offenders are assigned a risk level based on their out-of-state risk level assignment. However, if the commissioner concludes that the offender is from a state with a risk level assessment law that is not comparable to the Minnesota system, the extent of the notification may not exceed that of a risk level II offender.¹⁰ The probation or court services officer who is assigned to supervise the offender must provide written information of the terms and conditions of the offender's probation to:

- the victim of and any witnesses to the offense committed by the offender, if the victim or witness request this disclosure; and
- the chief law enforcement officer in the area where the offender resides or intends to reside.

The law enforcement officer, in consultation with the offender's probation officer, may provide all or part of this information to certain agencies or groups the offender is likely to encounter. These agencies and groups include public and private educational institutions, day care establishments, and establishments or organizations that primarily serve individuals likely to be victimized by the offender. The officer may also disclose information to individuals the officer believes are likely to be victimized by the offender based on the offender's pattern of offending or victim preference. This notice requirement does not apply while the offender resides in a residential facility with staff trained in the supervision of predatory offenders. [Minn. Stat. §§ 244.052](#), subd. 3a; [244.10](#), subd. 8.

Offenders Subject to Community Notification But Not Assigned a Risk Level

If a local law enforcement agency learns that a person subject to the community notification law is living in Minnesota but has not been assigned a risk level, the law enforcement agency must provide that information to the BCA and the Commissioner of Corrections within three business days. If the information is reliable and the law enforcement agency so requests, the commissioner must determine if the person was assigned a risk level under a comparable law from a different state.

If the commissioner determines that the law is comparable and public safety warrants, then within three days of receiving the request, the commissioner must notify the local agency that it

¹⁰ The local law enforcement agency may request that the end-of-confinement review committee perform a risk level assessment if the agency believes level III level notification is warranted. [Minn. Stat. § 244.052](#), para. (f).

may, in consultation with the department, notify the community based on the person's out-of-state risk level.

If the commissioner determines that the out-of-state risk assessment law is not comparable, then the extent of the notification may not exceed that of a risk level II offender. If the local agency wants to make a broader disclosure, then the agency must request that an end-of-confinement review committee assign a risk level to the offender. The agency must provide the committee all information about the offender's criminal history, the risk the offender poses to the community, and other relevant information. The committee must then promptly assign a risk level. [Minn. Stat. § 244.052](#), subd. 3a.

Civil and Criminal Liability for Disclosing or Failing to Disclose Information

A state or local agency or official, or a private organization or individual authorized to act on behalf of a state or local agency or official, is not civilly or criminally liable for *failing* to disclose information as permitted by the community notification law. In addition, these individuals and entities are not civilly or criminally liable for *disclosing* information as permitted by the community notification law, if the information disclosed is consistent with the offender's conviction history. Immunity does not apply to disclosure of information relating to conduct for which the offender was not convicted. [Minn. Stat. § 244.052](#), subd. 7.

Sexually Dangerous Persons Civil Commitment Law¹¹

Any person who has been determined by a court to be a "sexually dangerous person"¹² may be involuntarily committed under this law. [Minn. Stat. § 253B.185](#).

The Definition of a Sexually Dangerous Person

There are three elements to the definition of "sexually dangerous person."

- First, it must be demonstrated that the person has engaged in a course of "harmful sexual conduct" in the past. Sexual conduct is "harmful" if it creates a substantial likelihood of causing serious physical or emotional harm to another person. Certain crimes are presumed to cause such harm, unless proven otherwise in a particular case. For example, felony-level criminal sexual conduct crimes are presumed to qualify as "harmful sexual

¹¹ Minnesota law contains a second civil commitment law applicable to sexually dangerous persons, known as the "psychopathic personality" commitment law. It was enacted in the 1930s and has been replaced, from a practical standpoint, by the sexually dangerous persons civil commitment law. It remains on the books, however, because there are individuals in state treatment facilities who were originally committed pursuant to the older law and remain subject to that commitment. [Minn. Stat. 1992, § 526.10](#).

¹² [Minnesota Statutes, section 253B.185](#), also mentions "persons with a sexual psychopathic personality" as being subject to these provisions, but for the purposes of this summary, "sexually dangerous persons" will be the focus.

conduct.” Additionally, a number of other violent crimes are presumed to be “harmful sexual conduct” when they are motivated by the person’s sexual impulses or are part of a pattern of behavior that has criminal sexual conduct as its goal. These crimes include murder, manslaughter, felony-level assault, robbery, kidnapping, false imprisonment, incest, witness tampering, arson, first-degree burglary of a dwelling, terroristic threats, and felony-level harassment and stalking.

- Second, it must be shown that the person has manifested a sexual, personality, or other mental disorder or dysfunction.
- Third, it must be proven that, as a result of this mental disorder or dysfunction, the person is likely to engage in future acts of harmful sexual conduct.

The law does not require proof that the person is **unable** to control his or her sexual impulses; rather, it is enough to establish the likelihood of future harmful sexual conduct due to the person’s mental disorder or dysfunction. [Minn. Stat. § 253B.02](#), subds. 7a and 18c.

Prior Criminal Convictions

Prior criminal convictions are not required in order to civilly commit a person under this law. However, the standard of proof required for involuntary commitment under this law is a stringent one (clear and convincing evidence) and may be difficult to meet, absent the type of strong proof of prior harmful sexual conduct that a prior conviction would provide. [Minn. Stat. §§ 253B.02](#), subd. 18c; [253B.18](#), subd. 1; and [253B.185](#).

Preliminary Determinations When a Sex Offender Is Convicted or Sent to Prison

Minnesota law requires that when a court sentences a person for a felony-level criminal sexual conduct crime, the court must make a preliminary determination as to whether the civil commitment of the person as a sexually dangerous person would be appropriate and must include this determination in its sentencing order. If the court determines that such a petition would be appropriate, it must forward its preliminary determination and any supporting documentation to the county attorney. [Minn. Stat. § 609.1351](#).

Similarly, the Commissioner of Corrections is required to make the same type of preliminary determination concerning the appropriateness of civil commitment before releasing certain predatory offenders from state prison. This law applies when the sex offender has been classified by the commissioner to be in a “high risk” category. If the commissioner determines that a petition may be appropriate, he or she must forward the preliminary determination, along with a summary of the written reasons for it, to the county attorney in the county where the offender was convicted. The law then directs the county attorney to proceed, under the civil commitment law, to assess the case and determine whether civil commitment proceedings should be initiated. [Minn. Stat. § 244.05](#), subd. 7.

Civil Commitment Proceedings

A civil commitment proceeding under this law is initiated by the county attorney and is filed in the county where the proposed patient resides or is present. If the proposed patient is an inmate of a state prison, the petition may be filed in the county where the proposed patient was convicted.

Alternatively, the petition may be heard by a member of a specialized statewide panel of district judges established by the Minnesota Supreme Court to preside over commitment proceedings of sexually dangerous persons. (Although authorized to create such a panel, the supreme court has not done so to date.) [Minn. Stat. § 253B.185](#).

Rights and Procedures for Civil Commitment Hearings

The hearing on the petition is a civil proceeding and is governed by the same procedures and rules as a proceeding to commit a person as “mentally ill and dangerous.” These procedures include, among other things, the subject’s right to be represented by counsel at public expense, if necessary, and a requirement that the need for commitment be proven by clear and convincing evidence. Since the burden of proof is lower than beyond a reasonable doubt, evidence of sexual misconduct that is not related to a conviction is admissible. There is no right to a jury trial, so the cases are decided by judges. [Minn. Stat. §§ 253B.18; 253B.185](#).

Placement for People Who Are Civilly Committed

Sexually dangerous persons are committed to the custody of the Commissioner of Human Services and are placed in a secure treatment facility in Moose Lake known as the Minnesota Sexual Psychopathic Personality Treatment Center or a secure facility in St Peter. In order to obtain a less secure placement, the patient must prove, by clear and convincing evidence, that a less restrictive treatment program is available and is consistent with the patient’s treatment needs and the requirements of public safety. [Minn. Stat. §§ 246B.02; 253B.185](#), subd. 1.

If the patient was in prison at the time of the civil commitment, the person must serve the criminal sentence first before being transferred to a treatment facility. If the person was civilly committed first and later is committed to the Commissioner of Corrections’ custody due to a criminal conviction or probation revocation, the person must be transferred from the treatment facility to state prison. [Minn. Stat. § 253B.185](#), subd. 2.

Duration of Civil Commitment

During the 60-day period following the initial commitment decision by the court, the treatment facility prepares a treatment report and the court holds another hearing to decide whether the commitment decision should be made final. If the court finalizes its commitment decision at the review hearing, the person is committed to the Commissioner of Human Services’ custody for an indeterminate period of time. The indeterminate commitment lasts until the person can

demonstrate that he or she is no longer dangerous or in need of treatment. [Minn. Stat. § 253B.18](#).

Changing the Terms of or Ending Civil Commitment

The decision to transfer the person to a more or less secure treatment facility or to discharge a sexually dangerous person from civil commitment is made by a special review board panel appointed by the Commissioner of Human Services. The panel consists of three members who are experienced in the field of mental illness. One member must be a psychiatrist and one member must be an attorney. A patient may file a petition for transfer, discharge, or provisional discharge with the special review board panel after six months have elapsed since the person was first committed and may not file additional petitions with the board unless six months have elapsed since the last petition. A number of parties are entitled to be notified of and be present at the hearing on the petition, including the committing court and the county attorney of the committing county. Following the hearing and based on factors outlined in statute and evidence presented at the hearing, the panel makes written findings and recommendations on the petition and submits them to the Commissioner of Human Services.

The final decision on transfer or discharge rests with the commissioner. The order of the commissioner may be appealed to the Supreme Court Appeal Panel (SCAP). The SCAP must consider: (1) the person's clinical progress and present treatment needs; (2) the need for security to accomplish continuing treatment; (3) the need for continued institutionalization; and (4) whether the transfer can be accomplished with a reasonable degree of public safety. [Minn. Stat. § 253B.18](#), subs. 4c and 5.

SCAP decisions can be appealed to the Court of Appeals and the Minnesota Supreme Court.

Appendix

Elements of First- and Third-Degree Criminal Sexual Conduct Crimes

First-Degree Criminal Sexual Conduct (Minn. Stat. § 609.342) Sexual penetration and:	Third-Degree Criminal Sexual Conduct (Minn. Stat. § 609.344) Sexual penetration and:
A victim under 13 years old if the actor is more than three years older than the victim (also applies to certain sexual contact)*	A victim under 13 years old if the actor is no more than three years older than the victim*
	A victim at least 13 but younger than 16 if the actor is more than two years older**
A victim at least 13 but younger than 16 if the actor is more than four years older and uses a position of authority to make the victim submit*	A victim at least 16 but younger than 18 if the actor is more than four years older and uses a position of authority to make the victim submit***
Circumstances at time of act caused victim to have reasonable fear of imminent great bodily harm to self or others	
Actor is armed with dangerous weapon and uses or threatens to use it to cause victim to submit	
Actor causes personal injury to victim and either actor uses force/coercion or victim is mentally impaired or incapacitated/physically helpless	Actor uses force/coercion or actor knows or should know victim is mentally impaired or incapacitated/physically helpless
Actor is aided by accomplice and either accomplice uses force/coercion or accomplice is armed with dangerous weapon and uses or threatens to use it to cause victim to submit	
A victim under 16 years old , the actor has a “ significant relationship ” with the victim, and any of the following circumstances exists: force/coercion, personal injury, or sexual abuse involved multiple acts committed over extended time period*	A victim at least 16 but younger than 18 , the actor has a “ significant relationship ” with the victim, and any of the following circumstances exists: force/coercion, personal injury, or sexual abuse involved multiple acts committed over extended time period*
	Actor is psychotherapist , victim is patient and act occurred during therapy session or during the ongoing therapy relationship; victim is former patient and is emotionally dependent on therapist; or victim is patient or former patient and act occurred by means of therapeutic deception**

* Neither consent by the victim nor mistake as to the victim’s age is a defense

** If the actor is no more than 10 years older than the victim, then the actor’s reasonable belief that the complainant is 16 years of age or older is an affirmative defense. In all other cases, mistake as to the victim’s age is not a defense. Consent by the victim is not a defense in any case.

*** Consent by the victim is not a defense

First-Degree Criminal Sexual Conduct (Minn. Stat. § 609.342) Sexual penetration and:	Third-Degree Criminal Sexual Conduct (Minn. Stat. § 609.344) Sexual penetration and:
	Actor accomplishes act by means of deception or false representation that it is for a bona fide medical purpose**
	Actor is or purports to be member of clergy , victim is not married to actor, and either act occurred during spiritual advice meeting or during a time when victim was meeting with actor on ongoing basis for spiritual advice*
	Actor is an employee, contract personnel, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system*
	Actor is an agent of a special transportation services provider, the complainant uses the service, and the act occurs during or immediately before or after transporting the individual*

*Consent by the victim is not a defense

**Neither consent by the victim nor mistake as to the victim's age is a defense

***If the actor is no more than 10 years older than the victim, then the actor's reasonable belief that the complainant is 16 years of age or older is an affirmative defense. In all other cases, mistake as to the victim's age is not a defense. Consent by the victim is not a defense in any case.

Elements of Second-, Fourth-, and Fifth-Degree Criminal Sexual Conduct Crimes

Second-Degree Criminal Sexual Conduct (Minn. Stat. § 609.343) Sexual contact and:	Fourth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.345) Sexual contact and:	Fifth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.3451) Sexual contact and:
		Nonconsensual sexual contact with any victim if the contact is not covered by a higher degree of the crime
		Masturbation or lewd exhibition of the genitals in the presence of a minor under age 16, knowing or having reason to know the minor is present
A victim under 13 years old if the actor is more than three years older than the victim*	A victim under 13 years old if the actor is no more than three years older than the victim*	
A victim at least 13 but younger than 16 if the actor is more than four years older and uses a position of authority to make the victim submit*	A victim at least 13 but younger than 16 if the actor is more than four years older or uses a position of authority to make the victim submit.**	
	A victim at least 16 but younger than 18 if the actor is more than four years older and uses a position of authority to make the victim submit*	
Circumstances at time of act caused victim to have reasonable fear of imminent great bodily harm to self or others		
Actor is armed with dangerous weapon and uses or threatens to use it to cause victim to submit		
Actor causes personal injury to victim and either actor uses force/coercion or victim is mentally impaired or incapacitated/physically helpless	Actor uses force/coercion or actor knows or should know victim is mentally impaired or incapacitated/ physically helpless	

* Neither consent by the victim nor mistake as to the victim's age is a defense

** If the actor is no more than 10 years older than the victim, then the actor's reasonable belief that the complainant is 16 years of age or older is an affirmative defense. In all other cases, mistake as to the victim's age is not a defense. Consent by the victim is not a defense in any case.

*** Consent by the victim is not a defense

Second-Degree Criminal Sexual Conduct (Minn. Stat. § 609.343) Sexual contact and:	Fourth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.345) Sexual contact and:	Fifth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.3451) Sexual contact and:
Actor is aided by accomplice and either accomplice uses force/coercion or accomplice is armed with dangerous weapon and uses or threatens to use it to cause victim to submit		
A victim under 16 years old and the actor has a “ significant relationship ” with the victim*	A victim at least 16 but younger than 18 and the actor has a “ significant relationship ” with the victim*	
A victim under 16 years old , the actor has a “ significant relationship ” with the victim, and any of the following circumstances exists: force/coercion, personal injury, or sexual abuse involved multiple acts committed over extended time period*	A victim at least 16 but younger than 18 , the actor has a “ significant relationship ” with the victim, and any of the following circumstances exists: force/coercion, personal injury, or sexual abuse involved multiple acts committed over extended time period*	
	Actor is psychotherapist , victim is patient and act occurred during therapy session or during the ongoing therapy relationship, victim is former patient and is emotionally dependent on therapist, or victim is patient or former patient and act occurred by means of therapeutic deception***	
	Actor accomplishes act by means of deception or false representation that it is for a bona fide medical purpose ***	
	Actor is or purports to be member of clergy , victim is not married to actor, and either act occurred during spiritual advice meeting or during a time when victim was meeting with actor on ongoing basis for spiritual advice***	

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** If the actor is no more than 10 years older than the victim, then the actor’s reasonable belief that the complainant is 16 years of age or older is an affirmative defense. In all other cases, mistake as to the victim’s age is not a defense. Consent by the victim is not a defense in any case.

*** Consent by the victim is not a defense

Second-Degree Criminal Sexual Conduct (Minn. Stat. § 609.343) Sexual contact and:	Fourth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.345) Sexual contact and:	Fifth-Degree Criminal Sexual Conduct (Minn. Stat. § 609.3451) Sexual contact and:
	Actor is an employee, contract personnel, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system***	
	Actor is an agent of a special transportation services provider, the complainant uses the service, and the act occurs during or immediately before or after transporting the individual***	

* Neither consent by the victim nor mistake as to the victim's age is a defense

** If the actor is no more than 10 years older than the victim, then the actor's reasonable belief that the complainant is 16 years of age or older is an affirmative defense. In all other cases, mistake as to the victim's age is not a defense. Consent by the victim is not a defense in any case.

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Note: This publication is a revision of an earlier version written by former legislative analyst Judith Zollar.

For more information about sex offenders, visit the criminal justice area of our website, www.house.mn/hrd/hrd.htm.