

# Selected Materials Regarding the Sex Offender Civil Commitment Advisory Task Force

January 2013

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# Sex Offender Civil Commitment Advisory Task Force

## Purpose

The Sex Offender Civil Commitment Advisory Task Force was created to examine and provide Human Services Commissioner Lucinda Jesson with recommendations on the processes relating to the civil commitment of sex offenders in Minnesota. The task force's work will concentrate on three topics: the civil commitment and referral process for sex offenders; sex offender civil commitment options that are less restrictive than placement in a secure treatment facility; and, the standards and processes for the reduction in custody for civilly committed sex offenders.

## Report

- [First Report from the Task Force to the Commissioner of DHS \(Dec. 3, 2012\) \(PDF\)](#)

## Announcements

- The next task force meeting will be held Tuesday, Jan. 22, 2013, from 6 to 9 p.m. at the State Office Building in Room 5. The State Office Building is located at 100 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minn. Another task force meeting has been set for Tuesday, Feb. 12, 2013, from 6 to 9 p.m. at the State Office Building in Room 5.
- [Commissioner names Sex Offender Civil Commitment Task Force members](#)

## Meetings

- [Meeting agenda for Jan. 22, 2013, task force meeting \(PDF\)](#)
- [Meeting agenda for Jan. 3, 2013, task force meeting \(PDF\)](#)
- [Meeting minutes for Nov. 29, 2012, task force meeting \(PDF\)](#)
- [Meeting agenda for Nov. 29, 2012, task force meeting \(PDF\)](#)
- [Meeting minutes for Nov. 15, 2012, task force meeting \(PDF\)](#)
- [Meeting agenda for Nov. 15, 2012, task force meeting \(PDF\)](#)
- [Meeting minutes for Nov. 1, 2012, task force meeting \(PDF\)](#)
- [Meeting agenda for Nov. 1, 2012, task force meeting \(PDF\)](#)

## Additional resources and information

- [Presentation of Bill Donnay, director, Risk Assessment and Community Notification, Department of Corrections \(PDF\)](#)
- [Presentation of John Kirwin, assistant Hennepin County attorney \(PDF\)](#)
- [Presentation of Mark Ostrem, Olmsted County attorney and task force member \(PDF\)](#)
- [Nancy Johnston, executive director, Minnesota Sex Offender Program \(PDF\)](#)
- [Summary of other states' laws on Less Restrictive Alternatives \(PDF\)](#)
- [Minnesota Laws and Rules Relating to Less Restrictive Alternatives to Commitment in a Secure Treatment Facility \(PDF\)](#)
- [Summary of Legislative Auditor Evaluation Report \(PDF\)](#)
- [Summary of DHS 2011 Recommendations \(PDF\)](#)

## Sex Offender Civil Commitment Advisory Task Force

- [Information from Governor Pawlenty's 2004-05 Commission on Sex Offender Policy \(PDF\)](#)
- [Key Recommendations from Minnesota Department of Corrections 2007 Report \(PDF\)](#)
- [Summary of points and authorities underlying the claims made in Karsjens \(PDF\)](#)
- [December 2011 draft of non-introduced bill \(PDF\)](#)
- [Karsjens, et al. vs. Jesson, et al.; Order \(Judge Boylan\), Oct. 11, 2012 \(PDF\)](#)
- [Order of Commissioner Jesson appointing task force members, Oct. 5, 2012 \(PDF\)](#)
- [Karsjens, et al. vs. Jesson, et al.; Court Order, Oct. 5, 2012 \(PDF\)](#)
- [Karsjens, et al. vs. Jesson, et al., Order \(Judge Frank\), Oct. 5, 2012 \(PDF\)](#)
- [Karsjens, et al. vs. Jesson, et al.; Court Order, Aug. 15, 2012 \(PDF\)](#)
- [Order of Commissioner Jesson creating Task Force, Aug. 21, 2012 \(PDF\)](#)
- [Sex Offender Civil Commitment in Minnesota conference materials, Jan. 19, 2012](#)
- [Minn. Stat. 253B \(Civil Commitment\) \(PDF\)](#)
- Selected orders from the U.S. District Court in the state of Washington:
  - [1994 order \(PDF\)](#)
  - [2007 order \(PDF\)](#)

## Reports

- [Psychopathic Personality Commitment Law 1994](#)  
Office of the Legislative Auditor
- [Sex Offender Treatment Programs 1994](#)  
Office of the Legislative Auditor
- [Governor's Commission on Sex Offender Policy - Final Report 2005 \(PDF\)](#)
- [Community Supervision of Sex Offenders 2005](#)  
Office of the Legislative Auditor
- [Involuntary Commitment of Sexually Violent Predators: Comparing State Laws 2005](#)  
Washington State Institute for Public Policy
- [Minnesota Sex Offender Management - Final Report 2007 \(PDF\)](#)  
Department of Corrections
- [Comparison of State Laws Authorizing Involuntary Commitment of Sexually Violent Predators: 2006 Update, Revised 2007](#)  
Washington State Institute for Public Policy
- [Minnesota's Civil Commitment System for Sexually Dangerous Persons 2010 \(PDF\)](#)  
Minnesota House of Representatives, House Research Department
- [Options for Managing the Growth and Cost of the Minnesota Sex Offender Program: Facility Study 2011 \(PDF\)](#)  
Department of Human Services
- [Civil Commitment of Sex Offenders 2011](#)  
Office of the Legislative Auditor
- [Sex Offenders and Predatory Offenders: Minnesota Criminal and Civil Regulatory Laws 2012 \(PDF\)](#)  
Minnesota House of Representatives, House Research Department

## Contact the task force

The email address is: [DHS.SOCCTaskForce@state.mn.us](mailto:DHS.SOCCTaskForce@state.mn.us)

## Minnesota's Civil Commitment System for Sexually Dangerous Persons

*When is a sex  
offender subject to  
civil commitment?*

Any person who has been determined by a court to be a “sexually dangerous person” may be involuntarily committed as a patient in a secure hospital. Minn. Stat. § 253B.185. There are three elements to the definition of “sexually dangerous person.”

- First, the person must have 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.
- Second, the person must manifest a sexual, personality, or other mental disorder or dysfunction.
- Third, as a result of this mental disorder or dysfunction, the person must be 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; it is sufficient that the person faces difficulty in controlling behavior, and there is a likelihood of future harmful sexual conduct due to the person’s mental disorder or dysfunction. Minn. Stat. § 253B.02, subs. 7a and 18c.

*Must there be a  
prior criminal  
offense?*

No. Prior criminal convictions are not required in order to civilly commit a person under this law, but the person almost always has prior convictions. Minn. Stat. §§ 253B.02, subd. 18c; 253B.18, subd. 1; and 253B.185.

*How does the state  
ensure appropriate  
persons are referred  
for commitment?*

Minnesota law requires courts sentencing offenders who have committed felony-level criminal sexual conduct crimes to make a preliminary determination as to whether civil commitment of the person as a sexually dangerous person would be appropriate. Minn. Stat. § 609.1351.

Similarly, the Commissioner of Corrections must make a preliminary determination concerning the appropriateness of civil commitment before releasing certain predatory offenders from state prison. The commissioner must forward the preliminary determination to the county attorney in the county where the offender was convicted. This information must be forwarded no later than 12 months before the inmate’s release date or as soon as is practicable if the inmate is incarcerated for fewer than 12 months. The law then directs the county attorney to proceed to assess the case and determine whether civil commitment proceedings should be initiated. Minn. Stat. §§ 244.05, subd. 7; and 253B.185, subd. 8.

***Where are persons held pending resolution of a civil commitment petition?***

A person subject to a civil commitment petition shall be held in a state-run secure treatment facility unless the person elects to be held in a Department of Corrections facility or a county jail. Regardless of where the person is held, the precommitment cost of housing the offender is shared 50/50 between the state and the county seeking commitment. The state only pays its share if the legislature appropriates funds for the purpose. Minn. Stat. §§ 253B.045, subd. 1a; and 253B.185, subd. 5.

***Where are civil commitment proceedings heard?***

The county attorney initiates a civil commitment proceeding under this law 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. Minn. Stat. § 253B.185.

***What rights and procedures govern 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, among other things, guarantee the proposed patient’s right to be represented by counsel at public expense, if necessary, and require the need for commitment to be proven by clear and convincing evidence. Minn. Stat. §§ 253B.18; and 253B.185.

***Where are those civilly committed housed?***

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, Minnesota. Minn. Stat. §§ 246B.02; and 253B.185, subd. 1.

***For how long is a person committed?***

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. Minn. Stat. § 253B.18.

***How can the terms of the civil commitment be altered?***

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 three-judge panel with input from a special review board panel appointed by the Commissioner of Human Services. The review board consists of three members who are experienced in the field of mental illness and must include a psychiatrist and 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 all appeals are exhausted) and may not file additional petitions with the board unless six months have elapsed since the last petition is finally resolved, including appeals. 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 a judicial review panel, and everyone entitled to receive notice of the petition. The final decision on transfer or discharge rests with the judicial panel. Minn. Stat. §§ 253B.18, subd. 4c; 253B.185, subd. 9; and 253B.19.

**For more information:** Contact legislative analyst Jeff Diebel at 651-296-5041.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

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Updated: January 2012

## **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.

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# 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)
<b>1<sup>st</sup> degree</b> 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
<b>2<sup>nd</sup> degree</b> 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
<b>3<sup>rd</sup> degree</b> criminal sexual conduct	Sexual penetration	15 years; \$30,000 fine	48 months in prison; 36 months stayed sentence for "statutory rape"*
<b>4<sup>th</sup> degree</b> criminal sexual conduct	Sexual contact	10 years; \$20,000 fine	24 months stayed sentence; 18 months stayed sentence for "statutory rape"*
<b>5<sup>th</sup> degree</b> 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 Offenders<sup>1</sup>

**Life Without Release.** The court must impose a **life-without-release** sentence on a person convicted of certain clauses<sup>2</sup> 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 heinous<sup>3</sup> 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.

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<sup>1</sup> Portions of this provision were previously found in Minnesota Statutes 2004, section 609.109, which applied to offenses that occurred prior to 2005.

<sup>2</sup> 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.

<sup>3</sup> 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.**<sup>4</sup> 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

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<sup>4</sup> 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 previous<sup>5</sup> or prior<sup>6</sup> sex offense conviction. But if the offender is released from

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<sup>5</sup> 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).

<sup>6</sup> 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.

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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.<sup>7</sup> The person must register in Minnesota if ten years have not

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<sup>7</sup> 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 vehicles<sup>8</sup> 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, subs. 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

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<sup>8</sup> 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,<sup>9</sup> 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

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<sup>9</sup> 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, subs. 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, subs. 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.<sup>10</sup> 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

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<sup>10</sup> 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 Law<sup>11</sup>**

Any person who has been determined by a court to be a "sexually dangerous person"<sup>12</sup> 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

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<sup>11</sup> 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.

<sup>12</sup> 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, subs. 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, subds. 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

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

<b>First-Degree Criminal Sexual Conduct</b> (Minn. Stat. § 609.342) <b>Sexual penetration and:</b>	<b>Third-Degree Criminal Sexual Conduct</b> (Minn. Stat. § 609.344) <b>Sexual penetration and:</b>
	Actor accomplishes act by means of <b>deception or false representation</b> that it is for a <b>bona fide medical purpose**</b>
	Actor is or purports to be <b>member of clergy</b> , victim is not married to actor, and <b>either</b> act occurred during spiritual advice meeting <b>or</b> 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 <b>under 13 years old</b> if the actor is <b>more than</b> three years older than the victim*	A victim <b>under 13 years old</b> if the actor is <b>no more than</b> three years older than the victim*	
A victim <b>at least 13 but younger than 16</b> if the actor is <b>more than</b> four years older <b>and</b> uses a position of authority to make the victim submit*	A victim <b>at least 13 but younger than 16</b> if the actor is <b>more than</b> four years older <b>or</b> uses a position of authority to make the victim submit.**	
	A victim <b>at least 16 but younger than 18</b> if the actor is <b>more than</b> four years older <b>and</b> uses a position of authority to make the victim submit*	
Circumstances at time of act caused victim to have reasonable <b>fear of imminent great bodily harm</b> to self or others		
Actor is armed with <b>dangerous weapon</b> and uses or threatens to use it to cause victim to submit		
Actor causes <b>personal injury</b> to victim <b>and either</b> actor uses force/coercion <b>or</b> victim is mentally impaired or incapacitated/physically helpless	Actor uses <b>force/coercion or</b> actor knows or should know victim is <b>mentally impaired or incapacitated/ physically helpless</b>	

\* 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

<b>Second-Degree Criminal Sexual Conduct</b> <b>(Minn. Stat. § 609.343)</b> <b>Sexual contact and:</b>	<b>Fourth-Degree Criminal Sexual Conduct</b> <b>(Minn. Stat. § 609.345)</b> <b>Sexual contact and:</b>	<b>Fifth-Degree Criminal Sexual Conduct</b> <b>(Minn. Stat. § 609.3451)</b> <b>Sexual contact and:</b>
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 <b>under 16 years old</b> and the actor has a “ <b>significant relationship</b> ” with the victim*	A victim <b>at least 16 but younger than 18</b> and the actor has a “ <b>significant relationship</b> ” with the victim*	
A victim <b>under 16 years old</b> , the actor has a “ <b>significant relationship</b> ” 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 <b>at least 16 but younger than 18</b> , the actor has a “ <b>significant relationship</b> ” 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 <b>psychotherapist</b> , 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 <b>deception or false representation</b> that it is for a <b>bona fide medical purpose</b> ***	
	Actor is or purports to be <b>member of clergy</b> , victim is not married to actor, and <b>either</b> act occurred during spiritual advice meeting <b>or</b> during a time when victim was meeting with actor on ongoing basis for spiritual advice***	

\* 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

<b>Second-Degree Criminal Sexual Conduct</b> (Minn. Stat. § 609.343) <b>Sexual contact and:</b>	<b>Fourth-Degree Criminal Sexual Conduct</b> (Minn. Stat. § 609.345) <b>Sexual contact and:</b>	<b>Fifth-Degree Criminal Sexual Conduct</b> (Minn. Stat. § 609.3451) <b>Sexual contact and:</b>
	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.

\*\*\* Consent by the victim is not a defense

*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](http://www.house.mn/hrd/hrd.htm).*



**OFFICE OF THE LEGISLATIVE AUDITOR**  
STATE OF MINNESOTA

Evaluation Report Summary / March 2011

## Civil Commitment of Sex Offenders

### Major Findings:

- The number of civilly committed sex offenders in the Minnesota Sex Offender Program (MSOP) nearly quadrupled during the last decade and is expected to nearly double over the next ten years.
- Minnesota is one of 20 states with civil commitment programs for sex offenders and, in 2010, had the highest number of civilly committed sex offenders per capita.
- MSOP's annual cost is \$120,000 per offender, or about three times the cost of incarceration in Minnesota, but close to the average for other secure treatment facilities for civilly committed sex offenders.
- The number of court commitments as a percentage of referrals from the Department of Corrections varies significantly across the state. Our statistical analysis suggests that some sex offenders being committed may have a lower risk of recidivism than others who are being released from prison.
- Minnesota lacks reasonable alternatives to commitment at a high security facility. Lower-cost alternatives may be appropriate for some sex offenders being considered for commitment or already residing at MSOP facilities.
- No sex offender has been discharged from MSOP since it was created in 1994. Without releases, Minnesota is

susceptible to lawsuits challenging the adequacy of the treatment program.

- MSOP's treatment program has experienced frequent leadership changes and significant staff vacancies, and it has struggled to maintain the type of therapeutic environment necessary for treating high-risk sex offenders.
- Current MSOP management has worked to address security problems and clinical deficiencies, but it still needs to increase the number of treatment hours provided, improve the therapeutic environment, and establish clearer guidelines for judging treatment progress.

### Key Recommendations:

- The Legislature should require MSOP to develop a plan for lower-cost alternative facilities to be used by certain sex offenders. The plan should also outline the changes needed to implement a stay of commitment option.
- The Legislature should consider a variety of other options for reducing the costs of civil commitment, including changes in the commitment process, commitment standards, and financing of commitment costs, as well as changes in sentencing policy.
- The Department of Human Services should require MSOP to provide more treatment hours per week than are currently provided.

**To control accelerating costs, Minnesota could develop lower-cost facilities to house some civilly committed sex offenders and create an enhanced stay of commitment option for others.**

**Among the 20 states with civil commitment programs, Minnesota has the highest number of civilly committed sex offenders per capita.**

## Report Summary

Minnesota and 19 other states have laws allowing the courts to civilly commit dangerous sex offenders following their release from prison. In Minnesota, the Department of Corrections screens offenders scheduled for release and refers those who may be appropriate for civil commitment to county attorneys. County attorneys decide whether to file a petition for commitment with the district courts, which make the final determination on commitments. Committed sex offenders are sent to the Minnesota Sex Offender Program (MSOP), which has facilities in Moose Lake and St. Peter.

Civilly committed sex offenders retain certain civil rights, including the right to treatment. Without an adequate treatment program, Minnesota could face a legal challenge.

**Minnesota's population of civilly committed sex offenders has grown significantly in the last decade and is the highest in the nation on a per capita basis.**

The total number of civilly committed sex offenders in MSOP has grown from less than 30 in 1990 to 149 in 2000 and 575 in mid-2010. The 2010 figure does not include another 55 or so civilly committed sex offenders who were temporarily transferred to correctional facilities.

In 2010, Minnesota had the third highest population of civilly committed sex offenders—after California and Florida—and has the highest number in the nation on a per capita basis. It is unclear exactly why Minnesota has so many civilly committed sex offenders compared with other states. Minnesota has a lower overall incarceration rate than most states, but there are no data available to determine if Minnesota has a lower rate for sex offenders. Another possible explanation is that Minnesota's laws facilitate the civil commitment of sex offenders. Unlike most states, Minnesota does not allow jury trials for civil commitment. Minnesota also

allows hearsay evidence and requires the commitment standard to be met with "clear and convincing evidence" rather than proven "beyond a reasonable doubt." Minnesota also considers offenses involving emotional harm to victims, rather than just physical harm or violence.

The largest increases in commitments, however, occurred after the Department of Corrections (DOC) changed its referral practices. From 1991 to 2003, DOC referred about 26 offenders per year to county attorneys. Following a November 2003 rape and murder by a sex offender recently released from prison, DOC began referring all offenders who might meet the legal standard for commitment. With that change in policy, the number of annual DOC referrals after 2003 grew to about six times its previous rate.

**The costs of civil commitment in MSOP are high relative to incarceration and other alternatives.**

The annual cost per resident in MSOP is \$120,000. This cost is at least three times the cost of incarcerating an inmate at a Minnesota correctional facility. Although treatment costs play a role, the primary reason why costs are higher at MSOP facilities is security, which is the biggest spending component at both MSOP facilities and Minnesota's prisons. Overall staffing per resident is about three times higher at MSOP facilities than at Minnesota's prisons. This difference largely reflects differences in the mission and average size of the two types of facilities.

The annual cost of civil commitment programs in other states with secure facilities like MSOP ranges from about \$36,000 to \$180,000 per year. Minnesota's annual cost was the fifth highest of 12 states that responded to a recent survey.

The civil commitment program in Texas, which does not rely on the same type of facilities, has an annual cost of only about \$27,000 per offender. Texas houses its committed offenders in four halfway houses specifically for this

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**There is considerable variation in commitment practices, particularly among prosecutors.**

population and provides outpatient treatment. In addition, the Texas program provides close supervision and monitoring and restricts the ability of residents to travel outside the halfway houses. If offenders violate the terms of their commitment, they may receive lengthy prison sentences.

**Among Minnesota's judicial districts, commitment rates vary significantly, with the percentage of referred offenders being committed varying from 34 to 67 percent.**

Commitment rates in Hennepin and Ramsey counties and northeastern Minnesota are 34 to 36 percent of DOC referrals, while the rates are 43 to 45 percent in the judicial districts immediately north and south of Hennepin and Ramsey counties. Commitment rates in judicial districts throughout the rest of the state vary from 59 to 67 percent.

Statistical analyses we conducted strongly suggest that the probability of being committed is significantly higher in most of the rest of the state than it is in Hennepin and Ramsey counties and northeastern Minnesota. These analyses take into account known differences in the recidivism risk posed by offenders considered for commitment.

The differences in commitment rates appear to be largely the result of differences in the percentage of referred cases for which county attorneys file a petition. The DOC's referral practices are unaffected by geographic difference. In addition, the variation in court commitment practices is more limited than that among prosecutors.

**Minnesota lacks reasonable alternatives to commitment at a high security facility.**

A major problem with Minnesota's commitment process is that it generally involves a choice between a high security facility and release from prison with no supervision, if the offender has served his entire prison sentence. Minnesota law allows for consideration of a less restrictive alternative, but there

are no alternatives available. Minnesota has one private residential facility for sex offenders, but it will not take any offenders being considered for commitment.

One lower-cost alternative would be to establish group homes or halfway houses for certain civilly committed sex offenders who could be managed in such a setting. Currently, there are low functioning adult offenders at MSOP for whom the impact of the treatment program has probably been maximized. Some of these offenders are probably suitable for a group home setting that lacks the high security of an MSOP facility but retains sufficient supervision and monitoring. In addition, there may be other individuals in MSOP whose risk level has been reduced and may be suitable for a halfway house alternative such as that provided in Texas. Sufficient supervision would be needed, along with appropriate consequences if individuals do not comply with the rules.

Minnesota law currently provides for a stay of commitment option, but it is rarely used since it was designed primarily for populations other than sex offenders. That option would become more viable if the law provided for supervision by MSOP or DOC instead of a social service agency, and if the law was more explicit about the conditions an offender must meet to avoid revocation of a stay.

**With the large influx of commitments since 2003, MSOP has struggled to provide adequate treatment and maintain a therapeutic environment, particularly at its Moose Lake facility.**

Over the last eight years, MSOP's treatment program has experienced frequent leadership changes and has had a significant number of staff vacancies. In addition, it has been difficult to maintain the therapeutic environment necessary for making progress with high-risk sex offenders.

The problems have been particularly acute at MSOP's Moose Lake facility, which serves clients in the beginning stages of treatment. At one point last

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**No civilly committed sex offender has ever been discharged from the Minnesota Sex Offender Program.**

year, six of the eight clinical supervisor positions were vacant at Moose Lake. In November 2010, MSOP had 17 vacancies for nonsupervisory clinical positions, with 16 of them at Moose Lake.

The lack of adequate numbers of clinical staff has meant the number of hours of treatment provided by MSOP is generally lower than that provided by civil commitment programs in other states. In addition, the number of hours provided by MSOP is less than that provided at Minnesota correctional facilities or the only private residential facility for adult sex offenders in the state.

The treatment environment has also been adversely affected by reductions in security staff and a change in their role. In recent years, the number of security staff was cut significantly, and security counselors were no longer expected to provide therapeutic support to residents. While these changes made some sense, clinical staff have not been available in sufficient numbers to fill the void.

Current management at MSOP has taken steps to address problems at its facilities. For example, despite the reduction in security staffing, MSOP's facilities have become more secure, partly due to the adoption of clear policies for resident and employee behavior. Current

management is also taking steps to fill the vacancies in its treatment program. In addition, it has implemented a treatment program that appears to be consistent with accepted "best practices" in the field. Further work will be needed to make sure the program provides clear guidelines for assessing treatment progress and is implemented consistently by the clinicians who treat offenders.

**No civilly committed sex offender has ever been discharged from MSOP, although MSOP is now proposing to provisionally discharge two offenders in the next six months.**

Several factors may explain why no MSOP clients have been discharged from the program. First, problems in the treatment program over the last ten years have likely affected the progress of some sex offenders. Second, while a specialized court now determines whether offenders are discharged, the previous administration issued an executive order discouraging any discharges. Finally, Minnesota has a release standard for offenders who are civilly committed that, in practice, is stricter than other states. MSOP does not support any discharges without completion of the treatment program. Most states explicitly allow for discharges if an offender no longer meets the commitment criteria.

### Summary of Agency Responses

*In a letter dated March 3, 2011, Department of Human Services Commissioner Lucinda Jesson said that the evaluation team provided a "thorough review and analysis of the civil commitment process" and the "report reflects that hard work and objectivity." She said that the department "supports the majority of the recommendations made in the report" and believes that "many of the findings and recommendations are consistent with current objectives and goals to continue to provide sex offender treatment in a safe and secure facility." In a letter dated March 2, 2011, Department of Corrections Commissioner Tom Roy noted that the report found the department's referral policy to be "consistent with state law" and "empirically based." In recognition of the role played by referrals in the commitment process, he expressed willingness to "implement any changes in our procedures as legislatively directed."*

The full evaluation report, *Civil Commitment of Sex Offenders*, is available at 651-296-4708 or:  
[www.auditor.leg.state.mn.us/ped/2011/ccso.htm](http://www.auditor.leg.state.mn.us/ped/2011/ccso.htm)

# Options for Managing the Growth and Cost of the Minnesota Sex Offender Program: Facility Study

Minnesota Sex Offender Program

January 2011



Minnesota Department of **Human Services**

## Legislative Report

## EXECUTIVE SUMMARY

Throughout Minnesota, managing sexual offenders and combating sexual violence is a complex issue with a wide scope and multi-agency approach. For years, Minnesota has been a leader on many fronts in this area from specialized caseloads for supervision agents, to the development of one of the first actuarial risk tools in the field (MNSOST-R). The Minnesota Legislature has requested several studies related to sexual violence and sexual offenders in the past 15 years which is indicative of its commitment to continue to evaluate and strengthen current practice and to develop strategies consistent with advancements in the field. Many recommendations from these reports have been implemented and have resulted in an improved system.

Minnesota is one of 20 states that enacted civil commitment statutes to indeterminately detain individuals for treatment to address their sexual dangerousness and as part of a broader strategy to manage the risks presented across the continuum of sexual offenders. The civil commitment program is expensive to maintain and the program continues to expand because more sexual offenders are entering than are being released. The cost and growth of the Minnesota Sex Offender Program (MSOP) continues to be an area of concern particularly given the current economic issues facing the state. Public safety cannot be compromised yet the growth of this program creates a strain on the state budget as the per diem for MSOP clients is \$328 and projections indicate an expected annual growth of at least 50 additional clients. To address future growth and cost, the 2010 Legislature included a subdivision in the capital investment bonding bill requiring the commissioner of the Department of Human Services (DHS) to submit a report to the Legislature by January 15, 2011.

The commissioner tasked MSOP with the completion of this study. MSOP then convened four topical teams to provide analysis and recommendations for sex offender treatment, the civil commitment process, sexual abuse perpetration prevention, and bed space options for MSOP clients. These other facets of this issue were incorporated in this study to paint a complete picture of the growth of Minnesota's civil commitment program for sexual offenders and its subsequent need for expansion. Developing options to manage the growth and decrease the cost of MSOP was the charge for each topical team as they researched and provided analysis of their topic.

The treatment topical team found treatment systems in Minnesota have the potential to further reduce the need for civil commitments and to help support the release of some civilly committed individuals if they have made sufficient progress to warrant any court ordered release to society from MSOP. This results in an increased reliance on community-based treatment to manage higher risk sexual offenders. To make this shift responsibly, Minnesota should work to strengthen its community-based treatment options in several ways. These changes will require additional resources but it is likely that these additional costs will be more than offset through reductions in expected future MSOP operating costs and capital costs associated with program expansions.

The team that reviewed the current civil commitment process concluded these programs for sexual offenders are an expensive yet necessary tool in an effective, comprehensive statewide management strategy. The challenge for the State of Minnesota is to utilize MSOP efficiently while maintaining public safety in a fiscally responsible manner. Opportunities exist to impact the future cost and growth of MSOP by making modifications and revisions in the current process of civil commitment. Evaluating the application of commitment criteria in the referral process and considering options to indeterminate commitment would impact the number of new clients admitted to MSOP. Enhancing coordinated

community-based resources would increase the ability to manage this challenging population at a decreased cost. Once modifications and new policies are in place, an ongoing evaluation of the statewide management system for sex offenders would assist in maintaining efficiency and better ensure public safety.

Managing the growth and decreasing the cost of MSOP could be most effectively achieved if sexual abuse was prevented before someone perpetrated sexual harm. Prevention of sexual abuse perpetration was included in this study and report to illuminate the importance of preventing the creation of civilly committed sex offenders as well as preventing recidivism once MSOP clients are reintegrated into the community. By investing in a population-based public health approach to sexual violence prevention, Minnesota will be investing in long-term cost-savings for the state. A complex web of social norms, environmental factors, peer influence and individual decision-making that precedes an act of sexual violence. Ample opportunities for intervention and prevention exist.

After reviewing several options for renovation and expansion, the bed space options topical team concluded that both a short-term and a long-term solution are needed to address the projected growth of MSOP. In the short-term, MSOP should work with the Minnesota Security Hospital to move clients out of the Shantz building on the St. Peter campus. This allows MSOP to request asset preservation funds from the Legislature to complete the infrastructure renovations of the Shantz building. This will increase the capacity of MSOP by 55 additional beds, which will accommodate MSOP's bed space needs for one more year. This timing allows MSOP to review next year's projections and develop a bonding request for the 2012-2013 legislative sessions. The low operating costs of this recommendation will assist MSOP in lowering the overall per diem.

The long-term solution is the lowest on-going operating cost per client in adding a 400 bed living unit within the original design of the MSOP Moose Lake facility. This allows MSOP to take advantage of existing support infrastructure, security perimeter and administrative staff. The MSOP Moose Lake facility expansion also allows for building only 200 or 100 beds. The 200 bed addition would include adding only two of the five housing wings. The 100 bed option only builds one of the wings. These options will still require building the additional support infrastructure, but require less bonding dollars in the near term and still allow for the additional expansion of the other wings.

Minnesota would do well to continue to strengthen its multi-faceted, multi-agency approach to the issue of sex offender management and also, in preventing sexual violence. In moving forward, Minnesota should create and fund an on-going entity to coordinate, assess and improve statewide responses to sex offender management as well as to identify new and emerging issues. As this report demonstrates, the issue of sexual violence is exceedingly complex and thus requires an approach equal in its complexity including prevention, intervention and response.

It should be noted that the Office of Legislative Auditor (OLA) is in the process of conducting a program evaluation of MSOP. The OLA report to the Legislature will likely address some of these areas in further detail as well as provide suggestions and or recommendations for future direction.

# **Governor's Commission on Sex Offender Policy**

## **Final Report**

**Esther M. Tomljanovich**  
Chairperson

### **Members**

<b>Brian Schlueter</b>	<b>James Backstrom</b>
<b>Jerry Soma</b>	<b>Laura Budd</b>
<b>Steven Strachan</b>	<b>Terry Dempsey</b>
<b>John Stuart</b>	<b>Carla Ferrucci</b>
<b>Susan Voigt</b>	<b>Kris Flaten</b>
	<b>Gerald Kaplan</b>

**January 2005**

<p><b>Section I</b>  <b>Executive Summary of Recommendations</b></p>
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When making his appointments to this Commission, Governor Pawlenty asked Members to focus on the current and best practices in six distinct areas: (1) Minnesota's practices for sentencing offenders for criminal sexual conduct; (2) the practices for supervising those with a history of sex offenses; (3) the process for civilly committing offenders under Minnesota's Sexually Dangerous Person (SDP) and Sexual Psychopathic Personality (SPP) statutes; (4) the circumstances under which the placement in health care settings of elderly and disabled persons, who have a criminal history of sex offenses, can be restricted; (5) the procedures for the conditional medical release of inmates, who have a criminal history of sex offenses, to health care settings in the community; and (6) the practice of granting those with a history of criminal misconduct special waivers for later employment in settings that are regulated by the State of Minnesota.

Between September 8, 2004 and January 4, 2005 the Governor's Commission on Sex Offender Policy convened 14 hearings and held 3 off-site seminars. During these meetings the Commission heard from 50 expert witnesses on matters relating to the sentencing, supervision, treatment and registration of sex offenders. (*See, Appendix C*)

In drafting sessions on October 20, November 24, December 1 and January 4, the Commission developed a series of recommendations for review by Governor Pawlenty and the Minnesota Legislature. Briefly stated, the Commission's recommendations are:

**Sentencing Practices:**

The Commission recommends:

- Development of a blended determinate-indeterminate sentencing system for sex offenders. Key features of this plan include improving public safety by doubling of the current statutory maximum sentences for criminal sexual conduct crimes, and vigorous, politically-independent reviews of the offender's response to treatment while in custody.
- Creating a Sex Offender Release Board that would have the authority to review an offender's confinement record, including treatment progress, and all other relevant factors to determine when sex offenders should be released from prison. The Sex Offender Release Board would establish release and supervision conditions for any sex offender on supervised release.
- Increasing the statutory maximum indeterminate sentence to life for those offenders with a prior history of criminal sexual conduct. A potential life sentence maximum for repeat offenders, represents the right balancing of competing public safety interests.

- Increasing the penalty for indecent exposure to an unaccompanied minor under the age of 13 from a gross misdemeanor to a felony. Believing that such exposure crimes represent particularly dangerous sexualizing of young children, and that this conduct is a precursor to very egregious offenses, Commission Members urge the Legislature to meet this conduct with more serious consequences than the current law provides.

### **Supervision Practices:**

The Commission recommends:

- The use – wherever it is practicable – of specialized sex offender caseloads for state and county supervision agents. Specialized training in sex offender supervision techniques and routine experience with the methods and deceptions used by this type of offender, will promote more effective supervision of offenders.
- Granting judges discretion to set aside sex offender registration requirements for a limited class of juvenile offenders. Judges in Juvenile Court should be afforded more discretion to balance the benefits of having particular juveniles register as sex offenders, against efforts to re-integrate those juveniles back into society.
- Establish a layered, three-pronged approach to ensuring the timely disclosure of sex offender registry information. To ensure that health care facilities have all information that is relevant to admission, transfer and abuse prevention decisions, at an early point in the admission process, modify Minnesota law so as to:
  - (1) Codify the current Department of Corrections' policy – which requires a supervising agent to notify a health care facility if he or she knows that a supervised offender is receiving in-patient care – into statute; thereby making this best practice binding upon all state and local corrections agents.
  - (2) Require local law enforcement agencies to disclose a registrant's status to the administration of a health care facility, if law enforcement officials are aware that a registered offender is receiving in-patient care.
  - (3) Add to the existing requirements of the Predatory Offender Registry statute a requirement obliging registered offenders to disclose to the administration of any health care facility, upon admittance, his or her status as a registering predatory offender – and punishing the failure to disclose with a felony penalty.
- Establishing an ongoing Sex Offender Policy Board, with members appointed by the Governor to four-year staggered terms. The timeline established for this Commission did not permit development of some needed and useful policy recommendations. This work should continue on with another, formalized panel.

### **Civil Commitment Practices:**

The Commission recommends:

- Developing methods of segregating patients who refuse treatment would improve results. Commission Members believe that if the Minnesota Sex Offender Program (MSOP) is to effectively operate as a treatment setting, those who refuse treatment should be segregated and securely confined.
- Establishing a Continuum of Structured Treatment Options. Commission Members believe that any patients transitioning from civil commitment should be bounded at all times by a strong and mutually reinforcing set of security measures – including supervision agents; highly structured living facilities; and electronic monitoring, Global Positioning Services and polygraph services.
- Replicating the Department of Human Service-Dakota County Community Corrections contract for supervision. When patients who have been civilly committed as Sexual Psychopathic Personalities or Sexually Dangerous Persons successfully complete treatment, and are transitioning back to community settings, they need to be supervised by effective and well-trained corrections agents. The Legislature should formalize these methods in statute, and thereby improve the overall effectiveness, safety and viability of “pass-eligible” status and provisional discharges.
- Amending the felony escape statute to include civil commitment patients who abscond from the treatment program prior to discharge. So as to facilitate the extradition and return of those patients committed under the SDP or SPP laws, who flee before their discharge from the program, the Commission recommends this change in the law.
- Transferring the process of screening of sex offenders for possible civil commitment to an independent panel. Mindful that several bills from the 2004 Legislative Session would have added additional personnel, tenure protections, or both, to the civil commitment review process, the Commission suggests that a Sex Offender Release Board would be well suited to perform this function.
- Encouraging the Minnesota Supreme Court to use existing statutory authority to establish a specialized panel for civil commitments. In the judgment of the Commission, such a statewide judicial panel would result in the development of valuable expertise and efficient economies of scale.
- Transferring the civil commitment transition process to an independent panel. In the Commission’s view, having a cabinet-level official involved in approving patient trips outside of the facility threatens to overly politicize the process. The Commission suggests that the Sex Offender Release Board would be transparent; insulated from political pressure; and trusted by patients, treatment staff and the public.

### **Offender Health Care Practices:**

The Commission recommends:

- Modifying Minnesota law so as to make clear that any registered predatory offender who does not disclose his or her status upon admission to a health care facility, and is subject to transfer or discharge when this fact is later discovered, may not rely upon the anti-discharge protections of state law to remain in the facility. One possible reading of *Minnesota Statutes* § 144A.135 is that it permits predatory offenders to receive a 30-day notice and to remain in health care settings, pending an appeal of their transfer or discharge, even when the health care facility could not adequately account for the added security risk of such patients.
- Modifying Minnesota law so as to make clear that details of a patient's criminal history that are public information are not given a different and higher classification as confidential medical data when included in the patient's health care records. The classification and permitted uses of criminal history data should be uniform across settings and agencies – and should not particularly disadvantage health care providers.
- Developing partnerships to provide medical care in a secure setting to those with a criminal history of sex offenses. State government has an interest in developing the infrastructure of willing providers that can deliver health care – at varying levels of security – to those with a criminal history.
- Supporting the development of secure health care settings by having the state assist in the site selection process. In order to overcome local controversies as to the placement of such facilities, state participation in the site development process may be necessary.

### **Conditional Medical Release Practices:**

The Commission recommends:

- Closely tracking the experience of Federal Medical Center-Fort Worth in administering secure hospice care facilities. As the demographics of Minnesota's inmate population change, the state may find it useful to develop a lower-cost, long-term care facility within the corrections system. The FMC-Fort Worth facility has developed links between its hospice program and the prison's Medical Center that appear promising.

### **Variance and Set-Aside Practices:**

The Commission recommends:

- Streamlining Minnesota’s varied and disparate background check standards with a single, comprehensive standard. One possibility for eliminating gaps and confusion in Minnesota’s various background check processes would be to use the same list of criminal offenses – such as those listed in *Minnesota Statutes* § 245C.15 – as the trigger for employment disqualification.
- Dissemination of a list of the “collateral consequences” that attend conviction of a crime of criminal sexual conduct. Because the various registration requirements, restrictions on legal rights and disqualifications for employment that follow a criminal conviction for sexual misconduct are placed in different sections of Minnesota law, it would be a useful resource for judges, prosecutors, offenders, victims, employers and the public at large to have a short compilation of these consequences in one place.

### **Funding Issues:**

The Commission recommends:

- Moving toward a statewide approach to sex offender management. The Legislature should work toward achieving greater uniformity across Minnesota in supervision practices, treatment options, treatment infrastructure and the assessment of sex offenders.
- Examining in detail how the resources that are spent to prosecute and incarcerate sex offenders compare with the amount of public resources that are available to treat the victims of sex crimes and to prevent further sexual offending. As with other public safety programs, the Legislature should pursue a more uniform set of services across the state.
- Following any statutory changes to sex offender management practices with accompanying budgetary support that is expressed in separate line items. In the interests of transparency and accountability, the Legislature should designate separate budget line items for each of the improvements it makes to the sex offender management system.

### **The Next Frontiers:**

The Commission recommends:

- Increasing attention to the prevention of sex crimes. While the potential long-term cost savings to the public health system from preventing sex crimes are large – as is the potential to avoid suffering by victims – specific strategies on how to break cycles of offending are less clear. The Department of Health’s work on violence prevention is a valuable start; and more should be done to develop, research and discover effective prevention strategies.
- Increasing attention to the rise in the number of sexually dangerous offenders who are committed from the juvenile system. Given the fact that roughly 20 percent of the patients civilly committed to the MSOP as Sexual Psychopathic Personalities or Sexually Dangerous Persons are young men between the ages of 18 to 25, greater emphasis should be placed on early treatment responses to young, sexually-dangerous offenders. The alternative – namely, civil commitments that could span the lifetime of these patients – is both costly and tragic.

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Kevin Scott Karsjens, David Leroy Gamble, Jr., Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, Bradley Wayne Foster, and all others similarly situated,

Plaintiffs,

v.

Lucinda Jesson, Dennis Benson, Kevin Moser, Tom Lundquist, Greg Carlson, and Ann Zimmerman, in their individual and official capacities,

Defendants.

Court File No. 11-cv-03659 (DWF/JJK)

**FIRST AMENDED COMPLAINT**

**INTRODUCTION**

1. This class action is brought on behalf of individuals civilly committed to the Minnesota Sex Offender Program against Defendants for violations of Plaintiffs' constitutional, statutory and common law rights to (1) receive proper care and treatment, best adapted, according to contemporary professional standards, to rendering further supervision unnecessary in the least restrictive environment, (2) be free from punishment in violation of those rights, (3) have less restrictive confinement, (4) be free from inhumane treatment in violation of those rights, (5) have religious freedom, (6) have free

speech and association, (7) be free from unreasonable searches and seizures, and (8) be free from an invasion of privacy.

### **PROCEDURAL BACKGROUND**

2. Plaintiffs are all currently civilly committed to the Minnesota Sex Offender Program (“MSOP”) at Moose Lake, Minnesota pursuant to Minn. Stat. § 253B. Several of the patients in MSOP filed federal complaints against various state employees associated with MSOP. The complaints alleged violations of the patients’ civil rights pursuant to 28 U.S.C. § 1983 and other statutes.

3. On January 12, 2012 Judge Frank referred these cases to the Minnesota Chapter of the Federal Bar Association’s Pro Se Project. On January 20, 2012, the undersigned attorneys filed Notices of Appearance in *Thompson v. Ludeman, et al.*, 11-CV-01704 (DWF/JJK) and *Karsjens et al., v. Minnesota Department of Human Services, et al.*, 11-CV-0359 (DWF/JSM).

4. On January 25, 2012, Chief Judge Davis issued an Order [*Karsjens* Dkt. #142] staying all of the pro se MSOP cases with the exception of the *Thompson* and *Karsjens* actions pending the resolution of the outstanding Motion for Class Certification filed in the *Karsjens* case [Dkt. # 24]. On February 6, 2012, Chief Judge Davis issued an Amended Order [Dkt. # 145] applying the stay to additional MSOP cases that were unintentionally omitted from his previous order.

5. On February 8, 2012, Judge Frank issued an Order [*Karsjens* Dkt. #146] staying the *Thompson* litigation until further notice, and setting a deadline for filing an Amended Complaint in the *Karsjens* action by February 29, 2012. On February 29,

2012, Judge Frank issued an Order [*Karsjens* Dkt. # 149], pursuant to the stipulation of the parties, amending the deadline for filing an Amended Complaint in this action to March 15, 2012.

### NATURE OF THE ACTION

6. Plaintiffs bring this action on behalf of themselves and Class members alleging violations of their constitutional, statutory and common law rights. Specifically, Plaintiffs allege that the Defendants, in their official capacity and where applicable, in their individual capacity, have, among other things:

- a. failed to provide adequate treatment to Plaintiffs and Class members in violation of the Fourteenth Amendment to the United States Constitution, the Minnesota Constitution, and the Minnesota Civil Commitment and Treatment Act;
- b. denied Plaintiffs and Class members the right to be free from punishment in violation of the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution;
- c. denied Plaintiffs and Class members less restrictive alternative confinement in violation of the Fourteenth Amendment to the United States Constitution and the Minnesota Constitution;
- d. denied Plaintiffs and Class members the right to be free from inhumane treatment in violation of Fourteenth Amendment to the United States Constitution and the Minnesota Constitution;
- e. denied Plaintiffs and Class members the right to religion and religious freedom in violation of the First and Fourteenth Amendments to the United States Constitution;
- f. unreasonably restricted the First Amendment rights of free speech and association of Plaintiffs and Class members in violation of the United States Constitution and the Minnesota Constitution;

- g. implemented unreasonable searches and seizures upon Plaintiffs and Class members in violation of the Fourth Amendment to the United States Constitution and the Minnesota Constitution; and
- h. invaded the privacy of Plaintiffs and Class members in violation of the Fourth Amendment to the United States Constitution and the Minnesota Constitution.

7. Plaintiffs seek injunctive relief for these constitutional, statutory, and common law violations on behalf of themselves and Class members. Plaintiffs also seek actual or nominal damages based on the Defendants' actions in their individual capacity to violate Plaintiffs' constitutional, statutory, and common law rights.

#### **JURISDICTION AND VENUE**

8. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331. This Court has supplemental jurisdiction for Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367. Venue in this Court is proper pursuant to 28 U.S.C. § 1391 because the acts and omissions giving rise to these claims occurred in the State of Minnesota and the Defendants all reside in the State of Minnesota.

#### **DECLARATORY AND INJUNCTIVE RELIEF**

9. This Court has authority to grant declaratory relief pursuant to 28 U.S.C. § 2201 as an actual controversy exists regarding the rights, privileges, and immunities to which the Plaintiffs are entitled while committed to the care and custody of the State of Minnesota. Pursuant to 28 U.S.C. § 2202, this Court has authority to grant injunctive and other necessary and proper relief.

## PARTIES

### **I. Plaintiffs**

10. Plaintiff Kevin Scott Karsjens is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

11. Plaintiff David LeRoy Gamble, Jr. is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

12. Plaintiff Kevin John DeVillion is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

13. Plaintiff Peter Gerard Lonergan is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

14. Plaintiff James Matthew Noyer, Sr., is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

15. Plaintiff James John Rud is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

16. Plaintiff James Allen Barber is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

17. Plaintiff Craig Allen Bolte is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

18. Plaintiff Dennis Richard Steiner is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

19. Plaintiff Kaine Joseph Braun is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

20. Plaintiff Christopher John Thuringer is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

21. Plaintiff Kenny S. Daywitt is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

22. Plaintiff Bradley Wayne Foster is civilly committed to the MSOP in the care and custody of the Minnesota Department of Human Services for an indefinite period of time. He has been and continues to be injured by the acts and omissions of Defendants.

## **II. Defendants**

23. Defendant Lucinda Jesson is the Commissioner of the Minnesota Department of Human Services (“DHS”). The DHS is responsible for operating the MSOP. Defendant Jesson, in her individual and official capacity, implemented, retained and carried out policies through the MSOP that violated the constitutional, statutory, and common law rights of Plaintiffs and Class members.

24. Defendant Dennis Benson is the Executive Director of MSOP and a member of the clinical team. Defendant Benson, in his individual and official capacity, implemented, retained and carried out policies through the MSOP that violated the constitutional, statutory, and common law rights of Plaintiffs and the Class members.

25. Defendant Kevin Moser is the Director of MSOP. Defendant Moser, in his individual and official capacity, implemented, retained and carried out policies through the MSOP that violated the constitutional, statutory, and common law rights of Plaintiffs and the Class members.

26. Defendant Tom Lundquist is the Clinical Director of MSOP. Defendant Lundquist, in his individual and official capacity, implemented, retained and carried out policies through the MSOP that violated the constitutional, statutory, and common law rights of Plaintiffs and the Class members.

27. Defendant Greg Carlson is the Program Director of the Sexual Predator Program at MSOP and a member of the clinical team. Defendant Carlson, in his individual and official capacity, implemented, retained and carried out policies through the MSOP that violated the constitutional, statutory, and common law rights of Plaintiffs and the Class members.

28. Defendant Ann Zimmerman is the Security Director of MSOP. Defendant Zimmerman, in her individual and official capacity, implemented, retained and carried out policies through the MSOP that violated the constitutional, statutory, and common law rights of Plaintiffs and the Class members.

29. In all respects material to this action, all Defendants acted under the color of law and under the color of their authority as officers and employees of the DHS.

30. In all respects material to this action, all Defendants acted within the scope of their employment with the DHS, but exceeded the legitimate scope of their official capacity.

#### **CLASS ACTION ALLEGATIONS**

31. Plaintiffs bring this class action on behalf of themselves and the Class members pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure,

Pages 9 – 60 have been excerpted

amount of treatment provided and the staff that provides that treatment falls well below constitutional standards, well below contract standards and well below the reasonable performance of the treatment program created by MSOP's own policies.

244. The acts and omissions of Defendants constitute a breach of contract.

245. Plaintiffs Karsjens, Gamble, DeVillion, Lonergan, Noyer, Rud, Barber, Bolte, Steiner, Braun, Thuringer, Daywitt, Foster and Class members have been subject to and injured by these alleged violations and suffered damages as a direct and proximate result of Defendants' acts and omissions as specifically set forth above. Unless relief is granted, Plaintiffs and class members will continue to be injured by and suffer damages as a direct and proximate result of Defendants' acts and omissions specifically set forth above.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for relief as follows:

- a. That the Court determine that this action may be maintained as a class action under Rules 23(b)(2) and 23(b)(3) of the Federal Rules of Civil Procedure, that Plaintiffs be certified as class representative and Plaintiffs' counsel be appointed as counsel for the Class;
- b. That the unlawful conduct alleged herein be declared to be illegal and in violation of the federal and state constitutional, statutory and common law claims alleged herein;

- c. That the Court order Defendants to provide proper treatment, appropriate less restrictive alternatives, and in general operate MSOP without an improper purpose of punishment;
- d. That Defendants be enjoined from engaging in the same or similar practices alleged herein;
- e. That Plaintiffs and Class members recover actual or nominal damages, as provided by law, determined to have been sustained as to each of them, and that judgment be entered against Defendants on behalf of Plaintiffs and Class members;
- f. That Plaintiff and Class members receive pre-judgment and post-judgment interest as allowed by law;
- g. That Plaintiff and Class members recover their costs of the suit, attorneys' fees and expenses as allowed by law; and
- h. All other relief allowed by law and equity.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 15, 2012

s/Daniel E. Gustafson

Daniel E. Gustafson (#202241)

Karla M. Gluck (#238399)

David A. Goodwin (#386715)

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*Attorneys for Plaintiffs*

Summary of Points and Authorities Underlying the Claims made in Karsjens

Prepared by Dean Eric Janus

Summary of Points and Authorities underlying the claims made in Karsjens.

ESJ 10.24.2012; revised 10.31.12

Plaintiff's arguments in summary:

- I. Are based on the first and fourteen amendments to the US constitution, the Minnesota Constitution, and the Minnesota Commitment and Treatment Act.
- II. Allege violations of:
  - a. Right to provide adequate treatment.
  - b. Right to be free from punishment.
  - c. Right to less restrictive alternatives to secure confinement.
  - d. Right to be free from inhumane treatment.
  - e. Right to religion and religious freedom.
  - f. Freedom of speech and association.
  - g. Right to be free from unreasonable searches and seizures.
  - h. Right to privacy.
- III. Plaintiffs ask for injunctive relief and damages.
- IV. Key defenses:
  - a. Eleventh Amendment – immunity of the state from damages.
  - b. Adequate treatment is being provided.
  - c. All key decisions regarding commitment and discharge have been vetted by courts of competent jurisdiction.
  - d. The constitution provides great latitude to the states in operating state institutions.
  - e. The constitution provides great latitude to the states in restriction freedom of speech and religion in institutional settings.
  - f. The Eighth Circuit has upheld the denial of a Missouri sex offenders "right to treatment" claim, holding, under the circumstances presented, that the individual did not have a "fundamental right to treatment," and that therefore the "professional standards" rubric of *Youngberg v. Romeo* does not apply. Rather, a "shock the conscience" standard applies for judgment right to treatment claims. *Strutton v. Meade*.
  - g. In *Seling v. Young* (US 2001), the U.S. Supreme Court rejected the validity of an "as-applied" challenge to a statute based on ex post facto or double jeopardy grounds. The court left open the possibility of an as-applied substantive due process challenge based on persistent patterns of executive implementation.
- V. Selected authorities that might be raised by the plaintiffs.
  - a. The SPP/SDP statutory scheme must have a non-punitive purpose.
    - i. *Hendricks* directs courts to examine "conditions surrounding . . . confinement" to determine whether they "suggest a punitive purpose on the State's part."
    - ii. *In re Linehan*, 557 N.W.2d 171, 187 (Minn. 1996) (this is the "initial question" in the determination of constitutionality.)
    - iii. *Foucha v. Louisiana*, 504 U.S. 71, 76 (1992) (holding that a person civilly committed "was not convicted, [therefor] he may not be punished.")

- iv. The state's mere disclaimer of the intent to punish is not sufficient. *Hamdi v. Rumsfeld*, 542 U.S. 507, 556–57 (Scalia, J., dissenting) (stating: "It is unthinkable that the Executive could render otherwise criminal grounds for detention noncriminal merely by disclaiming an intent to prosecute, or by asserting that it was incapacitating dangerous offenders rather than punishing wrongdoing.").
  - v. *Kansas v. Crane*, 534 U.S. 407, 412 (2002) (civil commitment must not become a "mechanism for retribution or deterrence".)
- b. The commitment scheme must apply only to a "narrow" group of the "most dangerous." *Hendricks*, 521 U.S. at 357. A commitment statute that casts too broad a net is of "doubtful validity." *Pearson*, 309 U.S. at 274.
  - c. The provision of adequate treatment is a necessary condition for a non-punitive purpose.
    - i. Non-punitive purpose is demonstrated by the state's promise to provide treatment. In *Foucha*, Justice O'Connor's pivotal concurrence made the centrality of treatment clear, insisting on a "medical justification" for civil commitment. 507 U.S. at 88 (O'Connor, J., concurring).
    - ii. *Linehan III*, 557 N.W.2d at 187, 189 (legislature's intention to provide "comprehensive care and treatment for committed sex offenders" as a central prop of constitutional validity. Observing, "commitment was for the purpose of treatment.)
    - iii. *Call v. Gomez*, 535 N.W.2d 312, 319–20 (Minn. 1995) (entitlement to treatment demonstrates that the psychopathic personality statute "is not for punitive or punishment purposes, but rather is remedial . . .")
    - iv. *Seling v. Young* (2001), the Supreme Court again hinted broadly that the Constitution provides some guarantee of treatment in sex offender commitments.
    - v. *Thompson v. Ludeman et. al*, 11-cv-1704 (DWF/JJK) at p. 59 "Minnesota's civil commitment law for sex offenders is not intended to be punitive. Its purported purpose is to protect the public while the committed individual is treated for his mental abnormality." "If, however, the committed sex offender is put into indefinite physical confinement under punitive conditions with treatment that is so inadequate that it shocks the conscience, then the committee's right to substantive due process under the Fourteenth Amendment is implicated." See *id.* at p. 59. It would be "arbitrary in the sense that [their] punitive confinement, depriving [them] of [their] fundamental constitutional rights, would not be align with the statute's purported purpose of protecting the public while the Plaintiff receives 'proper care and treatment, best adapted, according to contemporary professional standards, to rendering further confinement unnecessary.'")
  - d. Standards for determining constitutional adequacy of treatment.
    - i. "treatment, best adapted, according to contemporary professional standards, to rendering further supervision unnecessary" (Minnesota Civil Commitment Act, 1998)

- ii. *Youngberg v. Romeo* (1982), which required that professional medical judgment be exercised; treatment must conform to professional standards. (“accepted professional judgment, practice, or standards”). But see discussion of Eighth Circuit case above *Strutton v. Meade*.
- iii. *Allen v. Illinois* (1986), specifically noting Illinois’ undertaking to provide treatment “designed to effect recovery.” 478 U.S. 364 (1986)
- iv. The Minnesota Supreme Court thought it important to memorialize the claim by the state that “treatment and rehabilitation are essential to MSH’s mission,” and to recite the promises made by the state that “each of the four phases [of the MSOP treatment program] will last approximately 8 months for model patients.” *Id.* In a separate case, the Minnesota Supreme Court characterized the treatment as “intensive,” “well-planned” and “well-structured.” *Call*, 535 N.W.2d at 319 n.5. The court relied on the state’s promise that treatment would assist patients in “obtaining discharge into the community.” *Id.* Believing in the good faith of the state, the court’s opinion featured the state’s representation that “[a]n average patient is expected to complete the program in a minimum of 24 months.” *Id.*
- e. The treatment provided by MSOP has been constitutionally inadequate.
- f. Least restrictive alternative
  - i. To deprive a person of liberty, the state must use narrowly tailored means to achieve a compellingly important end (*In re Linehan*, 1999; *State v. Post*, 1995).
- g. Time-limited by purpose
  - i. “the nature and duration of commitment [must] bear some reasonable relation to the purpose for which the individual is committed:” (*Jackson v. Indiana*, 406 U.S. 715 (1972).). *United States v. Salerno*, 1987; *Zadvydas v. Davis*, 2001)
  - ii. “due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed.” *Jackson v. Indiana*, 406 U.S. 715, 738 (1972). A commitment, proper *ab initio*, becomes unconstitutional just as soon as the justifications for confinement cease to obtain. “It [is unconstitutional to] continue [confinement] after that basis no longer existed.” *O’Connor v. Donaldson*, 422 U.S. 563, 575 (1975).
  - iii. *Call*, 535 N.W.2d at 319 (“so long as statutory discharge criteria are applied in such a way that person subject to commitment as psychopathic personality is confined only for so long as he continues to need further inpatient treatment and supervision for sexual disorder and to pose danger to public.”)
- h. Evidence that constitutional standards are not being adhered to:
  - i. “The governor doesn’t want these guys to get out, and he’s made that clear ever since he was running for office.” Warren Wolfe, *Sex Offender Release Rules are Changed*, STAR TRIB., July 11, 2003, at 1B (quoting Chief of Staff Charlie Weaver).
  - ii. Compare Minnesota’s record with other states:

1. Minnesota: one person (committed since 1988) released on provisional discharge.
  2. Wisconsin: current committed population (January 2012) 314. Currently on Supervised Release: 23. Historical: SR placement: 95. SR discharges 30. Institution discharges: 66.
  3. NY (law passed 2007). Total of 270 confinement orders. Of that 270, there have been 34 releases from confinement to SIST (SIST = Strict and Intensive Supervision and Treatment; in the community). 93 individuals were initially committed by the court to SIST.
- i. Plaintiffs' additional allegations:
- i. Conditions are punitive and non-therapeutic
  - ii. Physical space not designed with therapeutic goals in mind.
  - iii. Unwarranted and unreasonable searches.
  - iv. Physical restraints: restrictions are identical to maximum security prison, without consideration of individual security risk.
  - v. Inadequate medical treatment.
  - vi. Restrictions on the possession of personal property.
  - vii. Restrictions from accessing the Internet.
  - viii. Inadequate diet
  - ix. Communication and media restrictions.
  - x. Religious restrictions.
    1. Defendants monitor Plaintiffs and Class members when they speak to clergy and religious volunteers, even though they have been screened by MSOP staff upon entry to the facility. They also monitor Plaintiffs and Class members during religious services.
    2. Defendants do not provide Plaintiffs and Class members Kosher or Halal meals. Plaintiffs and Class members cannot wear yarmulkes, kufis, or religious medallions and pendants unless they are in their cells or at a religious service.
    3. Plaintiffs and Class members are only allowed five religious items in their personal property, and Defendants limit the types of religious items Plaintiffs and Class members may have.
    4. Defendants only allow Plaintiffs and Class members to have religious feasts once a year, despite the fact that Plaintiffs and Class members have offered to pay for those feasts.

## VI. Turay litigation (Washington State)

In *Turay v. Seling*, a federal district court determined that Washington's Special Commitment Center (SCC) failed to meet professionally reasonable standards for treatment, and issued an injunction in June 1994 "to make constitutionally adequate mental health treatment available at the SCC."<sup>44</sup> The court's injunction was decisively affirmed upon review by the Ninth Circuit Court of Appeals.

Finding progress slow, the court appointed a special master, nominated by the SCC, to assist in achieving compliance and report progress toward the same. Five years and seventeen progress reports later, the court found “a continuing failure to meet minimum professional standards.” In November 1999, the court issued a contempt order based on the following findings: [T]he continuing “failures to comply with the injunction . . . are failures to meet constitutionally required minimum professional standards for the treatment of sex offenders”; that the record showed “footdragging which has continued for an unconscionable time”; that defendants “persistently have failed to make constitutionally adequate mental health treatment available to the SCC residents, and have departed so substantially from professional minimum standards as to demonstrate that their decisions and practices were not and are not based on their professional judgment”; that defendants “have failed to take all reasonable steps within their power to comply or substantially comply with the injunction, and have intentionally disregarded the injunction's requirements[.]” All of these failures were in turn ascribed to a systemic resource allocation problem. The court’s injunction was not dissolved until March 2007, nearly fifteen years later.

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Office Attorney General  
Social & Health Services Div.

JUN - 6 1994

AT SEATTLE  
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

7	RICHARD G. TURAY,	)	
8	Plaintiff,	)	NO. C91-664WD
9	v.	)	ORDER AND INJUNCTION
10	DAVID B. WESTON, et al.,	)	
11	Defendants.	)	

The plaintiff has moved for injunctive relief based on the jury's finding that defendants Weston and Dehmer deprived him of his constitutional right of access to mental health treatment. All materials filed in support of or opposition to the motion, and the evidence received at trial, have been fully considered.

Plaintiff Richard Turay is confined as a "sexually violent predator" by the State of Washington pursuant to RCW ch. 71.09, a civil commitment statute. Plaintiff alleges in this lawsuit that the conditions of his confinement at the Special Commitment Center ("SCC") at Monroe, Washington, have violated his civil rights. He contends that his rights have been violated by overly restrictive policies regarding security, physical movement, visitation, and mail; by the defendants' failure to provide him with adequate mental health treatment and with educational, vocational, exer-

5-10, 20

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1 cise, and recreational opportunities; and by certain defendants  
2 having subjected him to an unlawful probe search.

3 The defendants are David Weston, superintendent of the SCC;  
4 William Dehmer, program director; Norman Nelson, forensic thera-  
5 pist; John Anderson-Taylor, forensic therapist; Steven Wahl,  
6 psychiatric security attendant; Andre Simon, psychiatric security  
7 attendant; and Joan Kirchoff, former forensic therapist.

8 Plaintiff has not challenged in this case the constitution-  
9 ality of RCW ch. 71.09, nor the legality of his confinement; the  
10 suit relates only to conditions of confinement.

11 This case was tried to a jury March 16-28, 1994. On March  
12 28, the jury returned its verdict finding that defendants Weston  
13 and Dehmer had denied plaintiff access to constitutionally ade-  
14 quate mental health treatment. On two claims relating to visita-  
15 tion the jury was unable to reach agreement; these were submitted  
16 to the court by stipulation, and the court found for the defen-  
17 dants. The jury also was unable to agree on the probe search  
18 claim, which will be retried to a different jury. In the March 28  
19 verdict, the jury found for the defendants on all other claims.

20 The Fourteenth Amendment Due Process Clause of the United  
21 States Constitution requires state officials to provide a civilly-  
22 committed person, such as the plaintiff, with access to mental  
23 health treatment which gives him a realistic opportunity to be  
24 cured or to improve the mental condition for which he was con-  
25 fined. See Youngberg v. Romeo, 457 U.S. 307, 319-22 (1982);  
26 Ohlinger v. Watson, 652 F.2d 775, 778 (9th Cir. 1980). Continued

1 confinement without access to mental health treatment, as required  
2 by the Constitution, would result in irreparable harm to the  
3 plaintiff. Given the verdict of the jury, and the findings set  
4 out below, the plaintiff is entitled to injunctive relief narrowly  
5 tailored to remedy this constitutional violation.

6 With respect to the provision of mental health treatment,  
7 the evidence submitted at trial established, and the court finds  
8 as facts, the following:

9 1. The jury's finding that defendants Weston and Dehmer  
10 have failed to provide plaintiff with access to mental health  
11 treatment which gives him a reasonable opportunity to be cured, or  
12 to improve, is adopted for purposes of this order and injunction.

13 2. "Sexually violent predators", as defined by RCW 71.09.-  
14 020, are a difficult population to treat therapeutically, requir-  
15 ing specialized treatment expertise and modalities.

16 3. A person civilly-committed under Washington's sexually  
17 violent predators law, RCW ch. 71.09, will not be released from  
18 secure confinement until a determination is made that his mental  
19 abnormality or personality disorder has so changed that he is not  
20 likely to commit predatory acts of sexual violence if released.  
21 RCW 71.09.090.

22 4. For the most part, treatment staff at SCC are inexperi-  
23 enced in the treatment of sex offenders.

24 5. The training of staff in this area has been developed ad  
25 hoc, and has consisted mostly of lectures.  
26

1           6. Until recently, no clinical psychologist or psychiatrist  
2 was regularly available to the treatment staff for consultation or  
3 supervision of therapy programs.

4           7. Treatment plans with objective measures of progress have  
5 not been developed for individuals confined in the program. As a  
6 result, it is difficult for either the resident or the staff to  
7 know if the individual is improving and in what ways.

8           8. Trust is an important element in a therapeutic relation-  
9 ship, yet trust and rapport between therapy staff and persons  
10 confined at SCC has remained very low, partly because of deficien-  
11 cies in the program.

12           9. Treatment staff have verbally abused residents and have  
13 performed strip searches of residents.

14           10. The failure of the program to meet constitutional  
15 standards to date has contributed to a belief by residents that  
16 they have no chance of ever qualifying for release, i.e., that  
17 their confinement amounts to a life sentence.

18           Based on the foregoing, the defendants Weston and Dehmer, in  
19 their official capacities, are hereby enjoined as follows:

20           A. To adopt and implement a plan for initial and ongoing  
21 training and/or hiring of competent sex offender therapists at  
22 SCC.

23           B. To implement strategies to rectify the lack of trust and  
24 rapport between residents and treatment-providers.

25           C. To implement a treatment program for residents which  
26 includes all therapy components recognized as necessary by pre-

1 vailing professional standards in comparable programs where  
2 participation is coerced. As agreed to by defendants, this shall  
3 include the involvement of spouses and family members in the  
4 treatment of residents, and plans for encouraging the visitation  
5 and support of family members.

6 D. To develop and maintain individual treatment plans for  
7 residents that include objective benchmarks of improvement so as  
8 to document, measure, and guide an individual's progress in  
9 therapy.

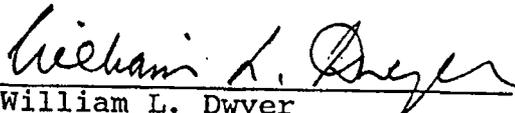
10 E. To provide a psychologist or psychiatrist expert in the  
11 diagnosis and treatment of sex offenders to supervise the clinical  
12 work of treatment staff, including monitoring of the treatment  
13 plans of individual residents, and to consult with staff regarding  
14 specific issues or concerns about therapy which may arise.

15 Defendant Weston shall file and serve on plaintiff and his  
16 counsel by July 20, 1994, a report describing the steps taken to  
17 satisfy the terms of this injunction. Plaintiff's counsel may  
18 submit any objections to the report no later than July 27, 1994.  
19 After court review of the report and objections, if any, a further  
20 order will be issued.

21 The clerk is directed to send copies of this order to all  
22 counsel of record.

23 Dated: June 3, 1994.

24  
25  
26

  
William L. Dwyer  
United States District Judge

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Kevin Scott Karsjens, David  
Leroy Gamble, Jr., Kevin John  
DeVillion, Peter Gerard  
Lonergan, James Matthew Noyer,  
Sr., James John Rud, James Allen  
Barber, Craig Allen Bolte, Dennis  
Richard Steiner, Kaine Joseph  
Braun, Brian Christopher John  
Thuringer, Kenny S. Daywitt, and  
Bradley Wayne Foster,

Civ. No. 11-3659 (DWF/JJK)

Plaintiffs,

v.

**ORDER**

Lucinda Jesson, Dennis Benson,  
Kevin Moser, Tom Lundquist, Greg  
Carlson, and Ann Zimmerman, in  
their individual and official  
capacities,

Defendants.

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**BACKGROUND**

The above-captioned matter was originally filed as *Karsjens, et al. v. Minnesota Department of Human Services, et al., pro se*, on December 21, 2011, as a proposed class action. On January 12, 2012, attorneys from the law firm of Gustafson Gluek PLLC filed Notices of Appearance in this matter. On or about January 25, 2012, Chief Judge Davis issued an Order [Doc. No. 142] staying all pending *pro se* Minnesota Sex Offender Program (“MSOP”) cases with the exception of this matter and *Thompson v. Ludeman, et*

*al.*, 11-CV-1704 (DWF/JJK), and on February 6, 2012, Chief Judge Davis issued an amended Order [Doc. No. 83] staying additional MSOP cases. On February 8, 2012, Judge Frank issued an Order [*Thompson*, Doc. No. 146] staying the *Thompson* litigation. On March 15, 2012, an Amended Complaint [Doc. No. 151] was filed in the *Karsjens* matter and on July 24, 2012, Judge Frank issued an Order [Doc. No. 203] certifying the *Karsjens* matter as a class action. The parties have been and continue to discuss settlement of the issues raised in the *Karsjens* Amended Complaint.

The Court recognizes that issues relating to the processes for sex offender civil commitment, reductions in custody, and less restrictive alternatives to sex offender civil commitment in secure treatment facilities are processes that may be addressed through further study and consensus by use of a task force.

Accordingly, **IT IS HEREBY ORDERED** that:

1. The Minnesota Commissioner of Human Services (Commissioner) shall create an advisory task force hereinafter referred to as the “Sex Offender Civil Commitment Advisory Task Force” (Task Force) that shall consist of up to 15 members and will expire two years from the date of appointment of the first member;
2. The Task Force shall examine and provide recommended legislative proposals to the Commissioner on the following topics:
  - A. The civil commitment and referral process for sex offenders;
  - B. Sex offender civil commitment options that are less restrictive than placement in a secure treatment facility; and
  - C. The standards and processes for the reduction in custody for civilly committed sex offenders.

3. The Commissioner shall strive to appoint individuals to the Task Force that have knowledge of the sex offender civil commitment process and the Minnesota Sex Offender Program; including, to the extent possible:

- A. Current and former state legislators
- B. Active or retired Minnesota County Attorneys
- C. Active or retired Minnesota State Court judges
- D. Active or retired Minnesota law enforcement personnel
- E. Attorneys licensed in the State of Minnesota that represent or have represented patients or sex offenders
- F. The Minnesota Ombudsman for mental health
- G. Victim advocates
- H. Sex offender treatment professionals
- I. Minnesota Department of Corrections
- J. Minnesota County Commissioners
- K. Minnesota County Adult Social Services
- L. Academic Professionals

4. The Task Force shall provide the Commissioner with recommendations on less restrictive alternatives to placement in secure treatment facilities and the Task Force shall provide to the Commissioner a schedule setting forth its work on each of the remaining topics and any other topics it deems necessary to adequately address the area of sex offender civil commitment by December 3, 2012. The schedule shall specify the date(s) by which the task force will deliver further recommended legislative reforms to the Commissioner.

5. The formation of this Task Force shall not affect or impair the rights of the parties with respect to further settlement discussions or litigation in this matter.

Date: August 15, 2012

*s/ Arthur J. Boylan* \_\_\_\_\_

Arthur J. Boylan  
Chief Magistrate Judge  
United States District Court



Minnesota Department of **Human Services**

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**ORDER**

WHEREAS, on August 21, 2012, I ordered the creation of the Sex Offender Civil Commitment Task Force (“Task Force”); and,

WHEREAS, I have reviewed all applications submitted through the Secretary of State’s open appointment process and, further, considered other qualified individuals with knowledge and abilities that will aid in the accomplishment of the Task Force’s work;

Therefore, IT IS HEREBY ORDERED that the following individuals are appointed as members of the Task Force:

1. **Hon. Eric J. Magnuson**, Chief Justice, Minnesota Supreme Court, retired (Chair)
2. **Hon. James M. Rosenbaum**, Judge, United States District Court, retired (Vice Chair)
3. **Representative Jim Abler**, Chair, Health and Human Services Finance Committee, Minnesota House of Representatives
4. **Donna Dunn**, Executive Director, Minnesota Coalition Against Sexual Assault
5. **Hon. Kathleen R. Gearin**, Judge, Ramsey County District Court
6. **Eric S. Janus**, President and Dean, William Mitchell College of Law
7. **Gerald T. Kaplan**, Executive Director, Alpha Human Services
8. **Representative Tina Liebling**, Minority Lead, Health and Human Services Reform Committee, Minnesota House of Representatives
9. **Senator Warren Limmer**, Chair, Judiciary and Public Safety Committee, Minnesota Senate
10. **Senator Tony Lourey**, Ranking Minority Member, Health and Human Services Committee, Minnesota Senate
11. **Ryan B. Magnus**, Partner, Jones and Magnus Attorneys at Law
12. **Hon. Paul A. Nelson**, Judge, Chippewa County District Court
13. **Roberta C. Ophem**, Ombudsman for Mental Health and Developmental Disabilities
14. **Mark A. Ostrem**, Olmsted County Attorney
15. **Nancy Schouweiler**, Chair, Dakota County Board of Commissioners; Chair, Justice and Public Safety Steering Committee, National Association of Counties

The above appointments are effective October 10, 2012.

IT IS FURTHER ORDERED that the following individuals are appointed, effective October 10, 2012, as *ex officio* members of the Task Force:

1. **Kelly Lyn Mitchell**, Executive Director, Sentencing Guidelines Commission
2. **Tom Roy**, Commissioner of Corrections
3. **Dr. Michael D. Thompson**, President, Minnesota Chapter of the Association for the Treatment of Sexual Abusers
4. **James D. Franklin**, Executive Director, Minnesota Sherriff's Association

The Task Force shall convene on October 11, 2012, at 9:00 a.m., at the Training Room of the Minnesota Department of Transportation Office of Aeronautics, 222 East Plato Boulevard, St. Paul, Minnesota 55107.

October 5, 2012

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LUCINDA E. JESSON  
Commissioner

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Kevin Scott Karsjens, David Leroy Gamble, Jr., Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, and Bradley Wayne Foster,

Court File No. 11-cv-03659 (DWF/JJK)

**ORDER REGARDING  
SEX OFFENDER  
CIVIL COMMITMENT  
ADVISORY TASK FORCE**

Plaintiffs,

v.

Lucinda Jesson, Dennis Benson, Kevin Moser, Tom Lundquist, Greg Carlson, and Ann Zimmerman, in their individual and official capacities,

Defendants.

On August 15, 2012, the Court entered an Order requiring the Minnesota Commissioner of Human Services (“the Commissioner”) to create an advisory task force referred to as the “Sex Offender Civil Commitment Advisory Task Force.” The Commissioner issued an order on August 21, 2012 creating the Sex Offender Civil Commitment Advisory Task Force (“Task Force”). The Task Force shall consist of up to 15 members and will expire two years from the date of appointment of the first member. The Task Force shall examine and provide recommended legislative proposals to the Commissioner on the following topics:

- A. The civil commitment and referral process for sex offenders;

B. Sex offender civil commitment options that are less restrictive than placement in a secure treatment facility; and

C. The standards and processes for the reduction in custody for civilly committed sex offenders.

The Minnesota Secretary of State published Notice of Vacancy for this Task Force on September 4, 2012. The deadline to submit an application to serve on the Task Force was set for September 25, 2012. The work of the task force is set to begin in early October, 2012.

The Commissioner received applications from interested persons. Those applications were provided to counsel for the parties in this matter. Counsel for the parties, the Commissioner and the Court met on September 25, 2012 by telephone to discuss the potential candidates.

On October 5, 2012, the Commissioner filed with the Minnesota Secretary of State and submitted to this Court her list of appointments to the Task Force.

Upon review of the applicants for the Sex Offender Civil Commitment Advisory Task Force, the Court hereby affirms the Commissioner's appointment for the following individual to serve as the Chairperson of the Task Force effective October 10, 2012:

The Honorable Eric J. Magnuson,  
Chief Justice, Minnesota Supreme Court, retired.

The Court hereby affirms the Commissioner's appointment for the following individual to serve as the Vice Chair of the Task Force effective October 10, 2012:

The Honorable James M. Rosenbaum,  
United States District Court, retired.

In addition, the Court hereby affirms the Commissioner's appointments for the following individuals to serve on the Task Force effective October 10, 2012:

1. Representative Jim Abeler, Chair, Health and Human Services Finance Committee, Minnesota House of Representatives
2. Representative Tina Liebling, Minority Lead, Health and Human Services Reform Committee, Minnesota House of Representatives
3. Senator Tony Lourey, Ranking Minority Member, Health and Human Services Committee, Minnesota Senate
4. Senator Warren Limmer, Chair, Judiciary and Public Safety Committee, Minnesota Senate
5. Eric Janus, President and Dean, William Mitchell College of Law
6. The Honorable Kathleen Gearin, Judge, Ramsey County District Court
7. The Honorable Paul Nelson, Judge, Chippewa County District Court
8. Mark Ostrem, Olmstead County Attorney
9. Roberta Opheim, Ombudsman for Mental Health and Developmental Disabilities
10. Donna Dunn, Executive Director, Minnesota Coalition Against Sexual Assault
11. Gerald T. Kaplan, Executive Director, Alpha Human Services
12. Nancy Schouweiler, Chair, Dakota County Board of Commissioners
13. Ryan B. Magnus, Partner, Jones and Magnus

Finally, the Court hereby affirms the following individuals as members *Ex-Officio* to the Task Force as designated by the Commissioner:

1. Kelly Lyn Mitchell, Executive Director, Sentencing Guidelines Commission.

2. Tom Roy, Minnesota Commissioner of Corrections.
3. Dr. Michael Thompson, President, Minnesota Chapter of the Association for Treatment of Sexual Abusers.
4. James Franklin, Executive Director, Minnesota Sheriff's Association..

Pursuant to Fed. R. Evid. 408, no proceedings of the Task Force, including, without limitation, testimony or evidence given or submitted to the Task Force, or materials or communications created, compiled, or drafted in connection with the activities of the Task Force by members of the Task Force or individuals assisting the Task Force are admissible in any ongoing or future litigation.

The Court will consider recommendations for the appointment of additional members to the Task Force that the Task Force may make.

**SO ORDERED:**

Dated: October 5, 2012

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ARTHUR J. BOYLAN  
United States Chief Magistrate Judge

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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Kevin Scott Karsjens, David Leroy Gamble, Jr., Kevin John DeVillion, Peter Gerard Lonergan, James Matthew Noyer, Sr., James John Rud, James Allen Barber, Craig Allen Bolte, Dennis Richard Steiner, Kaine Joseph Braun, Christopher John Thuringer, Kenny S. Daywitt, and Bradley Wayne Foster,

Plaintiffs,

v.

Lucinda Jesson, Dennis Benson, Kevin Moser, Tom Lundquist, Greg Carlson, and Ann Zimmerman, in their individual and official capacities,

Defendants.

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Civ. No. 11-3659 (DWF/JJK)

**ORDER REGARDING  
ADDITIONAL *EX-OFFICIO*  
MEMBER TO THE  
SEX OFFENDER  
CIVIL COMMITMENT  
ADVISORY TASK FORCE**

On October 5, 2012, the Court entered an Order affirming the Commissioner's appointments to the "Sex Offender Civil Commitment Advisory Task Force," including certain members *Ex-Officio*. In that Order, the Court stated that it would consider recommendations for the appointment of additional members to the Task Force.

The Court **HEREBY ORDERS** the following additional individual as a member *Ex-Officio* to the Task Force as designated by the Commissioner:

1. The Honorable Joanne Smith, Judge, Ramsey County District Court, Chief Judge, Judicial Appeal Panel.

Dated: October 5, 2012

*s/ Donovan W. Frank*  
DONOVAN W. FRANK  
United States District Court Judge

**Minnesota Laws and Rules Relating to Less Restrictive Alternatives to  
Commitment in a Secure Treatment Facility**

**MINNESOTA STATUTES**

**Section 253B.185, subdivision 1**

<https://www.revisor.mn.gov/statutes/?id=253B.185>

(d) In commitments under this section [i.e., SDP/SPP], the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

**Section 253B.095 RELEASE BEFORE COMMITMENT.**

<https://www.revisor.mn.gov/statutes/?id=253B.095>

**Subdivision 1. Court release.**

(a) After the hearing and before a commitment order has been issued, the court may release a proposed patient to the custody of an individual or agency upon conditions that guarantee the care and treatment of the patient.

(b) A person against whom a criminal proceeding is pending may not be released.

(c) A continuance for dismissal, with or without findings, may be granted for up to 90 days.

(d) When the court stays an order for commitment for more than 14 days beyond the date of the initially scheduled hearing, the court shall issue an order that must include:

(1) a written plan for services to which the proposed patient has agreed;

(2) a finding that the proposed treatment is available and accessible to the patient and that public or private financial resources are available to pay for the proposed treatment;

(3) conditions the patient must meet to avoid revocation of the stayed commitment order and imposition of the commitment order; and

(4) a condition that the patient is prohibited from giving consent to participate in a clinical drug trial while the court order is in effect.

(e) Notwithstanding paragraph (d), clause (4), during the period of a stay of commitment, the court may allow the patient to give consent to participate in a specific psychiatric clinical drug trial if the treating psychiatrist testifies or submits an affidavit that the patient may benefit from participating in the trial because, after providing other treatment options for a reasonable period of time, those options have been ineffective. The treating psychiatrist must not be the psychiatrist conducting the psychiatric clinical drug trial. The court must determine that, under the circumstances of the case, the patient is competent to choose to participate in the trial, that the patient is freely choosing to participate in the trial, that the compulsion of the stayed commitment is not being used to coerce the person to participate in the clinical trial, and that a reasonable person may choose to participate in the clinical trial.

(f) A person receiving treatment under this section has all rights under this chapter.

**Subd. 2. Case manager.** When a court releases a patient under this section, the court shall direct the case manager to report to the court at least once every 90 days and shall immediately report a substantial failure of a patient or provider to comply with the conditions of the release.

**Subd. 3. Duration.** The maximum duration of a stayed order under this section is six months. The court may continue the order for a maximum of an additional 12 months if, after notice and hearing, under sections 253B.08 and 253B.09 the court finds that (1) the person continues to be mentally ill, chemically dependent, or developmentally disabled, and (2) an order is needed to protect the patient or others.

**Subd. 4. Modification of order.** An order under this section may be modified upon agreement of the parties and approval of the court.

**Subd. 5. Revocation of order.** The court, on its own motion or upon the motion of any party that the patient has not complied with a material condition of release, and after notice and a hearing unless otherwise ordered by the court, may revoke any release and commit the proposed patient under this chapter.

Subd. 6. [Renumbered subd 4]

Subd. 7. [Renumbered subd 5]

**Special Rules of Procedure Governing Proceedings Under the Minnesota Commitment and Treatment Act**

[https://www.revisor.mn.gov/court\\_rules/rule.php?name=msspec-toh](https://www.revisor.mn.gov/court_rules/rule.php?name=msspec-toh)

**Rule 22. Stayed Orders (Mentally Ill and Dangerous to the Public, Sexually Dangerous Persons, and Sexual Psychopathic Personalities)**

Stayed orders for commitment as mentally ill and dangerous to the public, sexually dangerous person, or a sexual psychopathic personality may be issued only by agreement of the parties and approval by the court.

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*Selected statutory provisions affecting placement of individuals who have already been committed to a secure treatment facility.*

**MINNESOTA STATUTES Section 253B.185 (2011)**

<https://www.revisor.mn.gov/statutes/?id=253B.185>

**Subd. 9. Petition for reduction in custody.**

(a) This subdivision applies only to committed persons as defined in paragraph (b). The procedures in subdivision 10 for victim notification and right to submit a statement apply to petitions filed and reductions in custody recommended under this subdivision.

(b) As used in this subdivision:

(1) "committed person" means an individual committed under this section, or under this section and under section 253B.18, as mentally ill and dangerous. It does not include persons committed only as mentally ill and dangerous under section 253B.18; and

(2) "reduction in custody" means transfer out of a secure treatment facility, a provisional discharge, or a discharge from commitment. A reduction in custody is considered to be a commitment proceeding under section 8.01.

(c) A petition for a reduction in custody or an appeal of a revocation of provisional discharge may be filed by either the committed person or by the head of the treatment facility and must be filed with and considered by a panel of the special review board authorized under section 253B.18, subdivision 4c. A committed person may not petition the special review board any sooner than six months following either:

(1) the entry of judgment in the district court of the order for commitment issued under section 253B.18, subdivision 3, or upon the exhaustion of all related appeal rights in state court relating to that order, whichever is later; or

(2) any recommendation of the special review board or order of the judicial appeal panel, or upon the exhaustion of all appeal rights in state court, whichever is later. The head of the treatment facility may petition at any time. The special review board proceedings are not contested cases as defined in chapter 14.

(d) The special review board shall hold a hearing on each petition before issuing a recommendation under paragraph (f). Fourteen days before the hearing, the

committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and the petitioner's counsel, and the committed person and the committed person's counsel must be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(e) A person or agency receiving notice that submits documentary evidence to the special review board before the hearing must also provide copies to the committed person, the committed person's counsel, the county attorney of the county of commitment, the case manager, and the commissioner. The special review board must consider any statements received from victims under subdivision 10.

(f) Within 30 days of the hearing, the special review board shall issue written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel established under section 253B.19. The commissioner shall forward the recommendation of the special review board to the judicial appeal panel and to every person entitled to statutory notice. No reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the judicial appeal panel and until 15 days after an order from the judicial appeal panel affirming, modifying, or denying the recommendation.

\* \* \* \*

**Subd. 10a. Scope of community notification.**

(As amended in 2012 by

<https://www.revisor.mn.gov/laws/?id=123&doctype=Chapter&year=2012&type=0>)

(a) Notification of the public and disclosure of information under section 244.052, subdivision 4, regarding an individual who was committed under this section or Minnesota Statutes 1992, section 526.10, is as provided under section 244.052, subdivision 4, paragraphs (b), clause (3), and (g), and subdivision 4b, regardless of the individual's assigned risk level. The restrictions under section 244.052, subdivision 4, paragraph (b), clause (3), placed on disclosing information on individuals living in residential facilities do not apply to persons committed under this section or Minnesota Statutes 1992, section 526.10. The local law enforcement agency may proceed with the broadest disclosure authorized under section 244.052, subdivision 4.

(b) After four years from the date of an order for provisional discharge or discharge of civil commitment, the individual may petition the head of the treatment facility from which the individual was provisionally discharged or discharged to have the scope of notification and disclosure based solely upon the individual's assigned risk level under section 244.052.

(c) If an individual's provisional discharge is revoked for any reason, the four-year time period under paragraph (b) starts over from the date of a subsequent order for provisional discharge or discharge except that the head of the treatment facility or designee may, in the sole discretion of the head or designee, determine that the individual may petition before four years have elapsed from the date of the order of the subsequent provisional discharge or discharge and notify the individual of that determination.

(d) The head of the treatment facility shall appoint a multidisciplinary committee to review and make a recommendation on a petition made under paragraph (b). The head of the treatment facility or designee may grant or deny the petition. There is no review or appeal of the decision. If a petition is denied, the individual may petition again after two years from the date of denial.

(e) Nothing in this subdivision shall be construed to give an individual an affirmative right to petition the head of the treatment facility earlier than four years after the date of an order for provisional discharge or discharge.

(f) The head of the treatment facility shall act in place of the individual's corrections agent for the purpose of section 244.052, subdivision 3, paragraph (h), when the individual is not assigned to a corrections agent.

#### **Subd. 11. Transfer.**

(a) A patient who is committed as a sexually dangerous person or sexual psychopathic personality shall not be transferred out of a secure treatment facility unless it appears to the satisfaction of the judicial appeal panel, after a hearing and recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other treatment programs under the commissioner's control.

(b) The following factors must be considered in determining whether a transfer is appropriate:

- (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;

- (4) which facility can best meet the person's needs; and
- (5) whether transfer can be accomplished with a reasonable degree of safety for the public.

**Subd. 11a. Transfer; voluntary readmission to a secure facility.**

- (a) After a patient has been transferred out of a secure facility pursuant to subdivision 11 and with the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to a secure facility operated by the Minnesota sex offender program for a period of up to 60 days.
- (b) If the patient is not returned to the facility to which the patient was originally transferred pursuant to subdivision 11 within 60 days of being readmitted to a secure facility, the transfer is revoked and the patient shall remain in a secure facility. The patient shall immediately be notified in writing of the revocation.
- (c) Within 15 days of receiving notice of the revocation, the patient may petition the special review board for a review of the revocation. The special review board shall review the circumstances of the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer at the time of the revocation hearing.
- (d) If the transfer has not been revoked and the patient is to be returned to the facility to which the patient was originally transferred pursuant to subdivision 11, with no substantive change to the conditions of the transfer ordered pursuant to subdivision 11, no action by the special review board or judicial appeal panel is required.

**Subd. 11b. Transfer; revocation.** (a) The executive director of the Minnesota sex offender program or designee may revoke a transfer made pursuant to subdivision 11 and require a patient to return to a secure treatment facility if:

(1) remaining in a nonsecure setting will not provide a reasonable degree of safety to the patient or others; or

(2) the patient has regressed in clinical progress so that the facility to which the patient was transferred is no longer sufficient to meet the patient's needs.

(b) Upon the revocation of the transfer, the patient shall be immediately returned to a secure treatment facility. A report documenting reasons for revocation shall be issued by the executive director or designee within seven days after the patient is returned to the secure treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this subdivision. The revocation report shall be served upon the patient and the patient's counsel. The report shall outline the specific reasons for the revocation including, but not limited to, the specific facts upon which the revocation recommendation is based.

(d) A patient whose transfer is revoked must successfully re-petition the special review board and judicial appeal panel prior to being transferred out of a secure facility.

(e) Any patient aggrieved by a transfer revocation decision may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and, after considering the factors in subdivision 11, paragraph (b), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new transfer out of a secure facility at the time of the revocation hearing.

**Subd. 12. Provisional discharge.** A patient who is committed as a sexual psychopathic personality or sexually dangerous person shall not be provisionally discharged unless it appears to the satisfaction of the judicial appeal panel, after a hearing and a recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society.

The following factors are to be considered in determining whether a provisional discharge shall be recommended:

(1) whether the patient's course of treatment and present mental status indicate there is no longer a need for treatment and supervision in the patient's current treatment setting; and

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

**Subd. 13. Provisional discharge plan.** A provisional discharge plan shall be developed, implemented, and monitored by the head of the treatment facility or designee in conjunction with the patient and other appropriate persons. The head of the treatment facility or designee shall, at least quarterly, review the plan with the patient and submit a written report to the designated agency concerning the patient's status and compliance with each term of the plan.

**Subd. 14. Provisional discharge; review.** A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 18. The commissioner shall notify the patient that the terms of a provisional discharge continue unless the patient requests and is granted a change in the conditions of provisional discharge or unless the patient petitions the special review board for a full discharge and the discharge is granted by the judicial appeal panel.

**Subd. 14a. Provisional discharge; voluntary readmission.**

(a) With the consent of the executive director of the Minnesota sex offender program, a patient may voluntarily return to the Minnesota sex offender program from provisional discharge for a period of up to 60 days.

(b) If the patient is not returned to provisional discharge status within 60 days of being readmitted to the Minnesota sex offender program, the provisional discharge is revoked. The patient shall immediately be notified of the revocation in writing. Within 15 days of receiving notice of the revocation, the patient may request a review of the matter before the special review board. The special review board shall review the circumstances of the revocation and, after applying the standards in subdivision 15, paragraph (a), shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The board may recommend a return to provisional discharge status.

(c) If the provisional discharge has not been revoked and the patient is to be returned to provisional discharge, the Minnesota sex offender program is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan.

**Subd. 15. Provisional discharge; revocation.**

(a) The head of the treatment facility may revoke a provisional discharge if either of the following grounds exist:

- (1) the patient has departed from the conditions of the provisional discharge plan; or
- (2) the patient is exhibiting behavior which may be dangerous to self or others.

(b) The head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment facility. A report documenting reasons for revocation shall be issued by the head of the treatment facility within seven days after the patient is returned to

the treatment facility. Advance notice to the patient of the revocation is not required.

(c) The patient must be provided a copy of the revocation report and informed, orally and in writing, of the rights of a patient under this section. The revocation report shall be served upon the patient, the patient's counsel, and the designated agency. The report shall outline the specific reasons for the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

(d) An individual who is revoked from provisional discharge must successfully re-petition the special review board and judicial appeal panel prior to being placed back on provisional discharge.

\* \* \* \*

**Subd. 17. Appeal.** Any patient aggrieved by a revocation decision or any interested person may petition the special review board within seven days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of the revocation report for a review of the revocation. The matter shall be scheduled within 30 days. The special review board shall review the circumstances leading to the revocation and shall recommend to the judicial appeal panel whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of the revocation hearing.

\* \* \* \*

**Subd. 19. Aftercare services.** The Minnesota sex offender program shall provide the supervision, aftercare, and case management services for a person under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999. The designated agency shall assist with client eligibility for public welfare benefits and will provide those services that are currently available exclusively through county government.

Prior to the date of discharge or provisional discharge of any patient committed as a sexual psychopathic personality or sexually dangerous person, the head of the treatment facility or designee shall establish a continuing plan of aftercare services for the patient, including a plan for medical and behavioral health services, financial sustainability, housing, social supports, or other assistance the patient needs. The Minnesota sex offender program shall provide case management services and shall assist the patient in finding employment, suitable shelter, and adequate medical and behavioral health services and otherwise assist in the patient's readjustment to the community.

State	LRA at time of commitment	LRA for those already committed to a secure facility	Link to statutes
Arizona	When an individual is determined to meet the commitment standard, the district court may commit the person to a facility or release him to a less restrictive alternative. 90-day inpatient evaluation prior to actual release to an LRA during which LRA is investigated by state hospital and additional conditions may be proposed. The release to an LRA may be revoked by court order.	If committed to a facility, annual review reports required to state if LRA is in best interest of the person and will adequately protect the community. Individual may petition annually for release to LRA or full discharge regardless of endorsement by state hospital.	<u>Ariz. Rev. Stat. §§ 36-3701 to -3717</u>
California	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, the person is committed to a secure facility. (§ 6604)	Annual report to the court is required to include consideration of whether release to a LRA or an unconditional release is in the best interest of the person and conditions can be imposed that would adequately protect the community (§ 6605). Individual may petition for conditional release or unconditional discharge without endorsement by state hospital (§ 6608).	<u>Cal. Welfare &amp; Institutions Code §§ 6600-6609.3</u>
Florida	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, the person is committed to a secure facility. (§ 394.917 (2))	Annual reviews and right to petition for release but no specific direction to consider LRA. (§ 394.918)	<u>Fla. Stat. §§ 394.910-.932</u>
Illinois	When an individual is determined to meet the commitment standard, the district court's commitment order specifies either care in a secure facility or conditional release. (§40(b)(2))	Annual report to the court is required for the purpose of determining whether the person has made sufficient progress to be conditionally released or discharged. (§55) Person may petition for conditional release six months after commitment or denial of previous petition. (§60)	<u>725 Ill. Comp. Stat. 207/1-99</u>

Iowa	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a secure facility. (§229A.7, ¶¶ 5.b. and 7)	Annual review examination and report includes consideration of whether the person is suitable for placement in a transitional release program. (§229A.8. ¶ 5.e.(1)(b)). Establishes transitional release program. (§229A.8A) Allows for release with supervision and without supervision, which is still not full discharge. (§229A.9A)	<u>Iowa Code</u> <u>§§ 229A.1-</u> <u>16</u>
Kansas	No LRA option specified at time of commitment. (§59-29a07(a),(b))	Annual examination of person's mental condition with right to petition for release. Burden is on state to prove beyond a reasonable doubt that the person remains not safe to be placed in transitional release and if transitionally released is likely to engage in acts of sexual violence. (§59-29a08(c)(3)) During transitional release, person is annually examined to determine if appropriate for conditional release. (§§59-29a18, 59-29a19)	<u>Kan. Stat.</u> <u>§§ 59-</u> <u>29a01 to -</u> <u>29a23</u>
Massachusetts	No LRA option specified at time of commitment.	Individuals may apply to participate in a "community access program" annually. Community access program participants continue to reside within secure facility. (§6A) Allows for annual petitions for discharge. (§9)	<u>Mass. Gen.</u> <u>Laws. ch.</u> <u>123A, §§ 1-</u> <u>16</u>
Minnesota	Presumptive commitment to a secure treatment facility unless individual establishes by clear and convincing evidence that a less restrictive treatment program is available consistent with treatment needs and public safety. (§253B.185, subd. 1(d)) Alternatively, stay of commitment with custody assumed by individual or agency with conditions. (§253B.095)	Individuals may petition for reduction in custody (transfer out of secure facility, provisional discharge, or full discharge) six months after commitment or final disposition of last petition. (§253B.185, subd. 9)	<u>Minn. Stat.</u> <u>ch. 253B</u>

Missouri	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a secure facility. (§632.495, ¶¶2,3)	Annual examination of person's mental condition with right to petition for release. Burden is on state to prove by clear and convincing evidence that the person remains not safe to be at large and if released is likely to engage in acts of sexual violence. (§632.498, ¶5) Conditional release granted when person's mental abnormality has so changed that the person is not likely to commit acts of sexual violence if released. (§632.505)	<u>Mo. Rev. Stat. §§ 632.480-513</u>
Nebraska	If, when an individual is determined to meet the commitment standard, voluntary hospitalization or other LRA is available and would suffice to prevent repeat of sexual offending, then commitment petition is either dismissed or proceedings are stayed for up to 90 days for the individual to obtain voluntary treatment. (§71-1209 (3))	No LRA option specified as intermediate to full release or full confinement. (§71-1220)	<u>Neb. Rev. Stat. §§ 71-1201- to 1226</u>
New Hampshire	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a secure facility for up to 5 years (with ability to recommit for unlimited number of 5-year periods). (§§135-E:11,12)	Individual may petition for release. (§135-E:14)	<u>N.H. Rev. Stat. ch. 135-E</u>

New Jersey	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a facility designated for the custody, care, and treatment of sexually violent predators. (§§30:4-27.32, 30:4-27.34)	Annual review hearings (but no requirement that LRA be considered annually) and right to petition for discharge. (§30:4-27.35) After initial commitment to a secure facility, the Department of Human Services may recommend conditional discharge to be granted if the committing court finds that the person will not be likely to engage in acts of sexual violence because the person is amenable to and highly likely to comply with a plan to facilitate the person's adjustment and reintegration into the community so as to render involuntary commitment unnecessary for that person. (§30:4-27.32)	<u>N.J. Stat.</u> <u>§§ 30:4-</u> <u>27.24 to .38</u>
New York	If an individual is determined to be a detained sex offender who suffers from a mental abnormality, then the court determines whether the individual requires confinement or requires strict and intensive supervision. (§10.07 (f)) Conditions for strict and intensive supervision are detailed. (§10.11)	Annual examinations to determine if individual is dangerous sex offender in need of confinement; allowance for petitions seeking discharge or change to strict and intensive supervision. (§10.09)	<u>N.Y.</u> <u>Mental</u> <u>Hyg. Law</u> <u>§10</u>
North Dakota	If the individual is determined meet the commitment standard, commitment is to the least restrictive available treatment facility or program necessary to achieve the purposes of this chapter; however, there is no requirement to create a LRA specifically for an individual. (§25-03.3-13)	Annual evaluation to determine whether individual is to be discharged. (§25-03.3-17). Facility director may petition court for placement of the individual in the community for treatment on an outpatient basis. (§25-03.3-24)	<u>N.D. Cent.</u> <u>Code § 25-</u> <u>03</u>
Pennsylvania	[Sexually violent person commitment in Pennsylvania is limited those adjudicated delinquent as juveniles for specified acts of sexual violence and are still institutionalized and in need of treatment at age 20. (§6401)]	Annual review by court; if individual no longer meets criteria for commitment, an outpatient treatment plan is ordered to be developed. (§6404)	<u>42 Pa.</u> <u>Consol.</u> <u>Title 42 ch.</u> <u>64</u>

South Carolina	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a secure facility. (§44-48-100(A))	No LRA option specified as intermediate to full release or full confinement. Annual examination and report to committing court. Court orders a hearing if there is probable cause to believe the individual's condition has so changed that the person is safe to be at large, and if released, is not likely to commit acts of sexual violence. (§44-48-110)	<u>S.C. Code</u> <u>§§ 44-48-10</u> <u>to -170</u>
Texas	All commitments are to outpatient treatment and supervision, continuing until the person's behavioral abnormality has changed to the extent that the person is no longer likely to engage in a predatory act of sexual violence. (§841.081(a)) Required conditions on outpatient civil commitment are provided by statute. (§841.082) Violation of any conditions is a 3rd degree felony. (§841.085)	Biennial examination and report to court must consider whether to modify conditions and whether to release from all conditions. (§§841.101-102) Individual may separately petition for release. (§§841.121-122)	<u>Tex. Health</u> <u>&amp; Safety</u> <u>Code § 841</u>
Virginia	When the individual is determined to meet the commitment standard, the district court decides whether to commit to a secure facility (§§37.2-909, ¶A) or to continue the trial for up to 60 days while the suitability of a less restrictive alternative is investigated by their department of human services. (§§37.2-908, ¶¶ D-F)	Annual review hearing and report reevaluating the individual's condition and recommending treatment. Court may determine if individual is to be conditionally released. Department is responsible for developing a conditional release plan if court orders conditional release. (§37.2-910) Conditional release standards and requirements specified in statute. (§37.2-912-914)	<u>Va. Code.</u> <u>§§ 37.2-900</u> <u>to - 921</u>

Washington	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a secure facility. (§71.09.060 (1))	Annual examination and report to committing court must consider whether the individual currently meets commitment standard and whether conditional release to an LRA is in the best interest of the person and conditions can be imposed that would adequately protect the community. (§71.09.070 (1)) Statutory authorization for establishment of transitional facilities, including considerations for siting of those facilities in counties and incentive grants and payments. (§§71.09.250-344 )	<u>Wash. Rev. Code §§ 71.09.010 to - .903</u>
Wisconsin	No LRA option specified at time of commitment. When an individual is determined to meet the commitment standard, commitment is to a secure facility. (§§980.06, 980.065)	Annual reexamination of mental condition with express consideration of whether sufficient progress made for supervised release or discharge. (§980.07 (1))	<u>Wis. Stat. ch. 980</u>
United States	No LRA option specified at time of commitment.	Individual may be conditionally discharged "under a prescribed regimen of medial, psychiatric, or psychological care or treatment" if he will not be sexually dangerous to others while under those conditions. (¶(e))	<u>18 U.S.C. §4248</u>

# **Compilation of Sex Offender Civil Commitment Statutes**

Documents and all links available at  
[http://www.dhs.state.mn.us/main/groups/agencywide/documents/pub/dhs16\\_174148.pdf](http://www.dhs.state.mn.us/main/groups/agencywide/documents/pub/dhs16_174148.pdf)

## Links to Specific Jurisdictions

1. [Arizona](#)
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December 3, 2012

**Eric J. Magnuson**  
 (612) 977-8788  
 emagnuson@briggs.com

**VIA E-MAIL AND U.S. MAIL**

Ms. Lucinda E. Jesson  
 Commissioner  
 Minnesota Department of Human Services  
 P.O. Box 64998  
 St. Paul, MN 55164-0998

Dear Commissioner Jesson:

I enclose with this letter the first report of the recommendations of the Sex Offender Civil Commitment Advisory Task Force. As the report indicates, we have been charged with examining and providing recommended legislative proposals on three areas of the Minnesota civil commitment system for sex offenders. This report addresses the issue of Less Restrictive Alternatives to commitment of sex offenders to secure treatment facilities.

The order of the federal court required this report to be submitted by December 3, 2012, which we now do. Our goal was to answer the specific immediate question posed to us, before proceeding with a broader inquiry.

The short timeline within which we were required to present our initial recommendations made it necessary for us to be very focused in our analysis and recommendations. This report explains our process, identifies the resources we examined, explains the reasoning behind our conclusions, and contains a list of specific recommendations for legislative action on the topic of Less Restrictive Alternatives. However, we realize that our work is not done.

To address the other two issues identified by the court, the Task Force will need to review the entire system of civil commitment of sex offenders from referral to commitment to release. We plan to conduct that review and analysis over the next twelve months. It is our plan to meet regularly and often in the early months of the coming year so that we may communicate with legislators and coordinate our efforts with legislative developments on the subject. Following the end of the legislative session, we will take stock of where things stand and meet on a regular basis through the following months to prepare our final recommendations. We expect that we will present that final report on or before December 1, 2013.

## B R I G G S   A N D   M O R G A N

Ms. Lucinda E. Jesson  
December 3, 2012  
Page 2

The members of the Task Force recognize the seriousness of the assignment that they have undertaken and appreciate the trust and confidence that you and the court have shown in us.

Very truly yours,

Briggs and Morgan, PA

s/ Eric J. Magnuson  
Eric J. Magnuson

EJM/kd  
Enclosure

5057536v2

**November 29, 2012**

**MEMO**

**TO: Commissioner of Human Services**

**FROM: The Hon. Eric J. Magnuson, Chair,  
The Hon. James Rosenbaum, Vice Chair,  
Sex Offender Civil Commitment Advisory Task Force**

**SUBJECT: Less Restrictive Alternatives to Secure Facility Commitments**

This Task Force has been charged with examining and providing recommended legislative proposals on the following three topics:

- A. The civil commitment and referral process for sex offenders;
- B. Sex offender civil commitment options that are less restrictive than placement in a secure treatment facility; and
- C. The standards and processes for the reduction in custody for civilly committed sex offenders.

Part of the Task Force's charge is to have recommendations on the second topic by December 3, 2012. To that end, the Task Force met on October 11, November 1, 15, and 29. Members have studied a large volume of resource materials throughout this time period. Meetings included presentations from practitioners and discussion among Task Force members. Members were invited to make submissions addressing the three topics, with emphasis on the Less Restrictive Alternatives topic.

A number of conclusions may be drawn from our preliminary examination of the issues presented:

- It is clear from the review by Task Force members of the resource materials and the discussions and submissions of the members that Less Restrictive Alternatives is not a simple problem. Serious constitutional issues are presented in the pending federal litigation which gave rise to the appointment of the Task Force. Not only is civil commitment complex legally and medically, but there is a great deal of overlap between addressing Less Restrictive Alternatives for those already civilly committed (the first task assigned to the Task Force by the federal court and Commissioner), and providing alternatives to those who are subject of pending but not completed or future petitions for commitment.

- It is also clear that considerable additional study and thought will be necessary to provide a comprehensive proposal that deals with these interrelated issues.
- Perhaps the most significant impediment to effective Less Restrictive Alternatives is the absence of facilities and funding for programs to which offenders can be committed short of a secure facility, or outright release.
  - Existing law allows a court to commit an individual to a less-restrictive alternative if the individual “establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient’s treatment needs and the requirements of public safety.” Minn. Stat. § 253B.185, subd. 1(d) (2012). However, the lack of programs and facilities makes this provision of limited value.
  - The Legislative Auditor’s March 2011 report highlighted this issue in its findings and recommendations:
    - “Minnesota lacks reasonable alternatives to commitment at a high security facility.” (p. xi)
    - “One problem with Minnesota’s commitment process is that it results in an all-or- nothing outcome. The decision that prosecutors and judges face is that either a sex offender is civilly committed in an expensive, high security facility, or the offender is released to the community, sometimes with no supervision if he has served his complete prison sentence.” (p. 42)
    - “Minnesota may be committing some sex offenders who could be treated and supervised in other less costly settings.” (p. 43)
    - “Recommendation: The Legislature should require MSOP to develop a plan for alternative facilities for use by certain sex offenders currently at MSOP, as well as for certain newly committed individuals. The plan should provide details about funding and needed statutory changes to ensure adequate supervision, monitoring, and treatment of these sex offenders. The plan should also address the funding and statutory changes needed to address a stay of commitment option. The cost impact of these options should be compared with the costs of expected growth at MSOP without any change in policy. The plan should be presented to the 2012 Legislature.” (p. 45)

## Recommendations

1. The Legislature must provide adequate funding for less secure residential facilities, group homes, outpatient facilities, and treatment programs. The Legislature must ensure that such facilities and programs are operational within a reasonable period of time.
2. The Department of Corrections, the Department of Human Services, prosecutors, the courts, and persons subject to the commitment process must have full ability to access these Less Restrictive Alternatives. To the extent that any of the current statutory or regulatory laws are obstacles to Less Restrictive Alternatives, appropriate legislative changes should be made.
3. Less Restrictive Alternatives must ensure public safety. The Legislature should provide for increased resources for public education regarding the rehabilitative aspects of such programs and the provisions for public safety.
4. The Legislature should provide for geographic distribution of Less Restrictive Alternative facilities and programs to serve the entire state through regional, multi-provider and other collaborative programs. The Legislature must consider how local government ordinances, resolutions, or similar laws which have the effect of limiting, excluding, or impeding the siting of Less Restrictive Alternative facilities or programs for civilly committed sex offenders should be dealt with when they conflict with the establishment of a statewide plan for Less Restrictive Alternatives.
5. To effectuate these efforts, the Task Force urges the Legislature to adopt legislation providing that:
  - a. The Commissioner of Human Services shall request proposals from governmental and non-governmental entities and organizations for the development of new programs or enhancement of existing programs to provide safe options for the housing, supervision, and treatment of civilly committed sex offenders outside of a secure treatment facility.
  - b. Proposals shall at a minimum be required to describe the provision of residential services, treatment services, supervision services, use of monitoring technology such as GPS, and transitional services such as employment counseling and training in daily living skills.
  - c. Provision of these services need not be done solely within a residential facility so long as the proposal addresses the need for public safety in all aspects of programming.
  - d. Proposals must also include a plan for transitional progression into other lesser-restrictive settings and conditions.

- e. Proposals may include regional, multi-county or multi-provider programs and facilities.
- f. Proposed programs may be designed to serve individuals who previously have been civilly committed to secure facilities, and those who are subsequently civilly committed.
- g. The Commissioner of Human Services may award planning funds as necessary to further the development of proposals for less-restrictive alternatives.
- h. The Commissioner may request proposals on an ongoing basis.
- i. The Commissioner shall enter into contracts with governmental and non-governmental entities and organizations agreeing to provide housing, supervision, and treatment of civilly committed sex offenders outside of secure treatment facilities.
- j. If the Commissioner determines that there is insufficient capacity or geographic distribution from those awarded contracts under this section, the Commissioner shall establish state-operated facilities and programs in such amount as to provide sufficient capacity and geographic distribution.
- k. The Commissioner shall develop Less Restrictive Alternative programs and facilities throughout the state after due consideration of the population of offenders to be served, the number of facilities and different programs necessary to serve that population, the expressed desire of the Legislature that facilities not be unduly concentrated, and the financial impact of programs and facilities providing overlapping services.
- l. The Commissioner shall supervise, coordinate, and administer the development of less-restrictive alternative facilities and programs.
- m. Certification and licensing of programs and facilities granted by either the Department of Human Services or the Department of Corrections shall be honored by both departments.
- n. The Commissioner of Human Services shall perform case management and supervision activities for those civilly committed to a Less Restrictive Alternative and should have supervisory authority whenever the Commissioner is not directly providing those services.