

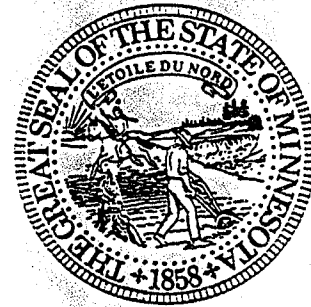
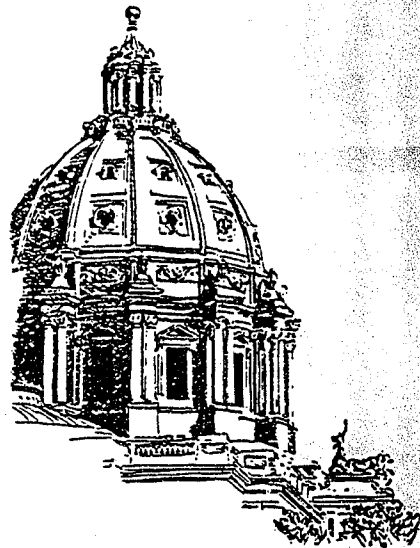
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TASK FORCE ON SEXUAL PREDATORS



Final Report To
The Minnesota Legislature

January 4, 1995



TASK FORCE ON SEXUAL PREDATORS

CREATION AND CHARGE

The Task Force on Sexual Predators was created by the 1994 legislature to "examine current law and practice relating to the commitment of psychopathic personalities...and...make recommendations on options, both civil and criminal, for dealing with sexual predators."¹

The Task Force was created in response to litigation questioning the constitutionality of Minnesota's psychopathic personality commitment statute.²

MEMBERSHIP

The Task Force was made up of a wide range of professionals familiar with the psychopathic personality statute, sex offenders, and the impact sexual assault has on victims. The 13-member task force included representatives of prosecutors, legislators, law enforcement, the Corrections and Human Services Departments, and various mental health professionals.³

MEETINGS

The Task Force met 13 times to gather information, seek input from a broad spectrum of individuals, and to formulate its recommendations.

It held over 44 hours of hearings and heard from 50 witnesses including the legislative auditor's office, prosecutors, psychologists, defense lawyers, judges, probation/community supervision professionals, law enforcement officers, victims, treatment professionals, corrections representatives, sentencing experts, and Minnesota's Attorney General and Governor. In addition, the Task Force toured the St. Peter Security Hospital, and the Bureau of Criminal Apprehension.

¹ Laws of Minnesota for 1994, Chapter 636, Article 8, section 20. See appendix one.

² Minnesota Statutes 1992, Chapter 526. See appendix two.

³ See appendix three for a complete list of the Task Force's membership.

RECOMMENDATIONS

Based upon the input they received and their own personal expertise, the Task Force made the following recommendations:

First, in its interim report the task force recommended that if the legislature was called into special session to address the civil commitment of psychopathic personalities, it enact into law bill draft SC3526-4.⁴ This bill was enacted by the legislature in substantially the same form as proposed by the Task Force. It was enacted during a special legislative session held on August 31, 1994.

Second, the Task Force further recommends modification of Minnesota's criminal sanctions by the enactment of legislation substantially similar to bill draft ES33.⁵ This bill proposes to make three changes to the patterned sex offender sentencing law:

- a) It would lengthen the maximum sentence allowed under the law to forty years. Under current law, the maximum sentence allowed under the law is limited by the statutory maximum sentence provided for the offense of conviction -- as low as five years for some offenses covered by the law.
- b) It would require that a patterned sex offender be placed on conditional release for the rest of his or her life after being released from state prison. Under current law, the conditional release term lasts for the greater of ten years or the time remaining in the statutory maximum sentence. Crimes or other release violations committed during the conditional release term could result in the offender going back to prison for life.
- c) It would expand the scope of the law to cover persons who plan or premeditate their predatory sex crime. Current law is limited to repeat offenders and to offenders who commit particularly aggravated sexually motivated crimes.

⁴ See appendix four.

⁵ See appendix five.

The Sentencing Guidelines Commission and/or the legislature should also continue to review Minnesota's criminal sexual conduct statutes to ensure that the length of sentences that are imposed are appropriate given the crimes committed.

Bill draft ES33 contains not only changes in Minnesota's criminal law, but also recommends training for judges and others on Minnesota's sentencing statutes that are applicable to persons convicted of sex offenses. In the past, the courts have suggested that the legislature should look at strengthening Minnesota's criminal sexual conduct sanctions.

However, the courts themselves have not always made the best use of existing sentencing options. For example, the Task Force heard testimony that the downward departure rate by judges for criminal sexual conduct offenses was 40%. Not all of these departures appeared warranted. Consequently, it is believed that training for the judicial branch on Minnesota's criminal sexual conduct sentencing laws would be worthwhile. Some reflection on the part of the judicial branch as to its sentencing practices may be beneficial.

Third, the Task Force further recommends the enactment of legislation that provides for public notification when certain high risk sex offenders are released into a community, if the notification will result in increased public safety.

If the state fails within three years to enact a public notification provision, it will lose 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 (approximately \$782,100).

However, the Task Force strongly believes that any such legislation must balance other competing interests with the public's right to know. With that goal in mind, the Task Force recommends that any public notification legislation meet several guidelines:

- a) Those offenders who fall within the scope of the public notification law should include certain offenders who have been committed to the Commissioner of Corrections and determined to be public risk monitoring cases.

The task force could not reach a consensus on whether other offenders who are not committed to the Commissioner of Corrections should also fall within the scope of the legislation.

- b) An exemption to the notification law should be made whenever an offender is

placed or resides in a facility that provides 24 hour supervision of the individual or the facility can account for his/her whereabouts on a 24 hour basis.

This exemption should be granted only to those facilities whose staff have received training in sex offender supervision.

- c) Standards must be delineated in the legislation so that the scope of the disclosure to the public corresponds to the degree of risk a violator poses. For example, for some offenders limited disclosure to school officials may be warranted. For others, a more general, widespread community notification may be appropriate.

Law enforcement and other officials charged with notifying the public will need these guidelines to assist them in determining how, when, and by what method the public disclosure should be made. These guidelines will also ensure that there is a consistent enforcement of the disclosure law by law enforcement agencies. Individual agencies should not be allowed to develop their own standards for disclosure, thereby creating the possibility for the inequitable application of the law.

Fourth, the Task Force further recommends the enactment of bill draft KC4,⁶ which modifies Minnesota's law related to the testing of sex offenders for the human immunodeficiency virus. Currently, the state is losing 10% of its federal funding under the Omnibus Crime Control and Safe Streets Act of 1968 (\$782,100) because the law does not require the sentencing court to take the action specified in the statute.

Federal authorities are also requiring the statute to be amended to make the factors that trigger the court order disjunctive rather than conjunctive as presently written.

Fifth, the Task Force further recommends that the money, which will be obtained as a result of the enactment of their fourth recommendation, be used to update computer capability

⁶ See appendix six.

and staffing levels within the Criminal Assessment Program (CAP) of the Bureau of Criminal Apprehension (BCA) as outlined in appendix seven.⁷

Presently, the sex offender registration database, the Minnesota Sex Crimes Analysis Program (MNSCAP), the photo retrieval database and other CAP databases are not integrated into a unified computer system. This lack of integration makes data entry and retrieval procedures duplicative and cumbersome.

For example, the physical characteristics of offenders are entered separately into the sex offender registration database, the photo retrieval database, the MNSCAP database and depending upon the nature of the crime, the Violent Criminal Apprehension Program (VICAP) database. This duplicative process results in wasted staff time that could be better used actually analyzing the data as opposed to merely "handling" it.

To the extent that the Task Force's fourth recommendation is not sufficient to provide enough money to fund this recommendation, it recommends that an additional general fund appropriation be made to make up the difference.

Sixth, the Task Force further recommends that any money obtained as a result of the enactment of their fourth recommendation that is not used to enhance the computer capability of the Criminal Assessment Program in the BCA be used to enhance DNA analysis methods within the Forensic Science Laboratory of the BCA. Additional money should be appropriated as needed to establish a complete polymerase chain reaction (PCR) testing program including purchasing the necessary equipment and supplies; conducting needed training; and remodeling existing lab facilities.

PCR technology will reduce testing time and enable tests to be conducted on smaller and poorer quality samples. Consequently, more cases will be able to be analyzed and more suspects positively identified. In addition, more innocent persons will be exonerated and have their names cleared earlier. As a result, police departments will see financial savings since they will be better able to focus their investigations more narrowly and accurately. In short, justice will be better served.

Seventh, the Task Force further recommends that the governor and the legislature develop a plan for the community placement and supervision of sexual psychopathic personalities and sexually dangerous persons who are provisionally discharged from civil commitment.

⁷ See appendix seven.

At present, there are inadequate community resources to deal with this population of offenders. Yet, the civil commitment process envisions their eventual release, since civil commitment is generally viewed as a temporary confinement and treatment option and not a permanent incarceration solution.

Eighth, the Task Force further recommends that adequate financial resources be appropriated to ensure that sex offenders who are released from criminal prison incarceration or placed on probation receive intensive probation and community supervision.

Caseload levels for probation officers are currently at unacceptably high levels to ensure adequate supervision of this population.

The Task Force believes that while intensive supervision can't guarantee the public's safety, it can do a better job of protecting the public than traditional probation or community supervision.

For example, the Task Force heard from the director of one intensive supervision program that no sex offender in their program has committed a new sex offense while under intensive supervision. This program limits agent's caseloads to 15 offenders; requires multiple visits per week with the offender, including a minimum of two visits per week at the offender's residence; and imposes unannounced random drug testing.

Ninth, the Task Force further recommends modifications to Minnesota's sex offender registration laws by (a) requiring perpetrators of sexual conduct crimes who come to Minnesota from other states to register; (b) increasing the penalty for failing to register to a felony for second and subsequent violations of the sex offender registration law; and (c) increasing the length of time that pedophiles must remain registered.

These measures will provide an added level of safety to the public by strengthening Minnesota's sex offender registration law and by being able to provide law enforcement with information that is not now otherwise available. For example, under current law sex offenders coming from other states need to register only if they come to Minnesota under an interstate compact.

Tenth, while much of the work of the Task Force has focused on specific criminal or civil law changes, the Task Force also recognizes that the long-term solution to the problem of sexual crimes rests in prevention measures, and early intervention and treatment. The Task Force wants to strongly urge policymakers not to lose sight of this fact.

Nor must they forget that while thousands of dollars are spent on incarcerating offenders, services for victims are no less important and should be adequately funded.

Finally, as a matter of general principle the Task Force believes that even though Minnesota does have the sexual psychopathic personality civil commitment process that can be used for certain offenders when it is appropriate, the long-term goal of policymakers should be to diminish the use of that mental health system and increase the use of the criminal justice system to deal with those offenders. This will save the state scarce financial resources and at the same time make those individuals criminally responsible for their behavior, which should be Minnesota's long-term goal.

APPENDICES

Appendix 1

Sec. 20. TASK FORCE ON SEXUAL PREDATORS.

There is created a 13-member task force to study issues relating to the confinement of sexual predators, including commitment of psychopathic personalities. The task force shall consist of two members of the senate appointed by the majority leader and two members of the house of representatives appointed by the speaker. Legislative membership from each body shall consist of one member of the democratic farmer labor party and one member of the independent republican party. In addition, the task force shall contain the following:

(1) four members selected by the commissioner of corrections, including at least one representative from the law enforcement community and one sexual assault counselor;

(2) one county attorney selected by the county attorneys association; and

(3) four members selected by the commissioner of human services, including the ombudsman for mental health and mental retardation, one mental health professional, one representative of a mental health advocacy group, and one representative from the attorney general's office.

The task force may request research and information from the commissioners of corrections and human services and staff assistance as needed.

The task force shall be convened no later than August 1, 1994, and shall examine current law and practice relating to the commitment of psychopathic personalities under Minnesota Statutes, chapters 253B and 526. The task force shall examine the laws of other jurisdictions and the clinical literature on sex offender treatment and shall make recommendations on options, both civil and criminal, for dealing with sexual predators. The task force shall report to the chairs of the house judiciary and senate crime prevention committees with these recommendations by January 15, 1995.

CHAPTER 526

PROBATE, GENERAL PROVISIONS

526.09 Psychopathic personality.
 526.10 Laws relating to mentally ill persons dangerous to the public to apply to psychopathic personalities; transfer or commitment to corrections.
 526.11 Not to constitute defense.

526.115 Statewide judicial panel; psychopathic personality commitments.
 526.20 Salaries and clerk hire not to be affected by decrease in net tax capacity.

526.01-526.07 [Repealed, 1959 c 578 s 7]

526.09 PSYCHOPATHIC PERSONALITY.

The term "psychopathic personality," as used in sections 526.09 to 526.11, means the existence in any person of such conditions of emotional instability, or impulsiveness of behavior, or lack of customary standards of good judgment, or failure to appreciate the consequences of personal acts, or a combination of any such conditions, as to render such person irresponsible for personal conduct with respect to sexual matters and thereby dangerous to other persons.

History: (8992-184a) 1939 c 369 s 1; 1986 c 444

526.10 LAWS RELATING TO MENTALLY ILL PERSONS DANGEROUS TO THE PUBLIC TO APPLY TO PSYCHOPATHIC PERSONALITIES; TRANSFER OR COMMITMENT TO CORRECTIONS.

Subdivision 1. Procedure. Except as otherwise provided in this section or in chapter 253B, the provisions of chapter 253B, pertaining to persons mentally ill and dangerous to the public shall apply with like force and effect to persons having a psychopathic personality, to persons alleged to have such personality, and to persons found to have such personality, respectively. Before such proceedings are instituted, the facts shall first be submitted to the county attorney, who, if satisfied that good cause exists therefor, shall prepare the petition to be executed by a person having knowledge of the facts and file the same with the judge of the probate court of the county in which the "patient," as defined in such statutes, has a settlement or is present. If the patient is in the custody of the commissioner of corrections, the petition may be filed in the county where the conviction for which the person is incarcerated was entered. The judge of probate shall thereupon follow the same procedures set forth in chapter 253B, for judicial commitment. The judge may exclude the general public from attendance at such hearing. If, upon completion of the hearing and consideration of the record, the court finds the proposed patient has a psychopathic personality, the court shall commit such person to a public hospital or a private hospital consenting to receive the person, subject to a mandatory review by the head of the hospital within 60 days from the date of the order as provided for in chapter 253B for persons found to be mentally ill and dangerous to the public. The patient shall thereupon be entitled to all of the rights provided for in chapter 253B, for persons found to be mentally ill and dangerous to the public, and all of the procedures provided for in chapter 253B, for persons found to be mentally ill and dangerous to the public shall apply to such patient except as otherwise provided in subdivision 2.

Subd. 2. Transfer to correctional facility. (a) If a person has been committed under this section and later is committed to the custody of the commissioner of corrections, the person may be transferred from a hospital to another facility designated by the commissioner of corrections as provided in section 253B.18; except that the special review board and the commissioner of human services may consider the following factors in lieu of the factors listed in section 253B.18, subdivision 6, to determine whether a transfer to the commissioner of corrections is appropriate:

- (1) the person's unamenability to treatment;
- (2) the person's unwillingness or failure to follow treatment recommendations;
- (3) the person's lack of progress in treatment at the public or private hospital;
- (4) the danger posed by the person to other patients or staff at the public or private hospital; and
- (5) the degree of security necessary to protect the public.

(b) If a person is committed under this section after a commitment to the commissioner of corrections, the person shall first serve the sentence in a facility designated by the commissioner of corrections. After the person has served the sentence, the person shall be transferred to a regional center designated by the commissioner of human services.

History: (8992-184b) 1939 c 369 s 2; 1969 c 431 s 1; 1982 c 581 s 24; 1984 c 623 s 9; 1986 c 444; 1989 c 290 art 4 s 8; 1992 c 571 art 3 s 5

526.11 NOT TO CONSTITUTE DEFENSE.

The existence in any person of a condition of psychopathic personality shall not in any case constitute a defense to a charge of crime, nor relieve such person from liability to be tried upon a criminal charge, unless such person is in a condition of insanity, idiocy, imbecility, or lunacy within the meaning of the laws relating to crimes and criminal procedure.

History: (8992-184c) 1939 c 369 s 3

526.115 STATEWIDE JUDICIAL PANEL; PSYCHOPATHIC PERSONALITY COMMITMENTS.

Subdivision 1. Creation. The supreme court may establish a panel of district judges with statewide authority to preside over commitment proceedings brought under section 526.10. Only one judge of the panel is required to preside over a particular commitment proceeding. Panel members shall serve for one-year terms. One of the judges shall be designated as the chief judge of the panel, and is vested with the power to designate the presiding judge in a particular case, to set the proper venue for the proceedings, and to otherwise supervise and direct the operation of the panel. The chief judge shall designate one of the other judges to act as chief judge whenever the chief judge is unable to act.

Subd. 2. Effect of creation of panel. If the supreme court creates the judicial panel authorized by this section, all petitions for civil commitment brought under section 526.10 shall be filed with the supreme court instead of with the probate court in the county where the proposed patient is present, notwithstanding any provision of section 526.10 to the contrary. Otherwise, all of the other applicable procedures contained in section 526.10 and chapter 253B apply to commitment proceedings conducted by a judge on the panel.

History: 1992 c 571 art 3 s 6

- 526.12 [Repealed, 1967 c 317 s 4]
- 526.123 [Repealed, 1961 c 596 s 1 subd 6]
- 526.124 [Repealed, 1961 c 596 s 1 subd 6]
- 526.125 [Repealed, 1961 c 596 s 1 subd 6]
- 526.126 [Repealed, 1961 c 596 s 1 subd 6]
- 526.127 [Repealed, 1951 c 327 s 6]
- 526.13 [Repealed, 1961 c 596 s 1 subd 6]
- 526.14 [Repealed, 1961 c 596 s 1 subd 6]
- 526.15 [Repealed, 1961 c 596 s 1 subd 6]
- 526.16 [Repealed, 1961 c 596 s 1 subd 6]
- 526.17 [Repealed, 1961 c 596 s 1 subd 6]

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has been developed in consultation with the interdisciplinary team to place the person in the available community services.

Subd. 2. Notification of discharge. Prior to the discharge or provisional discharge of any committed person, the head of the treatment facility shall notify the designated agency and the patient's spouse, or if there is no spouse, then an adult child, or if there is none, the next of kin of the patient, of the proposed discharge. The notice shall be sent to the last known address of the person to be notified by certified mail with return receipt. The notice shall include the following: (1) the proposed date of discharge or provisional discharge; (2) the date, time and place of the meeting of the staff who have been treating the patient to discuss discharge and discharge planning; (3) the fact that the patient will be present at the meeting; and (4) the fact that the next of kin may attend that staff meeting and present any information relevant to the discharge of the patient. The notice shall be sent at least one week prior to the date set for the meeting.

History: 1982 c 581 s 16; 1986 c 444; 1988 c 623 s 15

253B.17 RELEASE; JUDICIAL DETERMINATION.

Subdivision 1. Petition. Any patient, except one committed as mentally ill and dangerous to the public, or any interested person may petition the committing court or the court to which venue has been transferred for an order that the patient is not in need of continued institutionalization or for an order that an individual is no longer mentally ill, mentally retarded, or chemically dependent, or for any other relief as the court deems just and equitable. A patient committed as mentally ill or mentally ill and dangerous may petition the committing court or the court to which venue has been transferred for a hearing concerning the administration of neuroleptic medication. A hearing may also be held pursuant to sections 253B.08, 253B.09, 253B.12, and 253B.18.

Subd. 2. Notice of hearing. Upon the filing of the petition, the court shall fix the time and place for the hearing on it. Ten days' notice of the hearing shall be given to the county attorney, the patient, patient's counsel, the person who filed the initial commitment petition, the head of the treatment facility, and other persons as the court directs. Any person may oppose the petition.

Subd. 3. Examiners. The court shall appoint an examiner and, at the patient's request, shall appoint a second examiner of the patient's choosing to be paid for by the county at a rate of compensation to be fixed by the court.

Subd. 4. Evidence. The patient, patient's counsel, the petitioner and the county attorney shall be entitled to be present at the hearing and to present and cross-examine witnesses, including examiners. The court may hear any relevant testimony and evidence which is offered at the hearing.

Subd. 5. Order. Upon completion of the hearing, the court shall enter an order stating its findings and decision and mail it to the head of the treatment facility.

History: 1982 c 581 s 17; 1986 c 444; 1988 c 689 art 2 s 120; 1990 c 568 art 5 s 32

253B.18 PROCEDURES FOR PERSONS MENTALLY ILL AND DANGEROUS TO THE PUBLIC.

Subdivision 1. Procedure. Upon the filing of a petition alleging that a proposed patient is mentally ill and dangerous to the public, the court shall hear the petition as provided in sections 253B.07 and 253B.08. If the court finds by clear and convincing evidence that the proposed patient is mentally ill and dangerous to the public, it shall commit the person to the Minnesota Security Hospital, a regional center designated by the commissioner or to a treatment facility. In any case where the petition was filed immediately following the acquittal of the proposed patient for a crime against the person pursuant to a verdict of not guilty by reason of mental illness, the verdict constitutes evidence that the proposed patient is mentally ill and dangerous within the meaning of this section and shifts the burden of going forward in the presentation of evidence to the proposed patient; provided that the standard of proof remains as required by this chapter. Admission procedures shall be carried out pursuant to section 253B.10.

Subd. 2. Review; hearing. A written treatment report shall be filed with the committing court within 60 days after commitment. If the person is in the custody of the commissioner of corrections when the initial commitment is ordered under subdivision 1, the written treatment report must be filed within 60 days after the person is admitted to the Minnesota security hospital or a private hospital receiving the person. The court, prior to making a final determination with regard to a person initially committed as mentally ill and dangerous to the public, shall hold a hearing. The hearing shall be held within the earlier of 14 days of the court's receipt of the written treatment report, if one is filed, or within 90 days of the date of initial commitment or admission, unless otherwise agreed by the parties. If the court finds that the patient qualifies for commitment as mentally ill, but not as mentally ill and dangerous to the public, the court may commit the person as a mentally ill person and the person shall be deemed not to have been found to be dangerous to the public for the purposes of subdivisions 4 to 15. Failure of the treatment facility to provide the required report at the end of the 60-day period shall not result in automatic discharge of the patient.

Subd. 3. Indeterminate commitment. If the court finds at the hearing held pursuant to subdivision 2 that the patient continues to be mentally ill and dangerous, then the court shall order commitment of the proposed patient for an indeterminate period of time. Subsequent to a final determination that a patient is mentally ill and dangerous to the public, the patient shall be transferred, provisionally discharged or discharged, only as provided in this section.

Subd. 4. Special review board. The commissioner shall establish a special review board for persons committed as mentally ill and dangerous to the public. The board shall consist of three members experienced in the field of mental illness. One member of the special review board shall be a physician and one member shall be an attorney. No member shall be affiliated with the department of human services. The special review board shall meet at least every six months and at the call of the commissioner. It shall hear and consider all petitions for transfer out of the Minnesota Security Hospital, all petitions relative to discharge, provisional discharge and revocation of provisional discharge, and make recommendations to the commissioner concerning them.

Members of the special review board shall receive compensation and reimbursement for expenses as established by the commissioner.

Subd. 4a. Release on pass; notification. A patient who has been committed as mentally ill and dangerous and who is confined at the Minnesota security hospital shall not be released on a pass unless the pass is part of a pass plan that has been approved by the medical director of the Minnesota security hospital. At least ten days prior to a determination on the plan, the medical director shall notify the designated agency, the committing court, the county attorney of the county of commitment, an interested person, the petitioner, and the petitioner's counsel of the plan, the nature of the passes proposed, and their right to object to the plan. If any notified person objects prior to the proposed date of implementation, the person shall have an opportunity to appear, personally or in writing, before the medical director, within ten days of the objection, to present grounds for opposing the plan. The pass plan shall not be implemented until the objecting person has been furnished that opportunity. Nothing in this subdivision shall be construed to give a patient an affirmative right to a pass plan.

Subd. 4b. Pass-eligible status; notification. The following patients committed to the Minnesota security hospital shall not be placed on pass-eligible status unless that status has been approved by the medical director of the Minnesota security hospital:

- (a) a patient who has been committed as mentally ill and dangerous and who
 - (1) was found incompetent to proceed to trial for a felony or was found not guilty by reason of mental illness of a felony immediately prior to the filing of the commitment petition;
 - (2) was convicted of a felony immediately prior to or during commitment as mentally ill and dangerous; or
 - (3) is subject to a commitment to the commissioner of corrections; and

(b) a patient who has been committed as a psychopathic personality, as defined in section 526.09.

At least ten days prior to a determination on the status, the medical director shall notify the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner, and the petitioner's counsel of the proposed status, and their right to request review by the special review board. If within ten days of receiving notice any notified person requests review by filing a notice of objection with the commissioner and the head of the treatment facility, a hearing shall be held before the special review board. The proposed status shall not be implemented unless it receives a favorable recommendation by a majority of the board and approval by the commissioner. The order of the commissioner is appealable as provided in section 253B.19.

Nothing in this subdivision shall be construed to give a patient an affirmative right to seek pass-eligible status from the special review board.

Subd. 5. Petition; notice of hearing; attendance; order. A petition for an order of transfer, discharge, provisional discharge, or revocation of provisional discharge shall be filed with the commissioner and may be filed by the patient or by the head of the treatment facility. The special review board shall hold a hearing on each petition prior to making any recommendation. Within 45 days of the filing of the petition, the committing court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and petitioner's counsel shall 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 commissioner shall issue an order no later than 14 days after receiving the recommendation of the special review board. A copy of the order shall be sent by certified mail to every person entitled to statutory notice of the hearing within five days after it is issued. No order by the commissioner shall be effective sooner than 15 days after it is issued.

Subd. 6. Transfer. (a) Persons who have been found by the committing court to be mentally ill and dangerous to the public shall not be transferred out of the Minnesota Security Hospital unless it appears to the satisfaction of the commissioner, after a hearing and favorable recommendation by a majority of the special review board, that the transfer is appropriate. Transfer may be to other regional centers under the commissioner's control. In those instances where a commitment also exists to the department of corrections, transfer may be to a facility designated by the commissioner of corrections.

The following factors are to be considered in determining whether a transfer is appropriate:

- (i) the person's clinical progress and present treatment needs;
- (ii) the need for security to accomplish continuing treatment;
- (iii) the need for continued institutionalization;
- (iv) which facility can best meet the person's needs; and
- (v) whether transfer can be accomplished with a reasonable degree of safety for the public.

Subd. 7. Provisional discharge. Patients who have been found by the committing court to be mentally ill and dangerous to the public shall not be provisionally discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable 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: (a) whether the patient's course of hospitalization and present mental status indicate there is no longer a need for inpatient treatment and supervision; and (b) 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 to the community.

Subd. 8. **Provisional discharge plan.** A provisional discharge plan shall be developed, implemented and monitored by the designated agency in conjunction with the patient, the treatment facility and other appropriate persons. The designated agency shall, at least quarterly, review the plan with the patient and submit a written report to the commissioner and the treatment facility concerning the patient's status and compliance with each term of the plan.

Subd. 9. **Provisional discharge; review.** A provisional discharge pursuant to this section shall not automatically terminate. A full discharge shall occur only as provided in subdivision 15. The commissioner shall annually review the facts relating to the activity of a patient on provisional discharge and notify the patient that the terms of the provisional discharge shall continue unless the patient requests 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.

Subd. 10. **Provisional discharge; revocation.** The head of the treatment facility may revoke a provisional discharge if any of the following grounds exist:

- (i) the patient has departed from the conditions of the provisional discharge plan;
- (ii) the patient is exhibiting signs of a mental illness which may require in-hospital evaluation or treatment; or
- (iii) the patient is exhibiting behavior which may be dangerous to self or others.

Revocation shall be commenced by a notice of intent to revoke provisional discharge, which shall be served upon the patient, patient's counsel, and the designated agency. The notice shall set forth the grounds upon which the intention to revoke is based, and shall inform the patient of the rights of a patient under this chapter.

In all nonemergency situations, prior to revoking a provisional discharge, the head of the treatment facility shall obtain a report from the designated agency outlining the specific reasons for recommending the revocation, including but not limited to the specific facts upon which the revocation recommendation is based.

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.

Subd. 11. **Exceptions.** If an emergency exists, 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. In emergency cases, a report documenting reasons for revocation shall be submitted by the designated agency within seven days after the patient is returned to the treatment facility.

Subd. 12. **Return of patient.** After revocation of a provisional discharge or if the patient is absent without authorization, the head of the treatment facility may request the patient to return to the treatment facility voluntarily. The head of the facility may request a health officer, a welfare officer, or a peace officer to return the patient to the treatment facility. If a voluntary return is not arranged, the head of the treatment facility shall inform the committing court of the revocation or absence and the court shall direct a health or peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility. The expense of returning the patient to a treatment facility shall be paid by the commissioner unless paid by the patient or the patient's relatives.

Subd. 13. **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 commissioner whether or not the revocation shall be upheld. The special review board may also recommend a new provisional discharge at the time of a revocation hearing.

Subd. 14. **Voluntary readmission.** With the consent of the head of the treatment facility, a patient may voluntarily return from provisional discharge for a period of up to 30 days and be released from the treatment facility without a further review by the special review board. All the terms and conditions of the provisional discharge order shall remain unchanged if the patient is released again.

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Subd. 15. Discharge. A person who has been found by the committing court to be mentally ill and dangerous to the public shall not be discharged unless it appears to the satisfaction of the commissioner, after a hearing and a favorable recommendation by a majority of the special review board, that the patient is capable of making an acceptable adjustment to open society, is no longer dangerous to the public, and is no longer in need of inpatient treatment and supervision.

In determining whether a discharge shall be recommended, the special review board and commissioner shall consider whether specific conditions exist to provide a reasonable degree of protection to the public and to assist the patient in adjusting to the community. If the desired conditions do not exist, the discharge shall not be granted.

History: 1982 c 581 s 18; 1983 c 216 art 1 s 83; 1983 c 251 s 19-22; 1983 c 348 s 11; 1984 c 623 s 6, 7; 1984 c 654 art 5 s 58; 1986 c 444; 1991 c 148 s 3, 4; 1992 c 571 art 3 s 4

253B.19 JUDICIAL APPEAL PANEL: PATIENTS MENTALLY ILL AND DANGEROUS TO THE PUBLIC.

Subdivision 1. Creation. The supreme court shall establish an appeal panel composed of three judges and four alternate judges appointed from among the acting judges of the state. Panel members shall serve for terms of one year each. Only three judges need hear any case. One of the regular three appointed judges shall be designated as the chief judge of the appeal panel. The chief judge is vested with power to fix the time and place of all hearings before the panel, issue all notices, subpoena witnesses, appoint counsel for the patient, if necessary, and supervise and direct the operation of the appeal panel. The chief judge shall designate one of the other judges or an alternate judge to act as chief judge in any case where the chief judge is unable to act. No member of the appeal panel shall take part in the consideration of any case in which that judge committed the patient. The chief justice of the supreme court shall determine the compensation of the judges serving on the appeal panel. The compensation shall be in addition to their regular compensation as judges. All compensation and expenses of the appeal panel and all allowable fees and costs of the patient's counsel shall be paid by the department of human services.

Subd. 2. Petition; hearing. The committed person or the county attorney of the county from which a patient is mentally ill and dangerous to the public was committed may petition the appeal panel for a rehearing and reconsideration of a decision by the commissioner. The petition shall be filed with the supreme court within 30 days after the decision of the commissioner. The supreme court shall refer the petition to the chief judge of the appeal panel. The chief judge shall notify the patient, the county attorney of the county of commitment, the designated agency, the commissioner, the head of the treatment facility, any interested person, and other persons the chief judge designates, of the time and place of the hearing on the petition. The notice shall be given at least 14 days prior to the date of the hearing. The hearing shall be within 45 days of the filing of the petition. Any person may oppose the petition. The appeal panel may appoint examiners and may adjourn the hearing from time to time. It shall hear and receive all relevant testimony and evidence and make a record of all proceedings. The patient, patient's counsel, and the county attorney of the committing county may be present and present and cross-examine all witnesses.

Subd. 3. Decision. A majority of the appeal panel shall rule upon the petition. The order of the appeal panel shall supersede the order of the commissioner in the cases. No order of the appeal panel granting a transfer, discharge or provisional discharge shall be made effective sooner than 15 days after it is issued.

Subd. 4. Effect of petition. The filing of a petition shall immediately suspend the operation of any order for transfer, discharge or provisional discharge of the patient. The patient shall not be discharged in any manner except upon order of a majority of the appeal panel.

Subd. 5. Appeal. A party aggrieved by an order of the appeal panel may appeal

from the decision of the appeal panel to the court of appeals as in other civil cases. The filing of an appeal shall immediately suspend the operation of any order granting transfer, discharge or provisional discharge, pending the determination of the appeal.

History: 1982 c 581 s 19; 1983 c 216 art 1 s 37; 1983 c 247 s 106; 1983 c 251 s 23; 1983 c 348 s 12; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 377 s 4; 1991 c 148 s 5

253B.20 DISCHARGE; ADMINISTRATIVE PROCEDURE.

Subdivision 1. Notice to court. When a committed person is discharged, provisionally discharged, transferred to another treatment facility, or partially hospitalized, or when the person dies, is absent without authorization, or is returned, the treatment facility having custody of the patient shall notify the committing court.

Subd. 2. Necessities. The head of the treatment facility shall make necessary arrangements at the expense of the state to insure that no patient is discharged or provisionally discharged without suitable clothing. The head of the treatment facility shall, if necessary, provide the patient with a sufficient sum of money to secure transportation home, or to another destination of the patient's choice, if the destination is located within a reasonable distance of the treatment facility. The commissioner shall establish procedures by rule to help the patient receive all public assistance benefits provided by state or federal law to which the patient is entitled by residence and circumstances. The rule shall be uniformly applied in all counties. All counties shall provide temporary relief whenever necessary to meet the intent of this subdivision.

Subd. 3. Notice to designated agency. The head of the treatment facility, upon the provisional discharge or partial institutionalization of any committed person, shall notify the designated agency before the patient leaves the treatment facility. Whenever possible the notice shall be given at least one week before the patient is to leave the facility.

Subd. 4. Aftercare services. Prior to the date of discharge, provisional discharge or partial institutionalization of any committed person, the designated agency of the county of the patient's residence, in cooperation with the head of the treatment facility, and the patient's physician, if notified pursuant to subdivision 6, shall establish a continuing plan of aftercare services for the patient including a plan for medical and psychiatric treatment, nursing care, vocational assistance, and other assistance the patient needs. The designated agency shall provide case management services, supervise and assist the patient in finding employment, suitable shelter, and adequate medical and psychiatric treatment, and aid in the patient's readjustment to the community.

Subd. 5. Consultation. In establishing the plan for aftercare services the designated agency shall consult with persons or agencies, including any public health nurse as defined in section 145A.02, subdivision 18, and vocational rehabilitation personnel, to insure adequate planning and periodic review for aftercare services.

Subd. 6. Notice to physician. The head of the treatment facility shall notify the physician of any committed person at the time of the patient's discharge, provisional discharge or partial institutionalization, unless the patient objects to the notice.

Subd. 7. Services. A committed person may at any time after discharge, provisional discharge or partial institutionalization, apply to the head of the treatment facility within whose district the committed person resides for treatment. The head of the treatment facility, on determining that the applicant requires service, may provide needed services related to mental illness, mental retardation, or chemical dependency to the applicant. The services shall be provided in regional centers under terms and conditions established by the commissioner.

History: 1982 c 581 s 20; 1986 c 444; 1987 c 309 s 24

253B.21 COMMITMENT TO AN AGENCY OF THE UNITED STATES.

Subdivision 1. Administrative procedures. If the patient is entitled to care by any agency of the United States in this state, the commitment warrant shall be in triplicate, committing the patient to the joint custody of the head of the treatment facility and

CHAPTER 8

ATTORNEY GENERAL

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| 8.01 Appearance. | 8.12 Solicitor general: duties. |
| 8.02 Deputies, assistants. | 8.13 Contest of barriers on dairy products. |
| 8.025 Part-time special attorneys: payment on hourly basis. | 8.14 Actions challenging state expenditures: intervention. |
| 8.03 Prosecutions. | 8.15 Attorney general costs. |
| 8.04 Public lands. | 8.16 Attorney general: administrative subpoenas. |
| 8.05 Forms prepared; opinions. | 8.20 Delegation of contract review. |
| 8.06 Attorney for state officers, boards, or commissions; employ counsel. | 8.31 Additional duties of the attorney general. |
| 8.07 Opinions: county, city, town, public pension fund, school attorneys, commissioner of education. | 8.32 Consumer affairs. |
| 8.08 Report. | 8.33 Representation of consumer and small business interest in public utility matters. |
| 8.09 Prosecution: claims of state against United States; agreements with attorneys. | 8.34 Bias-motivated crime prosecution training. |
| 8.10 Compensation of attorneys. | |
| 8.11 Bringing action to recover on bonds. | |

8.01 APPEARANCE.

The attorney general shall appear for the state in all causes in the supreme and federal courts wherein the state is directly interested; also in all civil causes of like nature in all other courts of the state whenever, in the attorney general's opinion, the interests of the state require it. Upon request of the county attorney, the attorney general shall appear in court in such criminal cases as the attorney general deems proper. Upon request of a county attorney, the attorney general may assume the duties of the county attorney in psychopathic personality commitment proceedings under section 526.10. Whenever the governor shall so request, in writing, the attorney general shall prosecute any person charged with an indictable offense, and in all such cases may attend upon the grand jury and exercise the powers of a county attorney.

History: (109) 1905 c 227 s 1; 1973 c 90 s 1; 1986 c 444; 1992 c 571 art 3 s 1

8.02 DEPUTIES, ASSISTANTS.

Subdivision 1. Appointment of deputies and assistants. The attorney general may appoint, and at pleasure remove, six deputy attorneys general and 35 assistant attorneys general. The appointees shall render such aid as is required of them in the discharge of the official duties of the attorney general. To the extent authorized in writing by the attorney general, they shall have authority to appear before grand juries or in any court of this state, as the attorney general personally might do.

The attorney general shall have power to employ such assistance, whether lay, legal, or expert, as the attorney general deems necessary for the protection of the interests of the state through the proper conduct of its legal business.

Subd. 2. Record keeping. The attorney general shall:

- (1) keep a record of official correspondence and of all matters presented by the governor, auditor, commissioner of finance, secretary of state, or treasurer, or any officer or board in charge of the business of the state upon which any official action is necessary;
- (2) keep a record of all legal proceedings that the attorney general's office institutes or appears in and the several steps taken therein; and
- (3) make official opinions in writing and file the opinions in the attorney general's office.

History: (110) 1905 c 227 s 2; 1911 c 56 s 1; 1917 c 61 s 1; 1919 c 272 s 1; 1931 c 211 s 1; 1973 c 492 s 14; 1973 c 720 s 68; 1975 c 156 s 1; 1977 c 172 s 1; 1986 c 444; 1987 c 335 s 1

up to one year incarceration in a county jail, a county regional jail, a county workfarm, county workhouse or other local correctional facility, or require the defendant to pay a fine, or both. The court may allow the defendant the work release privileges of section 631.425 during the period of incarceration.

Subd. 5. If a person is convicted of assaulting a spouse or other person with whom the person resides, and the court stays imposition or execution of sentence and places the defendant on probation, the court must condition the stay upon the defendant's participation in counseling or other appropriate programs selected by the court.

Subd. 5a. Domestic abuse victims: electronic monitoring. (a) Until the commissioner of corrections has adopted standards governing electronic monitoring devices used to protect victims of domestic abuse, the court, as a condition of a stay of imposition or execution of a sentence, may not order an offender convicted of a crime described in paragraph (b) to use an electronic monitoring device to protect a victim's safety.

(b) This subdivision applies to the following crimes, if committed by the defendant against a family or household member as defined in section 518B.01, subdivision 2:

- (1) violations of orders for protection issued under chapter 518B;
- (2) assault in the first, second, third, or fifth degree under section 609.221, 609.222, 609.223, or 609.224;
- (3) criminal damage to property under section 609.595;
- (4) disorderly conduct under section 609.72;
- (5) harassing telephone calls under section 609.79;
- (6) burglary under section 609.582;
- (7) trespass under section 609.605;
- (8) criminal sexual conduct in the first, second, third, fourth, or fifth degree under section 609.342, 609.343, 609.344, 609.345, or 609.3451; and
- (9) terroristic threats under section 609.713.

(c) Notwithstanding paragraph (a), the judges in the tenth judicial district may order, as a condition of a stay of imposition or execution of a sentence, a defendant convicted of a crime described in paragraph (b), to use an electronic monitoring device to protect the victim's safety. The judges shall make data on the use of electronic monitoring devices to protect a victim's safety in the tenth judicial district available to the commissioner of corrections to evaluate and to aid in development of standards for the use of devices to protect victims of domestic abuse.

Subd. 6. Preference for intermediate sanctions. A court staying imposition or execution of a sentence that does not include a term of incarceration as a condition of the stay shall order other intermediate sanctions where practicable.

Subd. 7. Demand of execution of sentence. An offender may not demand execution of sentence in lieu of a stay of imposition or execution of sentence if the offender will serve less than nine months at the state institution. This subdivision does not apply to an offender who will be serving the sentence consecutively or concurrently with a previously imposed executed felony sentence.

History: 1963 c 753 art 1 s 609.135; 1971 c 244 s 2; 1976 c 341 s 3; 1977 c 349 s 1; 1977 c 355 s 6; 1978 c 723 art 2 s 4; 1978 c 724 s 1; 1981 c 9 s 2; 1981 c 227 s 8; 1983 c 264 s 9; 1984 c 610 s 3, 4; 1985 c 242 s 4; 1986 c 372 s 5; 1986 c 435 s 7-9; 1986 c 444; 1986 c 463 s 3; 1987 c 220 s 1; 1989 c 21 s 3; 1989 c 253 s 1; 1990 c 579 s 3, 4; 1991 c 272 s 6; 1991 c 279 s 27, 28; 1992 c 570 art 1 s 25; 1992 c 571 art 1 s 10; art 6 s 11, 12

609.1351 PETITION FOR CIVIL COMMITMENT.

When a court sentences a person under section 609.1352, 609.342, 609.343, 609.344, or 609.345, the court shall make a preliminary determination whether in the court's opinion a petition under section 526.10 may be appropriate and include the determination as part of the sentencing order. If the court determines that a petition

may be appropriate, the court shall forward its preliminary determination along with supporting documentation to the county attorney.

History: 1989 c 290 art 4 s 9; 1992 c 571 art 3 s 7

609.1352 PATTERNED SEX OFFENDERS: SPECIAL SENTENCING PROVISION.

Subdivision 1. Sentencing authority. A court shall sentence a person to a term of imprisonment of not less than double the presumptive sentence under the sentencing guidelines and not more than the statutory maximum, or if the statutory maximum is less than double the presumptive sentence, to a term of imprisonment equal to the statutory maximum, if:

(1) the court is imposing an executed sentence, based on a sentencing guidelines presumptive imprisonment sentence or a dispositional departure for aggravating circumstances or a mandatory minimum sentence, on a person convicted of committing or attempting to commit a violation of section 609.342, 609.343, 609.344, or 609.345, or on a person convicted of committing or attempting to commit any other crime listed in subdivision 2 if it reasonably appears to the court that 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;

(2) the court finds that the offender is a danger to public safety; and

(3) the court finds that the offender needs long-term treatment or supervision beyond the presumptive term of imprisonment and supervised release. The finding must be based on a professional assessment by an examiner experienced in evaluating sex offenders that concludes that the offender is a patterned sex offender. The assessment must contain the facts upon which the conclusion is based, with reference to the offense history of the offender or the severity of the current offense, the social history of the offender, and the results of an examination of the offender's mental status unless the offender refuses to be examined. The conclusion may not be based on testing alone. A patterned sex offender is one whose criminal sexual behavior is so engrained that the risk of reoffending is great without intensive psychotherapeutic intervention or other long-term controls.

Subd. 2. Predatory crime. A predatory crime is a felony violation of section 609.185, 609.19, 609.195, 609.20, 609.205, 609.221, 609.222, 609.223, 609.2A, 609.245, 609.25, 609.255, 609.342, 609.343, 609.344, 609.345, 609.365, 609.498, 609.561, or 609.582, subdivision 1.

Subd. 3. Danger to public safety. The court shall base its finding that the offender is a danger to public safety on either of the following factors:

(1) the crime involved an aggravating factor that would justify a durational departure from the presumptive sentence under the sentencing guidelines; or

(2) the offender previously committed or attempted to commit a predatory crime or a violation of section 609.224, including an offense committed as a juvenile that would have been a predatory crime or a violation of section 609.224 if committed by an adult.

Subd. 4. Departure from guidelines. A sentence imposed under subdivision 1 is a departure from the sentencing guidelines.

Subd. 5. Conditional release. At the time of sentencing under subdivision 1, the court shall provide that after the offender has completed the sentence imposed, less any good time earned by an offender whose crime was committed before August 1, 1993, the commissioner of corrections shall place the offender on conditional release for the remainder of the statutory maximum period or for ten years, whichever is longer.

The conditions of release may include successful completion of treatment and aftercare in a program approved by the commissioner, satisfaction of the release conditions specified in section 244.05, subdivision 6, and any other conditions the commissioner considers appropriate. Before the offender is released, the commissioner shall notify the sentencing court, the prosecutor in the jurisdiction where the offender was

611A.045 PROCEDURE FOR ISSUING ORDER OF RESTITUTION.

Subdivision 1. **Criteria.** The court, in determining whether to order restitution and the amount of the restitution, shall consider the following factors:

- (1) the amount of economic loss sustained by the victim as a result of the offense; and
- (2) the income, resources, and obligations of the defendant.

Subd. 2. **Presentence investigation.** The presentence investigation report made pursuant to section 609.115, subdivision 1, must contain information pertaining to the factors set forth in subdivision 1.

Subd. 2a. **Payment structure.** The court shall include in every restitution order a provision requiring a payment schedule or structure. The court may assign the responsibility for developing the schedule or structure to the court administrator, a probation officer, or another designated person. The person who develops the payment schedule or structure shall consider relevant information supplied by the defendant. If the defendant is placed on supervised probation, the payment schedule or structure must be incorporated into the probation agreement and must provide that the obligation to pay restitution continues throughout the term of probation. If the defendant is not placed on probation, the structure or schedule must provide that the obligation to pay restitution begins no later than 60 days after the restitution order is issued.

Subd. 3. **Dispute; evidentiary burden.** A dispute as to the proper amount or type of restitution must be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution is on the prosecution.

History: 1985 c 110 s 2; 1989 c 21 s 7

611A.046 VICTIM'S RIGHT TO REQUEST PROBATION REVIEW HEARING.

A victim has the right to ask the offender's probation officer to request a probation review hearing if the offender fails to pay restitution as required in a restitution order.

History: 1989 c 21 s 8

611A.05 PENALTIES NO BAR TO CIVIL REMEDIES.

The provision in any law for a penalty or forfeiture for its violation shall not be construed to deprive an injured person of the right to recover from the offender damages sustained by reason of the violation of such law.

History: 1941 c 492 s 23; 1983 c 262 art 1 s 6

611A.06 RIGHT TO NOTICE OF RELEASE.

Subdivision 1. **Notice of release required.** The commissioner of corrections or other custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, including release on extended furlough and for work release; released from a juvenile correctional facility; released from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency, or commitment under section 253B.18; or transferred from one correctional facility to another when the correctional program involves less security, if the victim has mailed to the commissioner of corrections or to the head of the facility in which the offender is confined a written request for this notice. The good faith effort to notify the victim must occur prior to the release, transfer, or change in security status. For a victim of a felony crime against the person for which the offender was sentenced to a term of imprisonment of more than 18 months, the good faith effort to notify the victim must occur 60 days before the offender's release, transfer, or change in security status.

Subd. 2. **Contents of notice.** The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to iden-

tify the court services agency that will be supervising the offender's release. The commissioner or other custodial authority complies with this section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the commissioner or authority in writing.

Subd. 3. Notice of escape. If an offender escapes from imprisonment or incarceration, including from release on extended furlough or work release, or from any facility described in subdivision 1, the commissioner or other custodial authority shall make all reasonable efforts to notify a victim who has requested notice of the offender's release under subdivision 1 within six hours after discovering the escape and shall also make reasonable efforts to notify the victim within 24 hours after the offender is apprehended.

Subd. 4. Private data. All identifying information regarding the victim, including the victim's request and the notice provided by the commissioner or custodial authority, is classified as private data on individuals as defined in section 13.02, subdivision 12, and is accessible only to the victim.

Subd. 5. Definition. As used in this section, "crime against the person" means a crime listed in section 611A.031.

History: 1983 c 262 art 1 s 5; 1986 c 444; 1986 c 445 s 4; 1986 c 463 s 11; 1987 c 224 s 3; 1988 c 649 s 4; 1989 c 190 s 4; 1990 c 579 s 9; 1991 c 170 s 5

ELECTRONIC MONITORING

611A.07 ELECTRONIC MONITORING TO PROTECT DOMESTIC ABUSE VICTIMS: STANDARDS.

Subdivision 1. Generally. The commissioner of corrections, after considering the recommendations of the battered women advisory council and the sexual assault advisory council, and in collaboration with the commissioner of public safety, shall adopt standards governing electronic monitoring devices used to protect victims of domestic abuse. In developing proposed standards, the commissioner shall consider the experience of the courts in the tenth judicial district in the use of the devices to protect victims of domestic abuse. These standards shall promote the safety of the victim and shall include measures to avoid the disparate use of the device with communities of color, product standards, monitoring agency standards, and victim disclosure standards.

Subd. 2. Report to legislature. By January 1, 1993, the commissioner of corrections shall report to the legislature on the proposed standards for electronic monitoring devices used to protect victims of domestic abuse.

History: 1992 c 571 art 6 s 20

SEX OFFENDER HIV TESTING

611A.19 TESTING OF SEX OFFENDER FOR HUMAN IMMUNODEFICIENCY VIRUS.

Subdivision 1. Testing on request of victim. (a) The sentencing court may issue an order requiring a person convicted of violating section 609.342, 609.343, 609.344, or 609.345, to submit to testing to determine the presence of human immunodeficiency virus (HIV) antibody if:

- (1) the prosecutor moves for the test order in camera;
- (2) the victim requests the test; and
- (3) evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during commission of the crime.

(b) If the court grants the prosecutor's motion, the court shall order that the test be performed by an appropriate health professional and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services.

Appendix 3
TASK FORCE ON SEXUAL PREDATORS

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ALTERNATES
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Appendix 4

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2

WORKING DRAFT

3

4

A bill for an act

5 relating to civil commitment of sexual predators;
6 establishing standards and procedures for the
7 commitment of sexually dangerous persons; recodifying
8 the existing psychopathic personality law in the civil
9 commitment chapter; codifying judicial interpretations
10 of the psychopathic personality law; amending
11 Minnesota Statutes 1992, sections 8.01; 147.091,
12 subdivisions 1 and 2; 147.111, subdivision 6; 148.10,
13 subdivision 6; 148.102, subdivision 4; 148.262,
14 subdivision 2; 148.263, subdivision 5; 148.32; 148.75;
15 148B.07, subdivision 6; 148B.175, subdivision 8;
16 148B.63, subdivision 6; 148B.68, subdivision 1;
17 148B.69, subdivision 5; 153.19, subdivision 1; 153.22,
18 subdivision 4; 153.24, subdivision 5; 243.55,
19 subdivision 3; 244.05, subdivision 7; 246.014;
20 253B.02, subdivision 17, and by adding subdivisions;
21 609.1351; and 626.557, subdivision 2; Minnesota
22 Statutes 1993 Supplement, sections 8.15, subdivision
23 1; 201.15, subdivision 1; 246.02, subdivision 2;
24 246B.01; 246B.02; 246B.03; 246B.04; 253B.23,
25 subdivision 1a; 254.05; and 611A.06, subdivision 1;
26 proposing coding for new law in Minnesota Statutes,
27 chapter 253B; repealing Minnesota Statutes 1992,
28 sections 526.09; 526.10; 526.11; and 526.115.

29 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

30

SEXUAL PREDATOR COMMITMENT ACT

31

ARTICLE 1

32

SEXUAL PREDATOR COMMITMENT

33

STANDARDS AND PROCEDURES

34

Section 1. Minnesota Statutes 1992, section 253B.02, is

35

amended by adding a subdivision to read:

1 Subd. 7a. [HARMFUL SEXUAL CONDUCT.] (a) "Harmful sexual
2 conduct" means sexual conduct that creates a substantial
3 likelihood of serious physical or emotional harm.
4 (b) There is a rebuttable presumption that conduct
5 described in the following provisions creates a substantial
6 likelihood that a victim will suffer serious physical or
7 emotional harm: section 609.342 (CRIMINAL SEXUAL CONDUCT IN THE
8 FIRST DEGREE), 609.343 (CRIMINAL SEXUAL CONDUCT IN THE SECOND
9 DEGREE), 609.344 (CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE),
10 or 609.345 (CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE). If
11 the conduct was motivated by the person's sexual impulses or was
12 part of a pattern of behavior that had criminal sexual conduct
13 as a goal, the presumption also applies to conduct described in
14 section 609.185 (MURDER IN THE FIRST DEGREE), 609.19 (MURDER IN
15 THE SECOND DEGREE), 609.195 (MURDER IN THE THIRD DEGREE), 609.20
16 (MANSLAUGHTER IN THE FIRST DEGREE), 609.205 (MANSLAUGHTER IN THE
17 SECOND DEGREE), 609.221 (ASSAULT IN THE FIRST DEGREE), 609.222
18 (ASSAULT IN THE SECOND DEGREE), 609.223 (ASSAULT IN THE THIRD
19 DEGREE), 609.24 (SIMPLE ROBBERY), 609.245 (AGGRAVATED ROBBERY),
20 609.25 (KIDNAPPING), 609.255 (FALSE IMPRISONMENT), 609.365
21 (INCEST), 609.498 (TAMPERING WITH A WITNESS), 609.561 (ARSON IN
22 THE FIRST DEGREE), or 609.582, subdivision 1 (BURGLARY IN THE
23 FIRST DEGREE).

24 Sec. 2. Minnesota Statutes 1994, section 253B.02, is
25 amended by adding a subdivision to read:

26 Subd. 17a. [SEXUAL PSYCHOPATHIC PERSONALITY.] "Sexual
27 psychopathic personality" means the existence in any person of
28 such conditions of emotional instability, or impulsiveness of
29 behavior, or lack of customary standards of good judgment, or
30 failure to appreciate the consequences of personal acts, or a
31 combination of any of these conditions, as to render the person
32 irresponsible for personal conduct with respect to sexual
33 matters, if the person has evidenced, by a habitual course of
34 misconduct in sexual matters, an utter lack of power to control
35 the person's sexual impulses and, as a result, is dangerous to
36 other persons.

1 Sec. 3. Minnesota Statutes 1992, section 253B.02, is
2 amended by adding a subdivision to read:

3 Subd. 18a. [SEXUALLY DANGEROUS PERSON.] (a) A "sexually
4 dangerous person" means a person who:

5 (1) has engaged in a course of harmful sexual conduct as
6 defined in subdivision 7a;

7 (2) has manifested a sexual, personality, or other mental
8 disorder or dysfunction; and

9 (3) as a result, is likely to engage in future acts of
10 harmful sexual conduct as defined in subdivision 7a.

11 (b) For purposes of this provision, it is not necessary to
12 prove that the person has an inability to control the person's
13 sexual impulses.

14 Sec. 4. [253B.185] [PROCEDURES FOR PERSONS WITH SEXUAL
15 PSYCHOPATHIC PERSONALITIES AND SEXUALLY DANGEROUS PERSONS.]

16 Subdivision 1. [GENERAL.] Except as otherwise provided in
17 this section, the provisions of this chapter pertaining to
18 persons mentally ill and dangerous to the public apply with like
19 force and effect to persons who are alleged or found to be
20 sexually dangerous persons or persons with a sexual psychopathic
21 personality. Before commitment proceedings are instituted, the
22 facts shall first be submitted to the county attorney, who, if
23 satisfied that good cause exists, will prepare the petition.
24 The county attorney may request a prepetition screening report.
25 The petition is to be executed by a person having knowledge of
26 the facts and filed with the committing court of the county in
27 which the patient has a settlement or is present. If the
28 patient is in the custody of the commissioner of corrections,
29 the petition may be filed in the county where the conviction for
30 which the person is incarcerated was entered. Upon the filing
31 of a petition alleging that a proposed patient is a sexually
32 dangerous person or is a person with a sexual psychopathic
33 personality, the court shall hear the petition as provided in
34 sections 253B.07 and 253B.08. Except for good cause shown or by
35 agreement of the parties, the petition must be heard within 45
36 days after the filing of the petition.

1 Subd. 2. [TRANSFER TO CORRECTIONAL FACILITY.] (a) If a
2 person has been committed under this section and later is
3 committed to the custody of the commissioner of corrections, the
4 person may be transferred from a hospital to another facility
5 designated by the commissioner of corrections as provided in
6 section 253B.18; except that the special review board and the
7 commissioner of human services may consider the following
8 factors in lieu of the factors listed in section 253B.18,
9 subdivision 6, to determine whether a transfer to the
10 commissioner of corrections is appropriate:

11 (1) the person's unamenability to treatment;

12 (2) the person's unwillingness or failure to follow
13 treatment recommendations;

14 (3) the person's lack of progress in treatment at the
15 public or private hospital;

16 (4) the danger posed by the person to other patients or
17 staff at the public or private hospital; and

18 (5) the degree of security necessary to protect the public.

19 (b) If a person is committed under this section after a
20 commitment to the commissioner of corrections, the person shall
21 first serve the sentence in a facility designated by the
22 commissioner of corrections. After the person has served the
23 sentence, the person shall be transferred to a regional center
24 designated by the commissioner of human services.

25 Subd. 3. [NOT TO CONSTITUTE DEFENSE.] The existence in any
26 person of a condition of a sexual psychopathic personality or
27 the fact that a person is a sexually dangerous person shall not
28 in any case constitute a defense to a charge of crime, nor
29 relieve such person from liability to be tried upon a criminal
30 charge.

31 Subd. 4. [STATEWIDE JUDICIAL PANEL; SEXUAL PSYCHOPATHIC
32 PERSONALITY AND SEXUALLY DANGEROUS PERSONS COMMITMENTS.] (a) The
33 supreme court may establish a panel of district judges with
34 statewide authority to preside over commitment proceedings
35 brought under subdivision 1. Only one judge of the panel is
36 required to preside over a particular commitment proceeding.

1 Panel members shall serve for one-year terms. One of the judges
2 shall be designated as the chief judge of the panel, and is
3 vested with the power to designate the presiding judge in a
4 particular case, to set the proper venue for the proceedings,
5 and to otherwise supervise and direct the operation of the
6 panel. The chief judge shall designate one of the other judges
7 to act as chief judge whenever the chief judge is unable to act.

8 (b) If the supreme court creates the judicial panel
9 authorized by this section, all petitions for civil commitment
10 brought under subdivision 1 shall be filed with the supreme
11 court instead of with the district court in the county where the
12 proposed patient is present, notwithstanding any provision of
13 subdivision 1 to the contrary. Otherwise, all of the other
14 applicable procedures contained in this chapter apply to
15 commitment proceedings conducted by a judge on the panel.

16 Sec. 5. [RECODIFICATION; EFFECT ON PRIOR COMMITMENTS.]

17 This act does not affect the commitment of persons under
18 Minnesota Statutes, sections 526.09 and 526.10. As provided in
19 section 645.37, this act's repeal and reenactment of sections
20 526.09, 526.10, 526.11, and 526.115, shall be construed as a
21 continuation of the earlier repealed provisions. All rights and
22 liabilities incurred under the repealed sections are preserved
23 and may be enforced.

24 Sec. 6. [REPEALER.]

25 Minnesota Statutes 1992, sections 526.09; 526.10; 526.11;
26 and 526.115; are repealed.

27 Sec. 7. [EFFECTIVE DATE.]

28 Sections 1 to 6 are effective the day following final
29 enactment.

30 ARTICLE 2

31 TECHNICAL AND CONFORMING AMENDMENTS

32 Section 1. Minnesota Statutes 1992, section 8.01, is
33 amended to read:

34 8.01 [APPEARANCE.]

35 The attorney general shall appear for the state in all
36 causes in the supreme and federal courts wherein the state is

1 directly interested; also in all civil causes of like nature in
2 all other courts of the state whenever, in the attorney
3 general's opinion, the interests of the state require it. Upon
4 request of the county attorney, the attorney general shall
5 appear in court in such criminal cases as the attorney general
6 deems proper. Upon request of a county attorney, the attorney
7 general may assume the duties of the county attorney in sexual
8 psychopathic personality and sexually dangerous person
9 commitment proceedings under section 526.10 253B.185. Whenever
10 the governor shall so request, in writing, the attorney general
11 shall prosecute any person charged with an indictable offense,
12 and in all such cases may attend upon the grand jury and
13 exercise the powers of a county attorney.

14 Sec. 2. Minnesota Statutes 1993 Supplement, section 8.15,
15 subdivision 1, is amended to read:

16 Subdivision 1. [FEE SCHEDULES.] The attorney general in
17 consultation with the commissioner of finance shall develop a
18 fee schedule to be used by the attorney general in developing
19 the agreements authorized in subdivision 3.

20 The attorney general may not assess a county any fee for
21 legal services rendered in connection with a psychopathic
22 personality commitment proceeding under section 526.10 253B.185
23 for which the attorney general assumes responsibility under
24 section 8.01.

25 Sec. 3. Minnesota Statutes 1992, section 147.091,
26 subdivision 1, is amended to read:

27 Subdivision 1. [GROUNDS LISTED.] The board may refuse to
28 grant a license or may impose disciplinary action as described
29 in section 147.141 against any physician. The following conduct
30 is prohibited and is grounds for disciplinary action:

31 (a) Failure to demonstrate the qualifications or satisfy
32 the requirements for a license contained in this chapter or
33 rules of the board. The burden of proof shall be upon the
34 applicant to demonstrate such qualifications or satisfaction of
35 such requirements.

36 (b) Obtaining a license by fraud or cheating, or attempting

1 to subvert the licensing examination process. Conduct which
2 subverts or attempts to subvert the licensing examination
3 process includes, but is not limited to: (1) conduct which
4 violates the security of the examination materials, such as
5 removing examination materials from the examination room or
6 having unauthorized possession of any portion of a future,
7 current, or previously administered licensing examination; (2)
8 conduct which violates the standard of test administration, such
9 as communicating with another examinee during administration of
10 the examination, copying another examinee's answers, permitting
11 another examinee to copy one's answers, or possessing
12 unauthorized materials; or (3) impersonating an examinee or
13 permitting an impersonator to take the examination on one's own
14 behalf.

15 (c) Conviction, during the previous five years, of a felony
16 reasonably related to the practice of medicine or osteopathy.
17 Conviction as used in this subdivision shall include a
18 conviction of an offense which if committed in this state would
19 be deemed a felony without regard to its designation elsewhere,
20 or a criminal proceeding where a finding or verdict of guilt is
21 made or returned but the adjudication of guilt is either
22 withheld or not entered thereon.

23 (d) Revocation, suspension, restriction, limitation, or
24 other disciplinary action against the person's medical license
25 in another state or jurisdiction, failure to report to the board
26 that charges regarding the person's license have been brought in
27 another state or jurisdiction, or having been refused a license
28 by any other state or jurisdiction.

29 (e) Advertising which is false or misleading, which
30 violates any rule of the board, or which claims without
31 substantiation the positive cure of any disease, or professional
32 superiority to or greater skill than that possessed by another
33 physician.

34 (f) Violating a rule promulgated by the board or an order
35 of the board, a state, or federal law which relates to the
36 practice of medicine, or in part regulates the practice of

1 medicine including without limitation sections 148A.02, 609.344,
2 and 609.345, or a state or federal narcotics or controlled
3 substance law.

4 (g) Engaging in any unethical conduct; conduct likely to
5 deceive, defraud, or harm the public, or demonstrating a willful
6 or careless disregard for the health, welfare or safety of a
7 patient; or medical practice which is professionally
8 incompetent, in that it may create unnecessary danger to any
9 patient's life, health, or safety, in any of which cases, proof
10 of actual injury need not be established.

11 (h) Failure to supervise a physician's assistant or failure
12 to supervise a physician under any agreement with the board.

13 (i) Aiding or abetting an unlicensed person in the practice
14 of medicine, except that it is not a violation of this paragraph
15 for a physician to employ, supervise, or delegate functions to a
16 qualified person who may or may not be required to obtain a
17 license or registration to provide health services if that
18 person is practicing within the scope of that person's license
19 or registration or delegated authority.

20 (j) Adjudication as mentally incompetent, mentally ill or
21 mentally retarded, or as a chemically dependent person, a person
22 dangerous to the public, a sexually dangerous person, or a
23 person who has a sexual psychopathic personality by a court of
24 competent jurisdiction, within or without this state. Such
25 adjudication shall automatically suspend a license for the
26 duration thereof unless the board orders otherwise.

27 (k) Engaging in unprofessional conduct. Unprofessional
28 conduct shall include any departure from or the failure to
29 conform to the minimal standards of acceptable and prevailing
30 medical practice in which proceeding actual injury to a patient
31 need not be established.

32 (l) Inability to practice medicine with reasonable skill
33 and safety to patients by reason of illness, drunkenness, use of
34 drugs, narcotics, chemicals or any other type of material or as
35 a result of any mental or physical condition, including
36 deterioration through the aging process or loss of motor skills.

1 (m) Revealing a privileged communication from or relating
2 to a patient except when otherwise required or permitted by law.

3 (n) Failure by a doctor of osteopathy to identify the
4 school of healing in the professional use of the doctor's name
5 by one of the following terms: osteopathic physician and
6 surgeon, doctor of osteopathy, or D.O.

7 (o) Improper management of medical records, including
8 failure to maintain adequate medical records, to comply with a
9 patient's request made pursuant to section 144.335 or to furnish
10 a medical record or report required by law.

11 (p) Fee splitting, including without limitation:

12 (1) paying, offering to pay, receiving, or agreeing to
13 receive, a commission, rebate, or remuneration, directly or
14 indirectly, primarily for the referral of patients or the
15 prescription of drugs or devices;

16 (2) dividing fees with another physician or a professional
17 corporation, unless the division is in proportion to the
18 services provided and the responsibility assumed by each
19 professional and the physician has disclosed the terms of the
20 division;

21 (3) referring a patient to any health care provider as
22 defined in section 144.335 in which the referring physician has
23 a significant financial interest unless the physician has
24 disclosed the physician's own financial interest; and

25 (4) dispensing for profit any drug or device, unless the
26 physician has disclosed the physician's own profit interest.
27 The physician must make the disclosures required in this clause
28 in advance and in writing to the patient and must include in the
29 disclosure a statement that the patient is free to choose a
30 different health care provider. This clause does not apply to
31 the distribution of revenues from a partnership, group practice,
32 nonprofit corporation, or professional corporation to its
33 partners, shareholders, members, or employees if the revenues
34 consist only of fees for services performed by the physician or
35 under a physician's direct supervision, or to the division or
36 distribution of prepaid or capitated health care premiums, or

1 fee-for-service withhold amounts paid under contracts
2 established under other state law.

3 (q) Engaging in abusive or fraudulent billing practices,
4 including violations of the federal Medicare and Medicaid laws
5 or state medical assistance laws.

6 (r) Becoming addicted or habituated to a drug or intoxicant.

7 (s) Prescribing a drug or device for other than medically
8 accepted therapeutic or experimental or investigative purposes
9 authorized by a state or federal agency or referring a patient
10 to any health care provider as defined in section 144-335 for
11 services or tests not medically indicated at the time of
12 referral.

13 (t) Engaging in conduct with a patient which is sexual or
14 may reasonably be interpreted by the patient as sexual, or in
15 any verbal behavior which is seductive or sexually demeaning to
16 a patient.

17 (u) Failure to make reports as required by section 147.111
18 or to cooperate with an investigation of the board as required
19 by section 147.131.

20 (v) Knowingly providing false or misleading information
21 that is directly related to the care of that patient unless done
22 for an accepted therapeutic purpose such as the administration
23 of a placebo.

24 (w) Aiding suicide or aiding attempted suicide in violation
25 of section 609.215 as established by any of the following:

26 (1) a copy of the record of criminal conviction or plea of
27 guilty for a felony in violation of section 609.215, subdivision
28 1 or 2;

29 (2) a copy of the record of a judgment of contempt of court
30 for violating an injunction issued under section 609.215,
31 subdivision 4;

32 (3) a copy of the record of a judgment assessing damages
33 under section 609.215, subdivision 5; or

34 (4) a finding by the board that the person violated section
35 609.215, subdivision 1 or 2. The board shall investigate any
36 complaint of a violation of section 609.215, subdivision 1 or 2.

1 Sec. 4. Minnesota Statutes 1992, section 147.091,
2 subdivision 2, is amended to read:

3 Subd. 2. [EFFECTIVE DATES.] A suspension, revocation,
4 condition, limitation, qualification or restriction of a license
5 shall be in effect pending determination of an appeal unless the
6 court, upon petition and for good cause shown, shall otherwise
7 order.

8 A license to practice medicine is automatically suspended
9 if (1) a guardian of the person of a licensee is appointed by
10 order of a probate court pursuant to sections 525.54 to 525.61,
11 for reasons other than the minority of the licensee; or (2) the
12 licensee is committed by order of a probate court pursuant to
13 chapter 253B or sections 526.09 to 526.11. The license remains
14 suspended until the licensee is restored to capacity by a court
15 and, upon petition by the licensee, the suspension is terminated
16 by the board after a hearing.

17 Sec. 5. Minnesota Statutes 1992, section 147.111,
18 subdivision 6, is amended to read:

19 Subd. 6. [COURTS.] The court administrator of district
20 court or any other court of competent jurisdiction shall report
21 to the board any judgment or other determination of the court
22 which adjudges or includes a finding that a physician is
23 mentally ill, mentally incompetent, guilty of a felony, or
24 guilty of a violation of federal or state narcotics laws or
25 controlled substances act, guilty of an abuse or fraud under
26 Medicare or Medicaid, appoints a guardian of the physician
27 pursuant to sections 525.54 to 525.61 or commits a physician
28 pursuant to chapter 253B or sections 526.09 to 526.11.

29 Sec. 6. Minnesota Statutes 1992, section 148.10,
30 subdivision 6, is amended to read:

31 Subd. 6. [EFFECT OF APPEAL.] A suspension, revocation,
32 condition, limitation, qualification, or restriction of a
33 license shall be in effect pending determination of an appeal
34 unless the court, upon petition and for good cause shown, shall
35 otherwise order.

36 A license to practice chiropractic is automatically

1 suspended if (1) a guardian of the person of a licensee is
2 appointed by order of a probate court under sections 525.54 to
3 525.61, for reasons other than the minority of the licensee; or
4 (2) the licensee is committed by order of a probate court under
5 chapter 253B or sections 526.09 to 526.11. The license remains
6 suspended until the licensee is restored to capacity by a court
7 and, upon petition by the licensee, the suspension is terminated
8 by the board after a hearing.

9 Sec. 7. Minnesota Statutes 1992, section 148.102,
10 subdivision 4, is amended to read:

11 Subd. 4. [COURTS.] The court administrator of district
12 court or any other court of competent jurisdiction shall report
13 to the board any judgment or other determination of the court
14 which adjudges or includes a finding that a doctor of
15 chiropractic is mentally ill, mentally incompetent, guilty of a
16 felony, guilty of an abuse or fraud, appoints a guardian of the
17 doctor of chiropractic under sections 525.54 to 525.61 or
18 commits a doctor of chiropractic under chapter 253B or sections
19 526.09 to 526.11.

20 Sec. 8. Minnesota Statutes 1992, section 148.262,
21 subdivision 2, is amended to read:

22 Subd. 2. [AUTOMATIC SUSPENSION.] Unless the board orders
23 otherwise, a license to practice professional or practical
24 nursing is automatically suspended if:

25 (1) a guardian of a nurse is appointed by order of a
26 probate court under sections 525.54 to 525.61;

27 (2) the nurse is committed by order of a probate court
28 under chapter 253B or sections 526.09 to 526.11; or

29 (3) the nurse is determined to be mentally incompetent,
30 mentally ill, chemically dependent, or a person dangerous to the
31 public by a court of competent jurisdiction within or without
32 this state.

33 The license remains suspended until the nurse is restored
34 to capacity by a court and, upon petition by the nurse, the
35 suspension is terminated by the board after a hearing or upon
36 agreement between the board and the nurse.

1 Sec. 9. Minnesota Statutes 1992, section 148.263,
2 subdivision 5, is amended to read:

3 Subd. 5. [COURTS.] The court administrator of district
4 court or another court of competent jurisdiction shall report to
5 the board any judgment or other determination of the court that
6 adjudges or includes a finding that a nurse is mentally ill,
7 mentally incompetent, chemically dependent, a person dangerous
8 to the public, guilty of a felony or gross misdemeanor, guilty
9 of a violation of federal or state narcotics laws or controlled
10 substances act, guilty of operating a motor vehicle while under
11 the influence of alcohol or a controlled substance, or guilty of
12 an abuse or fraud under Medicare or Medicaid, appoints a
13 guardian of the nurse under sections 525.54 to 525.61, or
14 commits a nurse under chapter 253B or ~~section 526.09 to 526.11.~~

15 Sec. 10. Minnesota Statutes 1992, section 148.32, is
16 amended to read:

17 148.32 [LICENSES; DENIAL, REVOCATION, REFUSAL.]

18 All licenses to practice midwifery heretofore or hereafter
19 issued by the board of medical practice must be renewed and a
20 fee paid for each renewal as set by the board. Licenses may be
21 revoked, suspended, conditioned, limited, qualified or
22 restricted, or renewals refused by the board for unprofessional
23 or dishonorable conduct, or neglect to make proper returns to
24 agents of a board of health as authorized under section 145A.04
25 of births, deaths, puerperal fever, and other contagious
26 diseases.

27 A license to practice midwifery is suspended if (1) a
28 guardian of the person of a licensee is appointed by order of a
29 probate court pursuant to sections 525.54 to 525.61, for reasons
30 other than the minority of the licensee; or (2) the licensee is
31 committed by order of a probate court pursuant to 253B or
32 ~~sections 526.09 to 526.11.~~ The license remains suspended until
33 the licensee is restored to capacity by a court and, upon
34 petition by the licensee, the suspension is terminated by the
35 board after a hearing.

36 Sec. 11. Minnesota Statutes 1992, section 148.75, is

1 amended to read:

2 148.75 [CERTIFICATES; DENIAL, SUSPENSION, REVOCATION.]

3 The state board of medical practice may refuse to grant
4 registration to any physical therapist, or may suspend or revoke
5 the registration of any physical therapist for any of the
6 following grounds:

7 (a) using drugs or intoxicating liquors to an extent which
8 affects professional competence;

9 (b) been convicted of a felony;

10 (c) conviction for violating any state or federal narcotic
11 law;

12 (d) procuring, aiding or abetting a criminal abortion;

13 (e) registration or attempted registration by fraud or
14 deception;

15 (f) conduct unbecoming a person registered as a physical
16 therapist or conduct detrimental to the best interests of the
17 public;

18 (g) gross negligence in the practice of physical therapy as
19 a physical therapist;

20 (h) treating human ailments by physical therapy after an
21 initial 30-day period of patient admittance to treatment has
22 lapsed, except by the order or referral of a person licensed in
23 this state to practice medicine as defined in section 147.081,
24 the practice of chiropractic as defined in section 148.01, the
25 practice of podiatry as defined in section 153.01, or the
26 practice of dentistry as defined in section 150A.05 and whose
27 license is in good standing; or when a previous diagnosis exists
28 indicating an ongoing condition warranting physical therapy
29 treatment, subject to periodic review defined by board of
30 medical practice rule;

31 (i) treating human ailments without referral by physical
32 therapy treatment without first having practiced one year under
33 a physician's orders as verified by the board's records;

34 (j) failure to consult with the patient's health care
35 provider who prescribed the physical therapy treatment if the
36 treatment is altered by the physical therapist from the original

1 written order. The provision does not include written orders
2 specifying orders to "evaluate and treat";

3 (k) treating human ailments other than by physical therapy
4 unless duly licensed or registered to do so under the laws of
5 this state;

6 (l) inappropriate delegation to a physical therapist
7 assistant or inappropriate task assignment to an aide or
8 inadequate supervision of either level of supportive personnel;

9 (m) treating human ailments other than by performing
10 physical therapy procedures unless duly licensed or registered
11 to do so under the laws of this state;

12 (n) practicing as a physical therapist performing medical
13 diagnosis, the practice of medicine as defined in section
14 147.081, or the practice of chiropractic as defined in section
15 148.01;

16 (o) failure to comply with a reasonable request to obtain
17 appropriate clearance for mental or physical conditions which
18 would interfere with the ability to practice physical therapy,
19 and which may be potentially harmful to patients;

20 (p) dividing fees with, or paying or promising to pay a
21 commission or part of the fee to, any person who contacts the
22 physical therapist for consultation or sends patients to the
23 physical therapist for treatment;

24 (q) engaging in an incentive payment arrangement, other
25 than that prohibited by clause (p), that tends to promote
26 physical therapy overutilization, whereby the referring person
27 or person who controls the availability of physical therapy
28 services to a client profits unreasonably as a result of patient
29 treatment;

30 (r) practicing physical therapy and failing to refer to a
31 licensed health care professional any patient whose medical
32 condition at the time of evaluation has been determined by the
33 physical therapist to be beyond the scope of practice of a
34 physical therapist; and

35 (s) failure to report to the board other registered
36 physical therapists who violate this section.

1 A certificate of registration to practice as a physical
2 therapist is suspended if (1) a guardian of the person of the
3 physical therapist is appointed by order of a prebate court
4 pursuant to sections 525.54 to 525.61, for reasons other than
5 the minority of the physical therapist; or (2) the physical
6 therapist is committed by order of a prebate court pursuant to
7 253B or sections-526-09-to-526-11. The certificate of
8 registration remains suspended until the physical therapist is
9 restored to capacity by a court and, upon petition by the
10 physical therapist, the suspension is terminated by the board of
11 medical practice after a hearing.

12 Sec. 12. Minnesota Statutes 1992, section 148B.07,
13 subdivision 6, is amended to read:

14 Subd. 6. [COURTS.] The court administrator of district
15 court or any other court of competent jurisdiction shall report
16 to the board any judgment or other determination of the court
17 that adjudges or includes a finding that a licensee is mentally
18 ill, mentally incompetent, guilty of a felony, guilty of a
19 violation of federal or state narcotics laws or controlled
20 substances act, or guilty of an abuse or fraud under Medicare or
21 Medicaid; or that appoints a guardian of the licensee pursuant
22 to sections 525.54 to 525.61 or commits a licensee pursuant to
23 chapter 253B or sections-526-09-to-526-11.

24 Sec. 13. Minnesota Statutes 1992, section 148B.175,
25 subdivision 8, is amended to read:

26 Subd. 8. [AUTOMATIC SUSPENSION; RESTORATION.] The right to
27 practice is automatically suspended if (1) a guardian of a
28 licensee is appointed by order of a prebate court under sections
29 525.54 to 525.61, or (2) the licensee is committed by order of a
30 prebate court pursuant to chapter 253B or sections-526-09-to
31 526-11. The right to practice remains suspended until the
32 licensee is restored to capacity by a court and, upon petition
33 by the licensee, the suspension is terminated by the board after
34 a hearing or upon agreement between the board and the licensee.
35 In its discretion, a board may restore and reissue permission to
36 provide services, but as a condition of the permission may

1 impose a disciplinary or corrective measure that it might
2 originally have imposed.

3 Sec. 14. Minnesota Statutes 1992, section 148B.63,
4 subdivision 6, is amended to read:

5 Subd. 6. [COURTS.] The court administrator of district
6 court or any other court of competent jurisdiction shall report
7 to the office of mental health practice any judgment or other
8 determination of the court that adjudges or includes a finding
9 that an unlicensed mental health practitioner is mentally ill,
10 mentally incompetent, guilty of a felony, guilty of a violation
11 of federal or state narcotics laws or controlled substances act,
12 or guilty of abuse or fraud under Medicare or Medicaid; or that
13 appoints a guardian of the unlicensed mental health practitioner
14 under sections 525.54 to 525.61 or commits an unlicensed mental
15 practitioner under chapter 253B or sections ~~526.09 to 526.11~~.

16 Sec. 15. Minnesota Statutes 1992, section 148B.68,
17 subdivision 1, is amended to read:

18 Subdivision 1. [PROHIBITED CONDUCT.] The commissioner may
19 impose disciplinary action as described in section 148B.69
20 against any unlicensed mental health practitioner. The
21 following conduct is prohibited and is grounds for disciplinary
22 actions:

23 (a) Conviction of a crime, including a finding or verdict
24 of guilt, an admission of guilt, or a no contest plea, in any
25 court in Minnesota or any other jurisdiction in the United
26 States, reasonably related to the provision of mental health
27 services. Conviction, as used in this subdivision, includes a
28 conviction of an offense which, if committed in this state,
29 would be deemed a felony or gross misdemeanor without regard to
30 its designation elsewhere, or a criminal proceeding where a
31 finding or verdict of guilty is made or returned but the
32 adjudication of guilt is either withheld or not entered.

33 (b) Conviction of crimes against persons. For purposes of
34 this chapter, a crime against a person means violations of the
35 following: sections 609.185; 609.19; 609.195; 609.20; 609.205;
36 609.21; 609.215; 609.221; 609.222; 609.223; 609.224; 609.23;

1 609.231; 609.235; 609.24; 609.245; 609.25; 609.255; 609.26,
2 subdivision 1, clause (1) or (2); 609.265; 609.342; 609.343;
3 609.344; 609.345; 609.365; 609.498, subdivision 1; 609.50,
4 clause (1); 609.561; 609.562; and 609.595.

5 (c) Failure to comply with the self-reporting requirements
6 of section 148B.63, subdivision 6.

7 (d) Engaging in sexual contact with a client or former
8 client as defined in section 148A.01, or engaging in contact
9 that may be reasonably interpreted by a client as sexual, or
10 engaging in any verbal behavior that is seductive or sexually
11 demeaning to the patient, or engaging in sexual exploitation of
12 a client or former client.

13 (e) Advertising that is false, fraudulent, deceptive, or
14 misleading.

15 (f) Conduct likely to deceive, defraud, or harm the public;
16 or demonstrating a willful or careless disregard for the health,
17 welfare, or safety of a client; or any other practice that may
18 create unnecessary danger to any client's life, health, or
19 safety, in any of which cases, proof of actual injury need not
20 be established.

21 (g) Adjudication as mentally incompetent, or as a person
22 ~~who has a psychopathic personality as defined in section 526.09,~~
23 or who is dangerous to self, or adjudication pursuant to chapter
24 253B, as chemically dependent, mentally ill, mentally retarded,
25 or mentally ill and dangerous to the public, or as a sexual
26 psychopathic personality or sexually dangerous person.

27 (h) Inability to provide mental health services with
28 reasonable safety to clients.

29 (i) The habitual overindulgence in the use of or the
30 dependence on intoxicating liquors.

31 (j) Improper or unauthorized personal or other use of any
32 legend drugs as defined in chapter 151, any chemicals as defined
33 in chapter 151, or any controlled substance as defined in
34 chapter 152.

35 (k) Revealing a communication from, or relating to, a
36 client except when otherwise required or permitted by law.

1 (l) Failure to comply with a client's request made under
2 section 144.335, or to furnish a client record or report
3 required by law.

4 (m) Splitting fees or promising to pay a portion of a fee
5 to any other professional other than for services rendered by
6 the other professional to the client.

7 (n) Engaging in abusive or fraudulent billing practices,
8 including violations of the federal Medicare and Medicaid laws
9 or state medical assistance laws.

10 (o) Failure to make reports as required by section 148B.63,
11 or cooperate with an investigation of the office.

12 (p) Obtaining money, property, or services from a client,
13 other than reasonable fees for services provided to the client,
14 through the use of undue influence, harassment, duress,
15 deception, or fraud.

16 (q) Undertaking or continuing a professional relationship
17 with a client in which the objectivity of the professional would
18 be impaired.

19 (r) Failure to provide the client with a copy of the client
20 bill of rights or violation of any provision of the client bill
21 of rights.

22 (s) Violating any order issued by the commissioner.

23 (t) Failure to comply with sections 148B.60 to 148B.71, and
24 the rules adopted under those sections.

25 (u) Failure to comply with any additional disciplinary
26 grounds established by the commissioner by rule.

27 Sec. 16. Minnesota Statutes 1992, section 148B.69,
28 subdivision 5, is amended to read:

29 Subd. 5. [AUTOMATIC SUSPENSION.] The right to practice is
30 automatically suspended if (1) a guardian of an unlicensed
31 mental health practitioner is appointed by order of a prebate
32 court under sections 525.54 to 525.61, or (2) the practitioner
33 is committed by order of a prebate court pursuant to chapter
34 253B or sections 526.09 to 526.11. The right to practice
35 remains suspended until the practitioner is restored to capacity
36 by a court and, upon petition by the practitioner, the

1 suspension is terminated by the commissioner after a hearing or
2 upon agreement between the commissioner and the practitioner.

3 Sec. 17. Minnesota Statutes 1992, section 153.19,
4 subdivision 1, is amended to read:

5 Subdivision 1. [GROUNDS LISTED.] The board may refuse to
6 grant a license or may impose disciplinary action as described
7 in this section against any doctor of podiatric medicine. The
8 following conduct is prohibited and is grounds for disciplinary
9 action:

10 (1) failure to demonstrate the qualifications or satisfy
11 the requirements for a license contained in this chapter or
12 rules of the board; the burden of proof shall be upon the
13 applicant to demonstrate the qualifications or satisfaction of
14 the requirements;

15 (2) obtaining a license by fraud or cheating or attempting
16 to subvert the licensing examination process;

17 (3) conviction, during the previous five years, of a felony
18 reasonably related to the practice of podiatric medicine;

19 (4) revocation, suspension, restriction, limitation, or
20 other disciplinary action against the person's podiatric medical
21 license in another state or jurisdiction, failure to report to
22 the board that charges regarding the person's license have been
23 brought in another state or jurisdiction, or having been refused
24 a license by any other state or jurisdiction;

25 (5) advertising that is false or misleading;

26 (6) violating a rule adopted by the board or an order of
27 the board, a state, or federal law that relates to the practice
28 of podiatric medicine, or in part regulates the practice of
29 podiatric medicine, or a state or federal narcotics or
30 controlled substance law;

31 (7) engaging in any unethical conduct; conduct likely to
32 deceive, defraud, or harm the public, or demonstrating a willful
33 or careless disregard for the health, welfare, or safety of a
34 patient; or podiatric medical practice that is professionally
35 incompetent, in that it may create unnecessary danger to any
36 patient's life, health, or safety, in any of which cases, proof

- 1 of actual injury need not be established;
- 2 (8) failure to supervise a preceptor or resident;
- 3 (9) aiding or abetting an unlicensed person in the practice
- 4 of podiatric medicine, except that it is not a violation of this
- 5 clause for a podiatrist to employ, supervise, or delegate
- 6 functions to a qualified person who may or may not be required
- 7 to obtain a license or registration to provide health services
- 8 if that person is practicing within the scope of that person's
- 9 license or registration or delegated authority;
- 10 (10) adjudication as mentally incompetent, or mentally ill,
- 11 or as a chemically dependent person, a person dangerous to the
- 12 public, a sexually dangerous person, or a person who has a
- 13 sexual psychopathic personality by a court of competent
- 14 jurisdiction, within or without this state;
- 15 (11) engaging in unprofessional conduct that includes any
- 16 departure from or the failure to conform to the minimal
- 17 standards of acceptable and prevailing podiatric medical
- 18 practice, but actual injury to a patient need not be
- 19 established;
- 20 (12) inability to practice podiatric medicine with
- 21 reasonable skill and safety to patients by reason of illness or
- 22 chemical dependency or as a result of any mental or physical
- 23 condition, including deterioration through the aging process or
- 24 loss of motor skills;
- 25 (13) revealing a privileged communication from or relating
- 26 to a patient except when otherwise required or permitted by law;
- 27 (14) improper management of medical records, including
- 28 failure to maintain adequate medical records, to comply with a
- 29 patient's request made under section 144.335 or to furnish a
- 30 medical record or report required by law;
- 31 (15) accepting, paying, or promising to pay a part of a fee
- 32 in exchange for patient referrals;
- 33 (16) engaging in abusive or fraudulent billing practices,
- 34 including violations of the federal Medicare and Medicaid laws
- 35 or state medical assistance laws;
- 36 (17) becoming addicted or habituated to a drug or

1 intoxicant;

2 (18) prescribing a drug for other than medically accepted
3 therapeutic or experimental or investigative purposes authorized
4 by a state or federal agency;

5 (19) engaging in sexual conduct with a patient or conduct
6 that may reasonably be interpreted by the patient as sexual, or
7 in verbal behavior which is seductive or sexually demeaning to a
8 patient;

9 (20) failure to make reports as required by section 153.24
10 or to cooperate with an investigation of the board as required
11 by section 153.20;

12 (21) knowingly providing false or misleading information
13 that is directly related to the care of that patient unless done
14 for an accepted therapeutic purpose such as the administration
15 of a placebo.

16 Sec. 18. Minnesota Statutes 1992, section 153.22,
17 subdivision 4, is amended to read:

18 Subd. 4. [AUTOMATIC SUSPENSION.] A license to practice
19 podiatric medicine is automatically suspended if (1) a guardian
20 of the person of a licensee is appointed by order of a probate
21 court under sections 525.54 to 525.61, for reasons other than
22 the minority of the licensee; or (2) the licensee is committed
23 by order of a probate court under chapter 253B or sections
24 526.09 to 526.11. The license remains suspended until the
25 licensee is restored to capacity by a court and, upon petition
26 by the licensee, the suspension is terminated by the board after
27 a hearing.

28 Sec. 19. Minnesota Statutes 1992, section 153.24,
29 subdivision 5, is amended to read:

30 Subd. 5. [COURTS.] The court administrators of the
31 district courts or any other court of competent jurisdiction
32 shall report to the board any judgment or other determination of
33 the court that adjudges or includes a finding that a podiatrist
34 is mentally ill, mentally incompetent, guilty of a felony, or
35 guilty of a violation of federal or state narcotics laws or
36 controlled substances act, guilty of an abuse or fraud under

1 Medicare or Medicaid, appoints a guardian of the podiatrist
2 under sections 525.54 to 525.61 or commits a podiatrist under
3 chapter 253B ~~or sections 526.89 to 526.11.~~

4 Sec. 20. Minnesota Statutes 1993 Supplement, section
5 201.15, subdivision 1, is amended to read:

6 Subdivision 1. [GUARDIANSHIPS, INCOMPETENTS AND
7 PSYCHOPATHS.] The probate judge in each county shall report
8 monthly to the county auditor the name and address of each
9 individual 18 years of age or over, who maintains residence in
10 that county and who, during the month preceding the date of the
11 report:

12 (a) was placed under a guardianship of the person;

13 (b) adjudged legally incompetent by reason of mental
14 illness, mental deficiency, or inebriation; or

15 (c) was adjudged a sexually dangerous person or a person
16 with a sexual psychopathic personality.

17 The judge shall also report the same information for each
18 individual transferred to the jurisdiction of the court who
19 meets a condition specified in clause (a), (b) or (c). Upon
20 receipt of the report, the county auditor shall determine
21 whether any individual named in the report is registered to
22 vote. The county auditor shall change the status on the record
23 in the statewide registration system of any individual named in
24 the report to indicate that the individual is not eligible to
25 reregister or vote.

26 Sec. 21. Minnesota Statutes 1992, section 243.55,
27 subdivision 3, is amended to read:

28 Subd. 3. As used in this section, "state hospital" or
29 "hospital" means any state operated facility or hospital under
30 the authority of the commissioner of human services for (a)
31 persons with mental illness, mental retardation, or chemical
32 dependency, (b) sex offenders, or (c) persons with a sexual
33 psychopathic personalities personality, or (d) sexually
34 dangerous persons.

35 Sec. 22. Minnesota Statutes 1992, section 244.05,
36 subdivision 7, is amended to read:

1 Subd. 7. [SEX OFFENDERS; CIVIL COMMITMENT DETERMINATION.]
2 Before the commissioner releases from prison any inmate
3 convicted under sections 609.342 to 609.345 or sentenced as a
4 patterned offender under section 609.1352, and determined by the
5 commissioner to be in a high risk category, the commissioner
6 shall make a preliminary determination whether, in the
7 commissioner's opinion, a petition under section 526v10 253B.185
8 may be appropriate. If the commissioner determines that a
9 petition may be appropriate, the commissioner shall forward this
10 determination, along with a summary of the reasons for the
11 determination, to the county attorney in the county where the
12 inmate was convicted no later than six months before the
13 inmate's release date. Upon receiving the commissioner's
14 preliminary determination, the county attorney shall proceed in
15 the manner provided in section 526v10 253B.185. The
16 commissioner shall release to the county attorney all requested
17 documentation maintained by the department.

18 Sec. 23. Minnesota Statutes 1992, section 246.014, is
19 amended to read:

20 246.014 [SERVICES.]

21 The measure of services established and prescribed by
22 section 246.012, are:

23 (1) There shall be served in state hospitals a single
24 standard of food for patients and employees alike, which is
25 nutritious and palatable together with special diets as
26 prescribed by the medical staff thereof. There shall be a chief
27 dietitian in the department of human services and at least one
28 dietitian at each state hospital. There shall be adequate staff
29 and equipment for processing, preparation, distribution and
30 serving of food.

31 (2) There shall be a staff of persons, professional and
32 lay, sufficient in number, trained in the diagnosis, care and
33 treatment of persons with mental illness, physical illness, and
34 including religious and spiritual counsel through qualified
35 chaplains (who shall be in the unclassified service) adequate to
36 take advantage of and put into practice modern methods of

1 psychiatry, medicine and related field.

2 (3) There shall be a staff and facilities to provide
3 occupational and recreational therapy, entertainment and other
4 creative activities as are consistent with modern methods of
5 treatment and well being.

6 (4) There shall be in each state hospital for the care and
7 treatment of persons with mental illness facilities for the
8 segregation and treatment of patients and residents who have
9 communicable disease.

10 (5) The commissioner of human services shall provide modern
11 and adequate psychiatric social case work service.

12 (6) The commissioner of human services shall make every
13 effort to improve the accommodations for patients and residents
14 so that the same shall be comfortable and attractive with
15 adequate furnishings, clothing, and supplies.

16 (7) The commissioner of human services shall establish
17 training programs for the training of personnel and may require
18 the participation of personnel in such programs. Within the
19 limits of the appropriations available the commissioner may
20 establish professional training programs in the forms of
21 educational stipends for positions for which there is a scarcity
22 of applicants.

23 (8) The standards herein established shall be adapted and
24 applied to the diagnosis, care and treatment of persons with
25 chemical dependency or mental retardation who come within those
26 terms as defined in the laws relating to the hospitalization and
27 commitment of such persons, and of persons who are have sexual
28 psychopathic personalities within-the-definition-thereof-in
29 Minnesota-Statutes-1945,-section-526.09 or are sexually
30 dangerous persons as defined in chapter 253B.

31 (9) The commissioner of human services shall establish a
32 program of detection, diagnosis and treatment of persons with
33 mental illness and persons described in clause (8), and within
34 the limits of appropriations may establish clinics and staff the
35 same with persons specially trained in psychiatry and related
36 fields.

1 (10) The commissioner of employee relations may reclassify
2 employees of the state hospitals from time to time, and assign
3 classifications to such salary brackets as will adequately
4 compensate personnel and reasonably assure a continuity of
5 adequate staff.

6 (11) In addition to the chaplaincy services, provided in
7 clause (2), the commissioner of human services shall open said
8 state hospitals to members of the clergy and other spiritual
9 leaders to the end that religious and spiritual counsel and
10 services are made available to the patients and residents
11 therein, and shall cooperate with all members of the clergy and
12 other spiritual leaders in making said patients and residents
13 available for religious and spiritual counsel, and shall provide
14 such members of the clergy and other spiritual leaders with
15 meals and accommodations.

16 (12) Within the limits of the appropriations therefor, the
17 commissioner of human services shall establish and provide
18 facilities and equipment for research and study in the field of
19 modern hospital management, the causes of mental and related
20 illness and the treatment, diagnosis and care of persons with
21 mental illness and funds provided therefor may be used to make
22 available services, abilities and advice of leaders in these and
23 related fields, and may provide them with meals and
24 accommodations and compensate them for traveling expenses and
25 services.

26 Sec. 24. Minnesota Statutes 1993 Supplement, section
27 246.02, subdivision 2, is amended to read:

28 Subd. 2. The commissioner of human services shall act with
29 the advice of the medical policy directional committee on mental
30 health in the appointment and removal of the chief executive
31 officers of the following institutions: Anoka-Metro Regional
32 Treatment Center, Ah-Gwah-Ching Center, Fergus Falls Regional
33 Treatment Center, St. Peter Regional Treatment Center and
34 Minnesota Security Hospital, Willmar Regional Treatment Center,
35 Faribault Regional Center, Cambridge Regional Human Services
36 Center, Brainerd Regional Human Services Center, and until June

1 30, 1995, Moose Lake Regional Treatment Center, and after June
2 30, 1995, Minnesota Sexual Psychopathic Personality Treatment
3 Center.

4 Sec. 25. Minnesota Statutes 1993 Supplement, section
5 246B.01, is amended to read:

6 246B.01 [MINNESOTA SEXUAL PSYCHOPATHIC PERSONALITY
7 TREATMENT CENTER DEFINITIONS.]

8 Subdivision 1. [APPLICABILITY.] The definitions in this
9 section apply to this chapter.

10 Subd. 2. [COMMISSIONER.] "Commissioner" means the
11 commissioner of human services or the commissioner's designee.

12 Subd. 3. [SEXUAL PSYCHOPATHIC PERSONALITY.] "Sexual
13 psychopathic personality" has the meaning given in
14 section 526-09 253B.02, subdivision 17a.

15 Subd. 4. [SEXUALLY DANGEROUS PERSON.] "Sexually dangerous
16 person" has the meaning given in section 253B.02, subdivision
17 18a.

18 Sec. 26. Minnesota Statutes 1993 Supplement, section
19 246B.02, is amended to read:

20 246B.02 [ESTABLISHMENT OF MINNESOTA SEXUAL PSYCHOPATHIC
21 PERSONALITY TREATMENT CENTER.]

22 The commissioner of human services shall establish and
23 maintain a secure facility located in Moose Lake. The facility
24 shall be known as the Minnesota Sexual Psychopathic Personality
25 Treatment Center. The facility shall provide care and treatment
26 to 100 persons committed by the courts as sexual psychopathic
27 personalities or sexually dangerous persons, or persons admitted
28 there with the consent of the commissioner of human services.

29 Sec. 27. Minnesota Statutes 1993 Supplement, section
30 246B.03, is amended to read:

31 246B.03 [LICENSURE.]

32 The commissioner of human services shall apply to the
33 commissioner of health to license the Minnesota Sexual
34 Psychopathic Personality Treatment Center as a supervised living
35 facility with applicable program licensing standards.

36 Sec. 28. Minnesota Statutes 1993 Supplement, section

1 246B.04, is amended to read:

2 246B.04 [RULES; EVALUATION.]

3 The commissioner of human services shall adopt rules to
4 govern the operation, maintenance, and licensure of the program
5 established at the Minnesota Sexual Psychopathic Personality
6 Treatment Center, or at any other facility operated by the
7 commissioner, for persons committed as a psychopathic
8 personality. The commissioner shall establish an evaluation
9 process to measure outcomes and behavioral changes as a result
10 of treatment compared with incarceration without treatment, to
11 determine the value, if any, of treatment in protecting the
12 public.

13 Sec. 29. Minnesota Statutes 1992, section 253B.02,
14 subdivision 17, is amended to read:

15 Subd. 17. [PERSON MENTALLY ILL AND DANGEROUS TO THE
16 PUBLIC.] A "person mentally ill and dangerous to the public" is
17 a person (a) who is mentally ill; and (b) who as a result of
18 that mental illness presents a clear danger to the safety of
19 others as demonstrated by the facts that (i) the person has
20 engaged in an overt act causing or attempting to cause serious
21 physical harm to another and (ii) there is a substantial
22 likelihood that the person will engage in acts capable of
23 inflicting serious physical harm on another. A person committed
24 as a sexual psychopathic personality or sexually dangerous
25 person as defined in section-526+89 subdivisions 17a and 18a is
26 subject to the provisions of this chapter that apply to persons
27 mentally ill and dangerous to the public.

28 Sec. 30. Minnesota Statutes 1993 Supplement, section
29 253B.23, subdivision 1a, is amended to read:

30 Subd. 1a. [AUTHORITY TO DETAIN AND TRANSPORT A MISSING
31 PATIENT.] If a patient committed under this chapter or chapter
32 526, or detained under a court-ordered hold is absent without
33 authorization, and either (1) does not return voluntarily within
34 72 hours of the time the unauthorized absence began; or (2) is
35 considered by the head of the treatment facility to be a danger
36 to self or others, then the head of the treatment facility shall

1 report the absence to the local law enforcement agency. The
2 head of the treatment facility shall also notify the committing
3 court that the patient is absent and that the absence has been
4 reported to the local law enforcement agency.

5 Upon receiving a report that a patient subject to this
6 section is absent without authorization, the local law
7 enforcement agency shall enter information on the patient
8 through the criminal justice information system into the missing
9 persons file of the National Crime Information Center computer
10 according to the missing persons practices.

11 A patient about whom information has been entered under
12 this section may be apprehended and held by a peace officer in
13 any jurisdiction pending return to the facility from which the
14 patient is absent without authorization. A patient may also be
15 returned to any facility operated by the commissioner of human
16 services. Patients committed under chapter 526 or committed as
17 mentally ill and dangerous under section 253B.18, and detained
18 under this subdivision, may be held in a jail or lockup only if:

19 (1) there is no other feasible place of detention for the
20 patient;

21 (2) the detention is for less than 24 hours; and

22 (3) there are protections in place, including segregation
23 of the patient, to ensure the safety of the patient.

24 If a patient is detained under this subdivision, the head
25 of the treatment facility from which the patient is absent shall
26 arrange to pick up the patient within 24 hours of the time
27 detention was begun and shall be responsible for securing
28 transportation for the patient to the facility. The expense of
29 detaining and transporting a patient shall be the responsibility
30 of the treatment facility from which the patient is absent. The
31 expense of detaining and transporting a patient to a treatment
32 facility operated by the department of human services shall be
33 paid by the commissioner unless paid by the patient or the
34 patient's relatives.

35 Immediately after an absent patient is located, the head of
36 the treatment facility from which the patient is absent, or the

1 law enforcement agency that located or returned the absent
2 patient, shall notify the law enforcement agency that first
3 received the absent patient report under this section and that
4 agency shall cancel the missing persons entry from the National
5 Crime Information Center computer.

6 Sec. 31. Minnesota Statutes 1993 Supplement, section
7 254.05, is amended to read:

8 254.05 [DESIGNATION OF STATE HOSPITALS.]

9 The state hospital located at Anoka shall hereafter be
10 known and designated as the Anoka-metro regional treatment
11 center; the state hospital located at Willmar shall hereafter be
12 known and designated as the Willmar regional treatment center;
13 until June 30, 1995, the state hospital located at Moose Lake
14 shall be known and designated as the Moose Lake regional
15 treatment center; after June 30, 1995, the newly established
16 state facility at Moose Lake shall be known and designated as
17 the Minnesota sexual psychopathic personality treatment center;
18 the state hospital located at Fergus Falls shall hereafter be
19 known and designated as the Fergus Falls regional treatment
20 center; and the state hospital located at St. Peter shall
21 hereafter be known and designated as the St. Peter regional
22 treatment center. Each of the foregoing state hospitals shall
23 also be known by the name of regional center at the discretion
24 of the commissioner of human services. The terms "human
25 services" or "treatment" may be included in the designation.

26 Sec. 32. Minnesota Statutes 1992, section 609.1351, is
27 amended to read:

28 609.1351 [PETITION FOR CIVIL COMMITMENT.]

29 When a court sentences a person under section 609.1352,
30 609.342, 609.343, 609.344, or 609.345, the court shall make a
31 preliminary determination whether in the court's opinion a
32 petition under section ~~526.10~~ 253B.185 may be appropriate and
33 include the determination as part of the sentencing order. If
34 the court determines that a petition may be appropriate, the
35 court shall forward its preliminary determination along with
36 supporting documentation to the county attorney.

1 Sec. 33. Minnesota Statutes 1993 Supplement, section
2 611A.06, subdivision 1, is amended to read:

3 Subdivision 1. [NOTICE OF RELEASE REQUIRED.] The
4 commissioner of corrections or other custodial authority shall
5 make a good faith effort to notify the victim that the offender
6 is to be released from imprisonment or incarceration, including
7 release on extended furlough and for work release; released from
8 a juvenile correctional facility; released from a facility in
9 which the offender was confined due to incompetency, mental
10 illness, or mental deficiency, or commitment under section
11 253B.18 or 253B.185; or if the offender's custody status is
12 reduced, if the victim has mailed to the commissioner of
13 corrections or to the head of the facility in which the offender
14 is confined a written request for this notice. The good faith
15 effort to notify the victim must occur prior to the offender's
16 release or when the offender's custody status is reduced. For a
17 victim of a felony crime against the person for which the
18 offender was sentenced to imprisonment for more than 18 months,
19 the good faith effort to notify the victim must occur 60 days
20 before the offender's release.

21 Sec. 34. Minnesota Statutes 1992, section 626.557,
22 subdivision 2, is amended to read:

23 Subd. 2. [DEFINITIONS.] As used in this section, the
24 following terms have the meanings given them unless the specific
25 context indicates otherwise.

26 (a) "Facility" means a hospital or other entity required to
27 be licensed pursuant to sections 144.50 to 144.58; a nursing
28 home required to be licensed to serve adults pursuant to section
29 144A.02; an agency, day care facility, or residential facility
30 required to be licensed to serve adults pursuant to sections
31 245A.01 to 245A.16; or a home care provider licensed under
32 section 144A.46.

33 (b) "Vulnerable adult" means any person 18 years of age or
34 older:

35 (1) who is a resident or inpatient of a facility;

36 (2) who receives services at or from a facility required to

1 be licensed to serve adults pursuant to sections 245A.01 to
2 245A.16, except a person receiving outpatient services for
3 treatment of chemical dependency or mental illness;

4 (3) who receives services from a home care provider
5 licensed under section 144A.46; or

6 (4) who, regardless of residence or type of service
7 received, is unable or unlikely to report abuse or neglect
8 without assistance because of impairment of mental or physical
9 function or emotional status.

10 "Vulnerable adult" does not include a person who is committed as
11 a sexual psychopathic personality or a sexually dangerous person
12 under section 526+10 253B.185.

13 (c) "Caretaker" means an individual or facility who has
14 responsibility for the care of a vulnerable adult as a result of
15 a family relationship, or who has assumed responsibility for all
16 or a portion of the care of a vulnerable adult voluntarily, by
17 contract, or by agreement.

18 (d) "Abuse" means:

19 (1) any act which constitutes a violation under sections
20 609.221 to 609.223, 609.23 to 609.235, 609.322, 609.342,
21 609.343, 609.344, or 609.345;

22 (2) nontherapeutic conduct which produces or could
23 reasonably be expected to produce pain or injury and is not
24 accidental, or any repeated conduct which produces or could
25 reasonably be expected to produce mental or emotional distress;

26 (3) any sexual contact between a facility staff person and
27 a resident or client of that facility;

28 (4) the illegal use of a vulnerable adult's person or
29 property for another person's profit or advantage, or the breach
30 of a fiduciary relationship through the use of a person or a
31 person's property for any purpose not in the proper and lawful
32 execution of a trust, including but not limited to situations
33 where a person obtains money, property, or services from a
34 vulnerable adult through the use of undue influence, harassment,
35 duress, deception, or fraud; or

36 (5) any aversive and deprivation procedures that have not

1 been authorized under section 245.825.

2 (e) "Neglect" means:

3 (1) failure by a caretaker to supply a vulnerable adult
4 with necessary food, clothing, shelter, health care or
5 supervision;

6 (2) the absence or likelihood of absence of necessary food,
7 clothing, shelter, health care, or supervision for a vulnerable
8 adult; or

9 (3) the absence or likelihood of absence of necessary
10 financial management to protect a vulnerable adult against abuse
11 as defined in paragraph (d), clause (4). Nothing in this
12 section shall be construed to require a health care facility to
13 provide financial management or supervise financial management
14 for a vulnerable adult except as otherwise required by law.

15 (f) "Report" means any report received by a local welfare
16 agency, police department, county sheriff, or licensing agency
17 pursuant to this section.

18 (g) "Licensing agency" means:

19 (1) the commissioner of health, for facilities as defined
20 in clause (a) which are required to be licensed or certified by
21 the department of health;

22 (2) the commissioner of human services, for facilities
23 required by sections 245A.01 to 245A.16 to be licensed;

24 (3) any licensing board which regulates persons pursuant to
25 section 214.01, subdivision 2; and

26 (4) any agency responsible for credentialing human services
27 occupations.

28 (h) "Substantiated" means a preponderance of the evidence
29 shows that an act that meets the definition of abuse or neglect
30 occurred.

31 (i) "False" means a preponderance of the evidence shows
32 that an act that meets the definition of abuse or neglect did
33 not occur.

34 (j) "Inconclusive" means there is less than a preponderance
35 of evidence to show that abuse or neglect did or did not occur.

36 Sec. 35. [EFFECTIVE DATE.]

- 1 Sections 1 to 34 are effective the day following final
- 2 enactment.

Appendix 5

01/05/95 12:25 p.m.

[RESDEPT] JB

ES33

1 A bill for an act

2 relating to crime; expanding the scope of the
3 patterned sex offender sentencing law; requiring
4 training for judges, prosecutors, peace officers, and
5 sex offender assessors on sentencing laws applicable
6 to repeat and patterned sex offenders; amending
7 Minnesota Statutes 1994, sections 480.30; and
8 609.1352, subdivisions 1, 3, and 5; proposing coding
9 for new law in Minnesota Statutes, chapter 388.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

11 Section 1. [388.25] [SEX OFFENDER SENTENCING; TRAINING FOR
12 PROSECUTORS AND PEACE OFFICERS.]

13 The county attorneys association, in conjunction with the
14 attorney general's office and the bureau of criminal
15 apprehension, shall conduct an annual training course for
16 prosecutors, public defenders, and peace officers on the
17 specific sentencing statutes and sentencing guidelines
18 applicable to persons convicted of sex offenses and crimes that
19 are sexually motivated. The training shall focus on the
20 sentencing provisions applicable to repeat sex offenders and
21 patterned sex offenders. The course may be combined with other
22 training conducted by the county attorneys association or other
23 groups

24 Sec. 2. Minnesota Statutes 1994, section 480.30, is
25 amended to read:

26 480.30 [JUDICIAL TRAINING.]

27 Subdivision 1. [CHILD ABUSE; DOMESTIC ABUSE; HARASSMENT.]

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1 The supreme court's judicial education program must include
2 ongoing training for district court judges on child and
3 adolescent sexual abuse, domestic abuse, harassment, stalking,
4 and related civil and criminal court issues. The program must
5 include information about the specific needs of victims. The
6 program must include education on the causes of sexual abuse and
7 family violence and culturally responsive approaches to serving
8 victims. The program must emphasize the need for the
9 coordination of court and legal victim advocacy services and
10 include education on sexual abuse and domestic abuse programs
11 and policies within law enforcement agencies and prosecuting
12 authorities as well as the court system.

13 Subd. 2. (SEXUAL VIOLENCE.) The supreme court's judicial
14 education program must include ongoing training for judges,
15 judicial officers, court services personnel, and sex offender
16 assessors on the specific sentencing statutes and sentencing
17 guidelines applicable to persons convicted of sex offenses and
18 other crimes that are sexually motivated. The training shall
19 focus on the sentencing provisions applicable to repeat sex
20 offenders and patterned sex offenders.

21 Subd. 3. (BAIL EVALUATIONS.) The supreme court's judicial
22 education program also must include training for judges,
23 judicial officers, and court services personnel on how to assure
24 that their bail evaluations and decisions are racially and
25 culturally neutral.

26 Sec. 3. Minnesota Statutes 1994, section 609.1352,
27 subdivision 1, is amended to read:

28 Subdivision 1. (SENTENCING AUTHORITY.) (a) Notwithstanding
29 the statutory maximum imprisonment penalty otherwise applicable
30 to the offense, a court shall commit a person to the
31 commissioner of corrections for a period of time that is not
32 less than double the presumptive sentence under the sentencing
33 guidelines and not more than the-statutory-maximum-or-if-the
34 statutory-maximum-is-less-than-double-the-presumptive-sentence
35 for-a-period-of-time-that-is-equal-to-the-statutory-maximum, 40
36 years if:

1 (1) the court is imposing an executed sentence, based on a
2 sentencing guidelines presumptive imprisonment sentence or a
3 dispositional departure for aggravating circumstances or a
4 mandatory minimum sentence, on a person convicted of committing
5 or attempting to commit a violation of section 609.342, 609.343,
6 609.344, or 609.345, or on a person convicted of committing or
7 attempting to commit any other crime listed in subdivision 2 if
8 it reasonably appears to the court that the crime was motivated
9 by the offender's sexual impulses or was part of a predatory
10 pattern of behavior that had criminal sexual conduct as its
11 goal;

12 (2) the court finds that the offender is a danger to public
13 safety; and

14 (3) the court finds that the offender needs long-term
15 treatment or supervision beyond the presumptive term of
16 imprisonment and supervised release. The finding must be based
17 on a professional assessment by an examiner experienced in
18 evaluating sex offenders that concludes that the offender is a
19 patterned sex offender. The assessment must contain the facts
20 upon which the conclusion is based, with reference to the
21 offense history of the offender or the severity of the current
22 offense, the social history of the offender, and the results of
23 an examination of the offender's mental status unless the
24 offender refuses to be examined. The conclusion may not be
25 based on testing alone. A patterned sex offender is one whose
26 criminal sexual behavior is so engrained that the risk of
27 reoffending is great without intensive psychotherapeutic
28 intervention or other long-term controls.

29 (b) The court shall consider imposing a sentence under this
30 section whenever a person is convicted of violating section
31 609.342 or 609.343.

32 Sec. 4. Minnesota Statutes 1994, section 609.1352,
33 subdivision 3, is amended to read:

34 Subd. 3. [DANGER TO PUBLIC SAFETY.] The court shall base
35 its finding that the offender is a danger to public safety on
36 either any of the following factors:

1 (1) the crime involved an aggravating factor that would
2 justify a durational departure from the presumptive sentence
3 under the sentencing guidelines; or
4 (2) the offender previously committed or attempted to
5 commit a predatory crime or a violation of section 609.224,
6 including: (a) an offense committed as a juvenile that would
7 have been a predatory crime or a violation of section 609.224 if
8 committed by an adult; or (b) a violation or attempted violation
9 of a similar law of any other state or the United States; or
10 (3) the offender planned or prepared for the crime prior to
11 its commission.

12 Sec. 5. Minnesota Statutes 1994, section 609.1352,
13 subdivision 5, is amended to read:

14 Subd. 5. [CONDITIONAL RELEASE.] At the time of sentencing
15 under subdivision 1, the court shall provide that after the
16 offender has completed the sentence imposed, less any good time
17 earned by an offender whose crime was committed before August 1,
18 1993, the commissioner of corrections shall place the offender
19 on conditional release for the remainder of the statutory
20 ~~maximum-period-or-for-ten-years,-whichever-is-longer~~ person's
21 life.

22 The conditions of release may include successful completion
23 of treatment and aftercare in a program approved by the
24 commissioner, satisfaction of the release conditions specified
25 in section 244.05, subdivision 6, and any other conditions the
26 commissioner considers appropriate. Before the offender is
27 released, the commissioner shall notify the sentencing court,
28 the prosecutor in the jurisdiction where the offender was
29 sentenced and the victim of the offender's crime, where
30 available, of the terms of the offender's conditional release.
31 If the offender fails to meet any condition of release, the
32 commissioner may revoke the offender's conditional release and
33 order that the offender serve all or a part of the remaining
34 portion of the conditional release term in prison. The
35 commissioner shall not dismiss the offender from
36 ~~supervision before-the-conditional-release-term-expires~~ for the

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1 remainder of the offender's life.

2 Conditional release granted under this subdivision is
3 governed by provisions relating to supervised release, except as
4 otherwise provided in this subdivision, section 244.04,
5 subdivision 1, or 244.05.

6 Sec. 6. [EFFECTIVE DATE.]

7 Sections 1 to 5 are effective August 1, 1995, and apply to
8 crimes committed on or after that date.

Appendix 6

10/20/94 7:43 a.m.

[RESDEPT] JH

KC4

1 moves to amend, as follows:

2 Page, after line, insert:

3 "Sec. Minnesota Statutes 1994, section 611A.19,

4 subdivision 1, is amended to read:

5 Subdivision 1. [TESTING ON REQUEST OF VICTIM.] (a) The

6 sentencing court may shall issue an order requiring a person

7 convicted of a violent crime, as defined in section 52, or

8 a juvenile adjudicated delinquent for violating sec. 609.342,

9 609.343, 609.344, or 609.345, to submit to testing to determine

10 the presence of human immunodeficiency virus (HIV) antibody if:

11 (1) the prosecutor moves for the test order in camera;

12 (2) the victim requests the test; and or

13 (3) evidence exists that the broken skin or mucous membrane

14 of the victim was exposed to or had contact with the offender's

15 semen or blood during commission of the crime in a manner which

16 has been demonstrated epidemiologically to transmit the HIV

17 virus.

18 (b) If the court grants the prosecutor's motion, the court

19 shall order that the test be performed by an appropriate health

20 professional who is trained to provide the counseling described

21 in section 144.763, and that no reference to the test, the

22 motion requesting the test, the test order, or the test results

23 may appear in the criminal record or be maintained in any record

24 of the court or court services."

Appendix 7

Bureau of Criminal Apprehension CAP UNIT INITIATIVE

There is a need within the Criminal Assessment Program Unit (CAP) of the Bureau of Criminal Apprehension (BCA) to improve the data information and processing capabilities. There is multiple data entry, multiple stand-alone systems that do not communicate with each other, and systems that were developed years ago that are no longer supported by the original developer. Some of these older systems do not use Department of Public Safety standard development languages and cannot be supported by Public Safety.

It is the intent of this request to create within the CAP Unit an integrated computer system containing the Sex Offender Registration (SOR) database, Minnesota Sex Crimes Analysis Program database (MN/SCAP), Violent Criminal Apprehension Program (VICAP) database, photo retrieval database (Hennepin County and State of Minnesota's driver license) and other CAP or state databases such as the Crime Incident database.

There will be a project team comprised of personnel from the BCA CAP Unit, the contract vendor(s) and the Office of System Information Management (OISM). The feasibility study and systems development will be completed by contract consultants. The business plan and technical requirements will be developed jointly by the project team. All hardware and software purchases will be reviewed and approved by BCA management and reviewed by OISM managers in accordance with existing computer purchasing procedures.

The current hardware in the CAP Unit needs to be upgraded to accommodate the integrated system and make use of current technology. CAP Unit and OISM personnel need to be trained in the programming development language, database tool, new technology and new integrated system.

We estimate that the funds required for this project at \$351,000. This is allocated as follows:

Feasibility Study	\$10,000
Systems Development	\$220,000
Hardware/Software	\$131,000
Training	\$10,000
TOTAL	\$371,000

Included in the above cost are:

Systems Development:

1. Analysis and design; Business Requirements, System Requirements, Functional Specifications.
2. Infrastructure components; identify and purchase rights to the programming development language and database tools, implement (write) the integrated database system.
3. Implement the components of the system.
4. Test and documentation.
5. Project management.

Hardware/Software:

1. Upgrade PC's
2. Upgrade CAP Server
3. Implement support systems; Geographic Information System (GIS) and Document Management System.

BUREAU OF CRIMINAL APPREHENSION
CRIMINAL ASSESMENT PROGRAM NEEDS

<u>Personnel</u> (salary plus benefits)	FY 96	Ongoing
2 Clerk Typist 3s @ \$40,000 each	\$80,000	\$80,000
2 Special Agents @ \$60,000 each	\$120,000	\$120,000
1 Criminal Intelligence Analyst @ \$45,000 each	\$45,000	\$45,000
1 Management Information Systems Coordinator 2 @ \$45,000	\$45,000	\$45,000
<u>TOTAL SALARY</u>	<u>\$290,000</u>	<u>\$290,000</u>
 <u>Equipment</u>		
Computer Equipment 6 IBM compatible 486 computers and printers @ \$5,000 each	\$30,000	\$6,000
Special Agent Equipment (including vehicle, weapon, body armor, etc) @ \$25,000 each	\$50,000	\$10,000
 <u>Operating Expenses</u>		
Including: Supplies @ \$2,000 per employee, \$10,000 other supplies, Communications @ \$300 per employee, Printing/mailling 4,000 SOR forms @ \$.40 each, Travel, including gas (\$1500), vehicle maintenance (\$500), accomodations and meals (\$2500) x 2 agents	\$34,000	\$34,000
 <u>TOTAL NON- SALARY</u>	<u>\$114,000</u>	<u>\$50,000</u>
 <u>GRAND TOTAL</u>	<u>\$404,000</u>	<u>\$340,000</u>