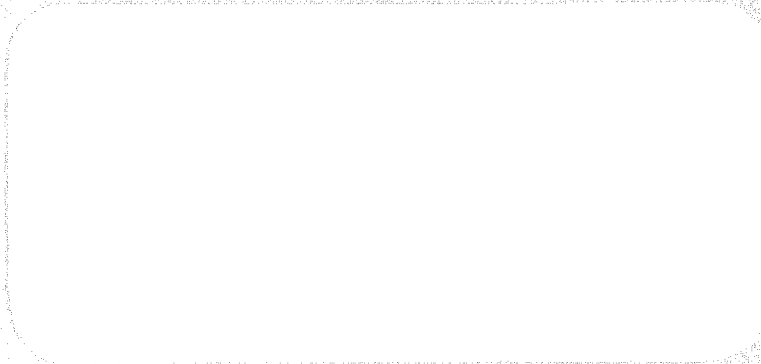
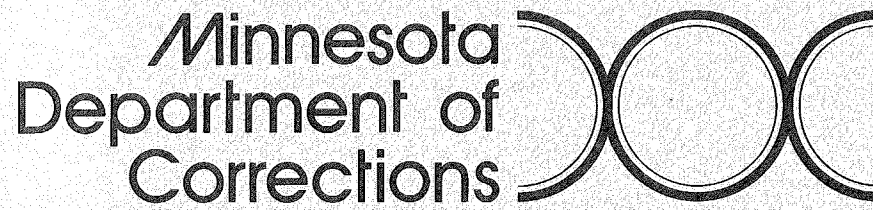


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***RISK ASSESSMENT AND RELEASE  
PROCEDURES FOR VIOLENT OFFENDERS/  
SEXUAL PSYCHOPATHS***

***Final Report  
August 15, 1991***

***prepared by***

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SEP 10 1991



# *Introduction*

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On July 22, 1991, I was asked by Commissioner of Corrections Orville B. Pung to accept a special assignment. Specifically, the special assignment entailed an objective review of the department's policies, procedures and practices relating to the identification, conditions of release, supervision, surveillance and systems of accountability which ensure the close monitoring of a risk offender's transition from the institution to the community. The assignment also included a review of the department process for identification and referral of offenders for civil commitment as a psychopathic personality (sexual psychopath). An interim report was requested by and submitted on July 31, 1991, with the final report due August 15, 1991.

As a result of my review I was to make recommendations which could further improve procedures and, most importantly, serve to enhance department efforts to meet its public safety responsibilities. The recommendations contained in this report are multi-jurisdictional because all branches of government and the civil and criminal justice systems must work together cooperatively to ensure that reasonable and prudent precautions are taken to reduce risks and to reemphasize that public safety has been and continues to be our common goal and highest priority.

An important aspect of the special assignment was my review of the Minnesota Department of Corrections policies and practices related to the Institution Services Division's identification of and prerelease planning for violent offenders, the Office of Adult Release's policies and procedures and the Community Services Division's policies and practices related to supervision and programming for the offender in the community. I found them to be consistent with American Correctional Association standards and the professionally accepted policies, procedures and practices of the

federal and most state corrections systems in the country. Are there areas that can be changed, improved, modified or defined in more detail? Yes, much in the same way that an investigation of a natural disaster or a train crossing accident provides new perspectives and information which lead to improved flood control, earthquake-proof architecture and safer railroad crossings.

It is unlikely that delivering an inmate to a residential placement and/or the immediate issuance of a warrant when an offender does not report to the residential placement would have prevented a tragic and senseless death. However, a detailed review of department practices in light of recent tragedies identified areas that could be changed to increase and improve accountability and control.

It must be kept in mind that there are no rational actions the legislature, police, courts and/or corrections could take that would put the criminal justice system in a position to declare to the citizenry the elimination of the possibility of violence or homicides in our society. We can and will make improvements in the system where a reasonable expectation could be a reduction in the potential for and frequency of violence by offenders on release status. Our attention as a society needs to be refocused on the societal causes of an increasingly violent society and violence towards women and children. Focusing society's resources on the reaction to violence after the fact is highly unlikely to have any significant impact on violence in our society. It is very revealing to hear and watch the very people who abhor the violence of the rapist and the murderer suggesting that as a society we should condone and sanction violence (castration and the death penalty) for offenders. It escapes me as to how this violent response will somehow elevate our society to greater respect for life and individual rights and reduce violence in our society. Any society that sanctions violence as a

rational response to violence should be aware of the message it is sending to the members of that society. We are telling the citizens not to be violent and not to solve conflicts and problems with violence — solving society's problems with violence is reserved for the state.

To reverse the increasing trend and propensity towards violence in our society, we need to invest our resources early in the lives of our children. Quality child care, day care and preschool programs, early intervention with all children experiencing impulse and anger control problems and children struggling in our education system with learning disabilities and behavior problems must be our priority. We must also provide equal opportunities and access for low income and disadvantaged families to marital, family and single parent counseling; employment; housing; health care; drug education and prevention programs; and the identification and treatment of the addicted. We cannot afford to continue to increase our funding of simplistic, reactionary solutions to complex societal problems in an effort to placate and mislead the citizens. These initiatives have not reduced the violence and homicides in any state in the country. We need prisons, parole officers, police and judges, but as a society we must recognize that the criminal justice system is not the cause or source of violence in our society. Depending on the circumstances of the crime, segments of the criminal justice system or the whole system make easy targets. We should ask ourselves how we train our children to resolve conflict. Do we ignore and/or stigmatize those children and adults who admit they have a problem and seek help for their problems?

With that in mind, these recommendations should not be viewed as a panacea but as reasonable and prudent precautions to provide increased control and improved systems of checks and balances that will reduce the potential for human error and tighten offender accountability.

In addition to my review of the civil commitment statute, the following is a partial list of some

materials reviewed during the special assignment:

- *Psychopathic Personalities Subcommittee Report* contained in the February 1988 *Commitment Act Task Force Report* to the Commissioner of Human Services
- *Attorney General's Task Force Report on Violence Against Women*, 1989
- *Issue of Civil Commitments in Minnesota* (related to the psychopathic personality), 1991
- *The Rehabilitation of Criminal Offenders: Problems & Prospects*, National Academy of Sciences, Washington, D.C., 1979
- *New Directions in the Rehabilitation of Criminal Offenders*, National Research Council, National Academy of Sciences, Washington, D.C. 1981
- *Practitioner's Guide to Treating the Incarcerated Male Sex Offender*, U.S. Department of Justice, February 1988
- Office of Adult Release Chapter 2940 Rules, 1987
- Office of Adult Release Residential Placement and/or Special Release Programming Guidelines, 1989
- Intensive Community Supervision Statute and Policies & Procedures, 7/90-6/91
- Guidelines for Revocation of Supervised Release or Parole, March 1991
- Assessment of Sex Offender Risk, Evaluation of Recidivism Risk/Needs Assessment
- Mentally Ill & Dangerous Program (program description), Adult Protection Services, Hennepin County Community Services Department

# Discussion

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The initial priority was to put in place a procedure to ensure that sexual psychopaths and/or other predatory and violent offenders already in the system are identified. Of course, we placed the highest priority on violent offenders, including sexual psychopaths already within the system, who are in their last year of incarceration 1) to determine if there is sufficient justification to attempt a civil commitment as a psychopathic personality or as mentally ill and dangerous, or 2) if a civil commitment is not possible or is denied by the court, to ensure that appropriate safeguards and conditions of release are in place prior to release to reduce the risk to public safety.

The department's coordinator of sex offender treatment programs was asked to convene a series of meetings and form a department committee made up of institution directors of sex offender treatment programs, the director of the department's mental health unit and other selected institution psychologists and case management staff. The purpose of these meetings was to outline an assessment of high-risk offenders which would include brief statements of purpose (goal); programming and suggestions for continuity, use, sharing and storing of information; and forums for improved communication to address emerging concerns and issues. The recommended institution procedures accomplish the committee's goals and incorporate the committee's *alerting risk factors* and recommendations for the assessment of high-risk offenders. The procedures also establish a seven-member departmental Civil Commitment Review Team and the *alerting risk factors* developed by the committee. The following is the committee's assessment outline.

## Assessment of High-Risk Offenders:

**Purpose** — Assess offender's needs for supervision, control and service regarding risk to public safety.

- Develop and implement a uniform, comprehensive method for assessing risk to public safety.
- Assess offenders at earliest possible stage (initial program review team) and throughout their involvement with the system.
- Record risk to public safety data in a cumulative assessment management file to be used for management, evaluation and research.

## Programming:

- Develop intervention/management plans that address the full range of supervision, control and treatment needs.
- Match offenders with supervision, control and treatment programs appropriate to assessed needs and risk levels.
- Provide a system of incentives and sanctions to increase offender's motivation for treatment.

## Linkages:

- Cumulative information should follow the offender from earliest impact point throughout the system.
- Formalized agreements should be developed that detail areas of responsibility, services to be provided and mechanisms for information exchange among programs in the system and treatment community.
- Ongoing professional forums should be held, especially at the policy-making level, to address common concerns and issues.
- An automated management information system should be established and used within and across systems to monitor delivery of program-

ming to offenders, collect data for program evaluation and establish a rationale for additional interventions and staff.

The committee also reviewed the psychopathic personality statute and the *Psychopathic Personalities Subcommittee Report* contained in the 1988 *Commitment Act Task Force Report*. Their concerns and recommendations are outlined here:

The following concerns regarding the psychopathic personality statute and subsequent recommendations were based on several days of discussion and a critical review by the committee of the report to the Commissioner of the Department of Human Services (DHS) by the Commitment Act Task Force of February, 1988. Many of the same problems cited in relation to the commitment statute by the Department of Corrections (DOC) committee were identified by that task force. Thus, once again the commitment statute was revisited and one must conclude that the limitations of this statute must be corrected to ensure public safety.

**Concern:** Term "psychopathic personality" is poorly defined. The definition is vague and too broad.

**Recommendation:** Develop a more workable definition of the term or create a better term to describe the predatory nature of these type of offenders. When doing either one of these options, caution must be exercised to ensure that the new term or definition reflects a diminished mental capacity so that the responsibility for these type of offenders remains with the DHS and not the DOC.

**Concern:** The current legislation places mentally ill and dangerous and the psychopathic personality under the same commitment act. Thus, the legislation utilizes the same type of criteria for treatment, discharge and revocation. These two populations are

very different. They have different treatment needs and therefore the therapeutic interventions and the system to ensure accountability must be different.

**Recommendation:** In the legislation a separation must occur between the mentally ill and dangerous and the psychopathic personality with different discharge and revocation criteria for each population.

**Concern:** When these two populations are committed to the DHS these individuals are housed together. The vulnerable adult is housed with the predator.

**Recommendation:** House the two populations separately. This would also provide the opening to utilize different therapeutic interventions for these two populations of patients.

**Concern:** Inherent in the DHS philosophy is the provision of treatment to all patients, the role of DHS therapists as advocates for patients and the movement of patients to the least restrictive environment at all times. With that in mind, often the responsibility for a patient's progress in treatment falls on the therapist's shoulders.

**Recommendation:** Individuals who have been found to be psychopathic are those who are least likely to benefit from treatment. While it is necessary due to the atmosphere in the courts to provide a release mechanism for these committed individuals, the definition of treatment must be broadened. As it exists now, the DHS must provide treatment. Many individuals committed under the psychopathic personality statute have been able to achieve release because they have stated that the DHS was not providing viable treatment options. The more effectively we can communicate the different, unique nature of these individuals to professionals in the community, the more



apt we are to be successful in keeping the more predatory offender off the streets.

**Concern:** A different philosophy of treatment exists between the DHS and the DOC. The mental health system is a client-determined system. The DHS staff role is very different than that of the DOC.

**Recommendation:** Until a change in the statute can be accomplished, information sharing between the two departments with the possibility of joint training should be considered. Staff of the security hospital do an excellent job with individuals committed as psychopathic personalities but their hands may be tied to treat these patients according to protocol due to DHS philosophy.

**Concern:** There is a lack of adequate human services transitional housing for this population moving from a restrictive environment to the community.

**Recommendation:** Human services should study the need for the expansion of halfway house resources to assist in the transition of these patients and with that a more rigid system of accountability upon discharge is established for the psychopathic personality.

**Concern:** These changes will take time and most likely a task force or committee will be created to study the issue and make recommendations. In the meantime, the problem remains that counties interpret the legislation differently, making it difficult to commit some offenders.

**Recommendation:** The suggestion for informational meetings to be held at the commissioner's invitation for county attorneys and judges is an excellent idea. The committee believes the information may also benefit DOC institutional staff. Training could be presented by those Hennepin

County staff who have extensive experience and demonstrated competence in processing and hearing civil commitment cases.

It is recommended that the State Departments of Corrections and Human Services join with state prosecutors and district court judges to propose changes in the civil commitment statute in the 1992 session of the legislature. The changes recommended would represent an enlightened change in public policy and would significantly improve the control and incapacitation of dangerous sex offenders and thereby enhance public safety.

The *Psychopathic Personalities Subcommittee Report* (pages 45-51) of the 1987 report to the Human Services Commissioner from the Commitment Act Task Force should be reviewed prior to development of any statutory amendments. The report is very revealing and should be considered as the department outlines specific language to amend the current civil commitment statutes and in planning legislative strategy for the 1992 legislative session.

Currently the Department of Human Services' focus and position on treatment are related to the fact that the majority of the patients in state hospitals are vulnerable adults. Appropriately, the DHS philosophy and approach to these clients is one of advocacy and justifiable concern for ensuring patients' rights and expediting their return to the community.

Psychopathic, violent, predatory sex offenders are not vulnerable adults and no responsible professional should advocate for expediting their return to the community at the expense of public safety. Return to the community of some dangerous sexual psychopaths may in some cases never be a reasonable option. When there is clear and convincing clinical evidence that their risk to public safety is diminished to a level that would represent a reasonable, prudent and justified calculated risk, and only then with very close supervision for an extended period of time in the community, should

the release occur. This statement is not intended to be critical of the Department of Human Services. They clearly should be advocates for vulnerable adults and other appropriate patients' right to return to the community as soon as practical. It is suggested that sexual psychopaths (even though some have diminished mental capacity) are not vulnerable adults and a different approach needs to be developed and legislated for making these civil commitments and separating them from vulnerable adults during their secure hospitalization and treatment.

In the July 31, 1991, interim report it was recommended that the Commissioner of Corrections invite selected prosecutors statewide to an informational meeting which would focus on the effective processing of civil commitments during or immediately after criminal felony prosecution where appropriate. At that meeting individuals from Hennepin County who have a wealth of knowledge and experience to share with other county prosecutors could make individual presentations and hold a panel question and answer session. Some of the most knowledgeable, experienced, competent and effective people who could be invited to make presentations and serve on the panel are Judge Patricia Belois; Assistant Hennepin County Attorney Liz Cutter; Carmen Madden, Hennepin County Adult Protection Services Program Manager; and Dr. Kenneth Carlson, director of the Department of Corrections Mental Health Unit. Governor Carlson's legal counsel and an appropriate representative of the Attorney General's staff could also be invited to attend the informational meeting.

The other agenda items could be a presentation by the Commissioner of Corrections on 1) proposed changes in the civil commitment statutes, focusing on the psychopathic personality (sexual psychopath) and 2) *the infrequent use by judges of Statute 609.1351, Petition for Civil Commitment*. However, prior to the meetings with the chief district court judges and prosecutors, it is my recommendation that Commissioner Pung meet with the Commissioner of the Department of Hu-

man Services to discuss a joint legislative initiative to amend the civil commitment statute. This would ensure that the executive branch of state government is supporting and taking a unified approach to amending the current civil commitment statutes and the housing, treatment, accountability and release of psychopathic personality (sexual psychopath) commitments. Given the viewpoints of the two agencies which are eluded to in the February 1988 *Commitment Act Task Force Report*, it is essential that the two agencies approach and agree on how the state will carry out its responsibilities for public safety and the treatment of sexual psychopaths. When the state's position on this issue is clearly defined and outlined, that position should be on the agenda for discussion with chief judges and prosecutors.

As eluded to, the agenda for the meetings with the judges and prosecutors should also include a discussion of *Statute 609.1351, Petition for Civil Commitment, which very clearly states that "When a court sentences a person under section 609.1352, 609.342, 609.343, 609.344, or 609.345 (patterned sex offenders, criminal sexual conduct 1, 2, 3 and 4 respectively), the court shall make a preliminary determination whether in the court's opinion a petition under section 526.10 may be appropriate. 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. If the person is subsequently committed under section 526.10, the person shall 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 facility designated by the commissioner of human services."*

During my discussion with Minnesota Supreme Court Chief Justice Sandy Keith he suggested that the Commissioner of Corrections contact Judge Kevin Burke, Assistant Chief Judge of the Fourth Judicial District, to discuss the most appropriate way of extending an invitation to the other district court judges for an informational meeting. Com-

missioner Pung contacted Judge Burke who was receptive to the proposal and agreed to assist in convening a meeting with the 10 chief district court judges.

The initial draft of the procedures for identification, monitoring and release of *Public Risk Monitoring Cases* was sent to adult institution heads for their review and input. The final procedures reflect input from institution heads and their staff.

The term *Public Risk Monitoring Case Guidelines* describes what it is that the department and the Office of Adult Release's Residential Placement/Special Release Programming Guidelines accomplished prior to my special assignment. This was discussed with the Executive Officer of Adult Release and it was decided that Office of Adult Release policies would be changed, using this new term. I concurred and the Office of Adult Release is in the process of implementing appropriate policy changes. In the interim until the policy changes are accomplished, I included the reference to the residential placement and/or special release programming guidelines in the proposed institution procedures.

Upon approval by Corrections Commissioner Orville Pung, the following new institution procedures will be sent to the institutions and will become effective the date of approval.



# *Institution Procedures for the Identification, Monitoring and Release of Public Risk Monitoring Cases*

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## **Introduction**

These procedures are designed to create a uniform screening process and criteria to be used by institution program review teams for the identification of offenders already in or entering the corrections system whose behaviors prior to commitment or related to the offender's committing offense or during incarceration indicate that the offender is a candidate for civil commitment as a psychopathic personality or may represent a risk to the public upon release.

*Psychopathic personality as currently defined by statute is 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.*

If the offender is considered for a civil commitment or a civil commitment is processed and denied, or the offender meets residential placement/special release programming guidelines and/or it is determined by use of the **alerting risk factors** that the offender represents a risk to public safety, he/she will be identified as a **Public Risk Monitoring Case**.

Listed below are **alerting risk factors** for those entering or already in the system. A separate set of **alerting risk factors** will be used by each institution program review team at the offender's annual review to determine whether the offender is a candidate for civil commitment or should, because of his/her behavior during incarceration, be identified as a **Public Risk Monitoring Case**.

## **Alerting Risk Factors for**

### **Offenders Entering the System:**

- Offender is a recidivist
- Offender has reoffended shortly upon release from custody
- Offender has escaped/absconded from a prior placement; i.e., halfway house
- Offender failed to report to a court-ordered placement
- Offender's crime involved kidnapping (offender may not have been formally charged with kidnapping)
- Offender used a weapon during commission of offense
- Offender inflicted excessive injuries to victim
- Offender's prior treatment exposure
- Victim was a stranger
- Impulsive nature of the offense
- Offenses demonstrate a pattern of escalation — increased frequency of offenses and/or level of violence
- Other assaults, misdemeanors included
- Age at first offense
- Age at time of release
- Offender denies conviction
- Criminal history review to include juvenile record, noting all charges and convictions, misdemeanors included
- Chemical dependency issues
- Any revocation or restructuring of supervised release/probation

## **Alerting Risk Factors for**

### **Offenders During Incarceration:**

- Any type of sexual misconduct while incarcerated
- Chemical usage while incarcerated
- Refusal to participate in treatment
- Possession of materials which depict acts of sadism, violence against women or children

- Collection of lists and/or news articles of children or any information similar to offender's selection of victim
- Verbally threatens to do specific harm to another individual upon release
- Received a discipline report considered a risk offense to staff and/or inmates which results in the offender's reclassification to maximum custody or a continuance of maximum custody
- History of predatory and/or assaultive behavior; i.e., threatening letters or assaults which may have been reduced to lesser charges
- Review formal psychological assessment (may include a referral for a penile/vaginal plethysmograph)
- History of mental illness or organic impairment

These factors should not be considered singularly but in a cumulative fashion. As the offender's history and incarcerated behavior are reflected in more of the *alerting risk factors*, his/her level of risk to public safety logically increases.

- ☐ All person offenders currently in the system and any other property offender cases that contain a factual description of behaviors supported by witnesses and/or official documentation which represent a significant risk to public safety; e.g., burglar who has any sexual contact or masturbates during the burglary, will be screened utilizing the Residential Placement/Special Release Programming Guidelines and the *alerting risk factors* on the offender's annual review date to determine the level of public risk they represent upon release. *Priority at this time will be placed on reviewing those cases in their last year of confinement to ensure no offender is released without a determination of the level of risk they represent to public safety.*
- ☐ All new person offender commitments and any other property offender factual cases that contain a factual description of behaviors supported by witnesses and/or documentation which represent a significant risk to public safety will be screened utilizing the Residential

Placement/Special Release Programming Guidelines and the *alerting risk factors* to determine the level of public risk they represent upon release. (It is projected that up to approximately 20 percent of the cases reviewed could rise to the level of risk necessary to be identified as a *Public Risk Monitoring Case*.)

- ☐ Utilizing Residential Placement/Special Release Programming Guidelines and the *alerting risk factors*, the institution program review team will determine at the initial review as to whether the inmate should be classified as a *Public Risk Monitoring Case*. Each institution will provide the Office of Adult Release on a quarterly basis a list of names of offenders identified during the previous quarter as *Public Risk Monitoring Cases*, including those being considered or processed for civil commitment.
- ☐ All inmates identified as *Public Risk Monitoring Cases* will be reviewed by the program review team and appropriate institution psychology staff to determine whether there is sufficient evidence from the committing offense and/or other documented behavior which would make a referral for a civil commitment as mentally ill and dangerous or as a psychopathic personality appropriate.
- ☐ If institution staff determine that sufficient documentation and/or evidence is present to warrant a civil commitment, the case will be prepared for review and referred to the department's Civil Commitment Review Team. That team will consist of seven departmental staff:
  - Associate warden
  - Assistant to the commissioner
  - Department's mental health unit director, MCF-OPH
  - Institution casework supervisor or assistant to the warden/superintendent
  - Field supervisor/director
  - Director of one of the department's sex offender treatment programs
  - Department's sex offender treatment program coordinator

☐ The department's Civil Commitment Review Team will review the case for referral to the appropriate county of commitment. If in their judgment the case is appropriate for a civil commitment, a member of the team will be designated to assist the institution in taking the case through the civil commitment process. It is estimated that only one or two percent of the cases will be appropriate to refer for psychopathic personality commitment.

☐ If the case is not referred for civil commitment or is denied but is determined to be appropriate for public risk monitoring during incarceration, the program review team will review the case annually with special attention to behaviors and conditions outlined in the *alerting risk factors* during incarceration. Using the *alerting risk factors* during incarceration, the program review team may at any point during any inmate's incarceration screen an inmate to determine if there is justification for a civil commitment or identification as a **Public Risk Monitoring Case**. If appropriate, the case will be referred to the department's Civil Commitment Review Team or designated a **Public Risk Monitoring Case**. If the Civil Commitment Review Team concurs, the case will be prepared for referral to the appropriate county of commitment, requesting a civil commitment. As previously indicated, a member of the team will be designated to assist the requesting institution in the civil commitment process.

☐ **Public Risk Monitoring Cases** will also be reviewed at the time of the request for agent assignment to determine if new information would justify a judicial commitment, following the same procedures that have been previously outlined.

☐ When a **Public Risk Monitoring Case** is not referred for judicial commitment or is processed and denied, the following options will be considered and/or included in prerelease planning by institution and field service staff:

- Residential placement
- Intensive community supervision
- Electronic monitoring
- No use of mood-altering chemicals
- Random urinalyses
- No victim contact
- No unsupervised contact with minors under age 16 (age of consent) without agent's permission
- No violence or threats of violence
- Any other conditions, initiatives or combination of the above conditions can and should be used depending on the specific needs of the offender or his/her case which will reduce risk to public safety

Institution and field staff should take every reasonable and prudent precaution to carry out responsibilities as they relate to public safety. This includes the notification of victims who request notification, appropriate law enforcement and/or child protection agencies where appropriate of the pending release of any offender determined to be a risk to public safety.

☐ All **Public Risk Monitoring Cases** will be transported to the release destination by community residential staff, an agent or institution staff. Institution staff must obtain a receipt for the offender from the person accepting custody of the releasee. *In the event that the designated transportation person for any reason is not available to provide transportation of a Public Risk Monitoring Case, institution staff will provide the transportation. A report from the institution head will be forwarded to the Deputy Commissioner of Institution Services which describes the reasons the person scheduled to provide transportation did not escort the offender to his/her placement.*

☐ Inmates identified as **Public Risk Monitoring Cases** may appeal their placement on that status to the Office of Adult Release. Only the Executive Officer of Adult Release has the authority to remove an offender from this status.

☐ In the event a *Public Risk Monitoring Case* serves to expiration on his/her sentence and a civil commitment was not possible or denied, the following prerelease precautions will be taken:

- Special investigators will be assigned in an attempt to identify where the releasee intends to reside if the inmate refuses to provide any information on his/her plans after discharge. The investigator will attempt to gather any information which would help appropriate police agencies monitor the releasee's activities. This information will be shared with all appropriate police agencies.
- Notification of victim(s) when requested
- Notification of the Bureau of Criminal Apprehension and appropriate county and local police agencies

☐ Form letters will be sent to the local police chief and the county sheriff under the signature of the institution head of the facility releasing the offender which provide the releasee's name, offense and release date as well as the name and phone number of the supervising agent. This procedure will be followed for all releases from adult facilities including those offenders being discharged.



# Recommendations

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It is recommended that the following staff be appointed by the Commissioner of Corrections to serve on the department's newly formed Civil Commitment Review Team:

*John Needham*, Associate Superintendent,  
St. Cloud  
*Jean Whitney*, Assistant to the Commissioner,  
central office  
*Dr. Kenneth Carlson*, Health Services  
Director, Oak Park Heights  
*Sue Nau*, Assistant to the Warden, Stillwater  
*Denis Doege*, Alternative Program  
Manager, central office  
*Dr. James Kaul*, Treatment Unit Director,  
Oak Park Heights  
*Pam Mindt*, Sex Offender Treatment Program  
Coordinator, central office

Many of the recommendations outlined in this report are the product of suggestions and recommendations made by the Office of Adult Release, Community Services Division staff, Institution Services Division staff and Community Corrections Act staff. These recommendations were discussed along with other recommendations developed for discussion at meetings with Department of Corrections supervisors and Community Corrections Act staff held in Sauk Centre on July 31, 1991, and August 1, 1991, respectively.

It is also appropriate to point out that these discussions and meetings over the last three weeks provided opportunities and forums that generated a variety of excellent ideas, some of which were not specifically relevant to this special assignment but did merit further discussion and follow-up because of their potential to further enhance communications and professional relationships. The Deputy Commissioners of the Institution and Community Services Divisions and the Executive Officer of Adult Release were enthusiastic about the

potential for more frequent internal discussions between and within divisions that could lead to a variety of creative improvements. Their expectations are that these discussions and suggestions will further improve communications, information sharing and further enhance the cooperation and relationships among county and state corrections agents, field staff and institution staff. It is refreshing, impressive and reassuring to participate with a group of professional correctional practitioners whose conscientious sense of responsibility, sensitivity and proprietary interest in public safety is reflected in all that they do on a daily basis.

All of the recommendations contained in this final report are separated into the three categories described below:

- I. Actions Taken by the Department of Corrections Since July 15, 1991, and Recommendations Implemented during Warden Frank Wood's Special Assignment.*
- II. Recommendations that are in Process for Which Detail is being Developed for Implementation on or before September 30, 1991.*
- III. Recommendations which Require Staff Assignment for Further Study and/or Require Either Legislative Changes and/or New Legislation. (Note: The timeline for these decisions and/or completion of these legislative proposals should be no later than December 15, 1991.)*



## ***I. Actions Taken by the Department of Corrections Since July 15, 1991, and Recommendations Implemented During Warden Frank Wood's Special Assignment***

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Prior to my transfer to special assignment status in central office on July 22, 1991, the Deputy Commissioner of Institution Services, the Executive Officer of Adult Release and the Deputy Commissioner of Community Services acted promptly to implement important procedural changes. All actions taken prior to July 23 were taken independent of this special assignment.

**July 15, 1991:** The Deputy Commissioner of Institution Services advised all institution heads that institution staff should transport all mandated cases to their destination until further notice and other arrangements could be made.

**July 19, 1991:** The Deputy Commissioner of Community Services sent a memorandum to all Department of Corrections agents, supervisors and directors suggesting a review of Community Services Division policies and procedures. He included specific direction related to the agents' vigilance and accountability in the supervision of offenders on release and the responsibilities for prompt use of warrants and hold orders. He established a staff committee to review the division's policies and procedures.

**July 19, 1991:** The Executive Officer of Adult Release directed all agents to ensure that transportation was provided to offenders released from jails to halfway houses, intensive supervised release, electronic monitoring and house arrest.

**July 22, 1991:** The Deputy Commissioner of Community Services advised Department of Corrections adult agents that all offenders released from institutions for placement in contract residential facilities would be escorted and transported from the releasing institution to their community placement effective July 22, 1991. The memorandum also indicated that institution staff would provide transportation to non-contract resi-

dential facilities and for electronic monitoring and house arrest releasees.

**July 22, 1991:** Commissioner Orville Pung requested that Warden Frank Wood of the state's high security facility at Oak Park Heights accept a special assignment in central office until August 15, 1991. Commissioner Pung asked Warden Wood to make a review of all policies, procedures and practices related to identification, prerelease planning and supervision of violent offenders. An initial report was requested by July 31, 1991, with the final report due on August 15, 1991.

**July 23, 1991:** After discussion between the Deputy Commissioner of Community Services and Warden Frank Wood, the Deputy Commissioner placed a temporary moratorium on accepting interstate parole sex offender cases until he completed his internal review of procedures for receiving, assessing public risk and supervising interstate sex offender cases.

**July 24, 1991:** The Alternative Program Manager suspended intake of all sex offenders into the work release program. He also proposed that, when sex offender intake for work release was restored, sex offenders not completing programming should not be eligible.

**July 29, 1991:** A draft of the proposed *Institution Procedures for the Identification, Monitoring and Release of Public Risk Monitoring Cases* was sent to adult institution heads by the Deputy Commissioner of Institution Services for review, input and use as a guide in the interim by institution staff until final procedures are approved.



## ***II. Recommendations that are in Process for which Detail is being Developed for Implementation on or before September 30, 1991***

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- ☐ It is recommended that the *Institution Procedures for the Identification, Monitoring and Release of Public Risk Monitoring Cases* be approved by Commissioner Pung and implemented by the Deputy Commissioner of Institution Services.
- ☐ It is recommended that Commissioner Pung appoint the members recommended in this report to the department's proposed Civil Commitment Review Team.
- ☐ It is recommended that the members of the Civil Commitment Review Team be directed to convene a series of meetings. At the first meeting the team should develop guidelines for the use of *alerting risk factors*. After completing the first task, a series of preliminary meetings will be necessary to review the psychopathic personality and civil commitment statutes for the purpose of developing proposals to amend or modify the civil commitment statutes. A report to Commissioner Pung should be completed prior to September 30, 1991. This will provide the necessary lead time for Department of Corrections staff to meet with Department of Human Services staff before the legislative session.
- ☐ It is recommended that Commissioner Pung invite the Commissioner of the Department of Human Services to discuss a joint agency legislative initiative to amend the current civil commitment statutes.
- ☐ It is recommended that Commissioner Pung invite county prosecutors to an informational meeting on effective use of the civil commitment statutes, utilizing Hennepin County resource people for those presentations. The meeting could also include a discussion among the prosecutors of the implications of the use of plea bargaining in some sex offender cases.
- ☐ It is recommended that Commissioner Pung and the Assistant Chief Judge of the Fourth Judicial District convene an informational meeting of chief district court judges. This meeting would also include presentations by Hennepin County resource people on their experience with the use of civil commitment statutes in relation to the sexual psychopath. It is also suggested that the Chief Justice of the Minnesota Supreme Court be asked to talk to the chief judges about the importance of all district court judges being familiar with and making more frequent use of Statute 609.1351, Petition for Civil Commitment. It also may be appropriate for the Assistant Chief Judge of the Fourth Judicial District to discuss with the other district court judges the implications of plea bargaining in some sex offender cases.
- ☐ It is recommended that the level of supervision provided to person offenders on prerelease status be studied by the Deputy Commissioner of Institution Services and his staff and, if recommendations to change the department's current practices are appropriate, they should be made in a report to Commissioner Pung.
- ☐ It is recommended that the granting of furloughs to person offenders be reviewed by the Deputy Commissioner of Institution Services and appropriate institution staff. If changes are appropriate in the department's current practices, a report recommending those changes should be forwarded to Commissioner Pung.
- ☐ The Deputy Commissioner of Institution Services, the Executive Officer of Juvenile Release and the juvenile institution superintendents are in the process of meeting for the purpose of evaluating and analyzing the number of juvenile sex offenders in the system, their needs and the resources required to initiate additional sex offender treatment programs for

juveniles. They will report their findings and recommendations to Commissioner Pung.

- ❑ It is recommended that the Deputy Commissioner of Institution Services appoint a committee made up of appropriate institution staff to study and make recommendations to him for establishing uniform guidelines, leadership and membership on the institution's program review teams. It is important that the program review teams in all the adult institutions approach these important responsibilities with departmentwide consistency and continuity.
- ❑ It is recommended that the Executive Officer of Adult Release study and evaluate the implications of continuing the current research of offenders scheduled for release or intensive community supervision status. The Executive Officer of Adult Release will make recommendations to Commissioner Pung related to this research project.
- ❑ It is recommended that the Office of Adult Release set up a committee to review the residential placement and/or special release programming guidelines (to be called *public risk monitoring guidelines*) to determine whether additional modifications of these guidelines are appropriate.
- ❑ It is recommended that the Office of Adult Release form a committee to discuss the restructure process and the feasibility of whether all *Public Risk Monitoring Cases* should have a formalized revocation hearing prior to any restructure consideration.
- ❑ It has been determined that even though there is a statutory requirement for presentence investigations to be ordered by the court, they are not always provided for offenders who are sentenced to the Commissioner of Corrections. It is recommended that the Institution Services Division implement a policy requiring the caseworker in the receiving institution to request a

postsentence investigation on all *Public Risk Monitoring Cases* if a presentence investigation was not completed.

- ❑ Failure to engage in realistic release planning by the inmate often complicates planning by the caseworker and agent with regard to residence and employment. Based on the mandatory release at two-thirds of the sentence, it is recommended that the Institution Services Division issue a directive that all inmates failing to cooperate in "realistic release planning" be considered for prosecution through the institution disciplinary court which could result in a loss of good time and an extension of the release date.
- ❑ It is recommended that the Institution Services Division form a small group to study the issue of institutions requiring a baseline urinalysis prior to release of all *Public Risk Monitoring Cases*. It is believed that this process will assist release planning and agent supervision methods. If the inmate receives a positive urinalysis, segregation and loss of good time should enter into the discussion.
- ❑ It is recommended that the Community Services Division and the Institution Services Division appoint four staff (two from each division) to study the packet material forwarded to the agent with regard to data that is available (public and private, etc.). This committee should discuss and recommend what additional information could be included in the packet to further assist the supervision of *Public Risk Monitoring Cases*. It is additionally recommended that a procedure be put in place to require updated psychological evaluations on all *Public Risk Monitoring Cases* prior to release and that this material be included in the agent referral packet.

- ❑ It is recommended that all ***Public Risk Monitoring Cases*** be photographed at the institution within 30 days of the offender's release and this photo should be forwarded to the field agent as a part of his/her records. These photos should be in color.
- ❑ It is recommended that the Deputy Commissioner of Institution Services appoint Warden Frank Wood to chair a committee to study the feasibility of the expansion and combining of the department's fugitive unit and the department's investigation section (internal affairs). The Department of Corrections currently does not have sufficient staff investigative resources to provide a prompt response to assist Community Services Division staff. The committee will forward any proposals for increased staffing to the Deputy Commissioner of Institution Services for inclusion in legislative proposals.
- ❑ It is recommended that the Community Services Division facilitate planning with Community Corrections Act and non-Community Corrections Act counties for an "Officer of the Day" system, similar to that which operates in state adult correctional facilities. This system will ensure the timely issuance of warrants on weekends and holidays and will provide leadership and resource coverage at all times by use of a pager system. Among the options to be considered are the possible utilization of state institutions (which are staffed 24 hours a day, seven days a week) and the possibility of having warrants issued from institutions on holidays and weekends with later affirmation of the warrant by the Office of Adult Release on the next business day.
- ❑ It is recommended that all field offices set up a process where a scheduling of reviews takes place on ***Public Risk Monitoring Cases***. These reviews should involve field supervisors. A chronological record of the reviews should be part of the record.
- ❑ It is recommended that a small group be formed made up of representatives of the Office of Adult Release and the Community Services Division to discuss and recommend additional procedures and/or options for surveillance and supervision of ***Public Risk Monitoring Cases***.
- ❑ It is recommended that the agent make contact with the victim of the offense prior to release of ***Public Risk Monitoring Cases***. This should occur in cases where the victim has requested notification.
- ❑ It is recommended that Community Corrections Act administrators and Department of Corrections supervisors and administrators convene at least semi-annually (more frequently if necessary) for administrative discussions of mutual concerns. The Office of Adult Release and the Office of Juvenile Release should attend the meetings for specific agenda items.
- ❑ It is recommended that the Community Services Division develop specific expectations for residential programs for accountability and timely reporting of absconders. These procedures should be very specific with respect to how they will operate during certain routine and crisis situations and these situations should be incorporated into the contracts.
- ❑ It is recommended that the Community Services Division (with the assistance of the Office of Adult Release) study the feasibility of hold orders being utilized by halfway houses in lieu of agent availability, etc.
- ❑ It is recommended that meetings be held at least semi-annually (more frequently if necessary) in rotating jurisdictions with Department of Corrections district supervisors, agents, Community Corrections Act representatives, Office of Adult Release staff and residential placement facility staff to discuss mutual concerns in the day-to-day management of offenders.

- ❑ It is recommended that the Community Services Division provide specialized training for agents and supervisors on a statewide basis in supervising *Public Risk Monitoring Cases*.
- ❑ It is recommended that the Community Services Division carefully outline with specificity and clarity the department's process for making risk assessments of interstate transfers of high-risk cases for all agents. The July 30, 1991, memorandum of current interstate transfer processes should be carefully reviewed and expanded in that process.



### ***III. Recommendations Which Require Staff Assignment for Further Study and/or Require Either Legislative Changes and/or New Legislation***

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***Note: The timeline for these decisions and/or completion of these legislative proposals should be no later than December 15, 1991.***

- ☐ It is recommended that the Department of Corrections draft legislation which would prohibit release of offenders from Minnesota correctional facilities on weekends or holidays.
- ☐ It is recommended that the Deputy Commissioner of Institution Services direct the Civil Commitment Review Team to study the practicality, feasibility and program compatibility of implementing both sanctions and incentives for sex offender participation in treatment. The team should consider loss of good time, entry level wage freezes and other sanctions. They should also develop incentives and make recommendations to the Deputy Commissioner on both sanctions and incentives options.
- ☐ It is recommended that, after the Civil Commitment Review Team has developed its recommendations for amending the psychopathic personality and civil commitment statutes, it should meet and work with representatives of the Human Services Department to finalize and unify the legislative approach of the two agencies. Commissioner Pung and/or the Deputy Commissioner of Institution Services should make the appropriate contacts with their respective counterparts in the Department of Human Services to facilitate the two agencies working together. This is one of the most important and crucial recommendations in this report. It is very important that the psychopathic personality statute be changed and that it reflect a real priority on public safety as it relates to the commitment, housing, treatment and release of sexual psychopaths.
- ☐ It is recommended that the Community Services Division form a statewide task force to

explore the feasibility of creating and funding residential facilities in rural areas. This committee should study the need for rural residential facilities and select the areas of the state where the Department of Corrections could cost-effectively benefit from this program and share in their operational costs.

- ☐ It is recommended that the Community Services Division develop standards calling for increased supervision, surveillance and counseling for high-risk offenders on release status. Where feasible, specialized workloads will be utilized to deal with the special problems presented by this type of offender. Recommendations for necessary staff and funding to provide this increased supervision within the Department of Corrections and Community Corrections Act areas shall also be developed.
- ☐ It is recommended that the Community Services Division formulate a task force to further study the area of expanding intermediate-type sanctions and supervision. This should include the study of expansion of electronic monitoring, intensive community supervision, day programming, etc., on a statewide basis.
- ☐ The need for a legislative amendment should be considered and proposed, if appropriate, for the expansion of the sex offender registration law to include all sex offenders.



## Conclusion

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The facts support the conclusion that Minnesota's criminal justice system is working and the Department of Corrections has and continues to act responsibly and clearly in the framework of accepted correctional practices in most states across the country and the Federal Bureau of Prisons.

Since 1980 over 15,000 offenders have returned to the community on parole or supervised release. These offenders were released responsibly with specific conditions designed to reduce risks to public safety. The conditions ranged from residential program placement, intensive community supervision and electronic monitoring to no victim contact and random drug testing. Other special conditions were also tailored individually to a specific offender's situation and needs. The combination of these conditions provided controls and systems of accountability and enhanced the agent's capacity to intervene and return the offender to prison at the first indication that he/she deviated from those conditions.

During my special assignment I encountered some isolated misunderstandings and inaccurate perceptions of the Office of Adult Release's revocation philosophy. I requested an analysis of institution populations and the corresponding monthly totals of Office of Adult Release revocations. From that analysis and discussion with the Office of Adult Release, it was very clear that institution capacities and their populations at any given point were not considered as part of any decision to revoke or not revoke the supervised release or parole status of any offender who represented any degree of risk to public safety. The monthly average for offender revocations ordered by the Office of Adult Release in 1988 was 29, 1989 - 35, 1990 - 32 and to date in 1991 a monthly average of 39 offenders have their release status revoked and are returned to prison by the Office of Adult Release for violations of their conditions of re-

lease. This means that 400 to 470 offenders on release status are returned to prison annually because they violate conditions of release. They are monitored, supervised, held accountable and the system intervenes when they deviate from behavioral expectations. If these offenders were kept in prison to the statutory expiration of their sentences, their behavior after release would not be monitored and the only time they could be returned to prison would be if they were caught and found guilty of committing another felony. The Office of Adult Release and agents are doing an exceptional job, given the fact that average agent caseloads (not counting intensive community supervision caseloads) range from 60 to 170.

The most current data available at this time on sex offender releases indicate 175 male sex offenders were released in a year. A year later three percent, or six sex offenders, returned to prison with a new sex offense. Thirteen percent were returned to prison after agents reported technical violations of their release conditions. One could ask the question, should we have a system that would keep 175 sex offenders in prison because six sex offenders failed and reoffended? *It should again be emphasized that some dangerous sexual psychopaths may never be released from their civil commitments.* Would public safety be better served if all sex offenders served expiration on their sentences and murderers served life in prison with no release? (One to two percent of the murderers return to prison with a new offense after 30 months on release). If sex offenders were required to serve to expiration of their sentences, the system could not legally impose any conditions of release, residential placement or intensive supervision on the offender. Such a release would represent an extreme risk to the public in some cases. Psychiatrists, psychologists and social workers cannot predict with accuracy future dangerousness or who will reoffend. The Department of Correc-

tions has been consistently successful by utilizing transitional programming methods to reduce the calculated risks inherent in the return of violent offenders to the community.

Can we as taxpayers afford to house the thousands of people who would have to be kept in prison long after they represent any risk to the public? Under such a system, would the rate of violent crime decline?

There is no evidence to support such a change in public policy given the experiences of California, Texas and Florida which have prison populations ranging from 45,000 to 100,000 prisoners on any given day. (Minnesota has 3,300 adult offenders in state institutions with an annual institution budget of \$95,000,000.) By comparison, California has taken the public policy position that they are going to be tough on crime and criminals by imposing long sentences and the death penalty. They currently house 100,000 inmates in state institutions and their budget is near three billion dollars annually. California continues in their attempts to build themselves out of the overcrowding problems created by their own regressive and counterproductive public policies — policies that have not registered any significant impact on homicides or the violent crime rate in California. There is no indication that those expenditures have had any impact on public safety. California, Texas and Florida also have the death penalty. How do the homicide rates in Los Angeles, Miami, Dallas and Houston compare to those in the Twin Cities? There is no comparison. Minnesota ranks 36<sup>th</sup> in violent crime. Among the 50 states, Florida ranks second, California ranks third and Texas ranks 12<sup>th</sup>.

In conclusion, Minnesota should not permit the legislature and the state to be demagogued into spending millions of dollars on empty promises and simplistic solutions to very complex societal problems. The end result is always poor public policy that historically has not reduced the crime rate and cannot stop (as promised by some) or reduce violent crime or homicides. The increased

sentences for murderers and sex offenders passed by the 1989 Legislature did not prevent homicides in Minnesota in 1989, 1990 and 1991 after those changes were enacted nor will additional increases in sentences at this time. We as a society have to look at the root causes of violence in our society and spend our very limited and finite resources on new initiatives with our children.

Crime is always self-centered behavior. I would propose that parents, the entertainment industry, the media, churches and the education systems work together and focus on teaching our children appropriate methods of conflict resolution, respect for others and the destructive consequences of self-centered behavior on each of us as individuals and as a society.

We cannot reduce violence in our society by spending very limited resources on after-the-fact reactions to the problem and the increased use of imprisonment. The United States incarcerates more people per capita than any other nation in the free world. Sixteen of the nation's 50 states execute approximately 12 to 24 poor and/or minority people annually as symbolic human sacrifices to somehow atone for the 23,000 murders committed annually in this country. These regressive public policies have not reduced violence any place in the United States. If these quick-fix, magical solutions are working someplace, the proponents of these solutions should be able to identify the state or country that has empirical evidence to support this claim.

Our efforts and our state resources should be focused on good, sound, long-range public policy, public policy that will encourage treatment and program experimentation. We must pursue the development of sophisticated systems that will help us identify potentially dangerous people before the fact, improve our capacity to predict future dangerousness and identify those who have a high probability of reoffending. It is clear from the literature and discussions with very respected people in the fields of psychiatry and psychology that we cannot predict future dangerousness with

any accuracy and we do not have an empirically supported form of treatment that works with sexual psychopaths.

While we are incapacitating those who represent the most violent, dangerous and predatory offenders, we need to fund experimental treatment programs with rigorous research and evaluation components. We must continue our search for treatment initiatives that work, much in the same way we have funded cancer research. We cannot afford to continue to fund, indefinitely, treatment programs whose value and impact cannot be supported by empirical research. Those programs must be discarded and new initiatives funded and researched.

This dual approach of attacking the root causes of violence in our society as outlined earlier in the report, when combined with experimental treatment initiatives and tough research components, is an enlightened approach to the problem and has the potential of impacting violence in our society. The simplistic solutions have been tried and are currently being reevaluated in states that are recognizing that their limited state resources are being spent on prison space and the operational costs of those facilities which have not impacted crime or violence in those states. I hope Minnesota is not persuaded to follow other states who now are forced by the magnitude of the economic impact on their state budgets to explore more enlightened criminal justice public policies.

*I recommend that we all tone down our rhetoric and put the formulation of good public policy ahead of any personal or political agendas we might have. If we all work together for the common good, we can put in place initiatives that can impact on the growing trend toward violence in our society.*



# Acknowledgments

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This final report is a product of an investment of over 200 hours by the author of reading; research; study and review of policies, procedures, statutes, related studies, reports and reference materials; meetings and consultation with a broad range of department staff with expertise in these areas. Additionally and simultaneously, other department staff were assigned specific individual and group tasks to develop information and recommendations for the interim and final reports. It is of vital importance that we acknowledge and recognize their excellent cooperation, hard work and important contributions to this effort with nearly impossible deadlines. They are to be commended for their outstanding effort and the exceptional and professional quality of their contributions. Their names and titles follow.

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