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Pretrial and Postconviction Conditional Release: 1998 Legislation

This information brief describes criminal pretrial and postconviction conditional release provisions enacted by the 1998 Legislature. The information brief also explores issues the legislature might address in the future in the areas of pretrial and postconviction conditional release.

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Conditional Release—A New Definition

Background and Summary

The definition of "conditional release" used in this information brief is the definition adopted by the 1998 Legislature in chapter 244 (county probation officer law) and [chapter 401](#) (Community Corrections Act). This definition includes several types of postconviction release and does *not* include pretrial release within its scope. Under this definition, "conditional release" means:

- parole;
- supervised release;
- conditional release as authorized under the patterned sex offender law (section 609.108, subdivision 6) and the repeat sex offender law (section 609.109, subdivision 7);
- work release as authorized by [sections 241.26, 244.065, and 631.425](#);
- probation;
- furlough; and
- any other authorized temporary release from a correctional facility.

Minn. Stat. §§ 244.195, subd. 1(c); [401.01](#), subd. 2(d)

Caveat: Some statutes and court rules use a different or more restrictive definition of "conditional release." This information brief will note when use of the term "conditional release" is inconsistent with the definition above.

Apprehend and Detain Authority

Background

The 1998 Legislature amended the statutes authorizing the Commissioner of Corrections and heads of Community Corrections Act (CCA) agencies and county probation agencies to issue, apprehend, and detain (A&D) orders to take persons on conditional release into custody for violating the conditions of release. These changes primarily clarified existing law. One substantive change provided state correctional investigators authority to apprehend and detain probationers, conditional releasees, supervised releasees, and pretrial releasees. Previously, state correctional investigators did not have this authority.

In addition, "conditional release" is defined in chapter 244 (county probation officer law) and [chapter 401](#) (CCA law) to refer to many types of release, as explained in the preceding section.

The clarifying changes are carried out by:

- amending [section 243.05](#), **subdivision 1** (A&D authority of the Commissioner of Corrections);
- repealing [section 244.19](#), **subdivision 3a** (A&D authority of county probation agencies) and replacing it with [section 244.195](#); and
- amending [section 401.01](#), **subdivision 2** and repealing [section 401.02](#), **subdivision 4** (A&D authority of CCA agencies) and replacing it with [section 401.025](#).

Summary

The following tables summarize the authority of the Commissioner of Corrections and heads of Community Corrections Act (CCA) agencies and county probation officer agencies to apprehend and detain individuals.

Commissioner of Corrections' A&D Authority

	With written A&D order	Without A&D order
Offender on parole or supervised release	A peace officer, state correctional investigator, or state parole and probation agent may retake and place person in actual custody.	A state parole and probation agent or state correctional investigator may take and detain a person when it appears necessary in order to prevent escape or enforce discipline and bring the person to the Commissioner of Corrections for action.
Offender on work release	No authority.	A state parole and probation agent or state correctional investigator may take and detain a person when it appears necessary in order to prevent escape or enforce discipline and bring the person to the Commissioner of Corrections for action.
Offender on probation (under supervision of commissioner pursuant to section 609.135)	A peace officer, state correctional investigator, or state parole and probation agent may retake and place a person in actual custody.	A state parole and probation agent or state correctional investigator may take and detain a person when it appears necessary in order to prevent escape or enforce discipline and bring the person before the court for proceedings to revoke under section 609.14 .
Offender on pretrial release	A peace officer, state correctional investigator, or state parole and probation agent may detain a person who absconds or fails to abide by the conditions of pretrial release.	No authority.
Felon who flees pending sentencing	A state parole and probation agent may take into custody without a warrant a person who has been convicted of a felony for which a prison sentence is presumed under the sentencing guidelines and applicable statutes, if the person absconds pending sentencing in violation of the conditions of release imposed by the court. The agent may take the person before the court without further delay.	No authority. The Commissioner of Corrections is to assist law enforcement agencies in locating and taking the person into custody.

A&D Authority in County Probation Officer Counties

	Authority for issuance of A&D order	Official who may act under A&D order	Length of detention and provision for release
Detention of conditional releasee	The court services director has authority to issue an A&D order when it appears necessary to enforce discipline or to prevent a person on conditional release from escaping or absconding.	Any peace officer <i>in the county</i> or any county probation officer serving the district and juvenile courts <i>of the county</i> may detain and bring the person before the court or Commissioner of Corrections, whichever is appropriate, for disposition.	Detention: not more than 72 hours, excluding Saturdays, Sundays, and holidays, pending a hearing before a court or the Commissioner of Corrections. Release: the court services director has authority to issue a written order directing a county probation officer serving the district and juvenile courts <i>of the county</i> to release a person within 72 hours of detention under an A&D order.
Detention of pretrial releasee	The court services director has authority to issue an A&D order for any person on court-ordered pretrial release who absconds from pretrial release or fails to abide by the conditions of release.	Any peace officer <i>in the county</i> or any probation officer serving the district and juvenile courts <i>of the county</i> may detain the person.	Detention - Rule 6.04 of the Rules of Criminal Procedure requires the individual to be taken "forthwith" before the judge, judicial officer, or court. Release - Rule 6.04 provides that the judge, judicial officer, or court may continue the release upon the same conditions or impose different or additional conditions for the defendant's possible release.
Detention of person under sentence or on probation by county other than home county	The court services director has authority to issue an A&D order for a person under sentence or on probation who: 1) fails to report to serve a sentence at a local correctional facility; 2) fails to return from furlough or authorized temporary release from a local correctional facility; 3) escapes from a local correctional facility; or 4) absconds from court-ordered home detention.	Any state correctional investigator or <i>any</i> peace officer, probation officer, or county probation officer <i>from another county</i> may detain the person.	Provision assumes offender should be in custody (and therefore detained) under the terms of sentence or probation.
Detention of person on court-ordered pretrial release by county other than home county	The court services director has authority to issue an A&D order for a person on court-ordered pretrial release who absconds from pretrial release or fails to abide by the conditions of pretrial release.	Any state correctional investigator or <i>any</i> peace officer, probation officer, or county probation officer <i>from another county</i> may detain the person.	<i>See</i> discussion of detention and release of pretrial releasee above.

A&D Authority in Community Corrections Act Counties

	Authority for issuance of A&D order	Official who may act under A&D order	Length of detention and provision for release
Detention of conditional releasee	The chief executive officer or designee of a community corrections agency has authority to issue an A&D order when it appears necessary to enforce discipline or to prevent a person on conditional release from escaping or absconding.	Any peace officer <i>in the county</i> or any county probation officer serving the district and juvenile courts <i>of the county</i> may detain and bring the person before the court or Commissioner of Corrections, whichever is appropriate, for disposition.	Detention: not more than 72 hours, excluding Saturdays, Sundays, and holidays, pending a hearing before a court or the Commissioner of Corrections. Release: the chief executive officer or designee has authority to issue a written order directing a county probation officer serving the district and juvenile courts <i>of the county</i> to release a person within 72 hours of detention under an A&D order.
Detention of pretrial releasee	The chief executive officer or designee of a community corrections agency has authority to issue an A&D order for any person on court-ordered pretrial release who absconds from pretrial release or fails to abide by the conditions of release.	Any peace officer <i>in the county</i> or any probation officer serving the district and juvenile courts <i>of the county</i> may detain the person.	Detention: Rule 6.04 of the Rules of Criminal Procedure requires the individual to be taken "forthwith" before the judge, judicial officer, or court. Release: Rule 6.04 provides that the judge, judicial officer, or court may continue the release upon the same conditions or impose different or additional conditions for the defendant's possible release.
Detention of person under sentence or on probation by county other than home county	The chief executive officer or designee of a community corrections agency has authority to issue an A&D order for a person under sentence or on probation who: 1) fails to report to serve a sentence at a local correctional facility; 2) fails to return from furlough or authorized temporary release from a local correctional facility; 3) escapes from a local correctional facility; or 4) absconds from court-ordered home detention.	Any state correctional investigator or <i>any</i> peace officer, probation officer, or county probation officer <i>from another county</i> may detain the person.	Provision assumes offender should be in custody (and therefore detained) under the terms of sentence or probation.
Detention of person on court-ordered pretrial release by county other than home county	The chief executive officer or designee of a community corrections agency has authority to issue an A&D order for a person on court-ordered pretrial release who absconds from pretrial release or fails to abide by the conditions of pretrial release.	Any state correctional investigator or <i>any</i> peace officer, probation officer, or county probation officer <i>from another county</i> may detain the person.	<i>See</i> discussion of detention and release of pretrial releasee above.

Probation Officer Authority to Impose Community Work Service

Background

The 1998 Legislature authorized CCA probation officers, county probation officers, and state parole and probation agents to impose community work service for a probationer's violation of a condition of probation. Prior to this law, only courts could impose conditions, including community work service, for a probation violation. The law applies to probationers who are under the supervision of the court, but does not apply to supervised releasees who have been released from prison to serve the remainder of their sentence under community supervision; their release is governed by [section 244.05](#) and Department of Corrections' rules.

Summary

The law grants CCA probation officers, county probation officers, and state parole and probation agents authority to require a person under their supervision to perform community work service for violating a condition of probation imposed by the court, unless the court directs otherwise. Community work service includes work in the sentence to service program. Probation officers may impose community work service to protect the public, to aid the offender's rehabilitation, or both.

Probation officers may impose up to eight hours of community work service for each violation and up to a total of 24 hours per offender per 12-month period, beginning with the date on which community work service is first imposed. The Commissioner of Corrections or head of a CCA agency or county probation agency may authorize an additional 40 hours of community work service, for a total of 64 hours per offender per 12-month period.

Probation officers must provide a written notice to the offender at the time that community work service is imposed, which states:

- the condition of probation that was violated;
- the number of hours of community work service imposed for the violation; and
- the total number of hours of community work service imposed to date in the 12-month period.

An offender may challenge the imposition of community work service by filing a petition in district court. The petition must be filed within five days of the offender's receiving written notice that community work service is being imposed. If the offender challenges the imposition of community work service, the state must prove by a preponderance of evidence that the imposition of community work service is reasonable under the circumstances.

[Minn. Stat. §§ 243.05](#), subd. 1; [244.19](#), subd. 3a; [401.02](#), subd. 5; and [609.135](#), subd. 1.

Conditional Release Data System

The Bureau of Criminal Apprehension must administer and maintain a computerized data system to assist criminal justice agencies in monitoring and enforcing the conditions of conditional release imposed on offenders by the court or the Commissioner of Corrections. For the purposes of this system, "conditional release" means probation, conditional release, and supervised release. The "conditional release" referred to within this definition is conditional release under the patterned sex offender law (section 609.108, subdivision 6) and repeat sex offender law (section 609.109, subdivision 7).

The data in the conditional release data system are private data, as defined by the Data Practices Act ([section 13.02](#), subdivision 12), but are accessible to criminal justice agencies, as defined by the Data Practices Act ([section 13.02](#), subdivision 3a), and to criminal justice agencies in other states in the conduct of their duties. Any consent to release of data in the system from the individual who is the subject of the data is ineffective.

Only criminal justice agencies may submit data to the conditional release data system. Under the law, many individuals and organizations have a duty to submit conditional release information to the Bureau, including sheriffs, police chiefs, probation and parole officers, county attorneys, and court clerks. The Commissioner of Corrections also may require the submission of information to the system.

[Minn. Stat. §§ 299C.06; 299C.09; and 299C.147.](#)

Peace Officer Authority to Detain Conditional Releasees

Background

The 1998 Legislature authorized peace officers to detain a person on conditional release upon probable cause that the person has violated a condition of release. This expansion of peace officer authority allows an officer to detain a conditional releasee for a technical release violation (e.g., a curfew violation). Prior to this change, an officer's authority to detain an individual existed only where the officer acted pursuant to a warrant or an A&D order, where there were grounds for detention under the warrantless arrest statute (e.g., where the officer had probable cause that the individual had committed a felony), or, for a limited time period, where the officer had reasonable suspicion that criminal activity was afoot.

Summary

The law authorizes a limited detention by a peace officer based upon probable cause that a conditional releasee has violated a release condition and sets guidelines the officer must follow. The peace officer must provide a detention report to the agency supervising the person as soon as

possible. The supervising agency has authority to release the person without commencing revocation proceedings or to commence revocation proceedings under the Rules of Criminal Procedure. The peace officer may not detain the individual for more than eight hours unless the supervising agency authorizes a longer detention. For individuals not on supervised release, the entire detention period is limited to 36 hours, as set forth in Rule 27.04 of the Rules of Criminal Procedure.

If the person is on supervised release, similar provisions apply, except that the entire detention period is limited to 72 hours, and the Commissioner of Corrections may release the person without commencing revocation proceedings or request a hearing before the hearings and release division.

Minn. Stat. § 629.355.

Releasee Plan

The legislature also adopted a companion piece to the law authorizing peace officers to detain conditional releasees. This provision requires the Department of Corrections, each county probation agency, and each CCA agency, in consultation with local law enforcement agencies, to develop a plan by August 1, 1998, to provide local law enforcement agencies with relevant information concerning conditional releasees. These plans must include:

- information on conditional releasees,
- the terms of their release,
- their offense history,
- other factors that present a risk of violation of the terms and conditions of release,
- strategies to identify those offenders most likely to violate the terms of release on an ongoing basis, and
- methods to ensure compliance with the terms of release by those releasees most likely to violate the terms of release on an ongoing basis.

[1998 Laws, ch. 367](#), art. 7, § 14.

Release Terms; Safety Considerations

The legislature requested the Minnesota Supreme Court to amend Rule 6.02 of the Rules of Criminal Procedure to allow a judge or judicial officer to consider the safety of any person or the community when imposing a condition of release or combination of conditions of release on an offender's pretrial release.

The rule currently requires an offender charged with an offense to be released pending trial or hearing on personal recognizance, on order to appear, or upon the execution of an unsecured appearance bond in a specified amount, unless the court determines that such a release "will be inimical of public safety or will not reasonably assure the appearance of the person as required." If the court makes this determination, it may impose other conditions.

[1998 Laws, ch. 367](#), art. 7, § 13.

Pretrial, Presentence, and Conditional Release Study

The 1998 Legislature appropriated \$100,000 to the Department of Administration to study or contract for a study of issues of pretrial, presentence, and conditional release. The study must examine:

- the extent to which crimes are committed by persons on pretrial, presentence, or conditional release, including the numbers and types of crimes committed;
- the extent to which persons on pretrial or presentence release fail to appear as required by courts; and
- the extent to which persons on pretrial, presentence, or conditional release violate conditions of release.

The study also must explore the extent to which changes in the state constitution, statutes, or Rules of Criminal Procedure would increase the number of individuals subject to pretrial detention or a longer detention period, as well as the effects of increasing the number of individuals subject to pretrial or presentence detention or a longer detention period.

The commissioner must report findings by January 15, 1999, to the chairs and ranking minority members of the Senate and House committees and divisions with jurisdiction over criminal justice funding and policy. The report must include recommendations, if any, on how pretrial and presentence release laws and rules may be amended within the current constitutional framework to lower the risk that persons on release will commit new offenses or not appear as directed by the court.

Future Issues

Although the following ideas did not result in new laws, the attention given these ideas during the 1997 interim and 1998 session by the Minnesota House Judiciary Committee indicates that these ideas may reemerge in the future:

- adopting pieces of Wisconsin's probation system, including giving probation officers authority to supplement court-ordered terms of probation;
- giving probation officers additional authority (beyond that granted by the 1998 Legislature) to impose sanctions for conditional release violations;
- using administrative hearings to impose sanctions on conditional releasees who violate terms of their release;
- issuing citations instead of warrants for conditional release violations, in situations where it appears unnecessary to take the conditional releasee into immediate custody; and
- prohibiting courts from releasing an individual on bail between conviction and sentencing or between tender of a guilty plea and sentencing when the court has information that the sentencing guidelines presume the defendant will be committed to the Commissioner of Corrections.