

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1014

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DATE	D-PG	OFFICIAL STATUS
03/04/2013	479	Introduction and first reading Referred to Health, Human Services and Housing
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A bill for an act

relating to human services; modifying provisions related to the Minnesota sex offender program; requiring a public education campaign; modifying the Civil Commitment Act; amending Minnesota Statutes 2012, sections 253B.18, subdivisions 4b, 4c; 253B.185, subdivisions 1, 9, 10, 11, 11a, 11b, 12, 14, 14a, 15, 17, 18, by adding subdivisions; 253B.19, subdivisions 2, 3, by adding a subdivision; 609.485, subdivision 2.

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

ARTICLE 1

**STRICT AND INTENSIVE SUPERVISION AND TREATMENT AND
PUBLIC EDUCATION CAMPAIGN**

Section 1. **STRICT AND INTENSIVE SUPERVISION AND TREATMENT.**

The commissioner of human services shall ensure there are an adequate number of facilities that provide strict and intensive supervision and treatment for individuals civilly committed under Minnesota Statutes, section 253B.185, who are court-ordered to strict and intensive supervision and treatment placement or placed on provisional discharge. The facilities must meet public safety requirements as specified by the commissioners of human services, public safety, and corrections, and ensure the safety of the public while meeting the treatment needs of the civilly committed population. The commissioner shall use the information resulting from the January 2013 request for information to determine existing capacity for a range of options for facilities, and treatment that is effective and appropriate and allows progression. If the capacity is insufficient, the commissioner shall develop or contract to provide additional facilities, services, and treatment to meet the need.

2.1 Sec. 2. **EDUCATION RELATING TO SEX OFFENDER CIVIL COMMITMENT**
 2.2 **PROCEDURAL CHANGES.**

2.3 The commissioner of human services shall develop and provide education to judges
 2.4 and court staff, county attorneys and other lawyers, and court-appointed examiners about
 2.5 the civil commitment procedural changes under article 2 and the strict and intensive
 2.6 supervision and treatment under section 1.

2.7 Sec. 3. **PUBLIC EDUCATION CAMPAIGN.**

2.8 The commissioner of human services shall develop a public education campaign
 2.9 informing the general public about the 2012 class action lawsuit relating to the Minnesota
 2.10 sex offender program (MSOP), the court's rulings, including the order from the court
 2.11 establishing the sex offender civil commitment advisory task force and the work of the
 2.12 task force, and the response by the legislature resulting in the legislation in this bill.
 2.13 The public education campaign must be a statewide effort to educate Minnesotans on
 2.14 the process of civilly committing sex offenders and the emerging policy in response to
 2.15 the court's decisions, and related issues.

2.16 Sec. 4. **EFFECTIVE DATE.**

2.17 This article is effective July 1, 2013. The commissioner of human services shall
 2.18 implement this article as soon as practicable.

2.19 **ARTICLE 2**

2.20 **CIVIL COMMITMENT MODIFICATIONS**

2.21 Section 1. Minnesota Statutes 2012, section 253B.18, subdivision 4b, is amended to
 2.22 read:

2.23 Subd. 4b. **Pass-eligible status; notification.** The following patients committed to a
 2.24 secure treatment facility shall not be placed on pass-eligible status unless that status has
 2.25 been approved by the medical director of the secure treatment facility:

2.26 (a) a patient who has been committed as a person who is mentally ill and dangerous
 2.27 and who:

2.28 (1) was found incompetent to proceed to trial for a felony or was found not guilty
 2.29 by reason of mental illness of a felony immediately prior to the filing of the commitment
 2.30 petition;

2.31 (2) was convicted of a felony immediately prior to or during commitment as a
 2.32 person who is mentally ill and dangerous; or

2.33 (3) is subject to a commitment to the commissioner of corrections; and

3.1 (b) a patient who has been committed as a psychopathic personality, a sexually
3.2 psychopathic personality, or a sexually dangerous person.

3.3 At least ten days prior to a determination on the status, the medical director shall
3.4 notify the committing court, the county attorney of the county of commitment, the
3.5 designated agency, an interested person, the petitioner, and the petitioner's counsel of the
3.6 proposed status, and their right to request review by the special review board. If within ten
3.7 days of receiving notice any notified person requests review by filing a notice of objection
3.8 with the commissioner and the head of the treatment facility, a hearing shall be held before
3.9 the special review board. The proposed status shall not be implemented unless it receives
3.10 a favorable recommendation by a majority of the board and approval by the commissioner.
3.11 The order of the commissioner is appealable as provided in section 253B.19. For a person
3.12 committed as a sexual psychopathic personality or as a sexually dangerous person under
3.13 section 253B.185, or committed as both mentally ill and dangerous to the public under
3.14 this section and as a sexual psychopathic personality or as a sexually dangerous person, a
3.15 request for review of pass-eligible status must be made directly to the judicial appeal panel
3.16 under section 253B.19.

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

3.19 Sec. 2. Minnesota Statutes 2012, section 253B.18, subdivision 4c, is amended to read:

3.20 Subd. 4c. **Special review board.** (a) The commissioner shall establish one or more
3.21 panels of a special review board. The board shall consist of three members experienced
3.22 in the field of mental illness. One member of each special review board panel shall be
3.23 a psychiatrist and one member shall be an attorney. No member shall be affiliated with
3.24 the Department of Human Services. The special review board shall meet at least every
3.25 six months and at the call of the commissioner. It shall hear and consider all petitions for
3.26 a reduction in custody or to appeal a revocation of provisional discharge. A "reduction
3.27 in custody" means transfer from a secure treatment facility, discharge, and provisional
3.28 discharge. Patients may be transferred by the commissioner between secure treatment
3.29 facilities without a special review board hearing.

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

3.32 (b) A petition filed by a person committed as mentally ill and dangerous to the
3.33 public under this section must be heard as provided in subdivision 5 and, as applicable,
3.34 subdivision 13. A petition filed by a person committed as a sexual psychopathic personality
3.35 or as a sexually dangerous person under section 253B.185, or committed as both mentally

4.1 ill and dangerous to the public under this section and as a sexual psychopathic personality
4.2 or as a sexually dangerous person must be heard as provided in section ~~253B.185,~~
4.3 ~~subdivision 9~~ 253B.19, subdivision 2, paragraph (b); and subdivision 2a.

4.4 Sec. 3. Minnesota Statutes 2012, section 253B.185, subdivision 1, is amended to read:

4.5 Subdivision 1. **Commitment generally.** (a) Except as otherwise provided in this
4.6 section, the provisions of this chapter pertaining to persons who are mentally ill and
4.7 dangerous to the public apply with like force and effect to persons who are alleged or
4.8 found to be sexually dangerous persons or persons with a sexual psychopathic personality.
4.9 For purposes of this section, "sexual psychopathic personality" includes any individual
4.10 committed as a "psychopathic personality" under Minnesota Statutes 1992, section 526.10.

4.11 (b) Before commitment proceedings are instituted, the facts shall first be submitted
4.12 to the county attorney, who, if satisfied that good cause exists, will prepare the petition.
4.13 The county attorney may request a prepetition screening report. The petition is to be
4.14 executed by a person having knowledge of the facts and filed with the district court of the
4.15 county of financial responsibility or the county where the patient is present. If the patient
4.16 is in the custody of the commissioner of corrections, the petition may be filed in the county
4.17 where the conviction for which the person is incarcerated was entered.

4.18 (c) Upon the filing of a petition alleging that a proposed patient is a sexually
4.19 dangerous person or is a person with a sexual psychopathic personality, the court shall
4.20 hear the petition as provided in ~~section 253B.18, except that section 253B.18, subdivisions~~
4.21 ~~2 and 3, shall not apply~~ sections 253B.07 and 253B.08.

4.22 If the court finds by clear and convincing evidence that the proposed patient is a sexually
4.23 dangerous person or is a person with a sexual psychopathic personality, the court shall
4.24 commit the person to the commissioner to place in a secure treatment facility for
4.25 evaluation and proposed disposition.

4.26 (d) ~~In commitments under this section, the court shall commit the patient to a secure~~
4.27 ~~treatment facility unless the patient establishes by clear and convincing evidence that a~~
4.28 ~~less restrictive treatment program is available that is consistent with the patient's treatment~~
4.29 ~~needs and the requirements of public safety.~~ Within 60 days following commitment and
4.30 receipt of the patient, a qualified person or persons designated by the commissioner
4.31 shall evaluate the patient, consider possible dispositions, and file a written disposition
4.32 report with the committing court. If the person is in the custody of the commissioner of
4.33 corrections when the commitment is ordered under paragraph (c), the written disposition
4.34 report must be filed no later than 60 days after the person is admitted to the secure
4.35 treatment facility. The commissioner may request that the court grant an extension of the

5.1 60-day deadline, which may be granted for good cause after opportunity for objection by
5.2 the patient and the county attorney. The disposition report must recommend whether
5.3 the person should be placed on strict and intensive supervision and treatment or in a
5.4 secure treatment facility. If the recommendation is for placement on strict and intensive
5.5 supervision and treatment, the report must specifically describe the conditions that the
5.6 program determines would be best suited to meet the person's treatment needs and the
5.7 requirements of public safety. Within 30 days after receiving the disposition report, unless
5.8 otherwise agreed by the parties, the court shall hold a hearing to make a final determination
5.9 as to the appropriate disposition of the case. If the disposition report recommends
5.10 placement on strict and intensive supervision and treatment, either party or the court may
5.11 request the court examiners to address the sufficiency and conditions of the plan.

5.12 (e) At the time of commitment, the court shall provide the commissioner copies
5.13 of the court-appointed examiners' reports and the exhibits admitted in the case. Upon
5.14 request of the evaluator, the county attorney shall provide copies of records gathered by
5.15 the county attorney for purposes of the case. Upon request, the evaluator is entitled to
5.16 promptly obtain records and data regarding the committed person from the Department of
5.17 Corrections, a probation or parole agency, and a program or provider that has provided sex
5.18 offender or mental health evaluation or treatment to the committed person.

5.19 (f) After a final determination that a patient is a sexually dangerous person or sexual
5.20 psychopathic personality, the court shall order commitment for an indeterminate period of
5.21 time and the patient shall be transferred, provisionally discharged, or discharged, only as
5.22 provided in this section.

5.23 Sec. 4. Minnesota Statutes 2012, section 253B.185, is amended by adding a
5.24 subdivision to read:

5.25 Subd. 1c. **Strict and intensive supervision and treatment.** (a) If a specific plan
5.26 for strict and intensive supervision and treatment is proposed, the court shall commit the
5.27 person to strict and intensive supervision and treatment, unless the petitioner proves by a
5.28 preponderance of the evidence that the plan is not sufficient to meet the person's treatment
5.29 needs or the requirements of public safety.

5.30 (b) If the court finds that strict and intensive supervision and treatment is appropriate,
5.31 the court shall notify the Minnesota sex offender program, which must prepare a plan
5.32 that identifies the treatment and services for the patient, including recommendations
5.33 regarding the conditions of strict and intensive supervision and treatment. The plan must
5.34 be presented to the court for its approval within 60 days after the court finds that strict
5.35 and intensive supervision and treatment is appropriate, unless the program or the patient

6.1 requests additional time to develop the plan and the court determines there is good cause
6.2 to allow an extension for a specified period.

6.3 (c) An order for strict and intensive supervision and treatment places the patient
6.4 in the custody and control of the commissioner of human services for the provision of
6.5 treatment, services, and supervision under the Minnesota sex offender program and the
6.6 patient is subject to the conditions set by the court and the program, which must ensure the
6.7 safety of the public while meeting the treatment needs of the civilly committed patient.

6.8 (d) If the program determines that a patient under this subdivision has violated a
6.9 condition under paragraph (c) or is exhibiting behavior that may be dangerous to self or
6.10 others or that the interests of public safety require that strict and intensive supervision
6.11 and treatment placement be revoked, the program may request the court to issue an
6.12 emergency ex parte order directing a law enforcement agency to take the person into
6.13 custody and transport the person to a Department of Corrections or county correctional
6.14 or detention facility or a secure treatment facility. The county attorney or the program
6.15 shall submit a statement showing probable cause for the detention and submit a petition
6.16 to revoke the strict and intensive supervision and treatment order within 48 hours after
6.17 the detention. The court shall hear the petition within 30 days, unless the hearing or
6.18 deadline is waived by the patient. If the court determines that a condition of the strict and
6.19 intensive supervision and treatment placement has been violated or that the safety of the
6.20 patient or others requires that the strict and intensive supervision and treatment placement
6.21 be revoked, the court shall revoke the strict and intensive supervision and treatment
6.22 placement and order an appropriate commitment placement under this section.

6.23 (e) This subdivision does not affect or replace any applicable registration
6.24 requirements under section 243.166 or notice requirements under sections 244.052 and
6.25 244.053.

6.26 Sec. 5. Minnesota Statutes 2012, section 253B.185, subdivision 9, is amended to read:

6.27 Subd. 9. **Petition for reduction in custody.** (a) This subdivision applies only to
6.28 committed persons as defined in paragraph (b). The procedures in subdivision 10 for
6.29 victim notification and right to submit a statement apply to petitions filed and reductions in
6.30 custody recommended under this subdivision.

6.31 (b) As used in this subdivision:

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

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

7.4 (c) A petition for a reduction in custody ~~or an appeal of a revocation of provisional~~
7.5 ~~discharge~~ may be filed by either the committed person or by the head of the treatment
7.6 facility ~~and must be filed with and considered by a panel of the special review board~~
7.7 ~~authorized under section 253B.18, subdivision 4c. A committed person may not petition~~
7.8 ~~the special review board any sooner than six months following either: executive director~~
7.9 ~~of the Minnesota sex offender program as provided in section 253B.19, subdivision 2a.~~

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

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

7.17 (d) ~~The special review board shall hold a hearing on each petition before issuing a~~
7.18 ~~recommendation under paragraph (f). Fourteen days before the hearing, the committing~~
7.19 ~~court, the county attorney of the county of commitment, the designated agency, an~~
7.20 ~~interested person, the petitioner and the petitioner's counsel, and the committed person~~
7.21 ~~and the committed person's counsel must be given written notice by the commissioner of~~
7.22 ~~the time and place of the hearing before the special review board. Only those entitled to~~
7.23 ~~statutory notice of the hearing or those administratively required to attend may be present~~
7.24 ~~at the hearing. The patient may designate interested persons to receive notice by providing~~
7.25 ~~the names and addresses to the commissioner at least 21 days before the hearing.~~

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

7.31 (f) ~~Within 30 days of the hearing, the special review board shall issue written~~
7.32 ~~findings of fact and shall recommend denial or approval of the petition to the judicial~~
7.33 ~~appeal panel established under section 253B.19. The commissioner shall forward the~~
7.34 ~~recommendation of the special review board to the judicial appeal panel and to every~~
7.35 ~~person entitled to statutory notice. No reduction in custody or reversal of a revocation~~
7.36 ~~of provisional discharge recommended by the special review board is effective until it~~

8.1 ~~has been reviewed by the judicial appeal panel and until 15 days after an order from the~~
8.2 ~~judicial appeal panel affirming, modifying, or denying the recommendation.~~

8.3 Sec. 6. Minnesota Statutes 2012, section 253B.185, is amended by adding a
8.4 subdivision to read:

8.5 Subd. 9a. **Biennial review of placement level.** (a) The commissioner shall appoint
8.6 an examiner to conduct an examination of the mental condition of a person committed
8.7 under this section within 24 months after the date of the commitment order under
8.8 subdivision 1, paragraph (c), and after that time at least once each 24 months to determine
8.9 whether the person has made sufficient progress for the judicial appeal panel to consider
8.10 whether the person's placement should be modified. At the time of an examination under
8.11 this section, the person who has been committed may retain or have the commissioner
8.12 appoint an additional examiner.

8.13 (b) An examiner conducting an examination under paragraph (a) shall prepare a
8.14 written report of the examination no later than 30 days after the date of the examination.

8.15 The report must examine and assess the patient's:

8.16 (1) progress toward treatment goals;

8.17 (2) risk to the public; and

8.18 (3) suitability for an alternative placement that balances the patient's continued
8.19 treatment needs and public safety. The examiner shall provide a copy of the report to the
8.20 county attorneys of the committing county and the county of financial responsibility, the
8.21 commissioner, and the judicial appeal panel.

8.22 (c) Notwithstanding paragraph (a), the judicial appeal panel may order an
8.23 examination of the person at any time during the period in which the person is subject to
8.24 the commitment order. The examination must be conducted pursuant to this subdivision.

8.25 (d) At any examination under paragraph (a), the executive clinical director of the
8.26 Minnesota sex offender program shall prepare a treatment progress report. The executive
8.27 clinical director shall provide a copy of the treatment progress report to the commissioner.

8.28 The treatment progress report must consider all of the following:

8.29 (1) the specific factors associated with the person's risk for committing another
8.30 sexually violent offense;

8.31 (2) whether the person has made significant progress in treatment or has refused
8.32 treatment;

8.33 (3) the ongoing treatment needs of the person; and

8.34 (4) any specialized needs or conditions associated with the person that must be
8.35 considered in future treatment planning.

9.1 (e) Examiners under paragraph (a) and the executive clinical director under paragraph
 9.2 (d) must have reasonable access to the person for purposes of examination, to the person's
 9.3 past and present treatment and supervision records, and to the person's health care records.

9.4 (f) The commissioner shall submit a biennial report comprised of the examination
 9.5 report under paragraph (a) and the treatment progress report under paragraph (d) to
 9.6 the judicial appeal panel. A copy of the biennial report must be placed in the person's
 9.7 treatment records. The commissioner shall provide a copy of the biennial report to the
 9.8 patient and the county attorneys of the committing county and the county of financial
 9.9 responsibility. The panel shall provide a copy of the biennial report to the patient's
 9.10 attorney as soon as the attorney is retained or appointed.

9.11 (g) If a person committed under this section is incarcerated for a new criminal charge
 9.12 or conviction, any reporting requirement under paragraphs (a), (d), or (f) does not apply
 9.13 during the incarceration period. The judicial appeal panel may order an examination of the
 9.14 person under paragraph (c) if the panel finds an examination is necessary. The required
 9.15 reports are due 24 months after the person is returned to the custody and control of the
 9.16 commissioner of human services under the Minnesota sex offender program.

9.17 (h) Failure to complete or file any required report within the specified time period
 9.18 does not affect the validity of the person's continuing commitment.

9.19 Sec. 7. Minnesota Statutes 2012, section 253B.185, subdivision 10, is amended to read:

9.20 Subd. 10. **Victim notification of petition and release; right to submit statement.**

9.21 (a) As used in this subdivision:

9.22 (1) "crime" has the meaning given to "violent crime" in section 609.1095, and
 9.23 includes criminal sexual conduct in the fifth degree and offenses within the definition of
 9.24 "crime against the person" in section 253B.02, subdivision 4a, and also includes offenses
 9.25 listed in section 253B.02, subdivision 7a, paragraph (b), regardless of whether they are
 9.26 sexually motivated;

9.27 (2) "victim" means a person who has incurred loss or harm as a result of a crime,
 9.28 the behavior for which forms the basis for a commitment under this section or section
 9.29 253B.18; and

9.30 (3) "convicted" and "conviction" have the meanings given in section 609.02,
 9.31 subdivision 5, and also include juvenile court adjudications, findings under Minnesota
 9.32 Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved,
 9.33 and findings in commitment cases under this section or section 253B.18, that an act or
 9.34 acts constituting a crime occurred.

10.1 (b) A county attorney who files a petition to commit a person under this section shall
10.2 make a reasonable effort to provide prompt notice of filing the petition to any victim of a
10.3 crime for which the person was convicted. In addition, the county attorney shall make a
10.4 reasonable effort to promptly notify the victim of the resolution of the petition.

10.5 (c) Before provisionally discharging, discharging, granting pass-eligible status,
10.6 approving a pass plan, or otherwise permanently or temporarily releasing a person
10.7 committed under this section from a treatment facility, the head of the treatment facility
10.8 shall make a reasonable effort to notify any victim of a crime for which the person was
10.9 convicted that the person may be discharged or released and that the victim has a right
10.10 to submit a written statement regarding decisions of the head of the treatment facility or
10.11 designee, ~~or special review board~~, with respect to the person. To the extent possible,
10.12 the notice must be provided at least 14 days before any ~~special review board~~ judicial
10.13 appeal panel hearing or before a determination on a pass plan. Notwithstanding section
10.14 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with
10.15 victim information in order to comply with the provisions of this section. The judicial
10.16 appeal panel shall ensure that the data on victims remains private as provided for in
10.17 section 611A.06, subdivision 4.

10.18 (d) This subdivision applies only to victims who have requested notification through
10.19 the Department of Corrections electronic victim notification system, or by contacting, in
10.20 writing, the county attorney in the county where the conviction for the crime occurred or
10.21 where the civil commitment was filed or, following commitment, the head of the treatment
10.22 facility. A request for notice under this subdivision received by the commissioner of
10.23 corrections through the Department of Corrections electronic victim notification system
10.24 shall be promptly forwarded to the prosecutorial authority with jurisdiction over the offense
10.25 to which the notice relates or, following commitment, the head of the treatment facility. A
10.26 county attorney who receives a request for notification under this paragraph following
10.27 commitment shall promptly forward the request to the commissioner of human services.

10.28 (e) Rights under this subdivision are in addition to rights available to a victim under
10.29 chapter 611A. This provision does not give a victim all the rights of a "notified person"
10.30 or a person "entitled to statutory notice" under subdivision 12 or 13 or section 253B.18,
10.31 subdivision 4a, 4b, or 5.

10.32 Sec. 8. Minnesota Statutes 2012, section 253B.185, subdivision 11, is amended to read:

10.33 Subd. 11. **Transfer.** (a) A patient who is committed as a sexually dangerous person
10.34 or sexual psychopathic personality shall not be transferred out of a secure treatment
10.35 facility unless it appears to the satisfaction of the judicial appeal panel, ~~after a hearing and~~

11.1 ~~recommendation by a majority of the special review board~~, that the transfer is appropriate.
 11.2 Transfer may be to other treatment programs under the commissioner's control.

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

11.5 (1) the person's clinical progress and present treatment needs;

11.6 (2) the need for security to accomplish continuing treatment;

11.7 (3) the need for continued institutionalization;

11.8 (4) which facility can best meet the person's needs; and

11.9 (5) whether transfer can be accomplished with a reasonable degree of safety for
 11.10 the public.

11.11 Sec. 9. Minnesota Statutes 2012, section 253B.185, subdivision 11a, is amended to read:

11.12 Subd. 11a. **Transfer; voluntary readmission to a secure facility.** (a) After a
 11.13 patient has been transferred out of a secure facility pursuant to subdivision 11 and with the
 11.14 consent of the executive director of the Minnesota sex offender program, a patient may
 11.15 voluntarily return to a secure facility operated by the Minnesota sex offender program for
 11.16 a period of up to 60 days.

11.17 (b) If the patient is not returned to the facility to which the patient was originally
 11.18 transferred pursuant to subdivision 11 within 60 days of being readmitted to a secure
 11.19 facility, the transfer is revoked and the patient shall remain in a secure facility. The patient
 11.20 shall immediately be notified in writing of the revocation.

11.21 (c) Within 15 days of receiving notice of the revocation, the patient may petition
 11.22 the ~~special review board~~ judicial appeal panel for a review of the revocation. The ~~special~~
 11.23 ~~review board~~ judicial appeal panel shall review the circumstances of the revocation and
 11.24 shall ~~recommend to the judicial appeal panel~~ determine whether or not the revocation shall
 11.25 be upheld. The ~~special review board~~ judicial appeal panel may also ~~recommend~~ order a
 11.26 new transfer at the time of the revocation hearing.

11.27 (d) If the transfer has not been revoked and the patient is to be returned to the
 11.28 facility to which the patient was originally transferred pursuant to subdivision 11, with no
 11.29 substantive change to the conditions of the transfer ordered pursuant to subdivision 11, no
 11.30 action by the ~~special review board~~ or judicial appeal panel is required.

11.31 Sec. 10. Minnesota Statutes 2012, section 253B.185, subdivision 11b, is amended to
 11.32 read:

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

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

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

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

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

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

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

12.28 Sec. 11. Minnesota Statutes 2012, section 253B.185, subdivision 12, is amended to read:

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

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

- 13.1 (1) whether the patient's course of treatment and present mental status indicate there is
 13.2 no longer a need for treatment and supervision in the patient's current treatment setting; and
 13.3 (2) whether the conditions of the provisional discharge plan will provide a reasonable
 13.4 degree of protection to the public and will enable the patient to adjust successfully to
 13.5 the community.

13.6 Sec. 12. Minnesota Statutes 2012, section 253B.185, subdivision 14, is amended to read:

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

13.13 Sec. 13. Minnesota Statutes 2012, section 253B.185, subdivision 14a, is amended to
 13.14 read:

13.15 Subd. 14a. **Provisional discharge; voluntary readmission.** (a) With the consent of
 13.16 the executive director of the Minnesota sex offender program, a patient may voluntarily
 13.17 return to the Minnesota sex offender program from provisional discharge for a period of
 13.18 up to 60 days.

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

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

13.32 Sec. 14. Minnesota Statutes 2012, section 253B.185, subdivision 15, is amended to read:

14.1 Subd. 15. **Provisional discharge; revocation.** (a) The head of the treatment facility
14.2 may revoke a provisional discharge if either of the following grounds exist:

14.3 (1) the patient has departed from the conditions of the provisional discharge plan; or

14.4 (2) the patient is exhibiting behavior which may be dangerous to self or others.

14.5 (b) The head of the treatment facility may revoke the provisional discharge and,
14.6 either orally or in writing, order that the patient be immediately returned to the treatment
14.7 facility. A report documenting reasons for revocation shall be issued by the head of the
14.8 treatment facility within seven days after the patient is returned to the treatment facility.
14.9 Advance notice to the patient of the revocation is not required.

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

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

14.18 Sec. 15. Minnesota Statutes 2012, section 253B.185, subdivision 17, is amended to read:

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

14.27 Sec. 16. Minnesota Statutes 2012, section 253B.185, subdivision 18, is amended to read:

14.28 Subd. 18. **Discharge.** A patient who is committed as a sexual psychopathic
14.29 personality or sexually dangerous person shall not be discharged unless it appears to the
14.30 satisfaction of the judicial appeal panel, ~~after a hearing and recommendation by a majority~~
14.31 ~~of the special review board~~, that the patient is capable of making an acceptable adjustment
14.32 to open society, is no longer dangerous to the public, and is no longer in need of inpatient
14.33 treatment and supervision.

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

15.5 Sec. 17. Minnesota Statutes 2012, section 253B.19, subdivision 2, is amended to read:

15.6 Subd. 2. **Petition; hearing.** (a) A person committed as mentally ill and dangerous
15.7 to the public under section 253B.18, or the county attorney of the county from which the
15.8 person was committed or the county of financial responsibility, may petition the judicial
15.9 appeal panel for a rehearing and reconsideration of a decision by the commissioner under
15.10 section 253B.18, subdivision 5. The judicial appeal panel must not consider petitions for
15.11 relief other than those considered by the commissioner from which the appeal is taken.
15.12 The petition must be filed with the Supreme Court within 30 days after the decision of
15.13 the commissioner is signed. The hearing must be held within 45 days of the filing of the
15.14 petition unless an extension is granted for good cause.

15.15 (b) A person committed as a sexual psychopathic personality or as a sexually
15.16 dangerous person under section 253B.185, or committed as both mentally ill and
15.17 dangerous to the public under section 253B.18 and as a sexual psychopathic personality
15.18 or as a sexually dangerous person under section 253B.185; ~~the county attorney of the~~
15.19 ~~county from which the person was committed or the county of financial responsibility; or~~
15.20 ~~the commissioner~~ executive director of the Minnesota sex offender program may petition
15.21 the judicial appeal panel for a ~~rehearing and reconsideration of a decision of the special~~
15.22 ~~review board under section 253B.185, subdivision 9.~~ The petition must be filed with
15.23 ~~the Supreme Court within 30 days after the decision is mailed by the commissioner as~~
15.24 ~~required in section 253B.185, subdivision 9, paragraph (f)~~ reduction in custody as allowed
15.25 under subdivision 2a. The hearing must be held within 180 days of the filing of the
15.26 petition unless an extension is granted for good cause. ~~If no party petitions the judicial~~
15.27 ~~appeal panel for a rehearing or reconsideration within 30 days, the judicial appeal panel~~
15.28 ~~shall either issue an order adopting the recommendations of the special review board or~~
15.29 ~~set the matter on for a hearing pursuant to this paragraph.~~

15.30 (c) For an appeal under paragraph (a) or (b), the Supreme Court shall refer the
15.31 petition to the chief judge of the judicial appeal panel. The chief judge shall notify the
15.32 patient, the county attorney of the county of commitment, the designated agency, the
15.33 commissioner, the head of the treatment facility, any interested person, and other persons
15.34 the chief judge designates, of the time and place of the hearing on the petition. The notice
15.35 shall be given at least 14 days prior to the date of the hearing.

16.1 (d) In an appeal under paragraph (a), any person may oppose the petition. The
16.2 patient, the patient's counsel, the county attorney of the committing county or the county of
16.3 financial responsibility, and the commissioner shall participate as parties to the proceeding
16.4 pending before the judicial appeal panel and shall, except when the patient is committed
16.5 solely as mentally ill and dangerous, no later than 20 days before the hearing on the
16.6 petition, inform the judicial appeal panel and the opposing party in writing whether they
16.7 support or oppose the petition and provide a summary of facts in support of their position.

16.8 (e) The judicial appeal panel may appoint examiners and may adjourn the hearing
16.9 from time to time. It shall hear and receive all relevant testimony and evidence and make a
16.10 record of all proceedings. The patient, the patient's counsel, and the county attorney of the
16.11 committing county or the county of financial responsibility have the right to be present and
16.12 may present and cross-examine all witnesses and offer a factual and legal basis in support
16.13 of their positions. The petitioning party seeking discharge or provisional discharge bears
16.14 the burden of going forward with the evidence, which means presenting a prima facie
16.15 case with competent evidence to show that the person is entitled to the requested relief.
16.16 If the petitioning party has met this burden, the party opposing discharge or provisional
16.17 discharge bears the burden of proof by clear and convincing evidence that the discharge or
16.18 provisional discharge should be denied. A party seeking transfer under section 253B.18,
16.19 subdivision 6, ~~or 253B.185, subdivision 11~~, must establish by a preponderance of the
16.20 evidence that the transfer is appropriate.

16.21 (f) For a petition under paragraph (b), any person may oppose the petition. The
16.22 patient, the patient's counsel, and the county attorney of the committing county or the
16.23 county of financial responsibility shall participate as parties to the proceeding pending
16.24 before the judicial appeal panel and shall, no later than 20 days before the hearing on the
16.25 petition, inform the judicial appeal panel and the opposing party in writing whether they
16.26 support or oppose the petition and provide a summary of facts in support of their position.
16.27 The judicial appeal panel may appoint examiners and may adjourn the hearing from
16.28 time to time. It shall hear and receive all relevant testimony and evidence and make a
16.29 record of all proceedings. The patient, the patient's counsel, and the county attorney of the
16.30 committing county or the county of financial responsibility have the right to be present
16.31 and may present and cross-examine all witnesses and offer a factual and legal basis in
16.32 support of their positions. The party opposing discharge or provisional discharge bears
16.33 the burden of proof by clear and convincing evidence that the discharge or provisional
16.34 discharge should be denied. A party seeking transfer under section 253B.185, subdivision
16.35 11, must establish by a preponderance of the evidence that the transfer is appropriate.

17.1 Sec. 18. Minnesota Statutes 2012, section 253B.19, is amended by adding a
17.2 subdivision to read:

17.3 Subd. 2a. **Receipt of biennial report; petition for reduction in custody.** (a) When
17.4 the commissioner provides a copy of the biennial report required by section 253B.185,
17.5 subdivision 9a, to the patient, the commissioner shall inform the person of the person's
17.6 right to file a petition for reduction in custody.

17.7 (b) Within 30 days after the commissioner submits a biennial report, the patient or
17.8 the patient's attorney may file a completed petition for reduction in custody with the appeal
17.9 panel. The petition may be accompanied by written argument, affidavits, and exhibits.
17.10 The executive director of the Minnesota sex offender program may file a petition for
17.11 reduction in custody at any time.

17.12 (c) If a petition for reduction in custody is timely filed under paragraph (b), the
17.13 appeal panel shall determine whether to set the matter for a hearing. A hearing must be
17.14 conducted unless the panel determines that the petition and accompanying documents fail
17.15 to present a prima facie case with competent evidence that the patient is entitled to the
17.16 requested relief. Every patient must have the opportunity to establish a prima facie case at
17.17 an in-person hearing no less than once every four years, except when section 253B.185,
17.18 subdivision 9a, paragraph (g), applies to the patient. If a petition for reduction in custody
17.19 is not filed in a timely manner under paragraph (b), the appeal panel may order a hearing.

17.20 (d) If a hearing is ordered, the hearing must be conducted pursuant to subdivision 2,
17.21 paragraph (e).

17.22 Sec. 19. Minnesota Statutes 2012, section 253B.19, subdivision 3, is amended to read:

17.23 Subd. 3. **Decision.** (a) A majority of the judicial appeal panel shall rule upon the
17.24 petition. The panel shall consider the petition de novo. The order of the judicial appeal
17.25 panel shall supersede an order of the commissioner under section 253B.18, subdivision
17.26 5. No order of the judicial appeal panel granting a transfer, discharge or provisional
17.27 discharge shall be made effective sooner than 15 days after it is issued.

17.28 The (b) For an appeal under subdivision 2, paragraph (a), the panel may not
17.29 consider petitions for relief other than those considered by the commissioner or special
17.30 review board from which the appeal is taken. The judicial appeal panel may not grant
17.31 a transfer or provisional discharge on terms or conditions that were not presented to the
17.32 commissioner or the special review board.

17.33 Sec. 20. Minnesota Statutes 2012, section 609.485, subdivision 2, is amended to read:

18.1 Subd. 2. **Acts prohibited.** Whoever does any of the following may be sentenced as
18.2 provided in subdivision 4:

18.3 (1) escapes while held pursuant to a lawful arrest, in lawful custody on a charge or
18.4 conviction of a crime, or while held in lawful custody on an allegation or adjudication
18.5 of a delinquent act;

18.6 (2) transfers to another, who is in lawful custody on a charge or conviction of a
18.7 crime, or introduces into an institution in which the latter is confined, anything usable in
18.8 making such escape, with intent that it shall be so used;

18.9 (3) having another in lawful custody on a charge or conviction of a crime,
18.10 intentionally permits the other to escape;

18.11 (4) escapes while in a facility designated under section 253B.18, subdivision 1,
18.12 pursuant to a court commitment order after a finding of not guilty by reason of mental
18.13 illness or mental deficiency of a crime against the person, as defined in section 253B.02,
18.14 subdivision 4a. Notwithstanding section 609.17, no person may be charged with or
18.15 convicted of an attempt to commit a violation of this clause;

18.16 (5) escapes while in or under the supervision of a facility or authority designated
18.17 under ~~section~~ sections 246B.01, subdivision 2a; 246B.02; 253B.18, subdivision 1;
18.18 253B.185, subdivision 1, paragraph (d); 253B.185, subdivision 1c; or Minnesota Statutes
18.19 1992, section 526.10;

18.20 (6) escapes while on pass status or provisional discharge according to section
18.21 253B.18 or 253B.185; or

18.22 (7) escapes while a civilly committed sex offender in the Minnesota sex offender
18.23 program as defined in section 246B.01, subdivision 1a, or subject to a court hold order
18.24 under section 253B.185.

18.25 For purposes of clauses (1) and (7), "escapes while held in lawful custody" or
18.26 "escapes while a civilly committed sex offender in the Minnesota sex offender program"
18.27 includes absconding from electronic monitoring or removing an electronic monitoring
18.28 device from the person's body.

18.29 Sec. 21. **EFFECTIVE DATE; APPLICATION.**

18.30 (a) Except as otherwise provided in this section, this article is effective August
18.31 1, 2013.

18.32 (b) Petitions for a reduction in custody pending before the special review board or
18.33 judicial appeal panel or the subject of appeal under Minnesota Statutes, section 253B.19,
18.34 subdivision 5, will continue to proceed under the laws and procedures in effect on July
18.35 31, 2013.

19.1 (c) The biennial review required under section 6 does not apply to patients with
19.2 pending petitions until 12 months after the final disposition of a petition for reduction in
19.3 custody that was pending on August 1, 2013, and no earlier than would apply under the
19.4 effective date that would apply if there was not a pending petition.

19.5 (d) Section 20 is effective August 1, 2013, and applies to crimes committed on or
19.6 after that date.

APPENDIX
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