

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. 1139

03/04/2013 Authored by Liebling

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to human services; modifying provisional discharge for the Minnesota
1.3 sex offender program; modifying victim notification of discharge or release of
1.4 person in the Minnesota sex offender program; amending Minnesota Statutes
1.5 2012, sections 253B.18, subdivision 5a; 253B.185, subdivisions 10, 12, 13, 14,
1.6 14a; 253B.19, subdivision 3; 611A.06, subdivisions 1, 2.

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

1.8 ARTICLE 1

1.9 PROVISIONAL DISCHARGE

1.10 Section 1. Minnesota Statutes 2012, section 253B.185, subdivision 12, is amended to
1.11 read:

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

1.17 (b) The following factors are to be considered in determining whether a provisional
1.18 discharge shall be recommended:

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

1.21 (2) whether the proposed conditions of the provisional discharge plan, as adopted or
1.22 modified by the judicial appeal panel under section 253B.19, will provide a reasonable
1.23 degree of protection to the public and will enable the patient to adjust successfully to
1.24 the community.

2.1 Sec. 2. Minnesota Statutes 2012, section 253B.185, subdivision 13, is amended to read:

2.2 Subd. 13. **Provisional discharge plan conditions.** A petition for reduction in
2.3 custody under subdivision 9 that requests a provisional discharge must include a list of the
2.4 proposed conditions of provisional discharge. These conditions must be presented to the
2.5 special review board. The special review board may recommend additional or modified
2.6 conditions. The judicial appeal panel may grant provisional discharge upon conditions that
2.7 it determines necessary to ensure adequate adjustment and reasonable risk to the public. A
2.8 provisional discharge plan shall be developed, implemented, and monitored by the head of
2.9 the treatment facility or designee in conjunction with the patient and other appropriate
2.10 persons. The head of the treatment facility or designee shall, at least quarterly, review the
2.11 plan with the patient and submit a written report to the designated agency concerning the
2.12 patient's status and compliance with each term of the plan.

2.13 Sec. 3. Minnesota Statutes 2012, section 253B.185, subdivision 14, is amended to read:

2.14 Subd. 14. **Provisional discharge; review.** A provisional discharge pursuant to this
2.15 section shall not automatically terminate. A full discharge shall occur only as provided
2.16 in subdivision 18. When provisional discharge is granted by the judicial appeal panel,
2.17 the conditions of provisional discharge may only thereafter be changed by order of the
2.18 judicial appeal panel. Subsequent changes to the conditions of provisional discharge are
2.19 not subject to the reduction in custody procedures in subdivision 9. The commissioner
2.20 shall notify the patient that the terms of a provisional discharge continue unless the patient
2.21 requests and is granted a change in the conditions of provisional discharge or unless the
2.22 patient petitions the special review board for a full discharge and the discharge is granted
2.23 by the judicial appeal panel.

2.24 Sec. 4. Minnesota Statutes 2012, section 253B.185, subdivision 14a, is amended to read:

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

2.29 (b) If the patient is not returned to provisional discharge status within 60 days of
2.30 being readmitted to the Minnesota sex offender program, the provisional discharge is
2.31 revoked. The patient shall immediately be notified of the revocation in writing. Within 15
2.32 days of receiving notice of the revocation, the patient may request a review of the matter
2.33 before the special review board. The special review board shall review the circumstances
2.34 of the revocation and, after applying the standards in subdivision 15, paragraph (a), shall

recommend to the judicial appeal panel whether or not the revocation shall be upheld. The board may recommend a return to provisional discharge status.

(c) If the provisional discharge has not been revoked and the patient is to be returned to provisional discharge, any change to the terms of the conditions of provisional discharge must be approved by the judicial appeal panel. A patient may remain at the Minnesota sex offender program beyond 60 days without being subject to revocation if the reason for the continued stay is solely the need for judicial appeal panel approval of changes to the provisional discharge conditions. The Minnesota sex offender program is not required to petition for a further review by the special review board unless the patient's return to the community results in substantive change to the existing provisional discharge plan.

Sec. 5. Minnesota Statutes 2012, section 253B.19, subdivision 3, is amended to read:

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

(b) The panel may not consider petitions for relief other than those considered by the commissioner or special review board from which the appeal is taken.

(c) The judicial appeal panel may not grant a transfer or, for an appeal brought under subdivision 2, paragraph (a), provisional discharge on terms or conditions that were not presented to the commissioner or the special review board.

(d) For a petition for provisional discharge before the judicial appeal panel under subdivision 2, paragraph (b), if provisional discharge is granted, the order of the judicial appeal panel shall include a list of the specific conditions of provisional discharge. The conditions may be based upon those proposed by the patient, those proposed by any party to the proceeding, or those proposed by the court. The conditions may be changed only by further order of the judicial appeal panel. An order changing the conditions of provisional discharge shall not be effective until 15 days after filing and is subject to appeal under subdivision 5.

Sec. 6. **EFFECTIVE DATE; APPLICATION.**

(a) Sections 1 to 5 are effective the day following final enactment. After the effective date of sections 1 to 5, a judicial appeal panel order granting provisional discharge shall specify and include provisional discharge conditions. The amendments in section 5 apply to all pending petitions for provisional discharge originating under Minnesota Statutes,

section 253B.185, subdivision 9, after the effective date of that section, whether the petitions are before the special review board or the judicial appeal panel. The amendments do not apply to a petition for provisional discharge on which the judicial appeal panel has issued an order on or before the date of final enactment.

(b) A provisional discharge that has been granted by the judicial appeal panel based upon a provisional discharge plan on or before the effective date of sections 1 to 5 continues in full force and effect. Any subsequent request to change the terms of the provisional discharge plan shall be filed directly with the judicial appeal panel. The panel's order disposing of the request shall specify the conditions of provisional discharge and thereafter replace the provisional discharge plan upon the order becoming effective. An order under this paragraph becomes effective 15 days after it is filed and is subject to the provisions of Minnesota Statutes, section 253B.19, subdivision 5, regarding appeal.

ARTICLE 2

VICTIM NOTIFICATION

Section 1. Minnesota Statutes 2012, section 253B.18, subdivision 5a, is amended to read:

Subd. 5a. **Victim notification of petition and release; right to submit statement.**

(a) As used in this subdivision:

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

(2) "victim" means a person who has incurred loss or harm as a result of a crime the behavior for which forms the basis for a commitment under this section or section 253B.185; and

(3) "convicted" and "conviction" have the meanings given in section 609.02, subdivision 5, and also include juvenile court adjudications, findings under Minnesota Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved, and findings in commitment cases under this section or section 253B.185 that an act or acts constituting a crime occurred.

(b) A county attorney who files a petition to commit a person under this section or section 253B.185 shall make a reasonable effort to provide prompt notice of filing the petition to any victim of a crime for which the person was convicted. In addition,

the county attorney shall make a reasonable effort to promptly notify the victim of the resolution of the petition.

(c) Before provisionally discharging, discharging, granting pass-eligible status, approving a pass plan, or otherwise permanently or temporarily releasing a person committed under this section from a treatment facility, the head of the treatment facility shall make a reasonable effort to notify any victim of a crime for which the person was convicted that the person may be discharged or released. The head of the treatment facility shall further notify any victim of the result of a special review board or judicial appeal panel proceeding on a petition for reduction in custody. The head of the treatment facility shall notify any victim and that the victim has a right to submit a written statement regarding decisions of the medical director, special review board, or commissioner with respect to the person. To the extent possible, the notice must be provided at least 14 days before any special review board hearing or before a determination on a pass plan.

Notwithstanding section 611A.06, subdivision 4, the commissioner shall provide the judicial appeal panel with victim information in order to comply with the provisions of this section. The judicial appeal panel shall ensure that the data on victims remains private as provided for in section 611A.06, subdivision 4.

(d) This subdivision applies only to victims who have requested notification through the Department of Corrections ~~electronic~~ Web-based victim notification system, or by contacting, in writing, the county attorney in the county where the conviction for the crime occurred. A request for notice under this subdivision received by the commissioner of corrections through the Department of Corrections ~~electronic~~ Web-based victim notification system shall be promptly forwarded to the prosecutorial authority with jurisdiction over the offense to which the notice relates or, following commitment, the head of the treatment facility. A county attorney who receives a request for notification under this paragraph following commitment shall promptly forward the request to the commissioner of human services.

(e) The rights under this subdivision are in addition to rights available to a victim under chapter 611A. This provision does not give a victim all the rights of a "notified person" or a person "entitled to statutory notice" under subdivision 4a, 4b, or 5 or section 253B.185, subdivision 10.

Sec. 2. Minnesota Statutes 2012, section 253B.185, subdivision 10, is amended to read:

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

(a) As used in this subdivision:

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

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

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

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

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

(d) This subdivision applies only to victims who have requested notification through the Department of Corrections ~~electronic~~ Web-based victim notification system, or by contacting, in writing, the county attorney in the county where the conviction for the crime occurred or where the civil commitment was filed or, following commitment, the head of the treatment facility. A request for notice under this subdivision received by the commissioner of corrections through the Department of Corrections ~~electronic~~ Web-based victim notification system shall be promptly forwarded to the prosecutorial authority with

jurisdiction over the offense to which the notice relates or, following commitment, the head of the treatment facility. A county attorney who receives a request for notification under this paragraph following commitment shall promptly forward the request to the commissioner of human services.

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

Sec. 3. Minnesota Statutes 2012, section 611A.06, subdivision 1, is amended to read:

Subdivision 1. **Notice of release required.** The commissioner of corrections or other custodial authority shall make a good faith effort to notify the victim that the offender is to be released from imprisonment or incarceration, including release on extended furlough and for work release; released from a juvenile correctional facility; released from a facility in which the offender was confined due to incompetency, mental illness, or mental deficiency, or commitment under section 253B.18 or 253B.185; or if the offender's custody status is reduced, if the victim has mailed to the commissioner of corrections or to the head of the facility in which the offender is confined a written request for this notice, or the victim has made a request for this notice to the commissioner of corrections through the Department of Corrections ~~electronic~~ Web-based victim notification system. The good faith effort to notify the victim must occur prior to the offender's release or when the offender's custody status is reduced. For a victim of a felony crime against the person for which the offender was sentenced to imprisonment for more than 18 months, the good faith effort to notify the victim must occur 60 days before the offender's release. For a victim who has requested notification under section 253B.185, subdivision 10, the good-faith effort to notify the victim must occur within seven days of the issuance of an order for discharge, provisional discharge, or transfer out of a secure facility.

Sec. 4. Minnesota Statutes 2012, section 611A.06, subdivision 2, is amended to read:

Subd. 2. **Contents of notice.** The notice given to a victim of a crime against a person must include the conditions governing the offender's release, and either the identity of the corrections agent who will be supervising the offender's release or a means to identify the court services agency that will be supervising the offender's release. The commissioner or other custodial authority complies with this section upon mailing the notice of impending release to the victim at the address which the victim has most recently provided to the commissioner or authority in writing, or by providing electronic notice to

- 8.1 the victim who requested this notice through the Department of Corrections ~~electronic~~
- 8.2 Web-based victim notification system.

APPENDIX
Article locations in 13-2299

ARTICLE 1 PROVISIONAL DISCHARGE Page.Ln 1.8
ARTICLE 2 VICTIM NOTIFICATION Page.Ln 4.13