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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 5134

03/21/2024 Authored by Frazier
The bill was read for the first time and referred to the Committee on Public Safety Finance and Policy

1.1 A bill for an act
1.2 relating to public safety; limiting supervision of parolees to five years; modifying
1.3 the grounds for early discharge from parole and the certificate of final discharge;
1.4 modifying the qualifications for the Supervised Release Board members; limiting
1.5 reappointment of members to the Supervised Release Board; making certain inmates
1.6 eligible for earned release credits; modifying the considerations for granting parole
1.7 or supervised release; modifying the standards for granting medical release;
1.8 establishing the Medical Release Review Board; eliminating life sentences;
1.9 amending Minnesota Statutes 2022, section 244.05, by adding a subdivision;
1.10 Minnesota Statutes 2023 Supplement, sections 243.05, subdivision 3; 244.049,
1.11 subdivisions 1, 2, 3; 244.05, subdivisions 4, 5, 8; repealing Minnesota Statutes
1.12 2023 Supplement, sections 244.45; 244.46, subdivision 4; 609.106, subdivision
1.13 2; 609.3455, subdivision 2.

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

1.15 Section 1. Minnesota Statutes 2023 Supplement, section 243.05, subdivision 3, is amended
1.16 to read:

1.17 Subd. 3. Duty of board; final discharge. It is the duty of the Supervised Release Board
1.18 to keep in communication, as far as possible, with all persons who are on parole and with
1.19 their employers. The board may grant a person on parole a final discharge from any sentence
1.20 within five years of release, and may do so earlier when:

1.21 (1) the person on parole has complied with the conditions of parole for a period of time
1.22 three years in a manner sufficient to satisfy the board that the parolee is reliable and
1.23 trustworthy; and

1.24 (2) the board is satisfied the person on parole will remain at liberty without violating
1.25 the law; and

1.26 (3) final discharge is not incompatible with the welfare of society.

2.1 Upon the granting of a final discharge, the board shall issue a certificate of final discharge  
2.2 to the person discharged and also cause a record of the acts of the inmate to be made. The  
2.3 record shall show the date of the inmate's confinement, ~~the inmate's record while in prison,~~  
2.4 ~~the date of parole, the inmate's record while on parole, reasons underlying the decision for~~  
2.5 ~~final discharge,~~ and other facts which the board regards as appropriate. Nothing in this  
2.6 section or section 244.05 shall be construed as impairing the power of the board of pardons  
2.7 to grant a pardon or commutation in any case.

2.8 Sec. 2. Minnesota Statutes 2023 Supplement, section 244.049, subdivision 1, is amended  
2.9 to read:

2.10 Subdivision 1. **Establishment; membership.** (a) The Supervised Release Board is  
2.11 established to review eligible cases and make release and final discharge decisions for:

2.12 (1) inmates serving life sentences with the possibility of parole or supervised release  
2.13 under sections 243.05, subdivision 1, and 244.05, subdivision 5;

2.14 (2) inmates serving indeterminate sentences for crimes committed on or before April  
2.15 30, 1980; and

2.16 (3) inmates eligible for early supervised release under section 244.05, subdivision 4a.

2.17 (b) Beginning July 1, 2024, the authority to grant discretionary release and final discharge  
2.18 previously vested in the commissioner under sections 243.05, subdivisions 1, paragraph  
2.19 (a), and 3; 244.08; and 609.12 is transferred to the board.

2.20 (c) The board consists of the following members:

2.21 (1) four individuals appointed by the governor who meet at least one of the following  
2.22 qualifications:

2.23 (i) a degree from an accredited law school or a bachelor's, master's, or doctorate degree  
2.24 in criminology, corrections, psychology, sociology, social work, or a related social science;

2.25 (ii) five years of experience in corrections, a criminal justice or community corrections  
2.26 field, rehabilitation programming, behavioral health, social work, or criminal law; or

2.27 (iii) demonstrated knowledge of victim issues and correctional processes;

2.28 (2) two individuals appointed by the governor with an academic degree in neurology,  
2.29 psychology, or a comparable field and who have expertise in the neurological development  
2.30 of juveniles; and

2.31 (3) the commissioner, who serves as chair.

3.1 (d) The majority leader of the senate, minority leader of the senate, speaker of the house,  
3.2 and minority leader of the house shall each recommend two candidates for appointment to  
3.3 the positions described in paragraph (c), clause (1).

3.4 Sec. 3. Minnesota Statutes 2023 Supplement, section 244.049, subdivision 2, is amended  
3.5 to read:

3.6 Subd. 2. **Terms; compensation.** (a) Appointed board members serve four-year staggered  
3.7 terms, but the terms of the initial members are as follows:

3.8 (1) three members must be appointed for terms that expire January 1, 2026; and

3.9 (2) three members must be appointed for terms that expire January 1, 2028.

3.10 (b) An appointed member is eligible for reappointment for an additional two-year term  
3.11 and a vacancy must be filled according to subdivision 1.

3.12 (c) For appointed members, compensation and removal are as provided in section 15.0575,  
3.13 but the compensation rate is \$250 a day or part of the day spent on board activities.

3.14 Sec. 4. Minnesota Statutes 2023 Supplement, section 244.049, subdivision 3, is amended  
3.15 to read:

3.16 Subd. 3. **Quorum; compensation; administrative duties.** (a) To make release and final  
3.17 discharge decisions for eligible cases described in subdivision 1, paragraph (a), clause (1),  
3.18 when the inmate was 18 years of age or older at the time of the commission of the offense,  
3.19 and clause (2), the board must comprise a majority of the five members identified in  
3.20 subdivision 1, paragraph (c), clauses (1) and (3). The members described in subdivision 1,  
3.21 paragraph (c), clause (2), are ineligible to vote on those cases.

3.22 (b) To make release and final discharge decisions for eligible cases described in  
3.23 subdivision 1, paragraph (a), clause (1), when the inmate was under 18 years of age at the  
3.24 time of the commission of the offense, and clause (3), the board must comprise a majority  
3.25 of all seven members and include at least one member identified in subdivision 1, paragraph  
3.26 (c), clause (2).

3.27 (c) An appointed board member must visit at least one state correctional facility every  
3.28 12 six months and have meaningful interaction with the inmate population. An appointed  
3.29 board member must not visit the same facility two or more times in succession.

4.1 (d) The commissioner must provide the board with personnel, supplies, equipment,  
4.2 office space, and other administrative services necessary and incident to fulfilling the board's  
4.3 functions.

4.4 Sec. 5. Minnesota Statutes 2023 Supplement, section 244.05, subdivision 4, is amended  
4.5 to read:

4.6 Subd. 4. **Minimum imprisonment, life sentence.** (a) An inmate serving a mandatory  
4.7 life sentence under section 609.106, subdivision 2, or 609.3455, subdivision 2, paragraph  
4.8 (a), must not be given supervised release under this section.

4.9 (b) Except as provided in paragraph (f), an inmate serving a mandatory life sentence  
4.10 under section 609.185, paragraph (a), clause (3), (5), or (6), or section 609.2661, clause (3);  
4.11 or Minnesota Statutes 2004, section 609.109, subdivision 3, must not be given supervised  
4.12 release under this section without having served a minimum term of 30 years, minus release  
4.13 credits earned under section 244.40.

4.14 (c) Except as provided in paragraph (f), an inmate serving a mandatory life sentence  
4.15 under section 609.385 must not be given supervised release under this section without having  
4.16 served a minimum term of imprisonment of 17 years.

4.17 (d) An inmate serving a mandatory life sentence under section 609.3455, subdivision 3  
4.18 or 4, must not be given supervised release under this section without having served the  
4.19 minimum term of imprisonment specified by the court in its sentence, minus release credits  
4.20 earned under section 244.40.

4.21 (e) An inmate serving a mandatory life sentence under section 609.106, subdivision 3,  
4.22 or 609.3455, subdivision 2, paragraph (c), must not be given supervised release under this  
4.23 section without having served a minimum term of imprisonment specified in subdivision  
4.24 4b.

4.25 (f) An inmate serving a mandatory life sentence for a crime described in paragraph (b)  
4.26 or (c) who was under 18 years of age at the time of the commission of the offense must not  
4.27 be given supervised release under this section without having served a minimum term of  
4.28 imprisonment specified in subdivision 4b.

4.29 Sec. 6. Minnesota Statutes 2023 Supplement, section 244.05, subdivision 5, is amended  
4.30 to read:

4.31 Subd. 5. **Supervised release, life and indeterminate sentences.** (a) The board ~~may~~  
4.32 must, under rules adopted by the commissioner, grant supervised release or parole ~~as follows~~

5.1 unless the board determines there is substantial evidence of the current dangerousness of  
 5.2 the inmate such that releasing the inmate would pose a significant risk to public safety:

5.3 (1) to an inmate serving a mandatory life sentence after the inmate has served the  
 5.4 minimum term of imprisonment specified in subdivision 4 or section 243.05, subdivision  
 5.5 1, paragraph (a);

5.6 (2) at any time for an inmate serving a nonlife indeterminate sentence for a crime  
 5.7 committed on or before April 30, 1980; or

5.8 (3) to an inmate eligible for early supervised release under subdivision 4a after the inmate  
 5.9 has served the minimum term of imprisonment.

5.10 (b) For cases involving multiple sentences, the board must grant or deny supervised  
 5.11 release as follows:

5.12 (1) if an inmate is serving multiple sentences that are concurrent to one another, the  
 5.13 board must grant or deny supervised release on all unexpired sentences; and

5.14 (2) notwithstanding any other law to the contrary, if an inmate who was under the age  
 5.15 of 18 at the time of the commission of the relevant offenses and has served the minimum  
 5.16 term of imprisonment specified in subdivision 4b is serving multiple sentences that are  
 5.17 consecutive to one another, the board may grant or deny supervised release on one or more  
 5.18 sentences.

5.19 (c) No less than three years before an inmate has served the applicable minimum term  
 5.20 of imprisonment, the board must assess the inmate's status and make programming  
 5.21 recommendations relevant to the inmate's release review. The commissioner must ensure  
 5.22 that any board programming recommendations are followed and implemented.

5.23 (d) The board must conduct a supervised release review hearing as soon as practicable  
 5.24 before an inmate has served the applicable minimum term of imprisonment.

5.25 (e) The board shall require the preparation of a community investigation report. The  
 5.26 report shall:

5.27 (1) ~~reflect the sentiment of the various elements~~ concerns of the community ~~toward the~~  
 5.28 ~~inmate, both at the time of the offense and at the present time~~ into which the inmate will be  
 5.29 released; and

5.30 ~~(2) include the views of the sentencing judge, the prosecutor, any law enforcement~~  
 5.31 ~~personnel who may have been involved in the case, and any successors to these individuals~~  
 5.32 ~~who may have information relevant to the supervised release decision; and~~

6.1 ~~(3)~~ (2) include the views of the victim and the victim's family unless the victim or the  
6.2 victim's family chooses not to participate.

6.3 (f) The board shall require the preparation of a development report when making a  
6.4 supervised release decision regarding an inmate who was under 18 years of age at the time  
6.5 of the commission of the offense. The report must be prepared by a mental health professional  
6.6 qualified to provide services to a client under section 245I.04, subdivision 2, clause (1) to  
6.7 (4) or (6), and must address the inmate's cognitive, emotional, and social maturity. The  
6.8 board may use a previous report that was prepared within 12 months immediately preceding  
6.9 the hearing.

6.10 (g) The board shall make reasonable efforts to notify the victim and community  
6.11 representatives, in advance, of the time and place of the inmate's release review hearing and  
6.12 help provide access to support services, as needed. The victim ~~has~~ and community  
6.13 representatives have a right to submit an oral or written statement at the review hearing.  
6.14 ~~The statement may summarize the harm suffered by the victim as a result of the crime and~~  
6.15 ~~give the victim's recommendation on whether the inmate should be given supervised release~~  
6.16 ~~at this time~~ input into any directives or prerelease conditions the board may give the inmate.  
6.17 These may include any of the following:

6.18 (1) requiring an apology or accountability statement from the inmate;

6.19 (2) submitting a statement summarizing the harm suffered by the victim, the community,  
6.20 or both as a result of the crime. This statement may be read to the inmate as part of the  
6.21 review;

6.22 (3) requesting a victim-offender dialogue with the inmate;

6.23 (4) requesting a transition circle with the inmate prior to release to discuss fears and  
6.24 amends with the community;

6.25 (5) submitting written questions to the inmate regarding the crime;

6.26 (6) requesting a protective order for the victim;

6.27 (7) requesting specific programming available within the Department of Corrections for  
6.28 the inmate, such as anger management classes, domestic abuse classes, or attending substance  
6.29 abuse support groups;

6.30 (8) requesting the inmate perform a set amount of community service once released as  
6.31 a way to honor the victim and community; or

7.1 (9) other individualized criteria aimed at repairing the harm caused by the inmate's  
7.2 actions.

7.3 (h) The board shall permit a prosecutor from the office that prosecuted the case to submit  
7.4 a written statement in advance of the review hearing.

7.5 (i) When considering whether to grant supervised release or parole to an inmate serving  
7.6 a life sentence or indeterminate sentence, the board shall consider, at a minimum, the  
7.7 following:

7.8 (1) the report prepared pursuant to paragraph (e);

7.9 (2) the report prepared pursuant to paragraph (f), if applicable;

7.10 (3) a victim statement under paragraph (g), if submitted;

7.11 (4) the statement of a prosecutor under paragraph (h), if submitted;

7.12 (5) the risk the inmate poses to the community if released as indicated by the inmate's  
7.13 score on a validated statistical tool to assess such risk;

7.14 (6) the inmate's progress in treatment, if applicable;

7.15 (7) the inmate's behavior while incarcerated;

7.16 (8) psychological or other diagnostic evaluations of the inmate that directly relate to the  
7.17 current dangerousness of the inmate;

7.18 (9) information on the inmate's rehabilitation while incarcerated;

7.19 (10) ~~the inmate's criminal history~~ community and victim concerns as detailed in paragraph  
7.20 (e);

7.21 (11) if the inmate was under 18 years of age at the time of the commission of the offense,  
7.22 relevant science on the neurological development of juveniles and information on the inmate's  
7.23 maturity and development while incarcerated; and

7.24 (12) any other relevant conduct of the inmate while incarcerated or before incarceration  
7.25 that is relevant to the inmate's current dangerousness if released.

7.26 (j) The board may not grant supervised release or parole to an inmate unless:

7.27 (1) while in prison:

7.28 (i) the inmate has successfully completed appropriate sex offender treatment, if applicable;

7.29 (ii) the inmate has been assessed for substance use disorder needs and, if appropriate,  
7.30 has successfully completed substance use disorder treatment; and

8.1 (iii) the inmate has been assessed for mental health needs and, if appropriate, has  
8.2 successfully completed mental health treatment; and

8.3 (2) a comprehensive individual release plan is in place for the inmate that:

8.4 (i) ensures that, after release, the inmate will have suitable housing and receive appropriate  
8.5 aftercare and community-based treatment; and

8.6 (ii) includes a postprison employment or education plan for the inmate.

8.7 (k) Supervised release or parole must be granted with a majority vote of the quorum  
8.8 required under section 244.049, subdivision 3. If there is a tie vote, supervised release or  
8.9 parole is granted only if the commissioner votes in favor of granting supervised release or  
8.10 parole.

8.11 (l) Within 30 days after a supervised release review hearing, the board must issue a  
8.12 decision on granting release, including an explanation for the decision. If an inmate is serving  
8.13 multiple sentences that are concurrent to one another, the board must grant or deny supervised  
8.14 release on all sentences.

8.15 (m) If the board does not grant supervised release, the explanation of that decision must  
8.16 identify specific steps that the inmate can take to increase the likelihood that release will  
8.17 be granted at a future hearing. These steps must guide the inmate toward addressing the  
8.18 reasons release was denied and must be reasonably achievable. The board must include  
8.19 directives suggested by the victim, the community, or both, as detailed in paragraph (e),  
8.20 that it determines are reasonable. If the inmate completes the directives by the next review,  
8.21 the board must grant the inmate supervised release or parole unless the board finds substantial  
8.22 evidence of a new concern about the current dangerousness of the inmate that could not  
8.23 reasonably have been known at the last review.

8.24 (n) When granting supervised release or parole under this subdivision, the board must  
8.25 set prerelease conditions to be followed by the inmate, if time permits, before their actual  
8.26 release or before constructive parole becomes effective. These conditions must include  
8.27 those conditions requested by the victim or community that the board deems reasonable. If  
8.28 the inmate violates any of the prerelease conditions, the commissioner may rescind the grant  
8.29 of supervised release without a hearing at any time before the inmate's release or before  
8.30 constructive parole becomes effective. A grant of constructive parole becomes effective  
8.31 once the inmate begins serving the consecutive sentence.

8.32 (o) If the commissioner rescinds a grant of supervised release or parole, the board:

9.1 (1) must set a release review date that occurs within 90 days of the commissioner's  
9.2 rescission; and

9.3 (2) by majority vote, may set a new supervised release date or set another review date.

9.4 (p) If the commissioner revokes supervised release or parole for an inmate serving a life  
9.5 sentence, the revocation is not subject to the limitations under section 244.30 and the board:

9.6 (1) must set a release review date that occurs within one year of the commissioner's final  
9.7 revocation decision; and

9.8 (2) by majority vote, may set a new supervised release date or set another review date.

9.9 (q) The board may, by a majority vote, grant a person on supervised release or parole  
9.10 for a life or indeterminate sentence a final discharge from their sentence in accordance with  
9.11 section 243.05, subdivision 3. In no case, however, may a person subject to a mandatory  
9.12 lifetime conditional release term under section 609.3455, subdivision 7, be discharged from  
9.13 that term.

9.14 (r) For purposes of this subdivision:

9.15 (1) "board" means the Indeterminate Sentence Release Board under section 244.049;

9.16 (2) "constructive parole" means the status of an inmate who has been paroled from an  
9.17 indeterminate sentence to begin serving a consecutive sentence in prison; and

9.18 (3) "victim" has the meaning given in section 611A.01, paragraph (b).

9.19 Sec. 7. Minnesota Statutes 2023 Supplement, section 244.05, subdivision 8, is amended  
9.20 to read:

9.21 Subd. 8. **Conditional medical and epidemic release.** (a) Notwithstanding subdivisions  
9.22 4 and 5, the ~~commissioner may~~ Medical Release Review Board shall order that an inmate  
9.23 be placed on conditional medical release before their scheduled supervised release date or  
9.24 target release date if:

9.25 (1) the inmate suffers from a grave illness or medical condition; and

9.26 (2) the release poses no threat to the public.

9.27 (b) If there is an epidemic of any potentially fatal infectious or contagious disease in the  
9.28 community or in a state correctional facility, the commissioner may also release an inmate  
9.29 to home confinement before the inmate's scheduled supervised release date or target release  
9.30 date if:

10.1 (1) the inmate has a medical condition or state of health that would make the inmate  
10.2 particularly vulnerable to the disease; and

10.3 (2) release to home confinement poses no threat to the public.

10.4 (c) ~~When deciding whether~~ In making a decision to release an inmate ~~according to this~~  
10.5 ~~subdivision on this status~~, the ~~commissioner~~ board must consider:

10.6 (1) the inmate's age and medical condition, health care needs, and custody classification  
10.7 and level of risk of violence;

10.8 (2) the appropriate level of community supervision; and

10.9 (3) alternative placements that may be available for the inmate.

10.10 (d) An inmate may not be released under this subdivision unless the ~~commissioner~~ board  
10.11 has determined that the inmate's health costs are likely to be borne by:

10.12 (1) the inmate; or

10.13 (2) medical assistance, Medicaid, veteran's benefits, or any other federal or state medical  
10.14 assistance programs.

10.15 (e) Conditional medical release is governed by provisions relating to supervised release  
10.16 except that it may be rescinded by the commissioner ~~may rescind conditional medical release~~  
10.17 ~~without~~ via a hearing if the ~~commissioner considers that the inmate's medical condition has~~  
10.18 ~~improved to the extent that:~~ conditional medical release presents a demonstrably significant  
10.19 risk to the public.

10.20 ~~(1) the illness or condition is no longer grave or can be managed by correctional health~~  
10.21 ~~care options; or~~

10.22 ~~(2) the epidemic that precipitated release has subsided or effective vaccines or other~~  
10.23 ~~treatments have become available.~~

10.24 ~~(f) Release under this subdivision may also be revoked in accordance with subdivisions~~  
10.25 ~~2 and 3 if the inmate violates any conditions of release imposed by the commissioner.~~

10.26 Sec. 8. Minnesota Statutes 2022, section 244.05, is amended by adding a subdivision to  
10.27 read:

10.28 Subd. 8a. **Medical Release Review Board; applications.** (a) The Medical Release  
10.29 Review Board must consist of the following members:

10.30 (1) a medical health professional, nominated by the University of Minnesota Medical  
10.31 School;

- 11.1 (2) a mental health professional nominated by a community-based mental health provider;
- 11.2 (3) a reentry specialist, nominated by formerly incarcerated members of the Minnesota
- 11.3 Transitions Coalition;
- 11.4 (4) a nursing home provider, nominated by Care Providers of Minnesota;
- 11.5 (5) a formerly incarcerated person, nominated by groups led by formerly incarcerated
- 11.6 persons;
- 11.7 (6) a victim rights advocate, nominated by a statewide victim rights coalition; and
- 11.8 (7) an attorney or advocate with expertise in the Americans with Disabilities Act,
- 11.9 nominated by the Minnesota Disability Law Center.
- 11.10 (b) The executive board of the Department of Direct Care and Treatment shall review
- 11.11 the nominations and appoint members from the nominated individuals.
- 11.12 (c) The executive board of the Department of Direct Care and Treatment must, along
- 11.13 with the commissioner of corrections, create an application process for any incarcerated
- 11.14 person to apply for conditional medical release.
- 11.15 (d) An application for conditional medical release must be processed within 14 days of
- 11.16 receipt.
- 11.17 **Sec. 9. REPEALER.**
- 11.18 Minnesota Statutes 2023 Supplement, sections 244.45; 244.46, subdivision 4; 609.106,
- 11.19 subdivision 2; and 609.3455, subdivision 2, are repealed.
- 11.20 **Sec. 10. EFFECTIVE DATE.**
- 11.21 Sections 4, 5, and 8 are effective August 1, 2024, and apply retroactively to inmates
- 11.22 -serving a mandatory life sentence.

**244.45 INELIGIBILITY FOR EARNED INCENTIVE RELEASE CREDIT.**

The following individuals are ineligible for earned incentive release credit:

- (1) those serving life sentences;
- (2) those given indeterminate sentences for crimes committed on or before April 30, 1980; or
- (3) those subject to good time under section 244.04 or similar laws.

**244.46 EARNED COMPLIANCE CREDIT AND SUPERVISION ABATEMENT STATUS.**

Subd. 4. **Applicability.** This section does not apply to individuals:

- (1) serving life sentences;
- (2) given indeterminate sentences for crimes committed on or before April 30, 1980; or
- (3) subject to good time under section 244.04 or similar laws.

**609.106 HEINOUS CRIMES.**

Subd. 2. **Life without release.** Except as provided in subdivision 3, the court shall sentence a person to life imprisonment without possibility of release under the following circumstances:

(1) the person is convicted of first-degree murder under section 609.185, paragraph (a), clause (1), (2), (4), or (7), or murder of unborn child in the first degree under section 609.2661, clause (1) or (2);

(2) the person is convicted of committing first-degree murder in the course of a kidnapping under section 609.185, paragraph (a), clause (3), or murder of unborn child in the first degree in the course of a kidnapping under section 609.2661, clause (3); or

(3) the person is convicted of first-degree murder under section 609.185, paragraph (a), clause (3), (5), or (6), or murder of unborn child in the first degree under section 609.2661, clause (3), and the court determines on the record at the time of sentencing that the person has one or more previous convictions for a heinous crime.

**609.3455 DANGEROUS SEX OFFENDERS; LIFE SENTENCES; CONDITIONAL RELEASE.**

Subd. 2. **Mandatory life sentence without release; egregious first-time and repeat offenders.** (a) Except as provided in paragraph (c), notwithstanding the statutory maximum penalty otherwise applicable to the offense, the court shall sentence a person convicted under section 609.342, subdivision 1, paragraph (a), (b), (c), (d), or (e), or subdivision 1a, clause (a), (b), (c), (d), (h), or (i); or 609.343, subdivision 1, paragraph (a), (b), (c), (d), or (e), or subdivision 1a, clause (a), (b), (c), (d), (h), or (i), to life without the possibility of release if:

(1) the fact finder determines that two or more heinous elements exist; or

(2) the person has a previous sex offense conviction for a violation of section 609.342, 609.343, 609.344, or 609.3458, subdivision 1, paragraph (b), and the fact finder determines that a heinous element exists for the present offense.

(b) A fact finder may not consider a heinous element if it is an element of the underlying specified violation of section 609.342 or 609.343. In addition, when determining whether two or more heinous elements exist, the fact finder may not use the same underlying facts to support a determination that more than one element exists.

(c) The court shall sentence a person who was under 18 years of age at the time of the commission of an offense described in paragraph (a) to imprisonment for life.