

A bill for an act

relating to human services; modifying provisions relating to civilly committed sex offenders, sexually dangerous persons, and sexual psychopathic personalities; amending provisions relating to judicial holds in commitment cases; amending Minnesota Statutes 2008, sections 253B.05, subdivision 1; 253B.07, subdivision 2b; 253B.10, subdivision 5; 253B.15, subdivision 1; 253B.18, subdivisions 4a, 5a; 253B.185; 253B.19, subdivision 2; Minnesota Statutes 2009 Supplement, sections 246B.01, subdivisions 1a, 1b, 2a, 2d; 246B.02; 246B.03, subdivisions 2, 3; 246B.04, subdivision 3; 246B.05, subdivision 1; 246B.06, subdivisions 1, 6, 7, 8; 246B.07, subdivisions 1, 2; 246B.08; 246B.09; 246B.10; 253B.14.

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

Section 1. Minnesota Statutes 2009 Supplement, section 246B.01, subdivision 1a, is amended to read:

Subd. 1a. ~~Client~~ **Civilly committed sex offender.** ~~"Client"~~ **"Civilly committed sex offender"** means a person who is admitted to the Minnesota sex offender program ~~or subject to a court hold order~~ under section 253B.185 for the purpose of assessment, diagnosis, care, treatment, supervision, or other services provided by the Minnesota sex offender program.

Sec. 2. Minnesota Statutes 2009 Supplement, section 246B.01, subdivision 1b, is amended to read:

Subd. 1b. ~~Client's~~ **Civilly committed sex offender's county.** ~~"Client's"~~ **"Civilly committed sex offender's county"** means the county of the ~~client's~~ **civilly committed sex offender's** legal settlement for poor relief purposes at the time of commitment. If the ~~client~~ **civilly committed sex offender** has no legal settlement for poor relief in this state, it means the county of commitment, except that when a ~~client~~ **civilly committed sex offender** with no legal settlement for poor relief is committed while serving a sentence

at a penal institution, it means the county from which the ~~client~~ civilly committed sex offender was sentenced.

Sec. 3. Minnesota Statutes 2009 Supplement, section 246B.01, subdivision 2a, is amended to read:

Subd. 2a. **Community preparation services.** Community preparation services are specialized residential services or programs operated or administered by the Minnesota sex offender program outside of a secure treatment facility. Community preparation services are designed to assist ~~clients~~ civilly committed sex offenders in developing the appropriate skills and resources necessary for an eventual successful reintegration into a community. A ~~client~~ civilly committed sex offender may be placed in community preparation services only upon an order of the judicial appeal panel under section 253B.19.

Sec. 4. Minnesota Statutes 2009 Supplement, section 246B.01, subdivision 2d, is amended to read:

Subd. 2d. **Local social services agency.** "Local social services agency" means the local social services agency of the ~~client's~~ civilly committed sex offender's county as defined in subdivision 1b and of the county of commitment, and any other local social services agency possessing information regarding, or requested by the commissioner to investigate, the financial circumstances of a ~~client~~ civilly committed sex offender.

Sec. 5. Minnesota Statutes 2009 Supplement, section 246B.02, is amended to read:

246B.02 ESTABLISHMENT OF MINNESOTA SEX OFFENDER PROGRAM.

The commissioner of human services shall establish and maintain the Minnesota sex offender program. The program shall provide specialized sex offender assessment, diagnosis, care, treatment, supervision, and other services to ~~clients~~ civilly committed sex offenders as defined in section 246B.01, subdivision 1a. Services may include specialized programs at secure treatment facilities as defined in section 253B.02, subdivision 18a, consultative services, aftercare services, community-based services and programs, transition services, or other services consistent with the mission of the Department of Human Services.

Sec. 6. Minnesota Statutes 2009 Supplement, section 246B.03, subdivision 2, is amended to read:

Subd. 2. **Minnesota sex offender program evaluation.** (a) The commissioner shall contract with national sex offender experts to evaluate the sex offender treatment program. The consultant group shall consist of four national experts, including:

(1) three experts who are licensed psychologists, psychiatrists, clinical therapists, or other mental health treatment providers with established and recognized training and experience in the assessment and treatment of sexual offenders; and

(2) one nontreatment professional with relevant training and experience regarding the oversight or licensing of sex offender treatment programs or other relevant mental health treatment programs.

(b) These experts shall, in consultation with the executive clinical director of the sex offender treatment program:

(1) review and identify relevant information and evidence-based best practices and methodologies for effectively assessing, diagnosing, and treating ~~clients~~ civilly committed sex offenders;

(2) on at least an annual basis, complete a site visit and comprehensive program evaluation that may include a review of program policies and procedures to determine the program's level of compliance, address specific areas of concern brought to the panel's attention by the executive clinical director or executive director, offer recommendations, and complete a written report of its findings to the executive director and clinical director; and

(3) in addition to the annual site visit and review, provide advice, input, and assistance as requested by the executive clinical director or executive director.

(c) The commissioner or commissioner's designee shall enter into contracts as necessary to fulfill the responsibilities under this subdivision.

Sec. 7. Minnesota Statutes 2009 Supplement, section 246B.03, subdivision 3, is amended to read:

Subd. 3. ~~Client~~ **Civilly committed sex offender grievance resolution process.**

(a) The executive director shall establish a grievance policy and related procedures that address and attempt to resolve ~~client~~ civilly committed sex offender concerns and complaints. The grievance resolution process must include procedures for assessing or investigating a ~~client's~~ civilly committed sex offender's concerns or complaints, for attempting to resolve issues informally, and for appealing for a review and determination by the executive director or designee.

(b) Any ~~client~~ civilly committed sex offender who believes a right that is applicable to ~~a client~~ an individual under section 144.651 has been violated may file a grievance

under paragraph (a) and attempt to resolve the issue internally, or by a complaint with the Minnesota Department of Health, Office of Health Facility Complaints, or both. Complaints filed with the Office of Health Facility Complaints under this paragraph must be processed according to section 144.652.

Sec. 8. Minnesota Statutes 2009 Supplement, section 246B.04, subdivision 3, is amended to read:

Subd. 3. **Access to data.** The Minnesota sex offender program shall have access to private data contained in the statewide supervision system under section 241.065, as necessary for the administration and management of current ~~Minnesota sex offender clients~~ civily committed sex offenders for the purposes of admissions, treatment, security, and supervision. The program shall develop a policy to allow individuals who conduct assessment, develop treatment plans, oversee security, or develop reintegration plans to have access to the data. The commissioner of corrections shall conduct periodic audits to determine whether the policy is being followed.

Sec. 9. Minnesota Statutes 2009 Supplement, section 246B.05, subdivision 1, is amended to read:

Subdivision 1. **Vocational work program option.** The commissioner of human services shall develop a vocational work program for persons admitted to the Minnesota sex offender program. The ~~vocation~~ vocational work program is an extension of therapeutic treatment in order for ~~clients~~ civily committed sex offenders to learn valuable work skills and work habits while contributing to their cost of care. The vocational work program may include work maintaining the center or work that is brought to the center by an outside source. The earnings generated from the vocational work program must be deposited into the account created in subdivision 2.

Sec. 10. Minnesota Statutes 2009 Supplement, section 246B.06, subdivision 1, is amended to read:

Subdivision 1. **Establishment; purpose.** (a) The commissioner of human services may establish, equip, maintain, and operate a vocational work program at any Minnesota sex offender program facility under this chapter. The commissioner may establish vocational activities for sex offender treatment ~~clients~~ for civily committed sex offenders as the commissioner deems necessary and suitable to the meaningful work skills training, educational training, and development of proper work habits and extended treatment services for ~~clients~~ civily committed sex offenders consistent with the requirements in

section 246B.05. The industrial and commercial activities authorized by this section are designated Minnesota State Industries and must be for the primary purpose of sustaining and ensuring Minnesota State Industries' self-sufficiency, providing educational training, meaningful employment, and the teaching of proper work habits to the ~~patients of~~ individuals in the Minnesota sex offender program under this chapter, and not solely as competitive business ventures.

(b) The net profits from the vocational work program must be used for the benefit of the ~~clients~~ civilly committed sex offenders as it relates to building education and self-sufficiency skills. Prior to the establishment of any vocational activity, the commissioner of human services shall consult with stakeholders including representatives of business, industry, organized labor, the commissioner of education, the state Apprenticeship Council, the commissioner of labor and industry, the commissioner of employment and economic development, the commissioner of administration, and other stakeholders the commissioner deems qualified. The purpose of the stakeholder consultation is to determine the quantity and nature of the goods, wares, merchandise, and services to be made or provided, and the types of processes to be used in their manufacture, processing, repair, and production consistent with the greatest opportunity for the reform and educational training of the ~~clients~~ civilly committed sex offenders, and with the best interests of the state, business, industry, and labor.

(c) The commissioner of human services shall, at all times in the conduct of any vocational activity authorized by this section, utilize ~~client~~ civilly committed sex offender labor to the greatest extent feasible, provided that the commissioner may employ all administrative, supervisory, and other skilled workers necessary to the proper instruction of the ~~clients~~ civilly committed sex offenders and the efficient operation of the vocational activities authorized by this section.

(d) The commissioner of human services may authorize the director of any Minnesota sex offender treatment facility under the commissioner's control to accept work projects from outside sources for processing, fabrication, or repair, provided that preference is given to the performance of work projects for state departments and agencies.

Sec. 11. Minnesota Statutes 2009 Supplement, section 246B.06, subdivision 6, is amended to read:

Subd. 6. **Wages.** Notwithstanding section 177.24 or any other law to the contrary, the commissioner of human services has the discretion to set the pay rate for ~~clients~~ individuals participating in the vocational work program. The commissioner has the authority to retain up to 50 percent of any payments made to ~~a client~~ an individual

participating in the vocational work program for the purpose of reducing state costs associated with operating the Minnesota sex offender program.

Sec. 12. Minnesota Statutes 2009 Supplement, section 246B.06, subdivision 7, is amended to read:

Subd. 7. **Status of ~~clients~~ civilly committed sex offenders.** ~~Clients~~ Civilly committed sex offenders participating in the vocational work program are not employees of the Minnesota sex offender program, the Department of Human Services, or the state, and are not subject to fair labor standards under sections 177.21 to 177.35; workers compensation under sections 176.011 to 176.862; the Minnesota Human Rights Act under sections 363A.001 to 363A.41; laws governing state employees under chapter 43A; labor relations under chapter 179A; or the successors to any of these sections and any other laws pertaining to employees and employment.

Sec. 13. Minnesota Statutes 2009 Supplement, section 246B.06, subdivision 8, is amended to read:

Subd. 8. **Claims.** Claims and demands arising out of injury to or death of a ~~client~~ civilly committed sex offender while that ~~client~~ individual is participating in the vocational work program or performing a work assignment maintaining the facility must be presented to, heard, and determined exclusively by the legislature as provided in section 3.738.

Sec. 14. Minnesota Statutes 2009 Supplement, section 246B.07, subdivision 1, is amended to read:

Subdivision 1. **Procedures.** The commissioner shall determine or redetermine, if necessary, what amount of the cost of care, if any, the ~~client~~ civilly committed sex offender is able to pay. The ~~client~~ civilly committed sex offender shall provide to the commissioner documents and proof necessary to determine the ability to pay. Failure to provide the commissioner with sufficient information to determine ability to pay may make the ~~client~~ civilly committed sex offender liable for the full cost of care until the time when sufficient information is provided.

Sec. 15. Minnesota Statutes 2009 Supplement, section 246B.07, subdivision 2, is amended to read:

Subd. 2. **Rules.** The commissioner shall use the standards in section 246.51, subdivision 2, to determine the ~~clients~~ civilly committed sex offender's liability for the care provided by the Minnesota sex offender program.

Sec. 16. Minnesota Statutes 2009 Supplement, section 246B.08, is amended to read:

246B.08 PAYMENT FOR CARE; ORDER; ACTION.

The commissioner shall issue an order to the ~~client~~ civilly committed sex offender or the guardian of the estate, if there is one, requiring the ~~client~~ civilly committed sex offender or guardian to pay to the state the amounts determined, the total of which must not exceed the full cost of care. The order must specifically state the commissioner's determination and must be conclusive, unless appealed. If a ~~client~~ civilly committed sex offender fails to pay the amount due, the attorney general, upon request of the commissioner, may institute, or direct the appropriate county attorney to institute, a civil action to recover the amount.

Sec. 17. Minnesota Statutes 2009 Supplement, section 246B.09, is amended to read:

246B.09 CLAIM AGAINST ESTATE OF DECEASED ~~CLIENT~~ CIVILLY COMMITTED SEX OFFENDER.

Subdivision 1. ~~Client's Estate of a civilly committed sex offender.~~ Upon the death of a ~~client~~ civilly committed sex offender, or a former ~~client~~ civilly committed sex offender, the total cost of care provided to the ~~client~~ individual, less the amount actually paid toward the cost of care by the ~~client~~ civilly committed sex offender, must be filed by the commissioner as a claim against the estate of the ~~client~~ civilly committed sex offender with the court having jurisdiction to probate the estate, and all proceeds collected by the state in the case must be divided between the state and county in proportion to the cost of care each has borne.

Subd. 2. **Preferred status.** An estate claim in subdivision 1 must be considered an expense of the last illness for purposes of section 524.3-805.

If the commissioner determines that the property or estate of a ~~client~~ civilly committed sex offender is not more than needed to care for and maintain the spouse and minor or dependent children of a deceased ~~client~~ civilly committed sex offender, the commissioner has the power to compromise the claim of the state in a manner deemed just and proper.

Subd. 3. **Exception from statute of limitations.** Any statute of limitations that limits the commissioner in recovering the cost of care obligation incurred by a ~~client~~ civilly committed sex offender or former ~~client~~ civilly committed sex offender must not apply to any claim against an estate made under this section to recover cost of care.

Sec. 18. Minnesota Statutes 2009 Supplement, section 246B.10, is amended to read:

246B.10 LIABILITY OF COUNTY; REIMBURSEMENT.

The ~~client's~~ civilly committed sex offender's county shall pay to the state a portion of the cost of care provided in the Minnesota sex offender program to a ~~client~~ civilly committed sex offender who has legally settled in that county. A county's payment must be made from the county's own sources of revenue and payments must equal ten percent of the cost of care, as determined by the commissioner, for each day or portion of a day, that the ~~client~~ civilly committed sex offender spends at the facility. If payments received by the state under this chapter exceed 90 percent of the cost of care, the county is responsible for paying the state the remaining amount. The county is not entitled to reimbursement from the ~~client~~ civilly committed sex offender, the ~~client's~~ civilly committed sex offender's estate, or from the ~~client's~~ civilly committed sex offender's relatives, except as provided in section 246B.07.

Sec. 19. Minnesota Statutes 2008, section 253B.05, subdivision 1, is amended to read:

Subdivision 1. **Emergency hold.** (a) Any person may be admitted or held for emergency care and treatment in a treatment facility, except to a facility operated by the Minnesota sex offender program, with the consent of the head of the treatment facility upon a written statement by an examiner that:

(1) the examiner has examined the person not more than 15 days prior to admission;

(2) the examiner is of the opinion, for stated reasons, that the person is mentally ill, developmentally disabled, or chemically dependent, and is in danger of causing injury to self or others if not immediately detained; and

(3) an order of the court cannot be obtained in time to prevent the anticipated injury.

(b) If the proposed patient has been brought to the treatment facility by another person, the examiner shall make a good faith effort to obtain a statement of information that is available from that person, which must be taken into consideration in deciding whether to place the proposed patient on an emergency hold. The statement of information must include, to the extent available, direct observations of the proposed patient's behaviors, reliable knowledge of recent and past behavior, and information regarding psychiatric history, past treatment, and current mental health providers. The examiner shall also inquire into the existence of health care directives under chapter 145, and advance psychiatric directives under section 253B.03, subdivision 6d.

(c) The examiner's statement shall be: (1) sufficient authority for a peace or health officer to transport a patient to a treatment facility, (2) stated in behavioral terms and not in conclusory language, and (3) of sufficient specificity to provide an adequate record for review. If danger to specific individuals is a basis for the emergency hold, the statement must identify those individuals, to the extent practicable. A copy of the examiner's

statement shall be personally served on the person immediately upon admission and a copy shall be maintained by the treatment facility.

Sec. 20. Minnesota Statutes 2008, section 253B.07, subdivision 2b, is amended to read:

Subd. 2b. **Apprehend and hold orders.** The court may order the treatment facility to hold the person in a treatment facility or direct a health officer, peace officer, or other person to take the proposed patient into custody and transport the proposed patient to a treatment facility for observation, evaluation, diagnosis, care, treatment, and, if necessary, confinement, when:

(1) there has been a particularized showing by the petitioner that serious physical harm to the proposed patient or others is likely unless the proposed patient is immediately apprehended;

(2) the proposed patient has not voluntarily appeared for the examination or the commitment hearing pursuant to the summons; or

(3) a person is held pursuant to section 253B.05 and a request for a petition for commitment has been filed.

The order of the court may be executed on any day and at any time by the use of all necessary means including the imposition of necessary restraint upon the proposed patient. Where possible, a peace officer taking the proposed patient into custody pursuant to this subdivision shall not be in uniform and shall not use a motor vehicle visibly marked as a police vehicle. Except as provided in section 253B.045, subdivision 1a, in the case of an individual on a judicial hold due to a petition for civil commitment under section 253B.185, assignment of custody during the hold is to the commissioner of human services. The commissioner is responsible for determining the appropriate placement within a secure treatment facility under the authority of the commissioner.

Sec. 21. Minnesota Statutes 2008, section 253B.10, subdivision 5, is amended to read:

Subd. 5. **Transfer to voluntary status.** At any time prior to the expiration of the initial commitment period, a patient who has not been committed as mentally ill and dangerous to the public or as a sexually dangerous person or as a sexual psychopathic personality may be transferred to voluntary status upon the patient's application in writing with the consent of the head of the facility. Upon transfer, the head of the treatment facility shall immediately notify the court in writing and the court shall terminate the proceedings.

Sec. 22. Minnesota Statutes 2009 Supplement, section 253B.14, is amended to read:

253B.14 TRANSFER OF COMMITTED PERSONS.

The commissioner may transfer any committed person, other than a person committed as mentally ill and dangerous to the public, or as a sexually dangerous person or as a sexual psychopathic personality, from one regional treatment center to any other treatment facility under the commissioner's jurisdiction which is capable of providing proper care and treatment. When a committed person is transferred from one treatment facility to another, written notice shall be given to the committing court, the county attorney, the patient's counsel, and to the person's parent, health care agent, or spouse or, if none is known, to an interested person, and the designated agency.

Sec. 23. Minnesota Statutes 2008, section 253B.15, subdivision 1, is amended to read:

Subdivision 1. **Provisional discharge.** The head of the treatment facility may provisionally discharge any patient without discharging the commitment, unless the patient was found by the committing court to be a person who is mentally ill and dangerous to the public, or a sexually dangerous person or a sexual psychopathic personality.

Each patient released on provisional discharge shall have a written aftercare plan developed which specifies the services and treatment to be provided as part of the aftercare plan, the financial resources available to pay for the services specified, the expected period of provisional discharge, the precise goals for the granting of a final discharge, and conditions or restrictions on the patient during the period of the provisional discharge. The aftercare plan shall be provided to the patient, the patient's attorney, and the designated agency.

The aftercare plan shall be reviewed on a quarterly basis by the patient, designated agency and other appropriate persons. The aftercare plan shall contain the grounds upon which a provisional discharge may be revoked. The provisional discharge shall terminate on the date specified in the plan unless specific action is taken to revoke or extend it.

Sec. 24. Minnesota Statutes 2008, section 253B.18, subdivision 4a, is amended to read:

Subd. 4a. **Release on pass; notification.** A patient who has been committed as a person who is mentally ill and dangerous and who is confined at a secure treatment facility or has been transferred out of a state-operated services facility according to section 253B.18, subdivision 6, shall not be released on a pass unless the pass is part of a pass plan that has been approved by the medical director of the secure treatment facility. The pass plan must have a specific therapeutic purpose consistent with the treatment plan, must be established for a specific period of time, and must have specific levels of liberty delineated. The county case manager must be invited to participate in the development of the pass plan. At least ten days prior to a determination on the plan, the medical director

11.1 shall notify the designated agency, the committing court, the county attorney of the county
11.2 of commitment, an interested person, the local law enforcement agency where the facility
11.3 is located, the county attorney and the local law enforcement agency in the location where
11.4 the pass is to occur, the petitioner, and the petitioner's counsel of the plan, the nature of the
11.5 passes proposed, and their right to object to the plan. If any notified person objects prior
11.6 to the proposed date of implementation, the person shall have an opportunity to appear,
11.7 personally or in writing, before the medical director, within ten days of the objection, to
11.8 present grounds for opposing the plan. The pass plan shall not be implemented until the
11.9 objecting person has been furnished that opportunity. Nothing in this subdivision shall be
11.10 construed to give a patient an affirmative right to a pass plan.

11.11 Sec. 25. Minnesota Statutes 2008, section 253B.18, subdivision 5a, is amended to read:

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

11.13 (a) As used in this subdivision:

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

11.19 (2) "victim" means a person who has incurred loss or harm as a result of a crime
11.20 the behavior for which forms the basis for a commitment under this section or section
11.21 253B.185; and

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

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

11.32 (c) Before provisionally discharging, discharging, granting pass-eligible status,
11.33 approving a pass plan, or otherwise permanently or temporarily releasing a person
11.34 committed under this section ~~or section 253B.185~~ from a treatment facility, the head of the
11.35 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 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 by contacting, in writing, the county attorney in the county where the conviction for the crime occurred. A county attorney who receives a request for notification under this paragraph 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. 26. Minnesota Statutes 2008, section 253B.185, is amended to read:

253B.185 SEXUAL PSYCHOPATHIC PERSONALITY; SEXUALLY DANGEROUS.

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

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

(c) Upon the filing of a petition alleging that a proposed patient is a sexually dangerous person or is a person with a sexual psychopathic personality, the court shall hear the petition as provided in section 253B.18.

(d) In commitments under this section, the court shall commit the patient to a secure treatment facility unless the patient establishes by clear and convincing evidence that a less restrictive treatment program is available that is consistent with the patient's treatment needs and the requirements of public safety.

Subd. 1a. **Temporary confinement.** During any hearing held under this section, or pending emergency revocation of a provisional discharge, the court may order the patient or proposed patient temporarily confined in a jail or lockup but only if:

(1) there is no other feasible place of confinement for the patient within a reasonable distance;

(2) the confinement is for less than 24 hours or, if during a hearing, less than 24 hours prior to commencement and after conclusion of the hearing; and

(3) there are protections in place, including segregation of the patient, to ensure the safety of the patient.

Subd. 1b. **County attorney access to data.** Notwithstanding sections 144.291 to 144.298; 245.467, subdivision 6; 245.4876, subdivision 7; 260B.171; 260B.235, subdivision 8; 260C.171; and 609.749, subdivision 6, or any provision of chapter 13 or other state law, prior to filing a petition for commitment as a sexual psychopathic personality or as a sexually dangerous person, and upon notice to the proposed patient, the county attorney or the county attorney's designee may move the court for an order granting access to any records or data, to the extent it relates to the proposed patient, for the purpose of determining whether good cause exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition.

The court may grant the motion if: (1) the Department of Corrections refers the case for commitment as a sexual psychopathic personality or a sexually dangerous person; or (2) upon a showing that the requested category of data or records may be relevant to the determination by the county attorney or designee. The court shall decide a motion under this subdivision within 48 hours after a hearing on the motion. Notice to the proposed patient need not be given upon a showing that such notice may result in harm or harassment of interested persons or potential witnesses.

Notwithstanding any provision of chapter 13 or other state law, a county attorney considering the civil commitment of a person under this section may obtain records and data from the Department of Corrections or any probation or parole agency in this state upon request, without a court order, for the purpose of determining whether good cause exists to file a petition and, if a petition is filed, to support the allegations set forth in the petition. At the time of the request for the records, the county attorney shall provide notice of the request to the person who is the subject of the records.

14.1 Data collected pursuant to this subdivision shall retain their original status and, if not
14.2 public, are inadmissible in any court proceeding unrelated to civil commitment, unless
14.3 otherwise permitted.

14.4 Subd. 2. **Transfer to correctional facility.** (a) If a person has been committed
14.5 under this section and later is committed to the custody of the commissioner of corrections
14.6 for any reason, including but not limited to, being sentenced for a crime or revocation of
14.7 the person's supervised release or conditional release under section 244.05; 609.3455,
14.8 subdivision 6, 7, or 8; Minnesota Statutes 2004, section 609.108, subdivision 6; or
14.9 Minnesota Statutes 2004, section 609.109, subdivision 7, the person shall be transferred to
14.10 a facility designated by the commissioner of corrections without regard to the procedures
14.11 provided in ~~section 253B.18~~ subdivision 11.

14.12 (b) If a person is committed under this section after a commitment to the
14.13 commissioner of corrections, the person shall first serve the sentence in a facility
14.14 designated by the commissioner of corrections. After the person has served the sentence,
14.15 the person shall be transferred to a treatment program designated by the commissioner
14.16 of human services.

14.17 Subd. 3. **Not to constitute defense.** The existence in any person of a condition of a
14.18 sexual psychopathic personality or the fact that a person is a sexually dangerous person
14.19 shall not in any case constitute a defense to a charge of crime, nor relieve such person
14.20 from liability to be tried upon a criminal charge.

14.21 Subd. 4. **Statewide judicial panel; commitment proceedings.** (a) The Supreme
14.22 Court may establish a panel of district judges with statewide authority to preside over
14.23 commitment proceedings of sexual psychopathic personalities and sexually dangerous
14.24 persons. Only one judge of the panel is required to preside over a particular commitment
14.25 proceeding. Panel members shall serve for one-year terms. One of the judges shall be
14.26 designated as the chief judge of the panel, and is vested with the power to designate the
14.27 presiding judge in a particular case, to set the proper venue for the proceedings, and to
14.28 otherwise supervise and direct the operation of the panel. The chief judge shall designate
14.29 one of the other judges to act as chief judge whenever the chief judge is unable to act.

14.30 (b) If the Supreme Court creates the judicial panel authorized by this section, all
14.31 petitions for civil commitment brought under subdivision 1 shall be filed with the supreme
14.32 court instead of with the district court in the county where the proposed patient is present,
14.33 notwithstanding any provision of subdivision 1 to the contrary. Otherwise, all of the
14.34 other applicable procedures contained in this chapter apply to commitment proceedings
14.35 conducted by a judge on the panel.

Subd. 5. **Financial responsibility.** (a) For purposes of this subdivision, "state facility" has the meaning given in section 246.50 and also includes a Department of Corrections facility when the proposed patient is confined in such a facility pursuant to section 253B.045, subdivision 1a.

(b) Notwithstanding sections 246.54, 253B.045, and any other law to the contrary, when a petition is filed for commitment under this section pursuant to the notice required in section 244.05, subdivision 7, the state and county are each responsible for 50 percent of the cost of the person's confinement at a state facility or county jail, prior to commitment.

(c) The county shall submit an invoice to the state court administrator for reimbursement of the state's share of the cost of confinement.

(d) Notwithstanding paragraph (b), the state's responsibility for reimbursement is limited to the amount appropriated for this purpose.

~~Subd. 6. **Aftercare and case management.** The state, in collaboration with the designated agency, is responsible for arranging and funding the aftercare and case management services for persons under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999.~~

Subd. 7. **Rights of patients committed under this section.** (a) The commissioner or the commissioner's designee may limit the statutory rights described in paragraph (b) for patients committed to the Minnesota sex offender program under this section or with the commissioner's consent under section 246B.02. The statutory rights described in paragraph (b) may be limited only as necessary to maintain a therapeutic environment or the security of the facility or to protect the safety and well-being of patients, staff, and the public.

(b) The statutory rights that may be limited in accordance with paragraph (a) are those set forth in section 144.651, subdivision 19, personal privacy; section 144.651, subdivision 21, private communications; section 144.651, subdivision 22, retain and use of personal property; section 144.651, subdivision 25, manage personal financial affairs; section 144.651, subdivision 26, meet with visitors and participate in groups; section 253B.03, subdivision 2, correspond with others; and section 253B.03, subdivision 3, receive visitors and make telephone calls. Other statutory rights enumerated by sections 144.651 and 253B.03, or any other law, may be limited as provided in those sections.

Subd. 8. **Petition and report required.** (a) Within 120 days of receipt of a preliminary determination from a court under section 609.1351, or a referral from the commissioner of corrections pursuant to section 244.05, subdivision 7, a county attorney shall determine whether good cause under this section exists to file a petition, and if good cause exists, the county attorney or designee shall file the petition with the court.

(b) Failure to meet the requirements of paragraph (a) does not bar filing a petition under subdivision 1 any time the county attorney determines pursuant to subdivision 1 that good cause for such a petition exists.

~~(c) By February 1 of each year, the commissioner of human services shall annually report to the respective chairs of the divisions or committees of the senate and house of representatives that oversee human services finance regarding compliance with this subdivision.~~

Subd. 9. **Petition for reduction in custody.** (a) This subdivision applies only to committed persons as defined in paragraph (b). The procedures in ~~section 253B.18, subdivision 5a,~~ subdivision 10 for victim notification and right to submit a statement ~~under section 253B.18~~ apply to petitions filed and reductions in custody recommended under this subdivision.

(b) As used in this subdivision:

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

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

(c) A petition for a reduction in custody or an appeal of a revocation of provisional discharge may be filed by either the committed person or by the head of the treatment facility and must be filed with and considered by a panel of the special review board authorized under section 253B.18, subdivision 4c. A committed person may not petition the special review board any sooner than six months following either:

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

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

(d) The special review board shall hold a hearing on each petition before issuing a recommendation under paragraph (f). Fourteen days before the hearing, the committing ~~court, the county attorney of the county of commitment, the designated agency, an interested person, the petitioner and the petitioner's counsel, and the committed person~~ court; the county attorneys of the counties of commitment, financial responsibility, and

proposed placement; the designated agency; an interested person; the petitioner and the petitioner's counsel; and the committed person and the committed person's counsel must be given written notice by the commissioner of the time and place of the hearing before the special review board. Only those entitled to statutory notice of the hearing or those administratively required to attend may be present at the hearing. The patient may designate interested persons to receive notice by providing the names and addresses to the commissioner at least 21 days before the hearing.

(e) A person or agency receiving notice that submits documentary evidence to the ~~special review board before the hearing must also provide copies to the committed person, the committed person's counsel, the county attorney of the county of commitment, the case manager, and the commissioner. The special review board must consider any statements~~ special review board before the hearing must also provide copies to the committed person; the committed person's counsel; the county attorneys of the counties of commitment, financial responsibility, and proposed placement; the case manager; and the commissioner. The special review board must consider any statements received from victims under ~~section 253B.18, subdivision 5a~~ subdivision 10.

(f) Within 30 days of the hearing, the special review board shall issue written findings of fact and shall recommend denial or approval of the petition to the judicial appeal panel established under section 253B.19. The commissioner shall forward the recommendation of the special review board to the judicial appeal panel and to every person entitled to statutory notice. No reduction in custody or reversal of a revocation of provisional discharge recommended by the special review board is effective until it has been reviewed by the judicial appeal panel and until 15 days after an order from the judicial appeal panel affirming, modifying, or denying the recommendation.

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

18.1 Rules of Criminal Procedure, rule 20.02, that the elements of a crime have been proved,
18.2 and findings in commitment cases under this section or section 253B.18, that an act or
18.3 acts constituting a crime occurred.

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

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

18.20 (d) This subdivision applies only to victims who have requested notification by
18.21 contacting, in writing, the county attorney in the county where the criminal conviction
18.22 occurred or where the civil commitment was filed or, following commitment, the head of
18.23 the treatment facility. A county attorney who receives a request for notification under this
18.24 paragraph shall promptly forward the request to the commissioner of human services.

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

18.29 Subd. 11. **Transfer.** (a) A patient who is committed as a sexually dangerous person
18.30 or sexual psychopathic personality shall not be transferred out of a secure treatment
18.31 facility unless it appears to the satisfaction of the judicial appeal panel, after a hearing and
18.32 recommendation by a majority of the special review board, that the transfer is appropriate.
18.33 Transfer may be to other treatment programs under the commissioner's control.

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

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

(2) the need for security to accomplish continuing treatment;
(3) the need for continued institutionalization;
(4) which facility can best meet the person's needs; and
(5) whether transfer can be accomplished with a reasonable degree of safety for the public.

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

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

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

(2) whether the conditions of the provisional discharge plan will provide a reasonable degree of protection to the public and will enable the patient to adjust successfully to the community.

Subd. 13. **Provisional discharge plan.** A provisional discharge plan shall be developed, implemented, and monitored by the head of the treatment facility or designee in conjunction with the patient and other appropriate persons. The head of the treatment facility or designee shall, at least quarterly, review the plan with the patient and submit a written report to the designated agency concerning the patient's status and compliance with each term of the plan.

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

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

- (1) the patient has departed from the conditions of the provisional discharge plan; or
- (2) the patient is exhibiting behavior which may be dangerous to self or others.

(b) The head of the treatment facility may revoke the provisional discharge and, either orally or in writing, order that the patient be immediately returned to the treatment

facility. A report documenting reasons for revocation shall be issued by the head of the treatment facility within seven days after the patient is returned to the treatment facility. Advance notice to the patient of the revocation is not required.

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

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

Subd. 16. **Return of absent patient.** If the patient is absent without authorization, the head of the treatment facility or designee may request a peace officer to return the patient to the treatment facility. The head of the treatment facility shall inform the committing court of the revocation or absence, and the court shall direct a peace officer in the county where the patient is located to return the patient to the treatment facility or to another treatment facility. The expense of returning the patient to a treatment facility shall be paid by the commissioner unless paid by the patient or other persons on the patient's behalf.

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

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

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

Subd. 19. **Aftercare services.** The Minnesota sex offender program shall provide the supervision, aftercare, and case management services for a person under commitment as sexual psychopathic personalities and sexually dangerous persons discharged after July 1, 1999. The designated agency shall assist with client eligibility for public welfare benefits and will provide those services that are currently available exclusively through county government.

Prior to the date of discharge or provisional discharge of any patient committed as a sexual psychopathic personality or sexually dangerous person, the head of the treatment facility or designee shall establish a continuing plan of aftercare services for the patient, including a plan for medical and behavioral health services, financial sustainability, housing, social supports, or other assistance the patient needs. The Minnesota sex offender program shall provide case management services and shall assist the patient in finding employment, suitable shelter, and adequate medical and behavioral health services and otherwise assist in the patient's readjustment to the community.

Sec. 27. Minnesota Statutes 2008, section 253B.19, subdivision 2, is amended to read:

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

(b) A person committed as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185, or committed as both mentally ill and dangerous to the public under section 253B.18 and as a sexual psychopathic personality or as a sexually dangerous person under section 253B.185; the county attorney of the county ~~from which the person was committed or the county of commitment,~~ financial responsibility, or proposed placement; or the commissioner may petition the judicial appeal panel for a rehearing and reconsideration of a decision of the special review board under section 253B.185, subdivision 9. The petition must be filed with the Supreme Court within 30 days after the decision is mailed by the commissioner as required in section 253B.185, subdivision 9, paragraph (f). The hearing must be held within 180 days of the filing of the petition unless an extension is granted for good cause. If no party petitions the

22.1 judicial appeal panel for a rehearing or reconsideration within 30 days, the judicial appeal
22.2 panel shall either issue an order adopting the recommendations of the special review board
22.3 or set the matter on for a hearing pursuant to this paragraph.

22.4 (c) For an appeal under paragraph (a) or (b), the Supreme Court shall refer the
22.5 petition to the chief judge of the judicial appeal panel. The chief judge shall notify the
22.6 ~~patient, the county attorney of the county of commitment, the designated agency, the~~
22.7 ~~commissioner, the head of the treatment facility, any interested person, and other persons~~
22.8 patient; the county attorneys of the counties of commitment, financial responsibility, and
22.9 proposed placement; the designated agency; the commissioner; the head of the treatment
22.10 facility; any interested persons; and other persons the chief judge designates; of the time
22.11 and place of the hearing on the petition. The notice shall be given at least 14 days prior to
22.12 the date of the hearing.

22.13 (d) Any person may oppose the petition. ~~The patient, the patient's counsel, the~~
22.14 ~~county attorney of the committing county or the county of financial responsibility, and the~~
22.15 The patient; the patient's counsel; any of the county attorneys of the committing county,
22.16 or the county of financial responsibility and county of placement, and the commissioner
22.17 shall participate as parties to the proceeding pending before the judicial appeal panel
22.18 and, except when the patient is solely committed as mentally ill and dangerous, shall, no
22.19 later than 20 days before the hearing on the petition, inform the judicial appeal panel and
22.20 the opposing party in writing whether they support or oppose the petition and provide a
22.21 summary of facts in support of their position. The judicial appeal panel may appoint
22.22 examiners and may adjourn the hearing from time to time. It shall hear and receive all
22.23 relevant testimony and evidence and make a record of all proceedings. The patient,
22.24 the patient's counsel, and the county ~~attorney of the committing county or the county~~
22.25 ~~of financial responsibility~~ attorneys have the right to be present and may present and
22.26 cross-examine all witnesses and offer a factual and legal basis in support of their positions.
22.27 The petitioning party seeking discharge or provisional discharge bears the burden of going
22.28 forward with the evidence which means presenting a prima facie case with competent
22.29 evidence to show that the person is entitled to the requested relief. If the petitioning
22.30 party has met this burden, then the party opposing discharge bears the burden of proof by
22.31 clear and convincing evidence that ~~the respondent is in need of commitment~~ discharge or
22.32 provisional discharge should be denied. A party seeking a transfer pursuant to section
22.33 253B.18, subdivision 6, or 253B.185, subdivision 11, must establish by a preponderance
22.34 of the evidence that transfer is appropriate.