

A bill for an act
relating to crime prevention; providing for indeterminate sentencing for certain
convicted sex offenders; proposing coding for new law in Minnesota Statutes,
chapter 609.

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

Section 1. **[609.3458] INDETERMINATE SENTENCE FOR PREDATORY SEX
OFFENDERS.**

Subdivision 1. **Definitions.** As used in this section:

(1) "sex offense" means a violation of section 609.342, 609.343, 609.344, or 609.345;

(2) "predatory sex offender" means a person who:

(i) is unable to control the person's sexual impulses;

(ii) is dangerous to other persons; and

(iii) has a pattern of harmful sexual conduct; and

(3) "harmful sexual conduct" means sexual conduct that creates a substantial
likelihood of serious physical or emotional harm to another.

Subd. 2. **Applicability.** A prosecuting attorney may charge a person under this
section when probable cause exists that the person:

(1) committed a sex offense; and

(2) is a predatory sex offender.

Subd. 3. **Procedures.** A person subject to prosecution under this section shall have
a bifurcated trial. The first phase of the trial shall determine the person's guilt on the sex
offense charge. If the person is found guilty of the sex offense, the second phase of the
trial shall determine whether the person is a predatory sex offender. In both phases of the
trial, the burden of proof is on the state and the standard of proof is beyond a reasonable

doubt. A person charged under this section has all of the rights of a criminal defendant in both phases of the trial.

Subd. 4. Indeterminate sentence; minimum and maximum term specified. (a) A person convicted of a sex offense who has been found by the fact finder to be a predatory sex offender shall be committed to the custody of the commissioner of corrections for the term required by paragraph (b).

(b) The minimum sentence of incarceration for offenders sentenced under paragraph (a) shall be twice the presumptive sentence under the sentencing guidelines for a person with the offender's criminal history. When the sentencing guidelines presume a stayed sentence for the sex offense, the court shall specify a minimum sentence. Notwithstanding any law to the contrary and the statutory maximum sentence for the offense, the maximum sentence is 60 years.

(c) A person sentenced under this section and subsequently released shall be placed on conditional release as provided for in subdivision 9.

(d) Notwithstanding section 609.135, the court may not stay the imposition or execution of the sentence required by this subdivision. An offender committed to the custody of the commissioner of corrections under this section may not be released from incarceration except as provided in this section and section 244.05, subdivision 8.

Subd. 5. Sentence of persons not found to be predatory sex offenders. If the person is convicted of the sex offense but is not determined to be a predatory sex offender, the court shall sentence the offender as otherwise provided by law.

Subd. 6. Release authority. The commissioner of corrections, under rules promulgated by the commissioner, may grant supervised release to offenders sentenced under this section.

Subd. 7. Petition for release, hearing. (a) A person who has served the minimum period of incarceration to which the person was sentenced may petition the commissioner of corrections for release. The commissioner shall hold a hearing on each petition for release prior to making any determination. Within 45 days of the hearing, the commissioner shall give written notice of the time and place of the hearing to all interested parties, including the petitioner, the sentencing court, the county attorney's office that prosecuted the case, and any victims of the crime who requested notification. The hearing must be held on the record. Upon the approval of the commissioner, the petitioner may subpoena witnesses to appear at the hearing.

(b) If the commissioner determines the person satisfies the criteria for conditional release, the commissioner shall release the person from incarceration no later than 14 days after making a determination.

3.1 (c) If the commissioner rejects the person's petition for release, the commissioner
3.2 must specify in writing the reasons for the rejection. The person may not petition for
3.3 release again until 24 months have elapsed since the rejection, unless the commissioner
3.4 specifies a shorter time period.

3.5 Subd. 8. **Criteria for release.** (a) A person sentenced under this section shall not
3.6 be released from incarceration unless it appears to the satisfaction of the commissioner
3.7 that the person:

3.8 (1) no longer poses a threat to the public;

3.9 (2) is no longer in need of programming in a secure facility; and

3.10 (3) is capable of reintegration with the general public.

3.11 (b) The person seeking release has the burden of showing, by clear and convincing
3.12 evidence, that the criteria in paragraph (a) have been met.

3.13 Subd. 9. **Conditional release.** (a) A person sentenced under this section shall serve,
3.14 upon release from incarceration, a conditional release term. The conditional release term
3.15 shall be the 60-year maximum term under this section less the amount of time actually
3.16 served, but the term cannot be less than ten years.

3.17 (b) The commissioner of corrections shall establish the conditions of release for a
3.18 person granted conditional release.

3.19 (c) The county attorney in the county where the conviction occurred, the person's
3.20 conditional release agent, or any other interested party may file a petition with the court
3.21 alleging that the person failed to satisfy any condition of release. If the court determines
3.22 that a person has violated a condition of release, the court may order an appropriate
3.23 sanction, including, but not limited to, incarcerating the person for a period specified by
3.24 the court in a local or state correctional facility. The period may be of any duration up to
3.25 the remainder of time left in the person's conditional release term.

3.26 **EFFECTIVE DATE.** This section is effective August 1, 2011, and applies to crimes
3.27 committed on or after that date.