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State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 2176

03/06/2017 Authored by O'Neill, Becker-Finn, Lohmer, Cornish, Hilstrom and others
The bill was read for the first time and referred to the Committee on Public Safety and Security Policy and Finance

1.1 A bill for an act
1.2 relating to public safety; requiring probation and parole agents to consider and
1.3 recommend local options to address technical violations by nonviolent controlled
1.4 substance offenders; appropriating money to facilitate access to local programs;
1.5 amending Minnesota Statutes 2016, sections 243.05, subdivision 1; 244.05,
1.6 subdivision 3; 244.198, by adding a subdivision; 609.14, by adding a subdivision.

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

1.8 Section 1. Minnesota Statutes 2016, section 243.05, subdivision 1, is amended to read:

1.9 Subdivision 1. **Conditional release.** (a) The commissioner of corrections may parole
1.10 any person sentenced to confinement in any state correctional facility for adults under the
1.11 control of the commissioner of corrections, provided that:

1.12 (1) no inmate serving a life sentence for committing murder before May 1, 1980, other
1.13 than murder committed in violation of clause (1) of section 609.185 who has not been
1.14 previously convicted of a felony shall be paroled without having served 20 years, less the
1.15 diminution that would have been allowed for good conduct had the sentence been for 20
1.16 years;

1.17 (2) no inmate serving a life sentence for committing murder before May 1, 1980, who
1.18 has been previously convicted of a felony or though not previously convicted of a felony
1.19 is serving a life sentence for murder in the first degree committed in violation of clause (1)
1.20 of section 609.185 shall be paroled without having served 25 years, less the diminution
1.21 which would have been allowed for good conduct had the sentence been for 25 years;

1.22 (3) any inmate sentenced prior to September 1, 1963, who would be eligible for parole
1.23 had the inmate been sentenced after September 1, 1963, shall be eligible for parole; and

2.1 (4) any new rule or policy or change of rule or policy adopted by the commissioner of
2.2 corrections which has the effect of postponing eligibility for parole has prospective effect
2.3 only and applies only with respect to persons committing offenses after the effective date
2.4 of the new rule or policy or change.

2.5 (b) Upon being paroled and released, an inmate is and remains in the legal custody and
2.6 under the control of the commissioner, subject at any time to be returned to a facility of the
2.7 Department of Corrections established by law for the confinement or treatment of convicted
2.8 persons and the parole rescinded by the commissioner.

2.9 (c) The written order of the commissioner of corrections, is sufficient authority for any
2.10 peace officer, state correctional investigator, or state parole and probation agent to retake
2.11 and place in actual custody any person on parole or supervised release. In addition, when
2.12 it appears necessary in order to prevent escape or enforce discipline, any state parole and
2.13 probation agent or state correctional investigator may, without order of warrant, take and
2.14 detain a parolee or person on supervised release or work release and bring the person to the
2.15 commissioner for action.

2.16 (d) The written order of the commissioner of corrections is sufficient authority for any
2.17 peace officer, state correctional investigator, or state parole and probation agent to retake
2.18 and place in actual custody any person on probation under the supervision of the
2.19 commissioner pursuant to section 609.135. Additionally, when it appears necessary in order
2.20 to prevent escape or enforce discipline, any state parole and probation agent or state
2.21 correctional investigator may, without an order, retake and detain a probationer and bring
2.22 the probationer before the court for further proceedings under section 609.14.

2.23 (e) The written order of the commissioner of corrections is sufficient authority for any
2.24 peace officer, state correctional investigator, or state parole and probation agent to detain
2.25 any person on pretrial release who absconds from pretrial release or fails to abide by the
2.26 conditions of pretrial release.

2.27 (f) Persons conditionally released, and those on probation under the supervision of the
2.28 commissioner of corrections pursuant to section 609.135 may be placed within or outside
2.29 the boundaries of the state at the discretion of the commissioner of corrections or the court,
2.30 and the limits fixed for these persons may be enlarged or reduced according to their conduct.

2.31 (g) Except as otherwise provided in subdivision 1b, in considering applications for
2.32 conditional release or discharge, the commissioner is not required to hear oral argument
2.33 from any attorney or other person not connected with an adult correctional facility of the
2.34 Department of Corrections in favor of or against the parole or release of any inmates. The

3.1 commissioner may institute inquiries by correspondence, taking testimony, or otherwise,
3.2 as to the previous history, physical or mental condition, and character of the inmate and, to
3.3 that end, has the authority to require the attendance of the chief executive officer of any
3.4 state adult correctional facility and the production of the records of these facilities, and to
3.5 compel the attendance of witnesses. The commissioner is authorized to administer oaths to
3.6 witnesses for these purposes.

3.7 (h) Unless the district court directs otherwise, state parole and probation agents may
3.8 require a person who is under the supervision of the commissioner of corrections to perform
3.9 community work service for violating a condition of probation imposed by the court.
3.10 Community work service may be imposed for the purpose of protecting the public, to aid
3.11 the offender's rehabilitation, or both. Agents may impose up to eight hours of community
3.12 work service for each violation and up to a total of 24 hours per offender per 12-month
3.13 period, beginning with the date on which community work service is first imposed. The
3.14 commissioner may authorize an additional 40 hours of community work services, for a total
3.15 of 64 hours per offender per 12-month period, beginning with the date on which community
3.16 work service is first imposed. At the time community work service is imposed, parole and
3.17 probation agents are required to provide written notice to the offender that states:

- 3.18 (1) the condition of probation that has been violated;
- 3.19 (2) the number of hours of community work service imposed for the violation; and
- 3.20 (3) the total number of hours of community work service imposed to date in the 12-month
3.21 period.

3.22 An offender may challenge the imposition of community work service by filing a petition
3.23 in district court. An offender must file the petition within five days of receiving written
3.24 notice that community work service is being imposed. If the offender challenges the
3.25 imposition of community work service, the state bears the burden of showing, by a
3.26 preponderance of the evidence, that the imposition of community work service is reasonable
3.27 under the circumstances.

3.28 Community work service includes sentencing to service.

3.29 (i) Prior to revoking a nonviolent controlled substance offender's parole or probation
3.30 based on a technical violation, when the offender does not present a risk to the public and
3.31 the offender is amenable to continued supervision in the community, a parole or probation
3.32 agent must identify community options to address and correct the violation including, but
3.33 not limited to, inpatient chemical dependency treatment. If a probation or parole agent
3.34 determines that community options are appropriate, the agent shall seek to restructure the

4.1 offender's terms of release to incorporate those options. If an offender on probation stipulates
4.2 in writing to restructure the terms of release, a probation agent must forward a report to the
4.3 district court containing:

4.4 (1) the specific nature of the technical violation of probation;

4.5 (2) the recommended restructure to the terms of probation; and

4.6 (3) a copy of the offender's signed stipulation indicating that the offender consents to
4.7 the restructuring of probation.

4.8 The recommended restructuring of probation becomes effective when confirmed by a
4.9 judge. The order of the court shall be proof of such confirmation and amend the terms of
4.10 the sentence imposed by the court under section 609.135. If a nonviolent controlled substance
4.11 offender's parole or probation is revoked, the offender's agent must first attempt to place
4.12 the offender in a local jail. For purposes of this paragraph, "nonviolent controlled substance
4.13 offender" is a person who meets the criteria described under section 244.0513, subdivision
4.14 2, clauses (1), (2), and (5), and "technical violation" has the meaning given in section
4.15 244.196, subdivision 6.

4.16 Sec. 2. Minnesota Statutes 2016, section 244.05, subdivision 3, is amended to read:

4.17 Subd. 3. **Sanctions for violation.** If an inmate violates the conditions of the inmate's
4.18 supervised release imposed by the commissioner, the commissioner may:

4.19 (1) continue the inmate's supervised release term, with or without modifying or enlarging
4.20 the conditions imposed on the inmate; or

4.21 (2) revoke the inmate's supervised release and reimprison the inmate for the appropriate
4.22 period of time.

4.23 Prior to revoking a nonviolent controlled substance offender's supervised release based
4.24 on a technical violation, when the offender does not present a risk to the public and the
4.25 offender is amenable to continued supervision in the community, the commissioner must
4.26 identify community options to address and correct the violation including, but not limited
4.27 to, inpatient chemical dependency treatment. If the commissioner determines that community
4.28 options are appropriate, the commissioner shall restructure the inmate's terms of release to
4.29 incorporate those options. If a nonviolent controlled substance offender's supervised release
4.30 is revoked, the offender's agent must first attempt to place the offender in a local jail. For
4.31 purposes of this subdivision, "nonviolent controlled substance offender" is a person who
4.32 meets the criteria described under section 244.0513, subdivision 2, clauses (1), (2), and (5),
4.33 and "technical violation" has the meaning given in section 244.196, subdivision 6.

5.1 The period of time for which a supervised release may be revoked may not exceed the
5.2 period of time remaining in the inmate's sentence, except that if a sex offender is sentenced
5.3 and conditionally released under Minnesota Statutes 2004, section 609.108, subdivision 5,
5.4 the period of time for which conditional release may be revoked may not exceed the balance
5.5 of the conditional release term.

5.6 Sec. 3. Minnesota Statutes 2016, section 244.198, is amended by adding a subdivision to
5.7 read:

5.8 Subd. 1a. **Alternatives to incarceration.** At a sanctions conference regarding a
5.9 nonviolent controlled substance offender, when the offender does not present a risk to the
5.10 public and the offender is amenable to continued supervision in the community, a probation
5.11 agency must identify community options to address and correct the violation including, but
5.12 not limited to, inpatient chemical dependency treatment. If the agency determines that
5.13 community options are appropriate, the county probation officer shall recommend a sanction
5.14 that incorporates those options. For purposes of this subdivision, "nonviolent controlled
5.15 substance offender" is a person who meets the criteria described under section 244.0513,
5.16 subdivision 2, clauses (1), (2), and (5).

5.17 Sec. 4. Minnesota Statutes 2016, section 609.14, is amended by adding a subdivision to
5.18 read:

5.19 Subd. 2a. **Alternatives to incarceration.** (a) A probation agent must present the court
5.20 with local options to address and correct the violation including, but not limited to, inpatient
5.21 chemical dependency treatment when the defendant at a summary hearing provided by
5.22 subdivision 2 is:

5.23 (1) a nonviolent controlled substance offender;

5.24 (2) subject to supervised probation;

5.25 (3) appearing based on a technical violation; and

5.26 (4) admitting or found to have violated any of the conditions of probation.

5.27 (b) For purposes of this subdivision, "nonviolent controlled substance offender" is a
5.28 person who meets the criteria described under section 244.0513, subdivision 2, clauses (1),
5.29 (2), and (5), and "technical violation" has the meaning given in section 244.196, subdivision
5.30 6.

6.1 Sec. 5. ALTERNATIVES TO INCARCERATION PILOT PROGRAM FUND.

6.2 (a) \$..... in fiscal year 2018 and \$..... in fiscal year 2019 are appropriated from the
6.3 general fund to the Department of Corrections. Agencies providing supervision to offenders
6.4 on probation, parole, or supervised release are eligible for grants to facilitate access to
6.5 community options including, but not limited to, inpatient chemical dependency treatment
6.6 for nonviolent controlled substance offenders to address and correct behavior that is, or is
6.7 likely to result in, a technical violation of the conditions of release. For purposes of this
6.8 section, "nonviolent controlled substance offender" is a person who meets the criteria
6.9 described under Minnesota Statutes, section 244.0513, subdivision 2, clauses (1), (2), and
6.10 (5), and "technical violation" has the meaning given in Minnesota Statutes, section 244.196,
6.11 subdivision 6.

6.12 (b) The Department of Corrections shall establish criteria for selecting grant recipients
6.13 and the amount awarded to each grant recipient.

6.14 (c) By January 15, 2019, the commissioner of corrections shall submit a report to the
6.15 chairs of the house of representatives and senate committees with jurisdiction over public
6.16 safety policy and finance. At a minimum, the report must include:

6.17 (1) the total number of grants issued under this program;

6.18 (2) the average amount of each grant;

6.19 (3) the community services accessed as a result of the grants;

6.20 (4) a summary of the type of supervision offenders were under when a grant was used
6.21 to help access a community option;

6.22 (5) the number of individuals who completed, and the number who failed to complete,
6.23 programs accessed as a result of this grant; and

6.24 (6) the number of individuals who violated the terms of release following participation
6.25 in a program accessed as a result of this grant, separating technical violations and new
6.26 criminal offenses.