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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 2349

03/22/2021 Authored by Becker-Finn and Wolgamott The bill was read for the first time and referred to the Committee on Public Safety and Criminal Justice Reform Finance and Policy

1.1 A bill for an act
1.2 relating to corrections; establishing the Minnesota Rehabilitation and Reinvestment
1.3 Act; providing for earned incentive release and supervision abatement status;
1.4 requiring reports; appropriating money; amending Minnesota Statutes 2020, sections
1.5 244.03; 244.05, subdivision 1b; proposing coding for new law in Minnesota
1.6 Statutes, chapter 244.

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

1.8 Section 1. Minnesota Statutes 2020, section 244.03, is amended to read:

1.9 244.03 REHABILITATIVE PROGRAMS.

1.10 The commissioner shall provide appropriate mental health programs and vocational and
1.11 educational programs with employment-related goals for inmates. The selection, design
1.12 and implementation of programs under this section shall be the sole responsibility of the
1.13 commissioner, acting within the limitations imposed by the funds appropriated for such
1.14 programs develop, implement, and provide appropriate substance abuse treatment programs;
1.15 sexual offender treatment programming; medical and mental health services; and vocational,
1.16 employment and career, educational, and other rehabilitative programs for persons committed
1.17 to the authority of the commissioner.

1.18 While evidence-based programs shall be prioritized, the selection, design, and
1.19 implementation of programs under this section shall be the sole responsibility of the
1.20 commissioner, acting within the limitations imposed by the funds appropriated for the
1.21 programs under this section.

1.22 No action challenging the level of expenditures for programs authorized under this
1.23 section, nor any action challenging the selection, design or implementation of these programs,

2.1 including employee assignments, may be maintained by an ~~inmate~~ incarcerated person in
2.2 any court in this state.

2.3 The commissioner may impose disciplinary sanctions upon any ~~inmate~~ incarcerated
2.4 person who refuses to participate in rehabilitative programs.

2.5 Sec. 2. **[244.031] REHABILITATIVE NEED ASSESSMENT AND**
2.6 **INDIVIDUALIZED PROGRAM PLAN REQUIRED.**

2.7 (a) The commissioner shall develop a comprehensive need assessment process for each
2.8 person who is serving a fixed term of imprisonment in a state correctional facility on or
2.9 after August 1, 2021, and has 365 days or more remaining until the person's scheduled
2.10 supervised release date.

2.11 (b) Upon completion of the assessment process, the commissioner shall ensure the
2.12 development of an individualized program plan, along with identified goals for every person
2.13 committed to the authority of the Department of Corrections. The individualized program
2.14 plan shall be holistic in nature in that it identifies intended outcomes for addressing the
2.15 incarcerated person's needs and risk factors, the individual's identified strengths, and available
2.16 and needed community supports, including victim safety considerations as required in
2.17 section 244.0552, if applicable.

2.18 (c) When an individual is committed to the custody of the commissioner for a crime
2.19 resulting in harm against a person or persons, the commissioner shall provide opportunity
2.20 for input during the assessment and program plan process. Victim input may include a
2.21 summary of victim concerns relative to release, concerns related to victim safety during the
2.22 committed person's term of imprisonment, and requests for imposition of victim safety
2.23 protocols as additional conditions of imprisonment or supervised release.

2.24 (d) The commissioner shall consider victim input statements in program planning and
2.25 establishing conditions governing confinement or release.

2.26 (e) For an individual with less than 365 days remaining until the individual's supervised
2.27 release date, the commissioner, in consultation with the incarcerated individual, shall develop
2.28 a transition and release plan.

2.29 Sec. 3. **[244.032] EARNED INCENTIVE RELEASE.**

2.30 (a) For the purposes of this section, "earned incentive release" means release credit that
2.31 is earned and subtracted from the term of imprisonment for completion of objectives
2.32 established by an incarcerated person's individualized program plan.

3.1 (b) To encourage and support rehabilitation when consistent with public interest and
3.2 public safety, the commissioner of corrections, in consultation with the Minnesota County
3.3 Attorney's Association, Minnesota Board of Public Defense, Minnesota Association of
3.4 Community Corrections Act Counties, Minnesota Indian Women's Sexual Assault Coalition,
3.5 Violence Free Minnesota, Minnesota Coalition Against Sexual Assault, Minnesota Alliance
3.6 on Crime, the Minnesota Sheriff's Association, Minnesota Chiefs of Police Association,
3.7 and the Minnesota Police and Peace Officers Association, shall establish policy providing
3.8 for earned incentive release credit and forfeiture of the credit as part of the term of
3.9 imprisonment. The policy shall:

3.10 (1) provide circumstances upon which an incarcerated person may earn incentive release
3.11 credits, including participation in rehabilitative programming as required under section
3.12 244.031; and

3.13 (2) address those circumstances where (i) the capacity to provide treatment programming
3.14 in the correctional facility is diminished but the services are available to the community,
3.15 and (ii) the conditions under which the incarcerated person could be released to the
3.16 community-based resource but remain subject to commitment to the commissioner and
3.17 considered for earned incentive release credit.

3.18 (c) The commissioner shall also develop a policy establishing a process for assessing
3.19 and addressing any systemic and programmatic gender and racial disparities that may be
3.20 identified in the award of earned incentive release credits.

3.21 **Sec. 4. [244.033] APPLICATION OF EARNED INCENTIVE RELEASE CREDIT.**

3.22 (a) Earned incentive release credits shall be subtracted from the term of imprisonment
3.23 but shall not be added the person's supervised release term. The maximum amount of earned
3.24 incentive release credit that can be earned and subtracted from the term of imprisonment is
3.25 17 percent of the term of imprisonment, but in no case shall the credit reduce the term of
3.26 imprisonment to less than one-half of the incarcerated person's executed sentence.

3.27 (b) The earned incentive release program is separate and distinct from other legislatively
3.28 authorized release programs, including the challenge incarceration program, work release,
3.29 conditional medical release, or Conditional Release of Nonviolent Controlled Substance
3.30 Offenders program, which may have unique statutory requirements and obligations.

4.1 Sec. 5. [244.034] CERTAIN OFFENSES INELIGIBLE FOR EARNED INCENTIVE
4.2 RELEASE CREDIT.

4.3 (a) A person committed to the commissioner for any of the following offenses shall be
4.4 ineligible for earned incentive release credit under sections 244.031 to 244.033:

4.5 (1) section 609.185, first degree murder, or 609.19, murder in the second degree;

4.6 (2) section 609.195, murder in the third degree, or 609.221, assault in the first degree;

4.7 (3) section 609.342, first degree criminal sexual conduct, 609.343, second degree criminal
4.8 sexual conduct, or 609.344, third degree criminal sexual conduct, if the offense was
4.9 committed with force or violence;

4.10 (4) section 609.3455, subdivision 5, dangerous sex offenders, where the court shall
4.11 specify a minimum term of imprisonment, based on the sentencing guidelines or any
4.12 applicable mandatory minimum sentence, that must be served before the offender may be
4.13 considered for supervised release;

4.14 (5) section 609.229, subdivision 4, paragraph (b), crimes committed for the benefit of
4.15 a gang where any person convicted and sentenced as required by section 609.229, subdivision
4.16 4, paragraph (a), is not eligible for probation, parole, discharge, work release, or supervised
4.17 release until that person has served the full term of imprisonment as provided by law;

4.18 (6) section 152.026 where a person with a mandatory minimum sentence imposed for
4.19 a first or second degree controlled substance crime is not eligible for probation, parole,
4.20 discharge, or supervised release until that person has served the full term of imprisonment
4.21 as provided by law;

4.22 (7) a person who was convicted in any other jurisdiction of a crime and the person's
4.23 supervision was transferred to this state;

4.24 (8) section 243.166, subdivision 5, paragraph (e), predatory offender registration;

4.25 (9) section 609.11, subdivision 6, use of firearm or dangerous weapon during the
4.26 commission of certain offenses;

4.27 (10) section 609.221, subdivision 2, paragraph (b), use of deadly force against a peace
4.28 officer, prosecutor, judge, or correctional employee;

4.29 (11) section 609.2231, subdivision 3a, paragraph (d), assault against secure treatment
4.30 personnel; and

5.1 (12) a person subject to a conditional release term under section 609.3455, subdivisions
 5.2 6 and 7, whether on the present offense or previous offense for which a term of conditional
 5.3 release remains.

5.4 (b) Persons serving life sentences, persons given indeterminate sentences for crimes
 5.5 committed on or before April 30, 1980, or persons subject to good time under section 244.04,
 5.6 or similar laws are ineligible for earned incentive release credit.

5.7 Sec. 6. Minnesota Statutes 2020, section 244.05, subdivision 1b, is amended to read:

5.8 Subd. 1b. **Supervised release; offenders who commit crimes on or after August 1,**
 5.9 **1993.** (a) Except as provided in subdivisions 4 and 5, every inmate sentenced to prison for
 5.10 a felony offense committed on or after August 1, 1993, shall serve a supervised release term
 5.11 upon completion of the inmate's term of imprisonment and any disciplinary confinement
 5.12 period imposed by the commissioner due to the inmate's violation of any disciplinary rule
 5.13 adopted by the commissioner or refusal to participate in a rehabilitative program required
 5.14 under section 244.03. The amount of time the inmate serves on supervised release shall be
 5.15 equal in length to the amount of time remaining in the inmate's executed sentence after the
 5.16 inmate has served the term of imprisonment reduced by any earned incentive release credit
 5.17 and any disciplinary confinement period imposed by the commissioner.

5.18 (b) No inmate who violates a disciplinary rule or refuses to participate in a rehabilitative
 5.19 program as required under section 244.03 shall be placed on supervised release until the
 5.20 inmate has served the disciplinary confinement period for that disciplinary sanction or until
 5.21 the inmate is discharged or released from punitive ~~segregation~~ restrictive housing
 5.22 confinement, whichever is later. The imposition of a disciplinary confinement period shall
 5.23 be considered to be a disciplinary sanction imposed upon an inmate, and the procedure for
 5.24 imposing the disciplinary confinement period and the rights of the inmate in the procedure
 5.25 shall be those in effect for the imposition of other disciplinary sanctions at each state
 5.26 correctional institution.

5.27 Sec. 7. **[244.0551] EARNED COMPLIANCE CREDIT AND SUPERVISION**
 5.28 **ABATEMENT STATUS.**

5.29 (a) For the purposes of this section, the following terms have the meanings given them:

5.30 (1) "supervision abatement status" means an end to active correctional supervision of a
 5.31 supervised individual without effect on the legal expiration date of the executed sentence
 5.32 less any earned incentive release credit; and

6.1 (2) "earned compliance credit" means a one-month reduction from the period of active
6.2 supervision of the supervised release term for every two months that a supervised individual
6.3 exhibits compliance with the conditions and goals of the individual's supervision plan.

6.4 (b) The commissioner of corrections shall adopt policy providing for earned compliance
6.5 credit and forfeiture of the credit. The commissioner shall adjust the period of an individual's
6.6 supervised release term for earned compliance credits accrued under a program created
6.7 under this section. Once a combination of time served, earned incentive credit, along with
6.8 a term of supervision and earned compliance credits equal the supervised release term, the
6.9 commissioner shall place the individual on supervision abatement status.

6.10 (c) A person whose period of active supervision has been completely reduced as a result
6.11 of earned compliance credits shall remain on supervision abatement status until the expiration
6.12 of the executed sentence, less any earned incentive release credit. If an individual is on
6.13 supervision abatement status and is charged with a new presumptive commit felony-level
6.14 crime against a person, the commissioner may return the individual to active supervision
6.15 and impose any additional sanctions, up to and including revocation from supervised release
6.16 and return to the custody of the commissioner.

6.17 (d) A person who is placed on supervision abatement status under this section may not
6.18 be required to regularly report to a supervised release agent or pay a supervision fee but
6.19 must continue to obey all laws, report any new criminal charges, and abide by section
6.20 243.1605 before seeking written authorization to relocate to another state.

6.21 (e) This section does not apply to persons serving life sentences, persons given
6.22 indeterminate sentences for crimes committed on or before April 30, 1980, or persons subject
6.23 to good time under section 244.04, or similar laws.

6.24 **Sec. 8. [244.0552] VICTIM INPUT.**

6.25 When an individual is committed to the custody of the commissioner for a crime of
6.26 violence and is eligible for earned incentive release credit under section 244.032, the
6.27 commissioner shall make reasonable efforts to notify the victim of the committed person's
6.28 eligibility for earned incentive release. Victim input may include a summary of victim
6.29 concerns relative to earned incentive release eligibility, concerns related to victim safety
6.30 during the committed person's term of imprisonment, and requests for imposition of victim
6.31 safety protocols as additional conditions of imprisonment or supervised release.

6.32 The commissioner shall consider victim input statements in establishing requirements
6.33 governing conditions of release. The commissioner shall provide the name and telephone

7.1 number of the local victim agency serving the jurisdiction of release to any victim providing
7.2 input on earned incentive release.

7.3 **Sec. 9. [244.0553] VICTIM NOTIFICATION.**

7.4 Nothing in sections 244.031 to 244.033 or 244.0551 to 244.0554 limits any victim
7.5 notification obligations of the commissioner of corrections required by statute related to a
7.6 change in custody status, committing offense, end of confinement review, or notification
7.7 registration.

7.8 **Sec. 10. [244.0554] INTERSTATE COMPACT.**

7.9 As may be allowed by compact requirements established in section 243.1605, a person
7.10 subject to supervision on a Minnesota sentence in another state under the Interstate Compact
7.11 for Adult Offender Supervision may be eligible for supervision abatement status pursuant
7.12 to this chapter only if they meet eligibility criteria as established in this section and certified
7.13 by a supervising entity in another state.

7.14 **Sec. 11. [244.0555] REALLOCATION OF EARNED INCENTIVE RELEASE**
7.15 **SAVINGS.**

7.16 Subdivision 1. **Definitions.** (a) For the purposes of this section the terms in this
7.17 subdivision have the meanings given them.

7.18 (b) "Commissioner" means the commissioner of corrections.

7.19 (c) "Offender daily cost" means the actual nonsalary expenditures, including
7.20 encumbrances as of July 31 following the end of the fiscal year, from the Department of
7.21 Corrections expense budgets for case management, food preparation, food provisions,
7.22 offender personal support including clothing, linen and other personal supplies, transportation,
7.23 dental care, nursing services, and professional technical contracted health care services.

7.24 (d) "Incarcerated days saved" means the number of days of an incarcerated person's
7.25 original sentence minus the number of actual days served, excluding days not served due
7.26 to death or as a result of time earned in the Challenge Incarceration Program under sections
7.27 244.17 to 244.173.

7.28 (e) "Earned incentive release per day cost savings" means the calculation of the total
7.29 actual expenses identified in paragraph (c) divided by the average daily population, divided
7.30 by 365 days, which reflects the daily cost per person.

8.1 (f) "Earned incentive release savings" means the calculation of the offender daily cost
8.2 multiplied by the number of incarcerated days saved for the period of one fiscal year.

8.3 Subd. 2. **Establishment of reallocation revenue account.** The reallocation of earned
8.4 incentive release savings account is established in the special revenue fund in the state
8.5 treasury. Funds in the account are appropriated to the commissioner and shall be expended
8.6 in accordance with the allocation established in subdivision 5, once the requirements of
8.7 subdivision 3 are met. Funds in the account are available until expended.

8.8 Subd. 3. **Certification of earned incentive release savings.** On or before the final
8.9 closeout date of each fiscal year, the commissioner shall certify to Minnesota Management
8.10 and Budget the earned incentive release savings from the previous fiscal year. The
8.11 commissioner shall provide the detailed calculation substantiating the savings amount,
8.12 including accounting system-generated data where possible, supporting the offender daily
8.13 cost and the incarcerated days saved.

8.14 Subd. 4. **Savings to be transferred to the reallocation revenue account.** After the
8.15 certification in subdivision 3 is completed, the commissioner shall transfer funds from the
8.16 appropriation from which the savings occurred to the reallocation revenue account according
8.17 to the allocation in subdivision 5. Transfers shall occur by September 1 each year.

8.18 Subd. 5. **Distribution of reallocation funds.** The commissioner shall distribute funds
8.19 as follows:

8.20 (1) 25 percent shall be transferred to the Office of Justice Programs in the Department
8.21 of Public Safety for crime victim services;

8.22 (2) 25 percent shall be transferred to the Community Corrections Act subsidy
8.23 appropriation and to the Department of Corrections for supervised release and intensive
8.24 supervision services, based upon a three-year average of the release jurisdiction of supervised
8.25 releasees and intensive supervised releasees across the state;

8.26 (3) 25 percent shall be transferred to the Department of Corrections for grants to develop
8.27 and invest in community-based services that support the identified needs of correctionally
8.28 involved individuals or individuals at risk of criminal justice system involvement, and for
8.29 sustaining the operation of evidence-based programming in state and local correctional
8.30 facilities; and

8.31 (4) 25 percent shall be transferred to the general fund.

9.1 Sec. 12. [244.0556] REPORTING REQUIRED.

9.2 (a) Beginning January 15, 2022, and by January 15 each year thereafter for a period of
9.3 ten years, the commissioner of corrections shall provide a report to the chairs and ranking
9.4 minority members of the house of representatives and senate committees and divisions with
9.5 jurisdiction over public safety and judiciary on the status of the requirements in this section
9.6 for the previous fiscal year. The report shall also be provided to the sitting president of the
9.7 Minnesota Association of Community Corrections Act Counties and the executive directors
9.8 of the Minnesota Sentencing Guidelines Commission, the Minnesota Indian Women's Sexual
9.9 Assault Coalition, the Minnesota Alliance on Crime, Violence Free Minnesota, the Minnesota
9.10 Coalition Against Sexual Assault, and the Minnesota County Attorney Association. The
9.11 report shall include but not be limited to:

9.12 (1) a qualitative description of program development; implementation status; identified
9.13 implementation or operational challenges; strategies identified to mitigate and ensure that
9.14 the program does not create or exacerbate gender, racial, and ethnic disparities; the number,
9.15 reason, and background of those in the prison population deemed ineligible for participation
9.16 in the program; and proposed mechanisms for projecting future program savings and
9.17 reallocation of savings;

9.18 (2) the number of persons granted earned incentive release, the total number of days of
9.19 incentive release earned, a summary of committing offenses for those individuals who
9.20 earned incentive release, the most recent calculated per diem, and the demographic data for
9.21 all persons eligible for earned incentive release and the reasons and demographic data of
9.22 those eligible individuals for whom earned incentive release was unearned or denied;

9.23 (3) the number of persons who earned supervision abatement status, the total number
9.24 of days of supervision abatement earned, the committing offenses for those individuals
9.25 granted supervision abatement status, the number of revocations for reoffense while on
9.26 supervision abatement status, and the demographic data for all persons eligible for, considered
9.27 for, granted, or denied supervision abatement status and the reasons supervision abatement
9.28 status was unearned or denied; and

9.29 (4) the number of victims who submitted input, the number of referrals to local
9.30 victim-serving agencies, and a summary of the kinds of victim services requested.

9.31 (b) The commissioner shall solicit feedback on victim-related operational concerns as
9.32 it relates to the application earned incentive release and supervision abatement status options
9.33 from the Minnesota Indian Women's Sexual Assault Coalition, Minnesota Alliance on
9.34 Crime, Minnesota Coalition Against Sexual Assault, and Violence Free Minnesota. A

10.1 summary of the feedback from these organizations shall be included in the annual report
10.2 under paragraph (a).

10.3 (c) The commissioner shall direct the Department of Corrections' research unit to perform
10.4 regular evaluation of the earned incentive release program and publish findings on the
10.5 Department of Corrections' website and in the annual report under paragraph (a).

10.6 Sec. 13. **EFFECTIVE DATE.**

10.7 Sections 1 to 12 are effective August 1, 2021, and apply to persons sentenced to a fixed
10.8 executed sentence or to persons serving a fixed term of imprisonment in a state correctional
10.9 facility on or after that date.