

prosecutorial authority with jurisdiction over the offense to which the notice relates. The prosecutorial authority complies with this section upon mailing a copy of an expungement petition relating to the notice to the address which the victim has most recently provided in writing.

Sec. 8. EFFECTIVE DATE.

Sections 2, 3, 4, 6, and 7 are effective August 1, 2001, and apply to petitions for expungement filed on or after that date.

Presented to the governor May 25, 2001

Signed by the governor May 29, 2001, 11:35 a.m.

CHAPTER 210—H.F.No. 1261

An act relating to corrections; making various changes to laws involving the department of corrections, including clarifying the community notification law, striking and repealing obsolete and unnecessary statutory language, clarifying who may be required to pay the costs for the use of a correctional camp, allowing licensed mental health professionals to admit inmates to the mental health unit at MCF-Oak Park Heights, altering the requirements of the department's annual performance report, providing that investigation of inmate deaths be initiated by the commissioner of corrections, continuing the task force for agency purchasing from correctional agencies, creating a peer review committee in the health correctional system; authorizing the commissioner to inspect and certify juvenile facilities licensed by the department of human services; requiring the commissioners of corrections and human services to develop alternative equivalent standards for chemical dependency treatment programs for correctional facilities under certain circumstances; requiring the commissioner of corrections to contract with the commissioner of human services for background studies of individuals providing services in secure and nonsecure juvenile residential and detention facilities; making it a crime for employees, contract personnel, or volunteers of a correctional system to engage in certain sexual activities with offenders in correctional facilities; requiring a sex offender assessment for certain repeat sex offenders; authorizing HIV test results to be maintained in inmate medical records; requiring new per diem methods to be used in annual reports; amending Minnesota Statutes 2000, sections 16B.181, subdivision 2; 241.016, subdivision 1; 241.018; 241.021, subdivisions 1, 4, 4a, 6, by adding a subdivision; 241.67, subdivision 8; 241.69; 242.32, subdivision 1a; 243.05, subdivision 6; 243.51, subdivision 2; 243.53, subdivision 1; 244.052, subdivision 3; 244.173; 244.18, subdivision 1; 390.11, subdivision 1, by adding a subdivision; 390.32, by adding a subdivision; 609.341, subdivision 11; 609.344, subdivision 1; 609.345, subdivision 1; 609.3452, subdivision 1, by adding subdivisions; 611A.19; Laws 1996, chapter 463, section 16, subdivision 3, as amended; repealing Minnesota Statutes 2000, sections 241.016, subdivision 2; 241.19; 242.51.

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

Section 1: Minnesota Statutes 2000, section 16B.181, subdivision 2, is amended to read:

Subd. 2. **PUBLIC ENTITIES; PURCHASES FROM CORRECTIONS INDUSTRIES.** (a) The commissioner of corrections, in consultation with the commis-

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sioner of administration, shall prepare updated lists of the items available for purchase from department of corrections industries and annually forward a copy of the most recent list to all public entities within the state. A public entity that is supported in whole or in part with funds from the state treasury may purchase items directly from corrections industries. The bid solicitation process is not required for these purchases.

(b) The commissioner of administration shall develop a contract or contracts to enable public entities to purchase items directly from corrections industries. The commissioner of administration, in consultation with the commissioner of corrections, shall determine the fair market price for listed items. The commissioner of administration shall require that all requests for bids or proposals, for items provided by corrections industries, be forwarded to the commissioner of corrections to enable corrections industries to submit bids. The commissioner of corrections shall consult with the commissioner of administration prior to introducing new products to the state agency market.

(c) No public entity may evade the intent of this section by adopting slight variations in specifications, when Minnesota corrections industry items meet the reasonable needs and specifications of the public entity.

(d) The commissioners of administration and corrections shall develop annual performance measures outlining goals to maximize inmate work program participation. The commissioners of administration and corrections shall appoint cochairs for a task force whose purpose is to determine additional methods to achieve the performance goals for public entity purchasing. The task force shall include representatives from the Minnesota house of representatives, Minnesota senate, the Minnesota state colleges and universities, University of Minnesota, Minnesota League of Cities, Minnesota Association of Counties, and administrators with purchasing responsibilities from the Minnesota state departments of corrections, public safety, finance, transportation, natural resources, human services, health, and economic security. Notwithstanding section 15.059, the task force created in this paragraph expires on June 30, 2003.

(e) If performance goals for public entity purchasing are not achieved in two consecutive fiscal years, public entities shall purchase items available from corrections industries. The commissioner of administration shall be responsible for notifying public entities of this requirement.

Sec. 2. Minnesota Statutes 2000, section 241.016, subdivision 1, is amended to read:

Subdivision 1. **ANNUAL REPORT.** (a) Notwithstanding section 15.91, The department of corrections shall issue submit a performance report by November 30 of each year to the chairs and ranking minority members of the senate and house committees and divisions having jurisdiction over criminal justice funding by January 15 of each year. The issuance and content of the report must conform with section 15.91, include the following:

- (1) department strategic mission, goals, and objectives;

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(2) the department-wide per diem, adult facility-specific per diems, and an average per diem, reported in a standard calculated method as outlined in the departmental policies and procedures; and

(3) department annual statistics as outlined in the departmental policies and procedures.

(b) The department shall maintain recidivism rates for adult facilities on an annual basis. In addition, each year the department shall, on an alternating basis, complete a recidivism analysis of adult facilities, juvenile services, and the community services divisions and include a three-year recidivism analysis in the report described in paragraph (a). When appropriate, the recidivism analysis must include education programs, vocational programs, treatment programs, industry, and employment.

Sec. 3. Minnesota Statutes 2000, section 241.018, is amended to read:

241.018 PER DIEM CALCULATION.

(a) The commissioner of corrections shall develop a uniform method to calculate the average department-wide per diem cost of incarcerating offenders at state adult correctional facilities. In addition to other costs currently factored into the per diem, it must include an appropriate percentage of capitol costs for all adult correctional facilities and 65 percent of the department's management services budget.

(b) The commissioner also shall use this method of calculating per diem costs for offenders in each state adult correctional facility. When calculating the per diem cost of incarcerating offenders at a particular facility, the commissioner shall include an appropriate percentage of capital costs for the facility and an appropriate prorated amount, given the facility's population, of 65 percent of the department's management services budget.

(c) The commissioner shall ensure that these new per diem methods are used in all future instances in which per diem charges are reported annual performance reports to the legislature and are also reflected in the department's biennial budget document.

(d) ~~The commissioner shall report information related to these per diems to the chairs and ranking minority members of the senate and house committees and divisions having jurisdiction over criminal justice funding by January 15, 2001.~~

Sec. 4. Minnesota Statutes 2000, section 241.021, subdivision 1, is amended to read:

Subdivision 1. SUPERVISION OVER CORRECTIONAL INSTITUTIONS.

(1) (a) Except as provided in paragraph (b), the commissioner of corrections shall inspect and license all correctional facilities throughout the state, whether public or private, established and operated for the detention and confinement of persons detained or confined therein according to law except to the extent that they are inspected or licensed by other state regulating agencies. The commissioner shall promulgate pursuant to chapter 14, rules establishing minimum standards for these facilities with respect to their management, operation, physical condition, and the security, safety, health, treatment, and discipline of persons detained or confined therein. Commencing

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September 1, 1980, no individual, corporation, partnership, voluntary association, or other private organization legally responsible for the operation of a correctional facility may operate the facility unless licensed by the commissioner of corrections. The commissioner shall review the correctional facilities described in this subdivision at least once every biennium, except as otherwise provided herein, to determine compliance with the minimum standards established pursuant to this subdivision. The commissioner shall grant a license to any facility found to conform to minimum standards or to any facility which, in the commissioner's judgment, is making satisfactory progress toward substantial conformity and the interests and well-being of the persons detained or confined therein are protected. The commissioner may grant licensure up to two years. The commissioner shall have access to the buildings, grounds, books, records, staff, and to persons detained or confined in these facilities. The commissioner may require the officers in charge of these facilities to furnish all information and statistics the commissioner deems necessary, at a time and place designated by the commissioner. The commissioner may require that any or all such information be provided through the department of corrections detention information system. The education program offered in a correctional facility for the detention or confinement of juvenile offenders must be approved by the commissioner of children, families, and learning before the commissioner of corrections may grant a license to the facility.

(b) For juvenile facilities licensed by the commissioner of human services, the commissioner may inspect and certify programs based on certification standards set forth in Minnesota Rules. For the purpose of this paragraph, "certification" has the meaning given it in section 245A.02.

~~(2)~~ (c) Any state agency which regulates, inspects, or licenses certain aspects of correctional facilities shall, insofar as is possible, ensure that the minimum standards it requires are substantially the same as those required by other state agencies which regulate, inspect, or license the same aspects of similar types of correctional facilities, although at different correctional facilities.

~~(3)~~ (d) Nothing in this section shall be construed to limit the commissioner of corrections' authority to promulgate rules establishing standards of eligibility for counties to receive funds under sections 401.01 to 401.16, or to require counties to comply with operating standards the commissioner establishes as a condition precedent for counties to receive that funding.

(4) (e) When the commissioner finds that any facility described in ~~clause (4) paragraph (a)~~, except foster care facilities for delinquent children and youth as provided in subdivision 2, does not substantially conform to the minimum standards established by the commissioner and is not making satisfactory progress toward substantial conformance, the commissioner shall promptly notify the chief executive officer and the governing board of the facility of the deficiencies and order that they be remedied within a reasonable period of time. The commissioner may by written order restrict the use of any facility which does not substantially conform to minimum standards to prohibit the detention of any person therein for more than 72 hours at one time. When, after due notice and hearing, the commissioner finds that any facility

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described in this subdivision, except county jails and lockups as provided in sections 641.26, 642.10, and 642.11, does not conform to minimum standards, or is not making satisfactory progress toward substantial compliance therewith, the commissioner may issue an order revoking the license of that facility. After revocation of its license, that facility shall not be used until its license is renewed. When the commissioner is satisfied that satisfactory progress towards substantial compliance with minimum standard is being made, the commissioner may, at the request of the appropriate officials of the affected facility supported by a written schedule for compliance, grant an extension of time for a period not to exceed one year.

(5) (f) As used in this subdivision, "correctional facility" means any facility, including a group home, having a residential component, the primary purpose of which is to serve persons placed therein by a court, court services department, parole authority, or other correctional agency having dispositional power over persons charged with, convicted, or adjudicated to be guilty or delinquent.

Sec. 5. Minnesota Statutes 2000, section 241.021, subdivision 4, is amended to read:

Subd. 4. **HEALTH CARE.** The commissioner of corrections shall provide professional health care to persons confined in institutions under the control of the commissioner of corrections and pay the costs of their care in hospitals and other medical facilities not under the control of the commissioner of corrections, including the secure treatment unit operated by the St. Paul - Ramsey Hospital. All reimbursements for these health care services shall be deposited in the general fund. The commissioner of corrections is authorized to contract with entities, including health care management companies, to provide health care to inmates. With respect to these contracts, these entities shall not be regulated as, or otherwise considered to be, health plan companies as defined in section 62Q.01, subdivision 4.

Sec. 6. Minnesota Statutes 2000, section 241.021, subdivision 4a, is amended to read:

Subd. 4a. **CHEMICAL DEPENDENCY TREATMENT PROGRAMS.** All residential chemical dependency treatment programs operated by the commissioner of corrections to treat adults and juveniles committed to the commissioner's custody shall comply with the standards mandated in Minnesota Rules, parts 9530.4100 to 9530.6500, or successor rule parts, for treatment programs operated by community-based residential treatment facilities. When the commissioners of corrections and human services agree that these established standards for community-based programs cannot reasonably apply to correctional facilities, alternative equivalent standards shall be developed by the commissioners and established through an interagency agreement.

Sec. 7. Minnesota Statutes 2000, section 241.021, is amended by adding a subdivision to read:

Subd. 4b. **PEER REVIEW COMMITTEE.** The commissioner of corrections shall establish a health care peer review committee. Sections 145.61 to 145.67 apply to the committee. The committee shall gather, review, and evaluate information

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relating to the on-site and off-site quality of care and treatment of offenders. The committee shall consist of:

- (1) the director of health services;
- (2) the department medical director;
- (3) the regional medical director of the contracted health care vendor;
- (4) the department director of nursing;
- (5) a physician from the contracting hospital provider; and
- (6) another physician who provides health care to offenders on site at a correctional facility.

Sec. 8. Minnesota Statutes 2000, section 241.021, subdivision 6, is amended to read:

Subd. 6. **BACKGROUND STUDIES.** (a) The commissioner of corrections is authorized to do background studies on personnel employed by any facility serving children or youth that is licensed under this section. The commissioner of corrections shall contract with the commissioner of human services to conduct background studies of individuals providing services in secure and nonsecure residential facilities and detention facilities who have direct contact, as defined under section 245A.04, subdivision 3, with persons served in the facilities. A disqualification of an individual in this section shall disqualify the individual from positions allowing direct contact or access to persons and residents receiving services in programs licensed by the departments of health and human services.

(b) A clerk or administrator of any court, the bureau of criminal apprehension, a prosecuting attorney, a county sheriff, or a chief of a local police department, shall assist in these studies by providing to the commissioner of human services, or the commissioner's representative, all criminal conviction data available from local, state, and national criminal history record repositories, including the criminal justice data communications network, pertaining to the following individuals: applicants, operators, all persons living in the household, and all staff of any facility subject to background studies under this subdivision.

(c) The department of human services shall conduct the background studies required by paragraph (a) in compliance with the provisions of chapter 245A. For the purpose of this subdivision, the term "secure and nonsecure residential facility and detention facility" shall include programs licensed or certified under subdivision 2. The department of human services shall provide necessary forms and instructions, shall conduct the necessary background studies of individuals, and shall provide notification of the results of the studies to the facilities, individuals, and the commissioner of corrections. Individuals shall be disqualified under the provisions of chapter 245A.

If an individual is disqualified, the department of human services shall notify the facility and the individual and shall inform the individual of the right to request a

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reconsideration of the disqualification by submitting the request to the department of corrections.

(d) The commissioner of corrections shall review and decide reconsideration requests, including the granting of variances, in accordance with the procedures and criteria contained in chapter 245A. The commissioner's decision shall be provided to the individual and to the department of human services. The commissioner's decision to grant or deny a reconsideration of disqualification is the final administrative agency action.

(e) Facilities described in paragraph (a) shall be responsible for cooperating with the departments in implementing the provisions of this subdivision. The responsibilities imposed on applicants and licensees under chapter 245A shall apply to these facilities. The provisions of section 245A.04, subdivision 3, paragraph (e), shall apply to applicants, licensees, and individuals.

Sec. 9. Minnesota Statutes 2000, section 241.67, subdivision 8, is amended to read:

Subd. 8. COMMUNITY-BASED SEX OFFENDER PROGRAM EVALUATION PROJECT. (a) For the purposes of this project, a sex offender is an adult who has been convicted, or a juvenile who has been adjudicated, for a sex offense or a sex-related offense which would require registration under section 243.166.

(b) The commissioner shall develop a long-term project to accomplish the following:

(1) provide follow-up information on each sex offender for a period of three years following the offender's completion of or termination from treatment;

(2) provide treatment programs in several geographical areas in the state;

(3) provide the necessary data to form the basis to recommend a fiscally sound plan to provide a coordinated statewide system of effective sex offender treatment programming; and

(4) provide an opportunity to local and regional governments, agencies, and programs to establish models of sex offender programs that are suited to the needs of that region.

~~(c) The commissioner shall provide the legislature with an annual report of the data collected and the status of the project by October 15 of each year, beginning in 1993.~~

~~(d) The commissioner shall establish an advisory task force consisting of county probation officers from Community Corrections Act counties and other counties, court services providers, and other interested officials. The commissioner shall consult with the task force concerning the establishment and operation of the project.~~

Sec. 10. Minnesota Statutes 2000, section 241.69, is amended to read:

241.69 PSYCHIATRIC MENTAL HEALTH UNIT; ESTABLISHMENT.

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Subdivision 1. **AUTHORITY; RULES.** The commissioner of corrections shall, in accordance with applicable rules and standards prescribed by the ~~departments~~ department of health and welfare human services, establish, staff, equip, maintain, and operate at one of the adult correctional institutions under the commissioner's control a psychiatric mental health unit for the care and treatment of those inmates of state correctional institutions who become mentally ill.

Subd. 2. **EXAMINATION.** When any person confined in an adult correctional institution under the control of the commissioner of corrections is alleged to be a mentally ill person, the ~~chief executive officer~~ director of psychological services, or warden or other person in charge of the institution shall cause the person to be examined by a licensed physician especially qualified in the diagnosis of mental illness, or, if none is available, by any licensed physician or licensed psychologist mental health professional available to the institution.

Subd. 3. **TRANSFER.** If the ~~examining physician~~ or psychologist licensed mental health professional finds the person to be mentally ill and in need of short term care, the ~~examining physician~~ health care professional may recommend transfer by the commissioner of corrections to the psychiatric mental health unit established pursuant to subdivision 1.

Subd. 4. **COMMITMENT.** If the ~~examining physician~~ health care professional or psychologist licensed mental health professional finds the person to be mentally ill and in need of long term care in a hospital, or if an inmate transferred pursuant to subdivision 3 refuses to voluntarily participate in the treatment program at the psychiatric mental health unit, the ~~chief executive officer~~ or director of psychological services of the institution or other person in charge the mental health professional shall initiate proceedings for judicial commitment as provided in section 253B.07. Upon the recommendation of the ~~physician~~ or psychologist licensed mental health professional and upon completion of the hearing and consideration of the record, the court may commit the person to the psychiatric mental health unit established in subdivision 1 or to another hospital. A person confined in a state correctional institution for adults who has been adjudicated to be mentally ill and in need of treatment may be committed to the commissioner of corrections and placed in the psychiatric mental health unit established in subdivision 1.

Subd. 5. **DISCHARGE.** The ~~chief medical officer~~ director of psychological services of the psychiatric mental health unit established under this section may, subject to the provisions of chapter 253B, provisionally discharge any inmate patient admitted as mentally ill without discharging the commitment and order the inmate patient's release into the general population of the institution from which admitted, subject to return to the facility for further treatment.

When the ~~chief medical officer~~ director of psychological services of the facility certifies that a patient is no longer in need of institutional care for mental illness the ~~chief medical officer~~ director of psychological services shall discharge the patient to the institution from which committed, and the discharge shall also discharge the mental illness commitment.

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A copy of the certification that the inmate is no longer in need of care for mental illness shall be transmitted to the commissioner of corrections. The commissioner of corrections shall give serious consideration to the aforementioned certification for purposes of their supervision over the inmate upon the inmate's release.

Subd. 6. **TRANSFER UPON EXPIRATION OF SENTENCE.** If the sentence of a person who has been adjudicated to be mentally ill and committed to the psychiatric mental health unit established under this section should expire before the person recovers and is discharged therefrom, and, in the judgment of the chief medical officer director of psychological services of the unit, the person requires further hospitalization for mental illness, the person shall be transferred by the commissioner of corrections to a state hospital designated by the commissioner of human services, there to be detained as in the case of other mentally ill persons under judicial commitment.

Subd. 7. **COSTS.** The costs of the commitment proceedings under this section shall be borne by the state.

Subd. 8. **DEFINITIONS.** For the purposes of this section, the words defined in section 253B.02 have the meanings given them in that section.

Sec. 11. Minnesota Statutes 2000, section 242.32, subdivision 1a, is amended to read:

Subd. 1a. **ALTERNATIVE RESIDENTIAL PROGRAMS; FUNDING.** The commissioner of corrections may establish and operate alternative residential programs for juveniles. Programming is available to court and social service agencies for placement of juveniles to act as early intervention in juvenile crime. The commissioner shall require participating state or federal agencies and local units of government sending participants to the program to pay the cost of the program. Funds received by the commissioner for the cost of the program from state and federal agencies and local units of government under this subdivision must be deposited in the state treasury and credited to a special account. Money in the account is appropriated to the commissioner to fund the program.

Sec. 12. Minnesota Statutes 2000, section 243.05, subdivision 6, is amended to read:

Subd. 6. **SUPERVISION BY COMMISSIONER OF CORRECTIONS; AGENTS.** (a) The commissioner of corrections, as far as possible, shall exercise supervision over persons released on parole or probation pursuant to this section and section 242.19.

(b) The commissioner of corrections shall exercise supervision over probationers as provided in section 609.135, and over persons conditionally released pursuant to section 241.26.

(c) For the purposes of clauses (a) and (b), and sections 609.115 and 609.135, subdivision 1, the commissioner shall appoint state agents who shall be in the classified service of the state civil service. The commissioner may also appoint suitable persons

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in any part of the state or enter into agreements with individuals and public or private agencies, for the same purposes, and pay the costs incurred under the agreements. Parole agents shall reside in the various districts of the state in which they are employed. Each agent or person shall perform the duties the commissioner may prescribe in behalf of or in the supervision of those persons described in clause (b). In addition, each agent or person shall act under the orders of the commissioner in the supervision of those persons conditionally released as provided in clause (a). Agents shall provide assistance to conditionally released persons in obtaining employment, and shall conduct relevant investigations and studies of persons under supervision upon the request of the commissioner. Regional supervisors may also supervise state parole agents as directed by the commissioner of corrections. This duty shall not interfere with the supervisor's responsibility under the County Probation Act, Laws 1959, chapter 698.

Sec. 13. Minnesota Statutes 2000, section 243.51, subdivision 2, is amended to read:

Subd. 2. TRANSFER OF INMATES TO FEDERAL GOVERNMENT. The commissioner of corrections may transfer to the custody of the United States attorney general any inmate of ~~the a Minnesota correctional facility—Stillwater or the Minnesota correctional facility—Shakopee~~ facility whose presence is seriously detrimental to the internal discipline and well-being of the facility, or whose personal safety cannot be reasonably secured therein or in any other state facility, provided the attorney general of the United States accept such transfer. Such transfer shall be accomplished in the manner prescribed by United States Code, title 18, section 5003 and acts amendatory thereof, and the commissioner of corrections may execute such contracts as therein provided. The reimbursement of the federal government for all costs and expenses incurred for the care, custody, subsistence, education, treatment, and training of such transferee shall be paid from the appropriation for the operation of the Minnesota ~~correctional facility—Stillwater or the Minnesota correctional facility—Shakopee~~ facility from which the inmate was transferred.

The chief executive officer of the transferring facility shall attach to such contract a duly certified copy of the warrant of commitment under which such inmate is held, together with copies of such other commitment papers as are required by section 243.49, and such other data relating to the character and condition of such inmates as the officer may deem necessary or may be required by the federal prison authorities. Such copy of the warrant of commitment and accompanying papers shall constitute sufficient authority for the United States to hold such inmate on behalf of the state of Minnesota.

Any inmate so transferred under this subdivision shall be subject to the terms and conditions of the inmate's original sentence as if the inmate were serving the same within the confines of the facility from which transferred. Nothing herein contained shall deprive such inmate of the right to parole or the rights to legal process in the courts of this state.

Sec. 14. Minnesota Statutes 2000, section 243.53, subdivision 1, is amended to read:

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Subdivision 1. **SEPARATE CELLS:** (a) When there are sufficient cells available, each inmate shall be confined in a separate cell. Each inmate shall be confined in a separate cell in institutions classified by the commissioner as custody level five and six institutions. This requirement does not apply to the following:

- (1) geriatric dormitory-type facilities;
- (2) honor dormitory-type facilities; and

(3) any other multiple occupancy facility at a custody level five or six institution that confines inmates who could be confined in an institution at custody level four or lower.

(b) Correctional institutions classified by the commissioner as custody level one, two, three, or four institutions must permit multiple occupancy, except segregation units, to the greatest extent possible. ~~The commissioner shall annually publish a list of the custody levels of all correctional institutions.~~

Sec. 15. Minnesota Statutes 2000, section 244.052, subdivision 3, is amended to read:

Subd. 3. **END-OF-CONFINEMENT REVIEW COMMITTEE.** (a) The commissioner of corrections shall establish and administer end-of-confinement review committees at each state correctional facility and at each state treatment facility where predatory offenders are confined. The committees shall assess on a case-by-case basis the public risk posed by predatory offenders who are about to be released from confinement.

(b) Each committee shall be a standing committee and shall consist of the following members appointed by the commissioner:

- (1) the chief executive officer or head of the correctional or treatment facility where the offender is currently confined, or that person's designee;
- (2) a law enforcement officer;
- (3) a treatment professional who is trained in the assessment of sex offenders;
- (4) a caseworker experienced in supervising sex offenders; and
- (5) a victim's services professional.

Members of the committee, other than the facility's chief executive officer or head, shall be appointed by the commissioner to two-year terms. The chief executive officer or head of the facility or designee shall act as chair of the committee and shall use the facility's staff, as needed, to administer the committee, obtain necessary information from outside sources, and prepare risk assessment reports on offenders.

(c) The committee shall have access to the following data on a predatory offender only for the purposes of its assessment and to defend the committee's risk assessment determination upon administrative review under this section:

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(1) private medical data under section 13.384 or 144.335, or welfare data under section 13.46 that relate to medical treatment of the offender;

(2) private and confidential court services data under section 13.84;

(3) private and confidential corrections data under section 13.85; and

(4) private criminal history data under section 13.87.

Data collected and maintained by the committee under this paragraph may not be disclosed outside the committee, except as provided under section 13.05, subdivision 3 or 4. The predatory offender has access to data on the offender collected and maintained by the committee, unless the data are confidential data received under this paragraph.

(d)(i) Except as otherwise provided in item (ii), at least 90 days before a predatory offender is to be released from confinement, the commissioner of corrections shall convene the appropriate end-of-confinement review committee for the purpose of assessing the risk presented by the offender and determining the risk level to which the offender shall be assigned under paragraph (e). The offender and the law enforcement agency that was responsible for the charge resulting in confinement shall be notified of the time and place of the committee's meeting. The offender has a right to be present and be heard at the meeting. The law enforcement agency may provide material in writing that is relevant to the offender's risk level to the chair of the committee. The committee shall use the risk factors described in paragraph (g) and the risk assessment scale developed under subdivision 2 to determine the offender's risk assessment score and risk level. Offenders scheduled for release from confinement shall be assessed by the committee established at the facility from which the offender is to be released.

(ii) If an offender is received for confinement in a facility with less than 90 days remaining in the offender's term of confinement, the offender's risk shall be assessed at the first regularly scheduled end of confinement review committee that convenes after the appropriate documentation for the risk assessment is assembled by the committee. The commissioner shall make reasonable efforts to ensure that offender's risk is assessed and a risk level is assigned or reassigned at least 30 days before the offender's release date.

(e) The committee shall assign to risk level I a predatory offender whose risk assessment score indicates a low risk of reoffense. The committee shall assign to risk level II an offender whose risk assessment score indicates a moderate risk of reoffense. The committee shall assign to risk level III an offender whose risk assessment score indicates a high risk of reoffense.

(f) Before the predatory offender is released from confinement, the committee shall prepare a risk assessment report which specifies the risk level to which the offender has been assigned and the reasons underlying the committee's risk assessment decision. The committee shall give the report to the offender and to the law enforcement agency at least 60 days before an offender is released from confinement. If the risk assessment is performed under the circumstances described in paragraph (d), item (ii), the report shall be given to the offender and the law enforcement agency as

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soon as it is available. The committee also shall inform the offender of the availability of review under subdivision 6.

(g) As used in this subdivision, "risk factors" includes, but is not limited to, the following factors:

(1) the seriousness of the offense should the offender reoffend. This factor includes consideration of the following:

- (i) the degree of likely force or harm;
- (ii) the degree of likely physical contact; and
- (iii) the age of the likely victim;

(2) the offender's prior offense history. This factor includes consideration of the following:

- (i) the relationship of prior victims to the offender;
- (ii) the number of prior offenses or victims;
- (iii) the duration of the offender's prior offense history;
- (iv) the length of time since the offender's last prior offense while the offender was at risk to commit offenses; and
- (v) the offender's prior history of other antisocial acts;

(3) the offender's characteristics. This factor includes consideration of the following:

- (i) the offender's response to prior treatment efforts; and
 - (ii) the offender's history of substance abuse;
- (4) the availability of community supports to the offender. This factor includes consideration of the following:
- (i) the availability and likelihood that the offender will be involved in therapeutic treatment;
 - (ii) the availability of residential supports to the offender, such as a stable and supervised living arrangement in an appropriate location;
 - (iii) the offender's familial and social relationships, including the nature and length of these relationships and the level of support that the offender may receive from these persons; and
 - (iv) the offender's lack of education or employment stability;

(5) whether the offender has indicated or credible evidence in the record indicates that the offender will reoffend if released into the community; and

(6) whether the offender demonstrates a physical condition that minimizes the risk of reoffense, including but not limited to, advanced age or a debilitating illness or physical condition.

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(h) Upon the request of the law enforcement agency or the offender's corrections agent, the commissioner may reconvene the end-of-confinement review committee for the purpose of reassessing the risk level to which an offender has been assigned under paragraph (e). In a request for a reassessment, the law enforcement agency which was responsible for the charge resulting in confinement or agent shall list the facts and circumstances arising after the initial assignment or facts and circumstances known to law enforcement or the agent but not considered by the committee under paragraph (e) which support the request for a reassessment. The request for reassessment by the law enforcement agency must occur within 30 days of receipt of the report indicating the offender's risk level assignment. The offender's corrections agent, in consultation with the chief law enforcement officer in the area where the offender resides or intends to reside, may request a review of a risk level at any time if substantial evidence exists that the offender's risk level should be reviewed by an end-of-confinement review committee. This evidence includes, but is not limited to, evidence of treatment failures or completions, evidence of exceptional crime-free community adjustment or lack of appropriate adjustment, evidence of substantial community need to know more about the offender or mitigating circumstances that would narrow the proposed scope of notification, or other practical situations articulated and based in evidence of the offender's behavior while under supervision. Upon review of the request, the end-of-confinement review committee may reassign an offender to a different risk level. If the offender is reassigned to a higher risk level, the offender has the right to seek review of the committee's determination under subdivision 6.

(i) An offender may request the end-of-confinement review committee to reassess the offender's assigned risk level after three years have elapsed since the committee's initial risk assessment and may renew the request once every two years following subsequent denials. In a request for reassessment, the offender shall list the facts and circumstances which demonstrate that the offender no longer poses the same degree of risk to the community. In order for a request for a risk level reduction to be granted, the offender must demonstrate full compliance with supervised release conditions, completion of required post-release treatment programming, and full compliance with all registration requirements as detailed in section 243.166. The offender must also not have been convicted of any felony, gross misdemeanor, or misdemeanor offenses subsequent to the assignment of the original risk level. The committee shall follow the process outlined in paragraphs (a) to (e), and ~~(g)~~ (c) in the reassessment. An offender who is incarcerated may not request a reassessment under this paragraph.

(j) Offenders returned to prison as release violators shall not have a right to a subsequent risk reassessment by the end-of-confinement review committee unless substantial evidence indicates that the offender's risk to the public has increased.

(k) The commissioner shall establish an end-of-confinement review committee to assign a risk level to offenders who are released from a federal correctional facility in Minnesota or another state and who intend to reside in Minnesota, and to offenders accepted from another state under a reciprocal agreement for parole supervision under the interstate compact authorized by section 243.16. The committee shall make reasonable efforts to conform to the same timelines as applied to Minnesota cases.

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Offenders accepted from another state under a reciprocal agreement for probation supervision are not assigned a risk level, but are considered downward dispositional departures. The probation or court services officer and law enforcement officer shall manage such cases in accordance with section 244.10, subdivision 2a. The policies and procedures of the committee for federal offenders and interstate compact cases must be in accordance with all requirements as set forth in this section, unless restrictions caused by the nature of federal or interstate transfers prevents such conformance.

~~(k)~~ (l) If the committee assigns a predatory offender to risk level III, the committee shall determine whether residency restrictions shall be included in the conditions of the offender's release based on the offender's pattern of offending behavior.

Sec. 16. Minnesota Statutes 2000, section 244.173, is amended to read:

244.173 CHALLENGE INCARCERATION PROGRAM; EVALUATION AND REPORT.

The commissioner shall develop a system for gathering and analyzing information concerning the value and effectiveness of the challenge incarceration program. ~~The commissioner shall report to the committees of the house of representatives and senate with jurisdiction over criminal justice policy by January 1, 1996, on the operation of the program.~~

Sec. 17. Minnesota Statutes 2000, section 244.18, subdivision 1, is amended to read:

Subdivision 1. **DEFINITION.** As used in this section, "local correctional fees" include fees for the following correctional services:

- (1) community service work placement and supervision;
- (2) restitution collection;
- (3) supervision;
- (4) court ordered investigations; ~~or~~
- (5) any other court ordered service;
- (6) post-prison supervision or other form of release; or

(7) supervision or other services provided to probationers or parolees under section 243.16 to be provided by a local probation and parole agency established under section 244.19 or community corrections agency established under chapter 401.

Sec. 18. Minnesota Statutes 2000, section 390.11, subdivision 1, is amended to read:

Subdivision 1. **DEATHS REQUIRING INQUESTS AND INVESTIGATIONS.** Except as provided in subdivision 1a, the coroner shall investigate and may conduct inquests in all human deaths of the following types:

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(1) violent deaths, whether apparently homicidal, suicidal, or accidental, including but not limited to deaths due to thermal, chemical, electrical, or radiational injury, and deaths due to criminal abortion, whether apparently self induced or not;

(2) deaths under unusual or mysterious circumstances;

(3) deaths of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so that the bodies will later be unavailable for examination; and

(4) deaths of inmates of public institutions who are not hospitalized for organic disease and whose deaths are not of any type referred to in clause (1) or (2).

Sec. 19. Minnesota Statutes 2000, section 390.11, is amended by adding a subdivision to read:

Subd. 1a. COMMISSIONER OF CORRECTIONS; INVESTIGATION OF DEATHS. The commissioner of corrections may require that all department of corrections incarcerated deaths be reviewed by an independent, contracted board-certified forensic pathologist.

Sec. 20. Minnesota Statutes 2000, section 390.32, is amended by adding a subdivision to read:

Subd. 11. COMMISSIONER OF CORRECTIONS; INVESTIGATION OF DEATHS. The commissioner of corrections may require that all department of corrections incarcerated deaths be reviewed by an independent, contracted board-certified forensic pathologist.

Sec. 21. Minnesota Statutes 2000, section 609.341, subdivision 11, is amended to read:

Subd. 11. (a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to ~~(l)~~ (m), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

(i) the intentional touching by the actor of the complainant's intimate parts, or

(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or

(iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority, or

(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.

(b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

New language is indicated by underline, deletions by strikeout.

- (i) the intentional touching by the actor of the complainant's intimate parts;
- (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts;
- (iii) the touching by another of the complainant's intimate parts; or
- (iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts.

(c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

Sec. 22. Minnesota Statutes 2000, section 609.344, subdivision 1, is amended to read:

Subdivision 1. **CRIME DEFINED.** A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor believes the complainant to be 16 years of age or older. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;

(c) the actor uses force or coercion to accomplish the penetration;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

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(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.

Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;

(k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense; or

(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense; or

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

Sec. 23. Minnesota Statutes 2000, section 609.345, subdivision 1, is amended to read:

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Subdivision 1. **CRIME DEFINED.** A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor believes the complainant to be 16 years of age or older;

(c) the actor uses force or coercion to accomplish the sexual contact;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

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(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense;

(k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose. Consent by the complainant is not a defense; ~~or~~

(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense; or

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

Sec. 24. Minnesota Statutes 2000, section 609.3452, subdivision 1, is amended to read:

Subdivision 1. **ASSESSMENT REQUIRED.** When a person is convicted of a violation of section ~~609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23, or another offense arising out of a charge based on one or more of these sections~~ sex offense, the court shall order an independent professional assessment of the offender's need for sex offender treatment. The court may waive the assessment if: (1) the sentencing guidelines provide a presumptive prison sentence for the offender, or (2) an adequate assessment was conducted prior to the conviction. An assessor providing an assessment for the court must be experienced in the evaluation and treatment of sex offenders.

Sec. 25. Minnesota Statutes 2000, section 609.3452, is amended by adding a subdivision to read:

Subd. 1a. **REPEAT OFFENDERS; MANDATORY ASSESSMENT.** When a person is convicted of a felony-level sex offense, and the person has previously been convicted of a sex offense regardless of the penalty level, the court shall order a sex offender assessment to be completed by the Minnesota security hospital. The assessment must contain the facts upon which the assessment conclusion is based, with reference to the offense history of the offender or the severity of the current offense, the social history of the offender, and the results of an examination of the offender's mental status unless the offender refuses to be examined. The assessment conclusion may not be based on testing alone. Upon completion, the assessment must be forwarded to the

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court and the commissioner of corrections. The court shall consider the assessment when sentencing the offender and, if applicable, when making the preliminary determination regarding the appropriateness of a civil commitment petition under section 609.1351.

Sec. 26. Minnesota Statutes 2000, section 609.3452, is amended by adding a subdivision to read:

Subd. 4. DEFINITION. As used in this section, "sex offense" means a violation of section 609.342; 609.343; 609.344; 609.345; 609.3451; 609.746, subdivision 1; 609.79; or 617.23; or another offense arising out of a charge based on one or more of those sections.

Sec. 27. Minnesota Statutes 2000, section 611A.19, is amended to read:

611A.19 TESTING OF SEX OFFENDER FOR HUMAN IMMUNODEFICIENCY VIRUS.

Subdivision 1. TESTING ON REQUEST OF VICTIM. (a) Upon the request or with the consent of the victim, the prosecutor shall make a motion in camera and the sentencing court shall issue an order requiring an adult convicted of or a juvenile adjudicated delinquent for violating section 609.342 (criminal sexual conduct in the first degree), 609.343 (criminal sexual conduct in the second degree), 609.344 (criminal sexual conduct in the third degree), 609.345 (criminal sexual conduct in the fourth degree), or any other violent crime, as defined in section 609.1095, to submit to testing to determine the presence of human immunodeficiency virus (HIV) antibody if:

(1) the crime involved sexual penetration, however slight, as defined in section 609.341, subdivision 12; or

(2) evidence exists that the broken skin or mucous membrane of the victim was exposed to or had contact with the offender's semen or blood during the commission of the crime in a manner which has been demonstrated epidemiologically to transmit the human immunodeficiency virus (HIV).

(b) When the court orders an offender to submit to testing under paragraph (a), the court shall order that the test be performed by an appropriate health professional who is trained to provide the counseling described in section 144.7414, and that no reference to the test, the motion requesting the test, the test order, or the test results may appear in the criminal record or be maintained in any record of the court or court services, except in the medical record maintained by the department of corrections.

Subd. 2. DISCLOSURE OF TEST RESULTS. The date and results of a test performed under subdivision 1 are private data as defined in section 13.02, subdivision 12, when maintained by a person subject to chapter 13, or may be released only with the subject's consent, if maintained by a person not subject to chapter 13. The results are available, on request, to the victim or, if the victim is a minor, to the victim's parent or guardian and positive test results shall be reported to the commissioner of health. Any test results given to a victim or victim's parent or guardian shall be provided by a health professional who is trained to provide the counseling described in section

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144.7414. Data regarding administration and results of the test are not accessible to any other person for any purpose and shall not be maintained in any record of the court or court services or any other record. After the test results are given to the victim or the victim's parent or guardian, data on the test must be removed from any medical data or health records maintained under section 13.384 or 144.335 and destroyed, except for those medical records maintained by the department of corrections.

Sec. 28. Laws 1996, chapter 463, section 16, subdivision 3, as amended by Laws 1997, chapter 238, section 3, is amended to read:

Subd. 3. New Facility

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To complete design and to construct, furnish, and equip a new close-custody correctional facility at custody level four to provide at least 800 beds.

The commissioner of administration may use construction delivery methods as may be appropriate to minimize the cost of the facility and maximize the construction time savings.

Before final contract documents for this project are advertised for construction bids, the commissioners of administration and corrections shall certify to the chairs of the senate finance committee, the senate crime prevention finance division, the house ways and means committee, the house judiciary finance committee, and the house capital investment committee that the program scope of the project has not increased since the project budget was reviewed in accordance with Minnesota Statutes, section 16B.335.

Upon receipt and evaluation of construction bids and before awarding contracts for the construction phase of the project, the commissioners of administration and finance shall inform the chairs of the house ways and means committee and the senate human resources finance committee and the chairs of the house and senate policy and finance committees and divisions hav-

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ing jurisdiction over criminal justice issues of the project budget necessary to complete that portion of the project. Any portion of this appropriation that exceeds the project budget shall be unallotted by the commissioner of finance.

~~By February 1 of each year, the commissioner shall report to the chairs of the house judiciary committee and senate crime prevention committee on efforts to recruit a workforce for the correctional facility that is proportional to the protected groups in the inmate population, the results of the efforts, and recommendations for achieving the goal of proportional representation of protected class employees in relation to the inmate population.~~

The commissioner of corrections shall construct an access road from state trunk highway 361 to the parking lot of the correctional facility. The commissioner of transportation shall construct any necessary improvements at the intersection of trunk highway 361 and the access road in order to facilitate ingress and egress from the correctional facility.

Sec. 29. WORKFORCE REPORTS.

The department of corrections shall continue to report on its efforts to recruit a diverse workforce as required in Minnesota Statutes, section 43A.191.

Sec. 30. REPEALER.

Minnesota Statutes 2000, sections 241.016, subdivision 2, 241.19, and 242.51, are repealed.

Sec. 31. EFFECTIVE DATE.

Sections 21 to 23 are effective June 1, 2001, and apply to crimes committed on or after that date. Sections 24 to 26 are effective the day following final enactment.

Presented to the governor May 25, 2001

Signed by the governor May 29, 2001, 11:36 a.m.

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