

## CHAPTER 244

### CRIMINAL SENTENCES, CONDITIONS, DURATION, APPEALS

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#### 244.01 DEFINITIONS.

Subdivision 1. For purposes of sections 244.01 to 244.11, the following terms shall have the meanings given them.

Subd. 2. "Inmate" means any person who is convicted of a felony, is committed to the custody of the commissioner of corrections and is confined in a state correctional facility or released from a state correctional facility pursuant to section 244.065 or 244.07.

Subd. 3. "Commissioner" means the commissioner of corrections or a designee.

Subd. 4. "Correctional facility" means any state facility under the operational authority of the commissioner of corrections.

Subd. 5. "Good time" means the period of time by which an inmate's term of imprisonment is reduced pursuant to section 244.04.

Subd. 6. "Commission" means the Minnesota sentencing guidelines commission established pursuant to section 244.09.

Subd. 7. "Supervised release" means the release of an inmate pursuant to section 244.05.

Subd. 8. "Term of imprisonment" is the period of time to which an inmate is committed to the custody of the commissioner of corrections minus earned good time.

**History:** 1978 c 723 art 1 s 1; 1979 c 102 s 13; 1980 c 417 s 12,13; 1984 c 589 s 1,2; 1986 c 444

#### 244.02 MUTUAL AGREEMENT PROGRAMS.

Subdivision 1. Within seven days after the commissioner assumes custody of an inmate, the commissioner shall inform the inmate of the availability and scope of mutual agreement programs and of the fact that participation by the inmate is optional and has no effect on the length of the inmate's sentence. If the inmate decides to enter into a mutual agreement program, the commissioner shall draft one for the inmate within 90 days after receiving a request to do so from the inmate. The mutual agreement program shall be drafted after a classification study of the inmate has been made by the commissioner. In drafting a mutual agreement program, the commissioner shall also refer to the presentence investigation which has been made of the inmate. The agreement shall provide the following:

(a) A program of vocational or educational training with specific chronological and achievement objectives, including completion of specified educational and vocational programs;

(b) Frequent and regular evaluation of the inmate by the commissioner; and

(c) A consideration of any educational qualifications or skills of the inmate when specifying certain types of work expectations.

The participation of inmates in the mutual agreement program shall be limited by the appropriations made for that purpose.

Subd. 2. The inmate may decline to enter into the agreement drafted by the commissioner. Failure to enter into an agreement shall not affect the earning of good time by an inmate, nor shall violation of the terms of the agreement constitute a disciplinary offense which may result in the loss of good time.

**History:** 1978 c 723 art 1 s 2; 1986 c 444

#### 244.03 VOLUNTARY PROGRAMS.

The commissioner shall provide appropriate mental health programs and vocational and educational programs with employment-related goals for inmates who desire to voluntarily participate in such programs. The selection, design and implementation of programs under this section shall be the sole responsibility of the commissioner, acting within the limitations imposed by the funds appropriated for such programs.

No action challenging the level of expenditures for programs authorized under this section, nor any action challenging the selection, design or implementation of these programs, may be maintained by an inmate in any court in this state.

**History:** 1978 c 723 art 1 s 3; 1986 c 444

#### 244.04 GOOD TIME.

Subdivision 1. **Reduction of sentence.** Notwithstanding the provisions of section 609.11, subdivision 6, and section 609.346, subdivision 1, the term of imprisonment of any inmate sentenced to a presumptive fixed sentence after May 1, 1980, shall be reduced in duration by one day for each two days during which the inmate violates none of the disciplinary offense rules promulgated by the commissioner. The reduction shall accrue to the period of supervised release to be served by the inmate.

Except as otherwise provided in subdivision 2, if an inmate violates a disciplinary offense rule promulgated by the commissioner, good time earned prior to the violation may not be taken away, but the inmate may be required to serve an appropriate portion of the term of imprisonment after the violation without earning good time.

Subd. 2. **Loss of good time.** By May 1, 1980, the commissioner shall promulgate rules specifying disciplinary offenses which may result in the loss of good time and the amount of good time which may be lost as a result of each disciplinary offense, including provision for restoration of good time. In no case shall an individual disciplinary offense result in the loss of more than 90 days of good time; except that no inmate confined in segregation for violation of a disciplinary rule shall be placed on supervised release until discharged or released from punitive segregation confinement, nor shall an inmate in segregation for violation of a disciplinary rule for which the inmate could also be prosecuted under the criminal laws earn good time while in segregation. The loss of good time shall be considered to be a disciplinary sanction imposed upon an inmate, and the procedure for the loss of good time and the rights of the inmate in the procedure shall be those in effect for the imposition of other disciplinary sanctions at each state correctional institution.

Subd. 3. The provisions of this section do not apply to an inmate serving a mandatory life sentence.

**History:** 1978 c 723 art 1 s 4; 1980 c 417 s 14; 1983 c 274 s 6; 1984 c 381 s 1,2; 1986 c 444

#### 244.05 SUPERVISED RELEASE TERM.

Subdivision 1. **Supervised release required.** Except as provided in subdivisions 4 and 5, every inmate shall serve a supervised release term upon completion of the inmate's term of imprisonment as reduced by any good time earned by the inmate or extended by confinement in punitive segregation pursuant to section 244.04, subdivision 2. The supervised release term shall be equal to the period of good time the inmate has earned, and shall not exceed the length of time remaining in the inmate's sentence.

Subd. 2. **Rules.** The commissioner of corrections shall promulgate rules for the placement and supervision of inmates serving a supervised release term. The rules shall

also provide standards and procedures for the revocation of supervised release, and shall specify the period of revocation for each violation of supervised release. Procedures for the revocation of supervised release shall provide due process of law for the inmate.

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

- (1) continue the inmate's supervised release term, with or without modifying or enlarging the conditions imposed on the inmate; or
- (2) revoke the inmate's supervised release and reimprison the inmate for the appropriate period of time.

The period of time for which a supervised release may be revoked may not exceed the period of time remaining in the inmate's sentence.

**Subd. 4. Minimum imprisonment, life sentence.** An inmate serving a mandatory life sentence shall not be given supervised release under this section without having served a minimum term of imprisonment of 17 years.

**Subd. 5. Supervised release, life sentence.** The commissioner of corrections may, under rules promulgated by the commissioner, give supervised release to an inmate serving a mandatory life sentence after the inmate has served the minimum term of imprisonment specified in subdivision 4.

**History:** 1978 c 723 art 1 s 5; 1983 c 274 s 7; 1984 c 381 s 3; 1986 c 444

#### **244.06 EXTRAORDINARY DISCHARGE.**

The commissioner of corrections may give extraordinary discharge to an inmate for reasons of serious health problems, senility, advanced age or other extraordinary circumstances. The commissioner shall promulgate rules specifying the circumstances under which extraordinary discharge may be approved and the appropriate procedures for approving the same. No extraordinary discharge shall be effective unless also approved by the Minnesota board of pardons.

**History:** 1978 c 723 art 1 s 6; 1983 c 274 s 8

#### **244.065 PRIVATE EMPLOYMENT OF INMATES OF STATE CORRECTIONAL INSTITUTIONS IN COMMUNITY.**

When consistent with the public interest and the public safety, the commissioner of corrections may conditionally release an inmate to work at paid employment, seek employment, or participate in a vocational training or educational program, as provided in section 241.26, if the inmate has served at least one half of the term of imprisonment as reduced by good time earned by the inmate.

**History:** 1980 c 417 s 11; 1983 c 274 s 9; 1986 c 444

#### **244.07 FURLOUGHS.**

**Subdivision 1.** If consistent with the public interest, the commissioner may, under rules prescribed by the commissioner, furlough any inmate in custody to any point within the state for up to five days. A furlough may be granted to assist the inmate with family needs, personal health needs, or reintegration into society. No inmate may receive more than three furloughs under this section within any 12-month period. The provisions of this section shall also apply to those inmates convicted of offenses prior to May 1, 1980.

**Subd. 2.** Notwithstanding the provisions of subdivision 1, if the commissioner determines that the inmate requires health care not available at the state correctional institution, the commissioner may grant the inmate the furloughs necessary to provide appropriate noninstitutional or extrainstitutional health care.

**History:** 1978 c 723 art 1 s 7; 1981 c 192 s 19; 1986 c 444

## 244.08 COMMISSIONER OF CORRECTIONS.

Subdivision 1. Effective May 1, 1980, the commissioner of corrections shall have only those powers and duties in sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, with relation to persons sentenced for crimes committed on or after May 1, 1980.

The commissioner of corrections shall retain all powers and duties presently vested in and imposed upon the commissioner with relation to persons sentenced for crimes committed on or before April 30, 1980.

The commissioner of corrections shall take into consideration, but not be bound by, the sentence terms embodied in the sentencing guidelines promulgated by the Minnesota sentencing guidelines commission and the penal philosophy embodied in sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, in its deliberations relative to parole, probation, release, or other disposition of inmates who commit the crimes giving rise to their sentences on or before April 30, 1980.

Subd. 2. Nothing in sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, shall be deemed to limit the powers and duties otherwise provided by law to the commissioner of corrections with regard to the management of correctional institutions or the disposition of inmates unless those powers and duties are inconsistent with the provisions of sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1, in which case those powers and duties shall be superseded by sections 244.01 to 244.11, 609.10, 609.145, subdivision 1, 609.165, subdivision 2, and 609.346, subdivision 1.

**History:** 1978 c 723 art 1 s 8; 1980 c 417 s 15; 1983 c 274 s 18; 1986 c 444

## 244.09 MINNESOTA SENTENCING GUIDELINES COMMISSION.

Subdivision 1. **Commission; establishment.** There is hereby established the Minnesota sentencing guidelines commission which shall be comprised of 11 members.

Subd. 2. The sentencing guidelines commission shall consist of the following:

- (1) the chief justice of the supreme court or a designee;
- (2) one judge of the court of appeals, appointed by the chief justice of the supreme court;
- (3) one district court judge appointed by the chief justice of the supreme court;
- (4) one public defender appointed by the governor upon recommendation of the state public defender;
- (5) one county attorney appointed by the governor upon recommendation of the board of governors of the county attorneys council;
- (6) the commissioner of corrections or a designee;
- (7) one peace officer as defined in section 626.84 appointed by the governor;
- (8) one probation officer or parole officer appointed by the governor; and
- (9) three public members appointed by the governor, one of whom shall be a victim of a crime defined as a felony.

When an appointing authority selects individuals for membership on the commission, the authority shall make reasonable efforts to appoint qualified members of protected groups, as defined in section 43A.02, subdivision 33.

One of the members shall be designated by the governor as chair of the commission.

Subd. 3. Each appointed member shall be appointed for four years and shall continue to serve during that time as long as the member occupies the position which made the member eligible for the appointment. Each member shall continue in office until a successor is duly appointed. Members shall be eligible for reappointment, and appointment may be made to fill an unexpired term. The term of any member

appointed or reappointed by the governor before the first Monday in January 1991 expires on that date. The term of any member appointed or reappointed by the governor after the first Monday in January 1991 is coterminous with the governor. The members of the commission shall elect any additional officers necessary for the efficient discharge of their duties.

Subd. 4. Each member of the commission shall be reimbursed for all reasonable expenses actually paid or incurred by that member in the performance of official duties in the same manner as other employees of the state. The public members of the commission shall be compensated at the rate of \$50 for each day or part thereof spent on commission activities.

Subd. 5. The commission shall, on or before January 1, 1980, promulgate sentencing guidelines for the district court. The guidelines shall be based on reasonable offense and offender characteristics. The guidelines promulgated by the commission shall be advisory to the district court and shall establish:

(1) The circumstances under which imprisonment of an offender is proper; and

(2) A presumptive, fixed sentence for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15 percent in the presumptive, fixed sentence.

The sentencing guidelines promulgated by the commission may also establish appropriate sanctions for offenders for whom imprisonment is not proper. Any guidelines promulgated by the commission establishing sanctions for offenders for whom imprisonment is not proper shall make specific reference to noninstitutional sanctions, including but not limited to the following: payment of fines, day fines, restitution, community work orders, work release programs in local facilities, community based residential and nonresidential programs, incarceration in a local correctional facility, and probation and the conditions thereof.

In establishing the sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including but not limited to the capacities of local and state correctional facilities.

The provisions of sections 14.01 to 14.69 do not apply to the promulgation of the sentencing guidelines, and the sentencing guidelines, including severity levels and criminal history scores, are not subject to review by the legislative commission to review administrative rules. However, on or before January 1, 1986, the commission shall adopt rules pursuant to sections 14.01 to 14.69 which establish procedures for the promulgation of the sentencing guidelines, including procedures for the promulgation of severity levels and criminal history scores, and these rules shall be subject to review by the legislative commission to review administrative rules.

Subd. 6. The commission, in addition to establishing sentencing guidelines, shall serve as a clearing house and information center for the collection, preparation, analysis and dissemination of information on state and local sentencing practices, and shall conduct ongoing research regarding sentencing guidelines, use of imprisonment and alternatives to imprisonment, plea bargaining, and other matters relating to the improvement of the criminal justice system. The commission shall from time to time make recommendations to the legislature regarding changes in the criminal code, criminal procedures, and other aspects of sentencing.

Subd. 7. The commission shall study the impact of the sentencing guidelines promulgated by the commission after their implementation. The commission shall also, after implementation of the guidelines, review the powers and duties of the commissioner of corrections and make recommendations to the legislature on the appropriate role, if any, of the board under the guidelines.

Subd. 8. The commissioner of corrections shall provide adequate office space and administrative services for the commission, and the commission shall reimburse the commissioner for the space and services provided. The commission may also utilize, with their consent, the services, equipment, personnel, information and resources of

other state agencies; and may accept voluntary and uncompensated services, contract with individuals, public and private agencies, and request information, reports and data from any agency of the state, or any of its political subdivisions, to the extent authorized by law.

Subd. 9. When any person, corporation, the United States government, or any other entity offers funds to the sentencing guidelines commission to carry out its purposes and duties, the commission may accept the offer by majority vote and upon acceptance the chair shall receive the funds subject to the terms of the offer, but no money shall be accepted or received as a loan nor shall any indebtedness be incurred except in the manner and under the limitations otherwise provided by law.

Subd. 10. The commission may select and employ a research director who shall perform the duties the commission directs, including the hiring of any clerical help and other employees as the commission shall approve. The research director and other staff shall be in the unclassified service of the state and their compensation shall be established pursuant to chapter 43A. They shall be reimbursed for the expenses necessarily incurred in the performance of their official duties in the same manner as other state employees.

Subd. 11. **Modification.** The commission shall meet as necessary for the purpose of modifying and improving the guidelines. Any modification which amends the sentencing guidelines grid, including severity levels and criminal history scores, or which would result in the reduction of any sentence or in the early release of any inmate, with the exception of a modification mandated or authorized by the legislature or relating to a crime created or amended by the legislature in the preceding session, shall be submitted to the legislature by January 1 of any year in which the commission wishes to make the change and shall be effective on August 1 of that year, unless the legislature by law provides otherwise. All other modifications shall take effect according to the procedural rules of the commission. On or before January 1 of each year, the commission shall submit a written report to the judiciary committees of the senate and the house of representatives that identifies and explains all modifications made during the preceding 12 months and all proposed modifications that are being submitted to the legislature that year.

Subd. 11a. **Retroactivity.** Any person who is serving a sentence for which there is a modification in the numbers in the cells of the guidelines grid may institute a proceeding applying for retroactive application of the modification and the court may grant a petition for retroactivity subject to the same procedures, standards and conditions as set forth for post conviction remedies in section 590.01, subdivision 3. The right to petition for relief pursuant to this subdivision does not apply to modifications in the sentencing guidelines other than modification of the numbers in the cells of the guidelines grid. The right to petition for relief pursuant to this subdivision does not apply to offenders on supervised release or to offenders who have had their supervised release revoked and who have been reimprisoned.

Subd. 12. The guidelines shall be submitted to the legislature on January 1, 1980, and shall be effective May 1, 1980, unless the legislature provides otherwise.

Subd. 13. **Rulemaking power.** The commission shall have authority to promulgate emergency and permanent rules to carry out the purposes of subdivision 5.

**History:** 1978 c 723 art 1 s 9; 1982 c 424 s 130; 1982 c 536 s 1-3; 1982 c 642 s 3; 1983 c 216 art 1 s 35; 1983 c 274 s 10,18; 1983 c 299 s 24; 1984 c 589 s 3-6; 1984 c 640 s 32; 1986 c 444; 1987 c 377 s 1-3; 1987 c 384 art 2 s 1; 1988 c 618 s 1

**NOTE:** Subdivision 2, as amended by Laws 1988, chapter 618, section 1, is effective upon the expiration of either the current term of office or the appointment to the commission of a district judge appointed under clause (3) whichever is earlier. See Laws 1988, chapter 618, section 2.

#### 244.10 SENTENCING HEARING; DEVIATION FROM GUIDELINES.

Subdivision 1. **Sentencing hearing.** Whenever a person is convicted of a felony, the court, upon motion of either the defendant or the state, shall hold a sentencing hearing. The hearing shall be scheduled so that the parties have adequate time to

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prepare and present arguments regarding the issue of sentencing. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the sentencing hearing. Prior to the hearing, the court shall transmit to the defendant or the defendant's attorney and the prosecuting attorney copies of the presentence investigation report.

At the conclusion of the sentencing hearing or within 20 days thereafter, the court shall issue written findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

**Subd. 2. Deviation from guidelines.** Whether or not a sentencing hearing is requested pursuant to subdivision 1, the district court shall make written findings of fact as to the reasons for departure from the sentencing guidelines in each case in which the court imposes or stays a sentence that deviates from the sentencing guidelines applicable to the case.

**Subd. 3. Computation of criminal history score.** If the defendant contests the existence of or factual basis for a prior conviction in the calculation of the defendant's criminal history score, proof of it is established by competent and reliable evidence, including a certified court record of the conviction.

**History:** 1978 c 723 art 1 s 10; 1986 c 444; 1988 c 520 s 1

## 244.11 APPELLATE REVIEW OF SENTENCE.

An appeal to the court of appeals may be taken by the defendant or the state from any sentence imposed or stayed by the district court according to the rules of criminal procedure for the district court of Minnesota. A dismissal of an appeal brought under this section shall not prejudice an appeal brought under any other section or rule.

When an appeal taken under this section is filed, the court administrator of the district court shall certify the transcript of the proceedings and any files or records relating to the defendant, the offense, and the sentence imposed or stayed; that the supreme court by rule or order may require.

On an appeal pursuant to this section, the court may review the sentence imposed or stayed to determine whether the sentence is inconsistent with statutory requirements, unreasonable, inappropriate, excessive, unjustifiably disparate, or not warranted by the findings of fact issued by the district court. This review shall be in addition to all other powers of review presently existing. The court may dismiss or affirm the appeal, vacate or set aside the sentence imposed or stayed and direct entry of an appropriate sentence or order further proceedings to be had as the court may direct.

This section shall not be construed to confer or enlarge any right of a defendant to be released pending an appeal.

**History:** 1978 c 723 art 1 s 11; 1983 c 247 s 103; 1Sp1986 c 3 art 1 s 82